

13 SCOB [2020] HCD

HIGH COURT DIVISION

Civil Revision No. 444 of 2016.

Mosammat Syeda Shamima Kader.

.....Plaintiff-Respondent-Petitioner.

-Vs-

Mohammad Enamur Rashid Chowdhury.

...Defendant-Appellant-Opposite

Party.

Mr. A.K.M. Rabiul Hassan with

Mr. Mohammad Selim Jahangir with
Mr. Md. Ziaur Rahman, Advocates.

.....For the petitioners.

Mr. Maqbul Ahmed with
Mr. Khairul Hasan, Advocates.

.....For the Opposite Party.

Heard on 06.05.2019, 12.05.2019

And

Judgment on 14.05.2019.

Present:

Mr. Justice Md. Rezaul Hasan.

Permanent injunction, City Corporation tax, boundary of the property, transfer of specific property, prima-facie title, tax receipt, misreading and non-reading of evidence

That the City Corporation holding tax receipt is not the proof of possession if isolated from a lawful prima-facie title claimed on the basis of apparently genuine deed and with reference to a clear chain of title. ... (Para 16)

It has to be noted here that, this case of claiming title in the suit property based on no title in any specific property is apparently a case of the land grabbers. Case of a land grabber is totally isolated from the chain of title and their deeds do not refer to any specific immovable property, so that a land grabber can grab any property or any portion of a property, on the basis of the papers created by or kept in their hands. ... (Para 20)

JUDGMENT

Md. Rezaul Hasan, J.

1. The defendant-appellate-opposite party has filed counter affidavit denying the allegation of the revisional application which is kept with the record.

2. This Rule has been issued calling upon the opposite party, to show cause as to why the impugned judgment and decree dated 30.11.2015 (decree signed on 06.01.2016), passed by the learned Additional District Judge, 1st Court, Chattogram, in Other Appeal No.191 of 2010, allowing the appeal and reversing the judgment and decree dated 22.04.2010 (decree signed on 25.04.2010), passed by the learned Additional Assistant Judge, 3rd Court, Sadar, Chattogram, in Other Suit No.45 of 2008 decreeing the suit, should not be set-aside and/or pass such other order or orders passed as to this Court may seem fit and proper.

3. Facts, relevant for disposal of the Rule, in brief, are that, the petitioner as plaintiff has filed Other Suit No.45 of 2008 before the court of Senior Assistant Judge, 5th Court,

Chattogram against the opposite party, being the defendant with a prayer for permanent injunction in respect of the suit property mentioned in the schedule to the plaint.

4. The defendant has appeared in the suit and filed written statements on 26.02.2003 and contested in the suit.

5. I have gone through the pleadings of the parties which need not be reproduced here. The plaintiff has produced 2 witnesses and proved certain documents which were marked as Ext. 1-11. On the other hand, the defendant produced 3 witnesses and has proved certain documents which were also marked as exhibit "Ka" to "Ja" series. The appellate court on an application has marked certain documents exhibit "Neo" to "Tha" by re-calling D.W. 1 at the time of taking additional evidence.

6. However, the Trial Court, after hearing the parties and assessing the evidence on record, decreed the suit by his judgment and decree dated 22.04.2010 (decree signed on 25.04.2013).

7. Against the said judgment and decree of the Trial Court, the defendant-appellant preferred Other Appeal No.191 of 2010 (as appellant) before the District Judge, Chattogram, which was heard by the learned Additional District Judge, 1st Court, Chattogram, who being the Appellate Court, has passed the impugned judgment and decree, allowing the appeal by setting aside the judgment and decree of the trial court, vide judgment and decree dated 30.11.2015 (decree signed on 06.01.2016).

8. Being aggrieved by and dissatisfied with the judgment and decree of the Appellate Court, the Plaintiff-Respondent-Petitioner filed this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

