

8 SCOB [2016] AD 136

APPELLATE DIVISION

PRESENT

Mr. Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NO. 15 of 2014

(From the judgment and order dated 21.07.2008 passed by the High Court Division in Civil Revision No. 3850 of 1998)

Israil Kha and others :Appellants

-Versus-

Syed Anwar Hossain and others :Respondents

For the Appellants : Mr. Abdul Quiyum, Senior Advocate (Mr. Ali Reza, Advocate with him), instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Respondents : Mr. A. J. Mohammad Ali, Senior Advocate (Mr. M. Khaled Ahmed, Advocate with him) instructed by Mr. Md. Aziz Taufique, Advocate-on-Record.

Date of Hearing : The 10th November, 2015

Date of Judgment : The 10th November, 2015

If an under-raiyat has been allowed to continue occupation after expiry of his term of lease, his tenancy can only be terminated in accordance with the provisions of the Bengal Tenancy Act. ... (Para 14)

The plaintiffs did not take any step to get back the land of plot No.4 after expiry of the period of lease mentioned in the kabuliyat. Defendant Nos. 1 and 2, the under-raiyat, continued their possession in suit plot No.4 as lawful tenants under the plaintiffs by holding over and after acquisition of rent receiving interest, they became tenants directly under the Government. ... (Para 15)

Judgment

Syed Mahmud Hossain, J:

1. This appeal, by leave, is directed against the judgment and order dated 21.07.2008 passed by the learned Single Judge of the High Court Division in Civil Revision No. 3850 of

1998 making the Rule absolute and setting aside the judgment and decree dated 09.11.1997 passed by the then learned Subordinate Judge, Second Court, Moulvi Bazar in Title Appeal No.175 of 1986 allowing the appeal and reversing the judgment and decree dated 31.08.1986 passed by the then Upazila Munsif, Kulaura, Moulvi Bazar in Title Suit No.354 of 1983 decreeing the suit.

2. The facts, leading to the filing of this appeal, in brief, are:

The respondents as the plaintiffs filed Title Suit No.354 of 1983 for declaration of title and recovery of khas possession in the Court of the then Munsif, Kulaura, Moulvi Bazar. The plaintiffs' case, in short, is that the suit land belonged to their predecessor. The plaintiffs have been possessing the suit land as khas khamar and graveyard. On Chaitra, 1378 B.S., the plaintiffs went to the local Tahsil Office for payment of rent and came to know that the suit land appertaining to plot No.1/2 was recorded in the names of the defendants. Having learnt the above wrong record, the plaintiffs filed Title Suit No.112 of 1974 but the plaint of the suit was returned to the plaintiffs. After that, on Baishak, 1388 B.S., the defendants in collusion with each other dispossessed the plaintiffs illegally from plot Nos.1,2 and 4 of the suit land. After that, the plaintiffs went to the local Tahsil Office and came to know that disputed plot Nos.2 and 3 were wrongly recorded in the names of defendant Nos.1 and 2 and plot No.4 was recorded in the name of defendant No.3. The plaintiffs approached the defendants for correction of record of right and recovery of khas possession of the suit land in plot Nos.1, 2 and 4 but the defendants denied the claim made by the plaintiffs. Hence the plaintiffs have filed this suit for declaration of title and recovery of khas possession of the suit plot Nos.1, 2 and 4.

3. The defendants contested the suit by filing written statement denying the material statements made in the plaint. Their case, in short, is that the plaintiffs were landlord (Mirasdar), who used to settle land in favour of different persons. The suit plot No.4 was settled in favour of Md. Maznu by a registered kabuliyat by plaintiff No.1 on 1st Baishak, 1350 B.S. After that, Md. Maznu sold the said property in favour of defendant Nos.1 and 2 by a registered deed of sale dated 04.03.1949. Suit plot Nos.2 and 3 were owned and possessed by the plaintiff and his 2 sisters, Sundani Bibi and Dudu Bibi, who sold the same to Md. Salim in Baishak, 1353 B.S. After that, Md. Salim also sold 24 decimals of land in favour of defendant Nos.1 and 2 by a registered deed of sale dated 13.04.1946 and the plaintiff had the full knowledge about that transfer. Thus the defendants became the owners and possessors of the suit land. However, the plaintiffs out of ill motive filed Title Suit No.63 of 1954, which was dismissed on contest. After that, Title Appeal No.64 of 1957 filed by the plaintiffs before the learned District Judge, Sylhet, was also dismissed. As such, the defendants-petitioners prayed for dismissal of the suit.

