

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Civil Revision No. 1291 of 2004**

**IN THE MATTER OF**

Amjad Hossain and others

.....Defendants-Appellants-Petitioners

Md. Afajuddin and others

.....Plaintiffs-Respondents-Opposite parties

Mr. Md. Shariful Islam, Advocate

.....For the petitioners

Mr. Abul Kashem Bhuiyan with

Mr. Mahbubur Rahman with

Mr. Raihan Kawsar, Advocates

.....For opposite party Nos. 1-7

**Heard on 01.03.23, 13.03.23, 14.03.23, 27.03.23 and judgment  
passed on 02.04.2023**

**Present:**

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, under section 115(1) of the Code of Civil  
Procedure, 1908, was issued in the following term-

*“Record of the case be called for and let a Rule issue  
calling upon the opposite parties to show cause as to why the  
judgment and decree dated 14.05.2003 passed by the learned  
Joint District Judge, 2<sup>nd</sup> Court, Rajshahi in Title Appeal No.*

*197 of 2002 dismissing the appeal and thereby affirming those dated 28.05.2002 passed by the learned Assistant Judge, Durgapur, Rajshahi in Title Suit No. 11 of 1996 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuance of the Rule, this Court stayed all further proceedings of the impugned judgment and decree dated 28.05.2002 for 3(three) months from the date and lastly, it was extended on 10.01.2005 for a period of another 6(six) months from the date.

The present opposite parties as the plaintiffs filed Title Suit No. 11 of 1996 in the Court of learned Assistant Judge, Durgapur, Rajshahi against the present petitioners as the defendants for a decree of permanent injunction in respect of the suit land.

The case of the plaintiffs, in short, is that the suit land originally belonged to one Amin Mondol, and the C.S. record was prepared in his name. He sold 1.31 acres of land from Sabek Plot No. 2232 to Taser Sorder on 19.07.1958 and then he sold out the land of Sabek Plot Nos. 1200 and 1844 to Arjan Bibi on 13.03.1959

and accordingly, the S.A. Khatian No. 142 and R.S. Khatian No. 380 were duly recorded in their names jointly. Thereafter, Taser Sorder on 23.07.1976, sold 1.31 acres of land to Zarman who then on 24.10.1982, sold the same to Abdul Barek, who on 10.07.1988, transferred his purchased land to plaintiff Nos. 1-3 by way of registered deed. Subsequently, Taser Sarder sold .40 acres of land of Sabek plot No.1844 to Rahman Sarder and Abdul Latif. Rahman Sarder sold his share to Abdul Hamid on 02.08.1982, and then Abdul Hamid on 30.09.1989, sold .20 acres of land from the western side of the said plot to plaintiff Nos. 4-6. Thereafter, Abdul Latif on 20.08.1982 sold his share of .20 acres of land to one Rostom Ali who then on 15.10.1988 exchanged the said land with plaintiff No. 7 Moyjuddin. Plaintiff No. 8 has been possessing .76 acres of the scheduled land since his purchase. The defendants threatened the plaintiffs to dispossess them from the suit land on 15.01.1996, and hence the suit.

The defendants contested the suit by filing a written statement denying the averments made in the plaint contending, inter alia, that Taser Sorder purchased 1.31 acres of land from

Sabek plot No.2232 from Amin Mondal vide registered Kabala No. 15115 dated 19.08.1958, and similarly, his wife Arjan Bibi purchased .40 acres from Sabek plot No. 1844; .76 acres from Sabek plot No. 2303 and .35 acres from Sabek plot No. 4751 in total 1.51 acres of land by a registered Kabala dated 10.03.1959, and at the time of S.A.'s operation, the said in total 2.82 acres of land were recorded in S.A. Khatian No. 142. Arjan Bibi sold .35 acres of land to one Oazed Ali and Adam Ali before the R.S. operation. The remaining 2.47 acres of land were recorded in R.S. Khatian No. 380 in their names in ejmali. They were issueless. Taser Sorder died before his wife. After the death of Arjan Bibi her brother Munsad, and sister Nurjahan became the lawful heirs and owned and possessed the land left by their sister Arjan Bibi. Thereafter, they sold .40 acres of land to the defendants by registered Kabala deeds on 02.03.1996 (Exhibit-Ka and Kha) and handed over possession to them and they are enjoying the property.

After the conclusion of the trial the learned Assistant Judge, Durgapur, Rajshahi by his judgment and decree dated 28.05.2002 decreed the suit on the contest against the defendants without cost

and restrained the defendants by way of a permanent injunction so that they could not disturb the peaceful enjoying of the plaintiff in the suit land.

