

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Emdadul Huq
Civil Revision No. 3186 of 2004.

With

Civil Revision No. 4313 of 2004.

In the matter of:

Chitta Ranjan Bakshi and others.

.....Petitioners.

Versus.

Maya Rani Bakshi and others.

.....Opposite
parties.

Mr. Abdul Kuddus Miah, Advocate.

..... For the petitioners.

Mr. Anowar Hossain, Advocate.

..... For the opposite party Nos 1(ka)-
(Ga).

Mr. A. B. Roy Chowdhury, Advocate.

.... For the opposite party Nos.

Heard on: 13.2.14, 27.2.14, 5.3.14, 3.4.14 21.4.14 ,
23.4.14, 15.5.2014.

Judgment on: 10.6.2014.

These two Civil Revisions arose from the same judgment and decree dated 08-5-2004 passed in Title Appeal No.13 of 2003.

By that judgment and decree the learned Special District Judge (Jana Nirapatta Bighnakari Apradh Daman Tribunal), Comilla dismissed the Appeal and thereby affirmed those dated 5.11.1996 passed by the learned Assistant Judge, Nangalkot, Comilla in Title Suit No.40 of 1996 decreeing the suit in preliminary form and thereby allowing saham to the plaintiff-petioners and 4 (four) sets of defendants.

Earlier separate Rules were issued in the two Revisions, but the Rules have been heard together and this judgment will govern both the Revisions.

Plaintiff's Case.

Plaintiff Niranjan Chandra Bakshi (deceased), being predecessor of opposite party Nos. 1-3, filed the above noted suit for getting partition of 1.28 ¼ acres of land out of the suit jote appertaining to the C.S. khatian No.156 measuring a total of 5.97 acres.

Plaintiffs claim that the suit jote belonged to two C.S. recorded tenants, being Agni Kumar Dey having a share of 2.48 ¾ acres and Droupodi Dey having a share of 3.48¼ acres. Apart from the said recorded share, Agani Kumar dey, by kabala dated 16.2.1953, purchased another 23 ½ decimals of land from Mohesh Chandra Dey son of the other C.S. tenant Droupodi Dey.

Agni Kumar Dey, during his life time, transferred 57 decimals by way of giving settlement. Thus plaintiff Nishi Ranjan (deceased), as the sole heir of Agni Kumar, inherited 2.25¼ acres. Subsequently plaintiff Nishi Ranjan transferred 87 decimals to several persons by different kabalas and he was left with 1.28¼ acres for which he filed the present partition suit.

In a better statement, plaintiff Nishi Ranjan Bakshi (deceased) stated that the other C.S. tenant Droupodi Dey settled 28 decimals of land by a registered kabuliat dated 19.4.1922 to one Jagannth Bakshi.

Plaintiff also stated some other facts relating to some transfer made by his caretaker Mohesh Master to one Ataran Nessa being mother of defendant Nos. 20-26 and also to two others.

Case of 5 (five) sets of defendants.

In the trial court, 5 (five) sets of defendants appeared and filed separate written statements and contested the suit. Their claims are briefly stated in the following paragraphs.

Claim of Defendant Nos.2, 28 and 29 : Defendant No.2 Abu Bala Dey claims to be the daughter of Amrita Dey being the grandson of the C.S. tenant Droupodi Dey. Defendant Nos. 28 and 29 are the two sons of Abu Bala Dey and they were added as defendants in the capacity of revisioners. These defendants claim a share of 2.69 ½ acres as the descendants of Droupodi Dey.

They admit that the C.S. recorded tenant Droupodi Dey had a share of 3.48 ¾ acres and that the other C.S. tenant Agani Kumar Dey had a share a 2.48 ¼ of acres.

They claim that Droupodi Dey, by amicable partition with Agni Kumur, used to possess 2.86 acres in the suit Jote. Droupodi had only one son named Mohesh who had two sons named Amrita Dey and Guru Prassanna Dey. Droupodi Dey, during her life time, transferred 2.31 acres of land to her grandson Amrita Dey by a registered patta dated 7.2.1924.

After the said transfer of 2.31 acres by Droupodi to grandson Amrita, her remaining property devolved upon her son Mohesh who gifted 38 ½ decimals to his grand-son Pran Gopal i.e. son of Amrita Dey by registered deed dated 20.7.51.