9. Learned Advocates Mr. A.K.M. Rabiul Hassan, Mr. Mohammad Selim Jahangir and Mr. Md. Ziaur Rahman appeared for the petitioner. Mr. Hassan having placed the petition, first of all submits that, both the parties admitted that the original land owner of the suit property was the Emperor of the Indian from whom one Nalini Ranjan Chowdhury obtained settlement and the legal heirs of Nalini Ranjan Chowdhury and then sold the property on 10.09.1959, by a registered deed No. 5117, to Chattogram Islamabad Town Co-operative Bank Limited, who sold the same to Khorshed Alim Siddiquee. The said Khorshed Alim Siddiquee sold the property to Arog Limited of Khatungonj and Arog Limited sold the same to Chattogram Menon Jamat Committee and, accordingly B.S. 410 khatian has been prepared in the name of Chattogram Menon Jamat Committee. He continues that, the plaintiff's case is that, the said Chattogram Menon Jamat Committee sold the said property through 5(five) saf-kabala deeds namely- deed No. 15574 dated 07.10.1980, deed No. 8756 dated 23.05.1981, deed No. 8876 dated 25.05.1981, deed No. 9574 dated 08.06.1981 and deed No. 12082 dated 20.07.1981, totaling 6.80 acres of land to Suja Miah Majumder and after his death his son Jamal Uddin Majumder got the suit property by way of amicable partition among the heirs of deceased Saja Miah Majumder and Jamal Uddin Majumder, then, by a registered deed No. 4234 dated 04.08.1994 sold the suit property to the plaintiff and had handed over the possession of the suit property. The said deed has been marked as exhibit -1. The learned Advocate further submits that, this deed No. 4234 dated 04.08.1994 (Ext. 1) clearly stated the quantity as well as the schedule of property sold to the plaintiff, which has been described in the schedule to the plaint and both the schedules are harmonious. He also submits that, pursuant to the aforesaid sale, the Mutation Case filed by the plaintiff-purchaser a Mutation

has been prepared in the name of the plaintiff, which has been marked as exhibit 4. He proceeds on that, although the defendant claimed that the aforesaid Chattogram Menon Jamat Committee sold 6.12 acres of land to Raja Miah and his wife by 4 *kabala* deeds, however, no description of these deeds was given in the written statements, nor any of these 4 deeds has even placed or proved before the trial court. He next submits that, although the defendant has produced and proved the document like deed No. 14867 dated 20.08.1984, whereby Raja Miah has allegedly sold the property to Akhter Zaman (marked as Ext. “Kha”), however, the schedule of this deed does not referred to any plot No. 36, nor any boundary has been given to show that any specific property was sold to said Akhter Zaman. Moreover, the schedule to the said deed marked as Ext. “Kha”, shows transfer of 6 decimals or 3 *gondas* and one Kora of land allegedly from the suit property. Moreso, he proceeds on, schedule to the Ext. “Kha” shows transfer of only 6 decimals (3 *gondas*) land allegedly transferred to Akhtar Zaman, but, the said deed No. 3633 dated 21.06.2001, whereby Akhtar Zaman allegedly sold the property to the defendant Mohammad Enamur Rashid Chowdhury, shows to have transferred 8 decimals of land or 4 *Gondas* i.e. in excess of the land alleged to have been purchased by Akhtar Zaman. He argues that, the fact that Raja Miah and his wife claimed to have purchased the property from Chattogram Menon Jamat Committee, but none of these 4 *kabalas* could be proved and that there is no schedule to the Ext. Kha, and that, while Akhtar Zaman claimed to have purchased 6 decimals i.e. 3 *gandas* of land but has allegedly sold 8 decimals have recorded by the trial court and considered by it in its judgment. He also submits that, the trial court has recorded that in the schedule to the deed No. 3633 dated 21.06.2001, but reference has been made to the City Corporation Holding No. 1091, the City Corporation tax receipt submitted by the defendant as Ext. Umo series shows no such holding number. The learned Advocate for the petitioner also submits that, in the schedule of the deed No. 3633, the suit property which was sold has been shown as Mouza Nasirabad which is not the address of suit property, because two Mouzas, namely, Nasirabad and East Nasirabad are different and this discrepancies has been noted by the trial court in its judgment. He proceeds on that, although the *kabalas* by which the said Raja Miah alleged to have purchased the property were not adduced, nor produced or proved before the court, however, some photocopies of same *kabalas* were filed before the trial court, but none of these shows any boundary of the property alleged to have been purchased by Raja Miah. The trial court has also pointed out the peculiarity of writing two deeds No. ১৪৬৭ as well as again in English 14867 on Ext. Kha, which is not the usual practice, while the defendant did not produce the original of the deed and that the certified copy of the said deed No. 14867 was not proved before the court below. The trial court has recorded that, the holding tax receipt or bills bear no holding number of the suit property. He next submits that, the trial court has found the exclusive possession of the plaintiff and has rightly found that the plaintiff is in possession. Therefore, he proceeds, the finding of the appellate court is result of misreading and non-reading of the evidence and deviation from the evidence on record. Moreover, the appellate court has given interpretation of all oral and documentary evidences and by its lengthy judgment it has tried to improve and make out a case for the defendant, by disregarding the evidence on record as well as the principle of law settled by the Superior Court. He lastly submits that, the Rule has merit and the same may kindly be made absolute. In support of his contention, the learned Advocate for the petitioner has referred to two decisions, reported in BLD 1989 at page 368: Sheikh Ahmed and others –Vs– Abdul Alim and BLD 1986 at page 155: Pasharuddin Mir V. Ismail Mia and others wherein it has held that, question of title in a suit for permanent injunction may be gone into incidentally but decision of title in a suit for permanent injunction is not the guiding principle. He has prayed for making the Rule absolute.