Being aggrieved by the said judgment and decree dated 28.05.2002 the defendants as the appellants preferred an appeal before the learned District Judge, Rajshahi, and the same was numbered Title Appeal No. 197 of 2002. Thereafter, the appeal was transferred before the learned Joint District Judge, 2<sup>nd</sup> Court; Rajshahi who after hearing the appeal by his judgment and decree dated 14.05.2003 disallowed the appeal on the contest without cost by affirming those of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 14.05.2003 the defendants as the petitioners had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Anyway, Mr. Md. Shariful Islam, the learned Advocate appearing on behalf of the defendants-petitioners submits that both the Courts below committed an error of law in holding the view that the defendants failed to file any separate Khatian or

Dakhila in the name of Arjan Bibi, and on the other hand, during the lifetime of Arjan Bibi her husband Taser Sorder sold .40 acres of land, and if there were no amicable settlement between the husband and wife, Arjan Bibi ought to have filed a suit for cancellation of the deed executed by her husband but she did not take any initiative to that effect. Besides, Taser Sorder was the sharer of 01 anna in his wife Arjan Bibi's land as such, his said transfer was legal. The Courts below also held that since the defendants claimed purchasing the land from the heirs of said Arjan Bibi they had the option to file a partition suit if they desire so.

He further submits that the Courts below failed to consider that Taser Sorder purchased 1.31 acres of land from Sabek plot No.2232 from Amin Mondal vide registered Kabala No. 15115 dated 19.08.1958, and similarly, his wife Arjan Bibi purchased .40 acres from Sabek plot No. 1844; .76 acres from Sabek plot No. 2303 and .35 acres from Sabek plot No. 4751 in total 1.51 acres of land by a registered Kabala dated 10.03.1959, and at the time of S.A.'s operation, the said in total 2.82 acres of land were recorded in S.A.

Khatian No. 142. Arjan Bibi sold .35 acres of land to one Wazed Ali and Adam Ali before R.S. Operation. The remaining 2.47 acres of land were recorded in R.S. Khatian No. 380 in their names in ejmali. They were issueless. Taser Sorder died before his wife. After the death of Arjan Bibi her brother Munsad, and sister Nurjahan became the lawful heirs and owned and possessed the land left by their sister Arjan Bibi. Thereafter, they sold .40 acres of land to the defendants by registered Kabala and handed over possession to them.

He lastly submits that both the Courts below failed to consider that the instant suit for a permanent injunction is not maintainable in an undivided ejmali property and the findings are not based on the proper assessment of the materials on record which occasioned a failure of justice.

Conversely, Mr. Abul Kashem Bhuiyan the learned Advocate appearing with Mr. Raihan Kawsar, Advocate on behalf of the plaintiffs-opposite parties submits that both the Courts below considering the facts and circumstances of the case and the

evidence on record rightly decreed the suit on concurrent findings and thereby committed no illegality occasioning a failure of justice.

He next submits that in a suit for a permanent injunction, the plaintiff is required to prove his exclusive possession over the suit land and a prima facie title thereto as the Court cannot decide the title in a simple suit for a permanent injunction. In the instant suit, the plaintiffs could not prove their conclusive possession over the suit land and prima facie title thereto as such; both the Courts below rightly decreed the suit of the plaintiffs and thereby committed no illegality. He lastly submits that there is no misreading and non-consideration of the material facts on record or error of law to have been committed in passing the impugned judgment and decree.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the plaintiffs filed the instant suit for a decree of permanent injunction restraining the defendants from disturbing their peaceful enjoyment of the suit land. The plaintiff prayed for injunction over 2.47 acres of land and the defendants undeniably accepted the



plaintiffs' title and possession over the suit land except for 40 decimals of the land of S.A plot No. 1844 and R.S plot No. 2438 claiming that after the death of Arjan Bibi issules her brother and sister became her legal heirs and sold out said 40 decimals of land to defendant Nos. 2 and 3 on 02.03.1996 by way of registered Kabala deeds (Exhibits-Ka and Kha), that is to say, after filing the instant suit on 15.01.1996 and during the pendency of the same by which the defendants did not acquire any title over the said land and possession thereon. It also appears that Taser Sarder and his wife Arjan Bibi were the owners of said 40 decimals of land on equal share by purchase and S.A. Khatian No.142 and R.S. Khatian No.380 (Exhibits-I and II) were prepared in their names as husband and wife in ejmali and during their title and possession over the land Taser Ali amicably sold out the said 40 decimals of land to one Rahman Sarder and Abdul Latif on 31.03.1973 who subsequently transferred the land to different persons from whom the plaintiffs got the same by purchase and exchange in 1988/1989 and entered into possession. There is no such evidence that Arjan Bibi ever raised any objection about the said sale of her ejmali land

