

Present:
Mr. Justice Faruque Ahmed
and
Mr. Justice Md. Ruhul Quddus

First Appeal No.188 of 2004
with
Civil Rule No.432 (F) of 2004

A. K. M. Waliullah and others
... Appellants

-Versus-

Secretary, Ministry of Housing and Public
Works and others
... Respondents

Mr. Md. Lutfor Rahman Mandal, Advocate
... for the appellants
Ms. Promila Biswas, D.A.G
... for the respondents

Judgment on 12.12.2011

Md. Ruhul Quddus, J:

This appeal at the instance of the plaintiffs is directed against judgment and decree dated 17.6.2004 passed by the Joint District Judge, Second Court, Dhaka rejecting the plaint in Title Suit No.89 of 2003. The suit was instituted for declaration of title and perpetual injunction for restraining the Government-officials from disturbing the plaintiffs peaceful possession on the suit property and from transferring it to any other person.

Plaintiffs case, in brief, is that the suit property originally belonged to one Md. Ramjan Ali, who being a migrated refugee from India, got it allotted from the Government of erstwhile East Pakistan by an indenture of agreement dated 29.7.1966 followed by another deed of conveyance dated 8.11.1969. After independence of Bangladesh, the said Ramjan Ali owed allegiance to Bangladesh and his name was included in the voter list dated 30.1.1973. He paid remaining installments on 17.4.1978 against the suit property and acquired sole proprietary right over the same.

Subsequently the said Ramjan Ali sold the suit property to the plaintiffs father and predecessor-in-interest Mukhlesuddin Ahmed by a registered sale deed dated 11.5.1978 and handed over possession thereof to him. Even after the said transfer, Ramjan Ali was all along present in Bangladesh. He died in Dhaka on 2.2.1980.

Meanwhile the area of Mirpur Police Station was declared as Mirpur Paurashava, and Holding No.372 was created against the suit property. Since then the plaintiffs were paying all taxes and utility charges to the Paurashava against the said holding.

Plaintiffs further case is that the suit property was declared abandoned and published as such in the khaq list of abandoned property on 23.9.1986, although in a prior inquiry it was found that the original allottee Ramjan Ali had sold it to Mukhlesuddin Ahmed, who was in possession thereof.

Thereafter, Mukhlesuddin Ahmed filed Case No.7 of 2001 (kha) in the First Court of Settlement, Dhaka for release of the said property, which was rejected on 1.12.2001. It is alleged that in rejecting the case, the Tribunal did not examine the thump impression of the original allottee Ramjan Ali by an expert and illegally arrived at a finding that the sale deed was not executed by him (Ramjan Ali).

Challenging the said decision, Mukhlesuddin Ahmed filed Writ Petition No.1238 of 2002. The High Court Division rejected it summarily by its judgment and order dated 17.3.2002. Then he moved in the Appellate Division with Civil Petition No.807 of 2002, which was also rejected in limini.

The plaintiffs came to know on 1.4.2003 that the defendant-officials were trying to settle the property elsewhere, thus the cause of action for filing the present suit arose.

The Secretary, Ministry of Housing and Public Works as defendant No.1 entered appearance and filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of the plaint on the grounds that the suit was barred by article 14 of President's Order No.16 of 1972 and also under article 6 (b) of The Ordinance No.XLIV of 1985, and that the abandoned character of the suit property was finally decided up to the Appellate Division.

Against the said application for rejection of the plaint, the plaintiffs filed a written objection on the facts and grounds stated therein.

Learned Joint District Judge heard the application and allowed the same by his order dated 17.6.2004 and thereby rejected the plaint on the ground that the suit was barred by law. Against the said judgment, the plaintiffs preferred the instant First Appeal and obtained an ad-interim order of injunction in the connected Civil Rule.

Mr. Md. Lutfur Rahman Mandal, learned Advocate appearing for the appellants submits that the Court of Settlement had no jurisdiction to decide title of the suit property and as such question of title between the parties is still open to be decided by a competent civil Court. Since the present suit is for declaration of title and other consequential relief, the plaint cannot be rejected on the ground of finality of the decision passed by the Court of Settlement. He further submits that the Government did not file any written objection denying the material allegations of the application, still the Court of Settlement rejected the application without proper adjudication of the issues whether the original allottee Ramjan Ali had left Bangladesh leaving the property uncared for; whether he died and was buried in Dhaka, and whether the authority served any statutory notice upon the occupants or did serve any other notice to meet natural justice. Under the facts and circumstances of the present case, the ouster clauses are not

applicable and the civil Court is fully competent to adjudicate the issues and decide title of the suit land on that basis.

On the jurisdiction of civil Court, Mr. Mandal refers to the cases of Mohammad Jamil Vs. Improvement Trust, Rawalpindi, 17 DLR (SC) 520; Secretary of State, represented by the Collector of South Arcot Vs. Mask and Company, Indians Appeals Vol. LXVII 222; Anisminic Ltd. Vs. Foreign Compensation Commission, 2 A C 147; Sm. Krishnamoni Vs. Baser Mondal and others, 1963 AIR Calcutta 225; The Province of East Pakistan and others Vs. Sirajul Huq Patwari and another, and some other cases in bunch, PLD 1966 Supreme Court 854; and People's Republic of Bangladesh, represented by the Secretary, Ministry of Public Works Vs. Chairman, Court of Settlement and others, 50 DLR (AD) 93.