Thus Pran Gopal acquired a total of $2.31 + 38\frac{1}{2} = 2.69\frac{1}{2}$ acres by inheritance from father Amrita Dey and gift from grandfather Mohesh Dey.

Mohesh Dey had made another gift of 70¼ decimals to his other son Guru Prassanno Dey by a registered deed dated 7.7.1954. Out of this 70¼ decimals, Guru Prassanno Dey gifted 61 decimals by

a registered deed dated 28.7.1980 to Shailo Bala (defendant No.1) being wife of Amirata. This Shailo Bala is the mother of defendant No. 2.

Guru Prassanno Dey died issue less and left his wife defendant No.3 and his brother's daughter defendant No.2. On the other hand Pran Gopal died leaving his mother Shaila Bala (defendant No.1) and sister defendant No.2. Subsequently defendant No.1 died leaving his only daughter defendant No.2, who has got two sons being defendant Nos. 28 and 253.

In this way defendant No.2 acquired 2.69½ acres and prayed for partition of that share.

Claim of Defendant Nos.18 and 19:-These two defendants jointly claim partition of 37¾ decimals by virtue of their purchase from plaintiff Nishi Ranjan (deceased) by four registered kabalas dated 21.7.1982, 25.4.1983, 24.2.1982 and 21.1.82.

Defendant No.14 and 15:-These two defendants claim 30 decimals by virtue of a kabala dated 15-02-1971 from Khitish Chandra son of Jagath Chandra Bakshi who, according to these defendants, took settlement of 1.26 acres from the C.S. tenant Droupodi Dey by a registered kabuliat dated 19.4.1922. However by amicable partition with his brothers Jogot Chandra used to possess only 53 cents, and his brothers used possess the remainder of the said land.

The share of Jagot Chandra being 53 cents devolved upon his 6(six) sons. However Khitish Chandra, as one of the sons of Jagot Chandra, used to possess the said 53 cents by amicable partition and sold 30 decimals out of that land to the defendants.

Defendant No.27: This defendant claims 60 decimals by virtue of purchase of his father Mofiz by kabala dated 11.7.1947 form Mohesh Chandra Dey son of the C.S. tenant Droupodi Dey.

Defennt No.11 (ka-Ga): These defendants claim 6 (six) decimals as grandson of one Asma Bibi who purchased the same from the said Mohesh.

Proceedings and decisions of the courts below:

At the trial, plaintiff and the aforesaid 5 (five) sets of defendants contested and produced oral and documentary evidence.

The trial court upon consideration of the evidence on record partly decreed the suit and also allowed saham to 4 out of the 5 sets of contesting the defendants as follows: **(a) plaintiff:** 1.13 ½ acres, **(b) defendant Nos. 18 and 19:** 37¾ decimals. **(c) defendant No.2 along with (28 and 29):** 1.50¼ acres. **(d)defendant No.27:** 60 decimals, and **(e) defendant No.11(ka to 11(ga):** 60 decimals.

Apart from allowing the shares as noted above, the trial court recorded findings that one Harimahan had a share of 64½ decimals and one Haque, as purchaser from the plaintiff, had a share of 36 decimals and one Shafi Mia had a share of 27 decimals, and that these shares would remain as residue shares.

With regard to the claim of the contesting defendant Nos. 14 and 15, the trial court recorded finding that their claim was not proved, as they failed to file the document of settlement dated 19-04-1922 and D.W.2 being full brother of defendant Nos. 14 and 15 denied the acquisition of any land by their father Jogot Bakshi by virtue of any settlement from Droupodi.

The defendant Nos.14 and 15, preferred the appeal and adduced additional evidence (Exhibit-ੳ/ੳ).

Defendant No. 20 did not appear in the trial court, but appeared in the appeal and filed a cross-objection. He raised clam for 60 decimals by virtue of purchase from the plaintiff Nishi Ranjan

(deceased). He also filed an application for adducing additional evidence in the appeal. But this application and also the cross objection were rejected by the appellate court.

The appellate court concurred with the findings and decision of the trial court and dismissed the appeal by the impugned judgment and decree.