by her husband during her lifetime, from which it appears that the plaintiffs could able to prove their prima facie title over the suit land. On perusal of the evidence on record, it also appears that the plaintiffs were able to prove their exclusive possession over the suit land by oral and documentary evidence. The defendants threatened the plaintiffs to dispossess them from the suit land before execution of their (defendants) alleged deeds (Exhibits-Ka and Kha). In the circumstances, both the Courts below considering the facts and circumstances of the case and the evidence on record rightly decreed the suit of the plaintiffs on concurrent findings and thereby committed no illegality occasioning failure of justice. However, concurrent findings of the Courts below cannot be interfered with unless there is a misreading or non-consideration of the material facts on record or an error of law to have been committed in passing the impugned judgment and decree. But in the case at hand, I do not find any such misreading or non-consideration of the material facts available on record or any error of law.

In the course of submissions, Mr. Bhuiyan referred to the decision in the case of Md. Kamal and others –Vs- A.K.M. Mohsin and others reported in 10 MLR (AD) (2005) 100 wherein in paragraph Nos. 6 and 7 it was held that-

*“On perusal of the judgment of the trial Court, it appears that the trial Court has arrived at a finding of exclusive possession with prima facie title of the plaintiff in the suit land. The Court of Appeal below though not discussed the evidence on the record but has agreed with the finding of the trial Court. The High Court Division, however, refused to interfere with the impugned judgment and decree of the Court of appeal below holding that the trial Court discussed the evidence of both the parties, oral and documentary, in arriving at a finding that the plaintiff has a prima facie title and exclusive possession in the suit land and that the appellate Court while affirming the judgment and decree of the trial Court is not required to reassess the oral evidence with minute details. The High Court*

*Division further held that in response to the submission of the learned Advocate for the petitioners that P.W. 3 Abdur Rahman having introduced the new story to the effect that Abdur Rahman purchased the land from the plaintiff subsequently to institution the suit and has been in possession after his purchase was not permissible under provision of Order 6 rule 7 of the Code of Civil Procedure and observed as under:*

*'Having judged this particular provision of law, from such angle of vision, I find in the instant case the plaintiffs having introduced their case to the effect that they have been in possession of the suit land in exercise of their title therein and in view of subsequent development namely transfer of some land out of the suit land in favour of P.W. 3 Abdur Rahman the evidence was led at the stage of trial to the effect that Abdur Rahman being subsequent purchaser as also being constituted attorney of the remaining suit land on behalf of the plaintiffs had been exercising his right*

*or possession over the same and such evidence even if led at the stage of trial by the plaintiff it can neither be said to be inconsistent with their previous pleading nor the same can be termed as a new ground of claim since Abdur Rahman P.W. 3 is none but a person stepping into the shoes of the plaintiffs and none else. Under such circumstances, I hold that the decisions relied on by the learned Advocate for the petitioners are not applicable in the instant case.’ (Para-6)”*

*“The suit is one for permanent injunction and the essential feature of the suit is to ascertain the exclusive possession of the suit land and in deciding the said issue the Court could incidentally go into the title if the same is inextricably mixed up with the question of possession while enquiring into the respective claims of the parties to the suit for determining whether the plaintiff is in exclusive possession of the disputed property and is entitled to a decree for permanent injunction. This view finds support in the case of*

*Rafizuddin Ahmed Vs. Mongla Barman and others reported in 43 DLR (AD) (1991)-215 wherein it has been held that:*

*'In a simple suit for permanent injunction with regard to a disputed landed property, the relief is available to a person who is in possession. The Court may enquire incidentally into the respective claims of the parties to the suit for determining whether the plaintiff has got a prima facie case i.e., whether he is in possession of the disputed property and entitled to the specific relief of permanent injunction. If the dispute involves complicated questions of title the plaintiff must establish his title by filing a regular suit for declaration of title. A simple suit for permanent injunction should not be allowed to be used as a testing device for ascertainment of title.'* (Para-7)"

In the attending facts and circumstances of the case, the above-cited decision is squarely applicable to the case at hand.

Given the above, I do not find any substance in the submissions so made by the learned Advocate for the petitioners, rather; I find substance in the submissions made by the learned Advocate for the opposite parties. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay, if any, vacated.

The impugned judgment and decree dated 14.05.2003 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Rajshahi in Title Appeal No. 197 of 2002 disallowing the appeal by affirming those dated 28.05.2002 passed by the learned Assistant Judge, Durgapur, Rajshahi in Title Suit No. 11 of 1996 decreeing the suit is hereby upheld.

Send a copy of this judgment along with the L.C.R to the Court below at once.