

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 4995 of 2014

Md. A. Samad Ara and others

.....plaintiff-petitioners

-Versus-

Md. Hanif Mondal being dead his legal heirs

1(a) Most. Tohinur Begum and others

.....defendant-opposite parties

No one appears for the petitioners

Mr. H. M. Borhan with

Ms. Sayada Shoukat Ara, Advocates

.....for opposite parties 1(a)-1(q)

Judgment on 01.07.2024

This rule at the instance of the plaintiffs was issued calling upon defendant-opposite party 1 to show cause as to why the judgment and decree of the Joint District Judge, Chanpainawabganj passed on 11.03.2014 in Title Appeal No. 232 of 2007 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Shibganj, Chanpainawabganj passed on 31.01.2007 in Other Class Suit No. 159 of 1990 dismissing the suit shall not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaintiffs instituted the suit stating that Tabjul Hoque was the original owner of the suit land measuring an area of 1.44 acres as described in the schedule to the plaint. On his death the plaintiffs, sister of them and the wife became the heirs. They used to possess the

land through *bargader* defendant 1 Hanif Mondal who disclosed on 01.09.1990 that he would sell the whole sugarcane grown in the land because he and defendant 2 purchased the suit land through two separate *kabalas* both dated 05.04.1988. The plaintiffs then collected the certified copies on 09.09.1990 and came to learn about the *kabalas*. Their maternal uncle was bed-ridden before his death and died on 07.06.1988. The disputed deeds were shown to have been executed and registered on 05.04.1988. The defendant prepared the deeds in the name of Tabjul Haque by false personation. Their maternal uncle Tabjul Haque also surrendered a part of the land to the Government at the time of submission of return. The deeds are collusive, forged and created only to grab the property. Hence, the suit for declaration that the *kabalas* as described in schedule 'Kha' to the plaint are forged, collusive and not binding upon the plaintiffs.

Defendant 1 contested the suit by filing written statement. In the written statement he denied the statements made in the plaint and further contented that the original owner Tabjul Haque by two *kabalas* transferred the land to him and defendant 2. The deeds were registered in the house of Haji Tabjul Haque on commission. Defendants 2 subsequently transferred his share to this defendant, who exchanged the said land with defendant 1 by another registered *ewaz* deed dated 10.10.1988. He has been enjoying the total land of two *kabalas* by growing crops therein. The suit, therefore, would be dismissed.

On pleadings, the Assistant Judge framed five issues. In the trial, the plaintiffs examined 3 (three) witnesses and their documents were produced as exhibits-'1'-'1Ka'. On the other hand, defendant 1 examined 4(four) witnesses and his documents were exhibit -'Ka'-'Ga'. However, the trial Court considering the evidence and other materials on record dismissed the suit against which the plaintiffs preferred appeal before the District Judge, Chanpainawabganj. The Joint District Judge, Court No.1, Chanpainawabganj heard the said appeal on transfer and dismissed the same which prompted the petitioner to approach this Court with this revision and the rule was issued.

No one appears for the petitioners although the matter has been appearing in the daily cause list for couple of days with the name of their learned Advocate for the petitiners.

Ms. Sayda Shoukat Ara, learned Advocate for opposite parties 1(a)-1(q) takes me through the judgments passed by the Courts below and submits that the plaintiffs claimed that the *kabalas* described in the schedule to the plaint was forged and collusive but they failed to prove it in evidence. It is settled principle that he who alleges forgery is to prove it but here the plaintiffs failed to discharge their onus. The defendant is in possession of the suit land as has been admitted by PW3 in evidence and as such the suit in the present for praying declaration only without seeking consequential relief of recovery of

possession is not maintainable. The Court of appeal below correctly assessed the evidence of the parties and dismissed the appeal affirming the judgment passed by the Court below which may not be interfered with. The rule, therefore, having no merit would be discharged.

I have considered the submissions of the learned Advocate for the opposite parties, gone through the judgments passed by the Courts below and grounds taken in the revisional application.

It is admitted by the parties that land described in the schedule 'Ka' to the plaint originally belonged to Haji Tabjul Haque. It is also admitted that he died on 07.06.1988. The plaintiffs alleges that their maternal uncle was bed-ridden before his death and was suffering from various old age diseases and taking its advantage defendant1 prepared those *kabalas* by false personation. The proof of the fact that defendant1 created those *kabalas* lies upon the plaintiffs. On perusal of the evidence of plaintiffs' witnesses, I find that that they hopelessly failed to prove that defendant1 prepared those *kabalas* by false personation. The witnesses of the plaintiffs to that effect is found not corroborative. On the other hand, defendant 1 produced the *kabalas* exhibit-'Ka' and 'Kha'. DW 2 Alhaj Md. Safiqul Alam is the scribe of the deed. He proved the execution and registration of the *kabalas* as per law. Although, he was cross-examined by the plaintiffs but nothing came out adverse. Therefore, defendant1 proved the execution

and registration of the *kabalas* by Tabjul Haque, the owner of the land. The possession of the land is found with defendant1. The witnesses of the defendant led corroborative evidence supporting his possession in the suit land. Moreover, PW3 Mahbul Haque, a witness to the plaintiffs in cross-examination stated that defendant1 Hamid possesses the suit land. Since defendant1 is found in possession of the suit land, the instant suit for declaration only without recovery of possession is not maintainable.

The trial Court found the report of the expert in respect of the thumb impression of executant Tabjul Haque against the plaintiffs and in favour of defendant1 and relied on it. But the Court of appeal below correctly did not admit the report of the expert as evidence because the expert was not examined on oath and the report was not exhibited. The findings and decisions of the Appellate Court to that effect is correct. But the appellate Court dismissed the appeal on the other aspects of the case and in doing so no error has been committed.

However, both the Courts below found that the plaintiffs have failed to prove the case and as such dismissed the suit. The above concurrent findings of the Courts below should not be interfered with by this Court in revision unless there is gross misreading or non-consideration of the evidence and other materials on record. In the revisional application no such ground has been taken. I do not find any misreading of evidence or any error on point of law in the

impugned judgments for which the decision taken by the Courts below could have been otherwise.

Therefore, I find no merit in this rule. Accordingly, the rule is discharged. No order as to the costs. The judgment and decree passed by the Courts below is hereby affirmed.

Communicate the judgment and send down the lower Courts' record.