10. Mr. Makbul Ahmed along with Mr. Khairul Hasan, learned Advocates, appeared for the opposite parties. Mr. Ahmed, on the contrary, submits that, the appellate court has discussed all the issues and pointed out elaborately in its judgment and there is no lacuna in the judgment of the appellate court and the judgment of the appellate court as the last court of fact, being reasonable, does not call for any interference. The learned Advocate submits that, in this suit a complicated question of title is involved and without filing a suit for partition, the suit was not maintainable. He next submits that, the impugned judgment and decree passed by the appellate court suffers from no illegality or from any other lacuna, whatsoever, and this Rule has no merit and the same may be discharged.

11. I have heard the learned Advocates for both sides, perused the application for revision, lower Court's record as well as the judgment of both the Courts below and other materials in the record.

12. Chain of title from Emperor of India to Chattogram Menon Jamat Committee is not disputed. The plaintiff has placed and proved khatian No. 410 (Ext. 3) in their names.

13. I find that, Jamal Uddin Majumder (one of the heirs of Suja Miah) by a registered deed No. 4234 dated 04.08.1994 sold the suit property to the plaintiff and handed over the possession and the said deed has been marked as exhibit -1. This deed No. 4234 dated 04.08.1994 clearly stated the quantity as well as the specific schedule of the land sold to the plaintiff, which has been described in the schedule of the plaint, as well. I also find that pursuant to the aforesaid transfer, Mutation khatian No. 410/62 of Mouza East Nasirabad has been prepared in the name of the plaintiff, which has been proved and marked as exhibit 4.

14. It also appears that Suja Miah had purchased 6.80 acres of land through 5 deeds. In paragraph No. 15 of the written statements, the defendant-opposite party has admitted that, Suja Miah had purchased 6.80 acres of land from Chattogram Menon Jamat Committee, but asserted that one Raja Miah (and his wife) had also purchased 4.80 acres of land from Chattogram Menon Jamat Committee by 4 deeds and that the said Raja Miah and Suja Miah started a Housing project (on mutual understanding) and that, Raja Miah has sold plot No. 36 (claimed to be the suit property) to Most. Akhtar Zaman by a deed No. 14867 dated 22.08.1984 (Ext. Kha). It has also been admitted in the written statement by the defendant that, 6.80 acres of land was purchased by Suja Miah from Chattogram Menon Jamat Committee and as such, it is admitted and this Suja Miah purchased 6.80 acres of land from Chattogram Menon Jamat Committee. But, the defendant could not produce, nor proved any of the said 4 deeds whereby Raja Miah is alleged to have purchased 4.08 acres of land from Chattogram Menon Jamat Committee in the name of himself and his wife. None of these alleged deeds, whereby the said Raja Miah and his wife had purchased the suit property was produced or proved at any stage of the suit. Rather, photocopy of the said kabalas of Raja Miah were placed before the trial court, but none of the photocopies of the said deeds show that any specific property was sold to Raja Miah. Moreover, these photocopies are not admissible in evidence, as per law. On the other hand, in the deed of Most. Akhtar Jahan (Ext. Kha) 6 decimals or 3 *gondas* of land is shown to have been transferred in her favour by the said Raja Miah. But, there is no boundary in this deed to show that any specific property was transferred to Akhtar Zaman by Raja Miah (whose title has not been proved). As such, there was no transfer of specific property to the defendant as per deed No. 14867 dated 20.08.1984. Moreover, the deed No. 3633 dated 21.06.2001 (Ext Ka) has been proved to show that, the defendant has purchased 8 (eight) decimals of land from Most. Akhtar Zaman,

which is clearly in excess of the land shown in deed No. 14867 dated 20.08.1984 (Ext. Kha). So, genuineness and legality of this deed is questionable.