4. The trial Court after hearing the parties by its judgment and order dated 31.08.1986 decreed the suit. Against the judgment and decree passed by the trial Court, the defendants preferred Title Appeal No.175 of 1986 before the learned District Judge, Moulvibazar. On transfer, the appeal was heard and disposed of by the then learned Subordinate Judge, Second Court, Moulvibazar, who by his judgment and order dated 30.10.1997 allowed the appeal setting aside the judgment and decree of the trial Court.

5. Being aggrieved by and dissatisfied with judgment and decree of the appellate Court, the plaintiffs filed a revisional application before the High Court Division and obtained Rule in Civil Revision No. 3850 of 1998. After hearing the parties, the learned Single Judge of the High Court Division, by the judgment and order dated 21.07.2008 made the Rule absolute.

6. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the leave-petitioners moved this Division by filing Civil Petition for Leave to Appeal Nos.2337 of 2010, in which, leave was granted on 24.11.2013, resulting in Civil Appeal No.15 of 2014.

7. Mr. Abdul Quiyum, learned Senior Advocate, appearing on behalf of the appellants, submits that if an under-raiyat has been allowed to continue occupation after expiry of his term of lease, his tenancy can only be terminated in accordance with Bengal Tenancy Act and that in the case in hand, the defendants continued as lawful tenants by holding over and that after acquisition of rent receiving interest under the State Acquisition and Tenancy Act, the defendants became tenants directly under the Government and that the High Court Division failed to consider this aspect of the case and as such, the impugned judgment should be set aside. He further submits that the defendants have been in possession of the suit land for more than 40 years and that the plaintiffs had failed to prove the story of the possession followed by the dispossession by adducing evidence and that the suit has been filed within the statutory period of limitation and as such, the impugned judgment should be set aside.

8. Mr. A. J. Mohammad Ali, learned Senior Advocate, appearing on behalf of the plaintiffs, on the other hand, supports the impugned judgment delivered by the High Court Division.

9. We have considered the submissions of the learned Senior Advocates of both the sides, perused the impugned judgment and the materials on record.

10. Before entering into the merit of this appeal, it is necessary to go through the grounds, for which, leave was granted. The grounds are quoted below:

“The appellate Court being the last Court of fact, the High Court Division committed error in interfering with the findings of the appellate Court in the absence of any infirmity in those findings.

Even if an under-raiyat has been allowed to continue occupation after expiry of his term of lease, his tenancy can only be terminated in accordance with the Bengal Tenancy Act [(1954) 8 DLR 366, 6 DLR (1952)652] and that in the case in hand, the defendants continued as lawful tenant by holding over and after acquisition of rent receiving interest under the State Acquisition and Tenancy Act, the defendants-petitioners became tenants directly under the Government and that the High Court Division failed to consider this aspect of the case.

The High Court Division failed to consider that the rent receipts and record of rights have got evidentiary value and that the defendants-petitioners had been possessing the suit land for more than 40 years within the knowledge of the plaintiffs-respondents and as such, the impugned judgment should be set aside.

The defendants-petitioners have been possessing the suit land for more than 40 years and the plaintiffs-respondents had failed to prove the story of possession followed by dispossession by adducing evidence and that the suit has been filed within the statutory period of limitation and as such, the impugned judgment should be set aside.

The High Court Division committed error in failing to reverse the finding of the appellate Court that the plaintiffs earlier filed Title Suit No.63 of 1954 for declaration

of title in respect of 4 plots of the suit land and that the said suit was dismissed after hearing both the sides and that the present suit being Title Suit No.63 of 1954 in respect of the suit land is barred by res judicata as well as limitation and as such, the impugned judgment should be set aside.

11. The plaintiffs-respondents claimed that they are the owners of the suit land by way of inheritance. The plaintiffs further claimed that they went to the Tahsil Office for payment of rent and came to know that the suit land appertaining to plot No.1/2 was recorded in the names of the defendants. On Baishak,1388 B.S. The defendants in collusion with each other dispossessed the plaintiffs illegally from the suit plot Nos.1, 2 and 4 of the suit land. The defendants contended that that the plaintiffs were the landlords (Mirasdars), who used to settle land in favour of different persons. Plaintiff No.1 settled suit plot No.4 to Md. Maznu by a registered kabuliyat dated 01.01.1340 B.S. After that, Md. Maznu sold the said property in favour of defendant Nos.1 and 2 by a registered deed of sale dated 04.03.1949. Suit plot Nos.2 and 3 were owned and possessed by the plaintiff and his 2 sisters, Sundani Bibi and Dudu Bibi, who sold the same to Md. Salim in Baishak,1353 B.S. After that, Md. Salim also sold 24 decimals of land in favour of defendant Nos.1 and 2 by a registered deed of sale dated 13.04.1946. The plaintiff filed Title Suit No.63 of 1954 which was dismissed on contest and Title Appeal No.64 of 1957 filed by the plaintiffs before the learned District Judge, Sylhet, was also dismissed.