Deliberation in Revision:

In C.R. No.3186 of 2004, Mr. Abdul Kuddus Miah the learned Advocate for the petitioners (defendant Nos.14 and 15), submits that the appellate court did not consider material evidence on record with regard to the basic title of these defendants, namely the registered kabuliat dated 19-04-1922 (Exhibit-3) executed by their father Jagot Chandra Bakshi in favour the admitted C.S. tenant Draupodi Dey for 1.26 acres of land.

Mr. Kuddus Mia next submits that the registered patta dated 19-04-1922 (Exhibit-৩/১) executed by the said Droupodi in favour of Jagot Chandra confirm the said settlement of 1.26 acres.

Mr. Kuddus Mia next submits that the defendants have produced the document of settlement as additional evidence in the appeal as evident from by order dated 04-07-2001 and also the kabala date 15-02-1971 (Exhibit-৩) by which they purchased 30 decimals from khitish Chandra being one of the six sons of the said Jagot Chandra Bakshi.

Mr. Kuddus Mia, the learned Advocate next submits that the appellate court failed to consider that the fact of settlement given by a C.S. recorded tenant to Jagot Chandra Bakshi was a fact subsequent to publication of the C.S record and therefore it could not be recorded in the C.S. record.

Mr. Kuddus Mia next submits that the document of settlement in favour of Jagot Chandra states about limited tenancy period, but in reality it continued as holding over which is reflected in the S.A. record as admitted by P.W.2.

With regard to the case of the defendant No.20, being the petitioner of the other Revision i.e. C.R. No.4313 of 2004, Mr. Abdul Kuddus Miah, the learned Advocate submits that this defendant did not appear in the trial court but filed a cross-objection in the appeal and also filed an application for adducing additional evidence, but the application was rejected on a flimsy ground that the application did contain the names of the witnesses.

Mr. Kuddus Miah, the learned Advocate, lastly submits that for proper adjudication of the dispute the appeal should be sent back on remand so that the aforesaid two sets of defendants get an opportunity to establish their claim.

In reply Mr. Anowar Hossain, the learned Advocate, for the opposite parties being defendant Nos. 2, 28 and 29, submits that the courts below have recorded concurrent decisions on all the relevant questions of fact including the failure of the petitioners both of the Revisions, to prove their case by producing credible evidence and therefore no interference is necessary in this Revision.

Mr. Hossain the learned Advocate next submits that the settlement given by the C.S. tenant Droupodi Dey to Jagot Chandra was only for 10 years and there is no evidence on record like a rent receipt to show that the tenancy continued by way of holding over.

In this connection Mr. Anowar Hossain, the learned Advocate refers to the case of *Siddik Ali being dead his heirs Afia Rahman and other Vs. Nurun Nessa Khatun and others reported in 43DLR (AD)(1991)* and also to the section 107 of the Transfer of Property Act.

Mr. A.B. Roy Chowdhury, the learned Advocate for the plaintiff submits that the claim of the plaintiff has not been challenged by any of the defendants and therefore the decree obtained by him should not be interfered with.

Finding sand decisions in Revision:

It appears from the materials on record that the claimants to the suit property clearly fall in two groups. The claimants of the 1st group are the successor-in-interest of Agni Kumar Dey being one of the two admitted C.S. tenants. They are the plaintiff and defendant Nos.18 and 19 and defendant No. 20.

The claimants of the 2nd group are the successors-in-interest of the other C.S. tenant Droupodi Ddy. They are defendant Nos. 2 along with No. 28, 29 and defendant Nos. 14 and 15 and defendant No. 27 and defendant No. 11 (Ka-Ga).

It further appears that, out of the said 1st group, the plaintiff was allowed by both the courts below a preliminary decree for a saham of 1.13¼ acres as the son of the C.S. tenant Agni Kumar Dey and that a saham of 37¾ decimals has been allotted to defendant No. 18 and 19 by virtue of their purchase from plaintiff. There is no objection in these two Revisions against those two saham.

The third claimant of the 1st group is defendant No.20. He claims his share by virtue of purchase from the plaintiff. But he did not appear in the trial court. However in the appeal he filed an application for adducing evidence in support of his claim, but the appellate court by order dated 24.3.2004 rejected the application on the reasoning that no name of the witnesses were furnished to prove the documents filed by defendant No.20. Thus his claim was discarded.

Evidently the reasoning of the appellate court is too technical. The appellate court could have directed the defendant No.20 to submit the names of the witness or at least could have summoned the defendant himself as a witness. No doubt this order has deprived defendant No.20 of the opportunity to establish his case.