15. The trial court has very specifically noted all these discrepancies and other material defects in the chain of title of the defendant. But the appellate court has given a distorted interpretation of judgment of the trial court. Moreover, in order to improve the case of the defendant, the appellate court has allowed additional evidence to be taken and allowed some documents to be proved by the defendant and marked them as exhibits “*Neo*” to “*Tha*”. But, none of these documents proves the prima-facie title of the defendant or his possession in the suit property, rather the trial court has rightly pointed out that, the kabala No. 4234 dated 04.08.1994 of the plaintiff as well as her mutation case both were allowed earlier, in point of time, than that of the defendant. The trial court has rightly pointed out that the schedule of the land of kabala dated 04.08.1994 (Ext. 1) of the plaintiff is inconsonance with the property described in the *khotain* as well as to the schedule of the plaint. The trial court has also rightly pointed out that, the defendant has tried to prove his possession by the Advocate Commissioner D.W. 3 and it has rightly recorded that, the defendant has failed to prove his possession either by adducing evidence or by the City Corporation holding tax receipt that has no nexus with the suit property.

16. I am of the considered opinion that the City Corporation holding tax receipt is not the proof of possession if isolated from a lawful prima-facie title claimed on the basis of apparently genuine deed and with reference to a clear chain of title.

17. I find that, the appellate court has totally ignored the factual aspect of this case and has given distorted interpretation of the judgment of the trial court, which is not only unreasonable, but also extremely perverted. The appellate court has also went out of the scope of this case by writing a lengthy judgment only to dismiss the suit on extraneous issues. I also find that, the findings of the appellate court are totally perverse as well as these are result of misreading and non-reading of the evidence on record and also misinterpretation of law cited in the judgment of the superior court.

18. I also find that no right or title of Raja Miah could be proved by adducing any evidence, oral or documentary, as has been rightly pointed out the trial court. But title of Suja Miah in respect of 6.80 acres of land has been admitted in paragraph No. 15 of the written statement of the defendant.

19. I also find that, the plaintiff has purchased the suit property and has been paying Government taxes on that. But this defendant claims to have purchased the suit property from Most. Akhtar Zaman on the basis of a deed (Ext. Ka), which does not bear any specific schedule. It shows that Raja Miah has allegedly sold 6 decimals or 3 *gondas* of land to Most. Akhtar Zaman, but the title of Raja Miah has not been proved, hence, the title of Most Akhtar Zaman has no prima-facie basis. On the other hand, title in any of unspecified property cannot be transferred. Besides, the defendant’s deed (Ext. Ka) shows that Most. Akhtar Zaman has purportedly transferred 8 decimals or 4 *gondas* land to him, whereas she claims to have purchased only 6 decimals or 3 *gondas* of land from Raja Miah (Ext. Kha). All these anomalies and material discrepancies prove that the defendant No. 1 or the person from whom he claims title do not have any prima-facie title, nor there is given any consistent account of deriving title by the defendant in any specific property. As such, findings of the appellate court in favour of the defendant are all distorted and based on misreading and non-reading of evidence and the same are liable to be reversed.

20. It has to be noted here that, this case of claiming title in the suit property based on no title in any specific property is apparently a case of the land grabbers. Case of a land grabber is totally isolated from the chain of title and their deeds do not refer to any specific immovable property, so that a land grabber can grab any property or any portion of a property, on the basis of the papers created by or kept in their hands. This court should be very cautious about these type of persons who apparently seems to be lands grabbers.

21. With these findings and observations, I find that, the impugned judgment and decree passed by the appellate court suffers from misreading and non-reading of evidence and from serious illegality and its findings are totally perverse. The appellate court in passing the impugned judgment and decree has committed grave error of law, resulting in error in the decision, occasioning failure of justice.

22. This Rule has merit and the same should be made absolute.

ORDER

23. In the result, the Rule is made absolute.

24. The findings of the appellate court are hereby reversed. The impugned judgment and decree dated 30.11.2015 (decree signed on 06.01.2016), passed by the learned Additional District Judge, 1st Court, Chattogram, in Other Appeal No.191 of 2010 is hereby set aside and the judgment and decree dated 22.04.2010 (decree signed on 25.04.2010), passed by the learned Additional Assistant Judge, 3rd Court, Sadar, Chattogram, in Other Suit No.45 of 2008, decreeing the suit, is hereby restored and upheld.

25. The order of stay granted earlier by this Court is hereby vacated.
No costs.

26. Let a copy of this judgment along with the Lower Court's Record be sent down to the concerned Courts at once.