12. Plaintiff No.1 settled suit plot No.4 to Md. Maznu by a registered kabuliyat dated 1st Baishak,1340 B.S. (exhibit-B) for a period of 8 years. Before expiry of 8 years, Md. Maznu sold the suit land to defendant Nos.1 and 2 by a registered deed of sale dated 04.04.1949 (Exhibit-C). The trial Court came to a finding that before expiry of the tenure of lease Md. Maznu sold the suit land to defendant Nos.1 and 2 and that Md. Maznu did not have the right to sell the land of suit plot No.4 to defendant Nos.1 and 2 violating the terms of the kabuliyat. The appellate Court, however, came to the finding that defendant Nos.1 and 2 acquired title to the land of suit plot No.4 by way of holding over.

13. The plaintiffs did not state anything in the plaint about the registered kabuliyat dated 1st Baishak, 1350 B.S. which was for a period of 8 years. Admittedly, before expiry of the tenure mentioned in the kabuliyat Md. Maznu sold the land of suit plot No.4 to defendant Nos.1 and 2. This purchase is of course subject to right of plaintiff No.1 to get the property back. Since the kabuliyat was for a period of 8 years, the plaintiffs could take step to get back the land of plot No.4 from defendant Nos.1 and 2 soon after expiry of the tenure of the kabuliyat. There is even no statement in the plaint that defendant Nos.1 and 2 surrendered possession of suit plot No.4 to the plaintiffs after expiry of the period of lease. By the purchase dated 04.03.1949, defendant Nos.1 and 2 became tenants under the plaintiffs. After expiry of the tenure of lease defendant Nos.1 and 2 remained as lawful tenants under the plaintiffs by holding over.

14. In this connection reliance may be placed on the case of *Jagabandu Basak and others Vs. Karim Mondal and others, (1956) 8 DLR 366*, in which, it has been held that if an under-raiyat has been allowed to continue occupation after expiry of his term of lease, his tenancy can only be terminated in accordance with the provisions of the Bengal Tenancy Act.

15. We have already found that the plaintiffs did not take any step to get back the land of plot No.4 after expiry of the period of lease mentioned in the kabuliyat. Defendant Nos.1 and 2, the under-raiyat, continued their possession in suit plot No.4 as lawful tenants under the

plaintiffs by holding over and after acquisition of rent receiving interest, they became tenants directly under the Government.

16. Reliance may also be placed on the case of *Wswini Kumar Poddar and others Vs. Taraq Chandra Rajbangish and others, (1954) 6 DLR 652*, in which, it has been held that the provisions of section 116 of the Transfer of Property Act are applicable where the tenant remains in possession of the lease-hold property after determination of the lease granted to the tenant and his continuing possession is assented to by the landlord. A tenant, who surrendered possession, does not come within the meaning of the words “remains in possession” of this section.

17. In the case in hand, the plaintiff could not make out any case that after expiry of the tenure of lease defendant Nos.1 and 2 surrendered the land of suit plot No.4 to the plaintiffs. Therefore, defendant Nos.1 and 2 continued their possession in the land of suit plot No.4 and became tenant under the Government after wholesale acquisition of superior interest by the Government.

18. Suit plot Nos.2 and 3 were sold by plaintiff No.1 and his two sisters to Md. Salim, who sold 24 decimals of land in favour of defendant Nos.1 and 2 by a registered deed of sale dated 13.04.1946 A.D.

19. From the discussion made above, it is crystal clear that the plaintiffs miserably failed to prove their title to the suit land. Admittedly, the plaintiffs filed Title Suit No.63 of 1954 for declaration of title in respect of the suit land which was dismissed. Subsequently, the plaintiffs filed Title Appeal No.64 of 1957 before the learned District Judge, Sylhet, which was also dismissed. Therefore, it appears that instant Title Suit No.112 of 1972 filed by the plaintiffs is hopelessly barred by limitation.

20. The defendants have produced the records of right standing in their names in respect of the suit land and also the rent receipt showing payment of rent to the Government. Having gone through the evidence of the witnesses, we find that the defendants had been in possession of the suit land for more than 40 years within the knowledge of the plaintiffs. The plaintiffs-respondents failed to prove the story of their alleged possession followed by dispossession by adducing convincing evidence and they also failed to prove that the suit has been filed within the statutory period of limitation and as such, the suit was barred by limitation on this score also.

21. In the light of the findings made before, we find substance in this appeal.

22. Accordingly, this appeal is allowed without any order as to costs and the impugned judgment delivered by the High Court Division is set aside and the judgment and decree passed by the appellate Court is restored.