

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 1102 of 1995

Ismail Mondol and others petitioners

-Versus-

Government of Bangladesh represented by the
Deputy Commissioner, Rajshahi and others

..... opposite parties

No one appears for the petitioners

Ms. Shahla Sharafat Nazad and

Ms. Farida Parvin, Assistant Attorney Generals

..... for opposite party 1

Mr. S M Obaidul Haque, Advocate

..... for opposite party 2

Judgment on 08.07.2024

Bhishmadev Chakrabortty, J:

The plaintiffs obtained this rule and defendants were called upon to show cause as to why the judgment and decree of the then Subordinate Judge, Court No. 1, Rajshahi passed on 18.06.1994 in Title Appeal No. 46 of 1986 dismissing the appeal affirming the judgment and decree of the then Munsif Paba, Rajshahi passed on 31.12.1983 in Other Class Suit No. 13 of 1985 dismissing the suit should not be set aside and and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaintiffs instituted the aforesaid suit stating that the suit pond originally belonged to Hemanto Kumari alias Shashi Mukhi Debi, Sudhirendra Kumar Sannjal, Naresh Narayan Roy, Sharat Chandra Sannjal and Sharat Sundari Debi. CS khatian was prepared in

their names. Sarafat Mondal, Safat Mondal and Kevatullah Mondal being tenants under the aforesaid landlords used to possess the suit pond in *ejmali*. Kevatullah Mondal died leaving behind his son Hakimuddin and daughter Aduri Bibi (plaintiff 8). Safat Mondal died leaving behind his sons Shariat Mondal and daughter Sarjan Bewa. Shariat and Sharjan failing to pay rent to the superior landlords surrendered the land to them. The original landlord remained in *khas* possession of 4 annas share for few years and then in 1345 BS gave it *pattan* to Hossain Mondal. He became owner in a part of the pond and started possessing the same in *ejmali*. Hafizuddin Mondal died leaving behind his 3 sons, 3 daughters and a wife (defendants 1-7). Sharafat Mondal died leaving behind his 2 daughters (defendants 8 and 9). Hossain Mondal died leaving behind his 3 sons Ibrahim Mondal (plaintiff 1), Seyamuddin Mondal and Solaiman Mondal. Seyamuddin Mondal died leaving his widow, 2 sons and 2 daughters and they are plaintiffs 3-6. Solaiman Mondal died leaving his only son Hanif Mondal (plaintiff 7). Thus the plaintiffs inherited 4 annas share and plaintiff 8 became owner of 2 annas 13 gandas 1 kara and 1 kranti share. Defendants 1-9 have got share of 9 annas 6 gandas 2 karas and 2 krantis share. SA khatian has been prepared in the names of the plaintiffs 1-7 and defendant 10 government to the extent of 4 annas share which is wrong. Defendant 1, who used to pay rent for the plaintiffs kept the said fact of preparation of wrong record secret. The

plaintiff went to the tahshil office on 25.03.19740 for payment of rent but the concerned officer refused to accept it because of preparation of records in the name of the defendant. Hence the suit for declaration of title and confirmation of possession in respect of 6 annas 13 gandas 1 kara and 1 kranti share of the pond out of .84 acres as described in the schedule to the plaint.

Defendant 10, government contested the suit by filing written statement denying the statements made in the plaint. In the written statement it contended that the suit property is admittedly a pond. After abolition of *zamindari* system the land being the excess land of the *zamindars* has been recorded in government's name under section 20 of the State Acquisition of Tenancy Act, 1950 (SAT Act, 1950). It is a pond and local people has been using it. Hence the suit would be dismissed.

Defendants 11-19 contested the suit by filing a separate set of written statement contending that suit the tank originally belonged to Marfat, Saibot and Kebatullah Mondal. Among them Marafat and Sharafat alias Safat have 4 annas share each and remaining 8 annas belonged to Kebatullah. The above owners remained in possession in *ejmali*. Marfat Mondal died leaving his 2 daughters Abirjan and Shukti and brother Shafat Mondal. Shafat died leaving his son Shariat and daughter Surjan Bibi. Surjan Bibi died leaving his son Shariat and daughter Sharjan Bibi. Sharjan Bibi died leaving his son Akimuddin