All the 4(four) sets of defendants of the **2nd group** claim their interest through the other C.S tenant Droupodi Dey and her successor in interest.

It appears that there is a clear dispute between the two sets of defendants being No.2 (along with No. 28 and 29) and No. 27, and 11(Ka to Ga) on the one side and defendant No.14 and 15 on the other. The principal dispute between these two sets is whether Droupodi Dey, the admitted C.S. tenant, had transferred on 1.26 acres to Jagot Chandra Bakshi by settlement and whether the settlement continued after the expiry of the first tenure as mentioned in documents of settlement.

On this issue defendant Nos.14 and 15 rely on the document of settlement being a kabuilat dated 19.4.1922 (Exhibit-3) executed by Jagot Bakshi in favour of C.S. tenant Droupodi and the patta dated 19-04-1922 executed by Droupodi in favour of Jagot Chandra and the kabala dated 15-02-1971 executed (Exhibit-७) by Khitish being son of the said Jagot.

But the trial court discarded claim of these defendants and recorded a finding that the defendant Nos.14 and 15 did not file any document. Evidently trial court did not consider the said two documents (Exhibit-3 and ७) admitted as evidence.

The materials on record show that the deceased plaintiff Nishi Ranjan in his plaint admitted the fact of settlement by Drupodi Dey to Jagot Chandra Bakshi and filed the certified copy of kabuilat executed by Jagot Chandra (Exhibit-3). This document shows that

some land of C.S. plot Nos.230 and 227 was settled by Droupodi Dey for 20 years. The measurement of the land is stated in local measurement with reference to those C.S. plot. This document is further supported by the photo copy filed by the defendant No. 20 in this court showing similar entries.

It is noted the additional evidence Exhibit-ଢ, ଢ/୧) as mentioned in the order dated 04-05-2007 passed by the appellate court are not available on record.

Defendant Nos. 14 and 15 however filed in this court the copy of the registered patta dated 19.04.22 and filed an application for accepting it as additional evidence. This document show that Droupodi settled the same quantum of land as in Exhibit-3, and the tenure is mentioned as 20 years and another photo copy of the same document shows that period as being 10 years.

The defendant Nos. 14 and 15 have not filed the certified copy of the S.A record in support of their claim of holding over after expiry of the period of tenancy as mentioned in the foresaid documents. However it appears that P.W.2 stated about preparation of the S.A. khatian No.56/1 in the name of Jagot Bakhsi. So these defendants appear to have produced some evidence in support of their claim.

Both the courts below erroneously reasoned that the C.S record was not prepared in the name of the Jagot Chandra the predecessor-in-interest of defendant Nos.14 and15. Such reasoning is evidently erroneous, simply because the settlement to Jagot Chandra allegedly took place after preparation of the C.S. record and therefore the C.S. record could not contain the name of the person to whom the land was settled by a C.S. tenant.

However it appears that there is clear conflict in the claim of defendant Nos. 14 and 15 with those of defendant No.2 and other

defendants claiming through Drupodi. Because if defendant No. 14 and 15 are able to prove their claim namely settlement of 1.26 acres by Drupodi to Jagot Bakshi by the documents dated 19-04-1922 and the holding over after expiry of the tenancy period, the property left with Droupodi will be reduced with the result that the probable entitlement of defendant No.2 and also No.11 (Ka-Ga) and No. 27 may be reduced or otherwise decided.

In consideration of the above findings I hold that for proper adjudication of the dispute the appeal should be sent back on remand to the appellate court and the parties should get proper opportunity to adduce additional evidence with regard to the claims of defendant Nos. 14 and 15 and of No.20.

In the result, the Rule issue in C.R. No. 3188 of 2004 and also the Rule issued in C.R No. 4313 of 2004 are made absolute. The Judgment and decree dated 8.5.2004 passed by the learned Special District Judge,(Jana Nirapatta Bighnakari Aparadh Daman Tribunal), Comilla in Title Appeal No.13 of 2003 is hereby set aside. The appeal is sent back on remand.

The said appellate court is directed to dispose of the appeal in accordance with law after allowing the parties reasonable opportunity to adduce additional evidence.

No order as to costs.

Send down the lower court record with a copy of the judgment and order to the courts below.

B.H.