On the other hand Ms. Promila Biswas, learned Deputy Attorney General Appearing for the Government-respondents submits that the decision of the Court of Settlement reached finality with dismissal of the civil petition filed by late Mukhlesuddin Ahmed, father of the plaintiffs. Thus the abandoned character of the suit property was finally established and it vested in Government. Now the heirs of the said Mukhlesuddin Ahmed cannot claim any title over the same property against the Government. The suit is clearly barred by law.

We have considered the submissions advanced by learned Advocates of both the sides, examined the materials on record and

gone through the decisions cited. It appears that the Court of Settlement considered and discussed the evidence both oral and documentary as adduced by the petitioner and observed that *it also appears from the Govt. file No.S-7/AP-145/85 of the Ministry of Works that a legal notice in page No.1 of the file N/s5(Q) was served upon the possessor, petitioner Muklesuddin for surrendering possession*. The Tribunal disbelieved Ramjan Ali's presence in Bangladesh at the relevant time as no citizenship certificate, non-option certificate, voter list or any other document in support of his presence was produced. The Tribunal also disbelieved the sale deed of Muklesuddin Ahmed because of non-production of any original via-deed and non-examination of any attesting witness.

All the cases cited by Mr. Mandal, learned Advocate for the appellants are distinguishable. Of those, only the case of 50 DLR (AD) 93 is related to abandoned property, wherein two claimants were fighting for one property claiming their diverse title. Those claimants filed two separate applications for release of that property and the Court of Settlement allowed both the applications deciding the property not to be abandoned. Challenging the said decision, the Government unsuccessfully moved a writ petition in the High Court Division and thereafter, a civil petition before the Appellate Division. In the leave petition, learned Deputy Attorney General appearing for Government-petitioner submitted that the Court of Settlement was wrong in allowing

the applications of two applicants on conflicting claims. Their Lordships of the Appellate Division dismissed the leave petition replying the said point in the following manner:

“The Court of Settlement was not a Court for determining the title of the rival claimants. It was a Court for determination whether the case property was an abandoned property or not. Since the Court of Settlement and the High Court Division both found that the case property is not an abandoned property it will be for the rival claimants themselves to sort out who is the legal owner thereof and to what extent, if not already determined by a Court of law.”

In the present case, there is only one claimant, who filed application before the Court of Settlement and claimed the suit property not to be an abandoned property. No dispute over title against any other individual is raised. The Tribunal rejected the application on consideration of the abandoned character of the said property. The genuineness of the petitioner's sale deed was a collateral issue related with the abandoned character of the suit property, which the petitioner Mukhesuddin Ahmed could not prove to rebut the conclusiveness of abandoned character of the property. The case of 50 DLR (AD) 93 is, therefore, not applicable here.

The facts regarding to filing of application before the Court of Settlement by the plaintiff's father Mukhesuddin Ahmed for exclusion of the suit property from the list of abandoned property, rejection of the

said application by the Tribunal's decision dated 1.12.2001 and its affirmation up to the Appellate Division, have been clearly stated in the plaint.

The decision of the Court of Settlement thus reached finality. Its legal consequence is that the property vested in Government, which can own, possess and dispose of it in any lawful manner. The plaintiffs, who are heirs of late Mukhlesuddin Ahmed (applicant before the Court of Settlement) cannot reopen the case raising the question of title in a disguised form. If the present suit is allowed to continue, there will be no end of litigation. It is barred by law and should be buried at the earliest opportunity.

This is correct that the Court of Settlement has a limited jurisdiction only to look into whether a particular property answers to the definition of abandoned property or not. But for that purpose it has jurisdiction also to see whether the applicant has *locus standi* to claim the property in question. In the present case the Court of Settlement found the transfer in favour of Mukhlesuddin Ahmed not to be genuine. This is in substance a decision on *locus standi* of the applicant in negative.

It is clear that the heirs of late Muklesuddin Ahmed (applicant before the Court of Settlement) have brought the present suit to continue with their possession over the abandoned property and it is definite that the suit will bring no result for the plaintiffs. In such a suit,

the Court can also invoke its inherent power and reject the plaint taking recourse to section 151 of the Code of Civil Procedure, even if it cannot be rejected under Order VII rule 11 of the Code. [reliance placed on 20 BLD (AD) 278]

In view of the discussions made above and the decision cited, we do not find any illegality in the impugned order of rejection of the plaint. The appeal merits no consideration and is liable to be dismissed.

Accordingly the appeal is dismissed, however, without any order as to cost. The connected Civil Rule is also discharged and the stay granted therein is vacated.

Send down the lower Courts record.

Faruque Ahmed, J:

I agree.