and daughter Aduri Bibi (plaintiff 8). Shairat Mondal died leaving his wife Sadiman Bewa and son Janab Ali (defendant 11) and 2 daughter Kariman and Fatema. Sadimam subsequently died. Shariat Mondal and Sharjan Bibi never surrendered their share to the superior land lords. Shukti Bibi died leaving behind her husband Huma Mondal, 3 daughters Fatema Bibi, Safura Bibi and Nafura Bibi and they inherited her share in the suit tank. Aduri Bibi (plaintiff 8), daughter of Kabatullah was given in marriage to plaintiff 1 who purchased the share of Abirjan Bibi and Hridi Mondal. In this way plaintiff 1 has become co-sharer of 4 annas 13 gandas 1 kara and 1 kranti share by purchase and plaintiff 8 became a co-sharer in respect of 2 annas 13 gandas 1 kara and 1 kranti share by inheritance. Hakimuddin died leaving Eunos, Manjan Bewa, 3 sons Ainal Haque, Sultan and Mamtaj and 3 daughters Sonabhan, Manjan and Shamsunnahar as heirs. They are owning and possessing the share in *ejmali* left by Hakimuddin. Kariman died leaving behind his heirs husband Jabaruddin with 2 sons Yeakub Ali and Nazrul Islam and 4 daughters Hoza, Hefajan, Nurunnahar and Chadannahar as heirs who are owner in possession of Kariman Bibi's share in the suit land in *ejmali*. When the dispute arose in respect of the suit tank, a *salish* was held in the union tahshil office. It was decided there that all the co-sharers including the defendants would possesses the suit tank in *ejmali*. The plaintiffs filed

the suit on false statement. The suit in the present from is not maintainable also and as such it would be dismissed.

On pleadings the trial Court framed 5 issues. In the trial the plaintiffs examined 5 witnesses while the defendants examined 4. The documents produced by the plaintiffs were exhibits 1(a)-1(g) and 2(a)-2(m) and that of the defendants were exhibits 1(a)-1(b) series. However, the then Munsif, Paba, Rajshahi dismissed the suit deciding all the material issues against the plaintiffs. Being aggrieved by the plaintiffs preferred appeal before the District Judge, Rajshahi. The then Subordinate Judge Court No. 1, Rajshahi heard the said appeal on transfer and dismissed it affirming the judgment and decree passed by the trial Court. In this juncture, the plaintiffs approached this Court and obtained this rule.

Opposite parties 2(a)-2(j) fixed this matter in this bench for hearing. Thereafter it has been appearing in the delay cause list from 29.04.2024 with the name of the learned Advocate for the petitioner. It has come up in today's cause list for hearing with the name of Mr. Md. Saiful Islam, learned Advocate for the petitioners, but none turned up when the matter is called on for hearing. This is a very old matter of 1995 and has been pending in this Court for last 29 years and as such it is taken up for disposal on merit.

Ms. Shaila Sharafat Nazad, learned Assistant Attorney General for opposite party 1 submits that admittedly the disputed property is a

pond. After abolition of *zamindari* system the SAT Act, 1950 came into force. The pond being non retainable land of the *zamindars* has been recorded in the *khas* khatian and general public has been using it for collecting water therefrom and for bathe. Since the record has been prepared in the name of the government as *khas* khantian, the plaintiffs are not entitled to get a decree in the suit. The Courts below correctly dismissed the suit which may not be interfered with by this Court in revision.

Mr. SM Obaidul Haque, learned Advocate for opposite parties 2(a)-2(j), on the other hand, opposes in Rule and submits that the plaintiffs failed the prove that Shairat and Sharjan did not surrender the land to the superior landlords. The plaintiffs hopelessly failed to prove that the share of the land was surrendered as claimed by them. The plaintiffs also failed to prove that they took suit pond *pattan* from the *zamindars*. Since the suit property is admittedly a pond and as such the suit in the present from praying for declaration of title and confirmation of possession is not maintainable without seeking partition. The rule thus having no merit would be discharged.

I have considered the submissions of the learned Advocates for opposite parties 1 and 2(a)-2(j), gone through the materials on record and the grounds taken in the revisional application.

It transpires that the suit was brought for declaration of title and confirmation of possession claiming 6 annas 13 gandas 1 kara and 1

kranti share of a pond measuring .84 acres. In a suit for declaration of title and confirmation of possession the title as well as the possession of the plaintiffs over the property are to be proved. In this suit the plaintiffs claimed title and confirmation of possession on a share of a pond. It is difficult to prove possession in a specific part of a pond. The plaintiffs could have prayed in suit for declaration of title and joint possession in the suit land. Since the possession as claimed by the plaintiffs cannot be confirmed in a part of undivided pond, therefore, I find the with the aforesaid prayer the suit is not maintainable. The plaintiffs could have filed a suit for declaration of title and partition because the plaintiffs and defendants both admitted possession each other in the suit pond but dispute is regarding share they have been enjoying. It is also found that the plaintiff by evidence both oral and documentary failed to prove that Shariat and Sharjan surrendered the suit pond to the superior landlords and subsequently they took *pattan* of it from the land lords. The documents filed by the plaintiffs exhibits-1(a)-1(g) are not connected with the suit pond. The *dakhilas* exhibits 2(a)-2(i) showing payment of rent to the superior landlord in support of the *pattan* has not been proved by evidence. Therefore, I find that the Courts below correctly assessed the evidence of the parties both oral and documentary and dismissed the suit. I find no misreading and non consideration of the evidence in the judgments

passed by the Courts below. No such ground has been taken in the revisional application.

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

Communicate this judgment and send down the lower Court records.

Rajib