

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3608 of 2002

Md. Abdul Mannan being dead his legal
heirs 1(a) Md. Mehedi Hassan Tornado
and others

..... Petitioners.

-Versus-

Md. Abdul Hossain being dead his legal
heirs 1(a) Md. Afzal and others

.....Opposite parties.

Mr. Md. Ishaque Miah, Advocate

.....For the petitioners.

Mr. Md. Abdullah Al Mamun, Advocate

.....For the Opposite parties

Heard and judgment on 2nd July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 29.04.2002 passed by the Additional District Judge, 2nd Court, Pabna in Other Class Appeal No. 10 of 2000 reversing those dated 30.01.2000

passed by the then Subordinate Judge, 1st Court, Pabna in Other Class Suit No. 23 of 1990 dismissing the suit should not be set aside.

Opposite party as plaintiff filed Other Class Suit No. 23 of 1990 before the Court of the then Subordinate Judge, 1st Court, Pabna for declaration of title and further declaration that khatian No. 49 in place of khatian No.45 has wrongly been written in the deed dated 26.04.69 and 19.10.73.

Plaint case in short, inter alia, is that the schedule land was in ownership and possession of Mukta Sundari. Mukta Sundari used to possess the suit land through borgader since before C.S. operation. At the time of D.S. operation, the name of the landlord Mukta Sundary and Meher Biswas was recorded. After D.S. operation Mukta Sundari rejected old Borgader and gave Borga to the person selected by her. While Mukta Sundari, was in possession of the suit property, died leaving only daughter Ful Kumari, her son Proboth Chandra Adhikari. While they were in ownership and possession of the suit property, sold the schedule property to the plaintiff by two deeds dated 26.04.69 and 19.10.73. But on the last S.A. operation the suit land was wrongly

recorded in the name of Rojibullah, the predecessor of the defendant Nos. 1-12 and .35 decimals of land was recorded in the name of Hari Dasi, predecessor of the defendant No.13 and the remaining land was recorded in the name of Zilla Parishad and this wrong record did not affect the title of the plaintiff and his predecessor Tarani Charan, who was not aware about the S.A. record. The deed writer due to mistake wrote khatian No.49 in place of khatian No.45 in the said two deeds dated 26.04.069 and 19.10.73. To settle this wrong recording of the khatian No, there was a salish with the Chairman of Hemaitpur Union Parishad and two Senior Advocates of the Pabna Bar and other local elites but nothing was settled and the defendant Nos. 1-13 denied the title of the plaintiff. Hence he filed this suit for declaration of title.

Petitioner as defendant Nos. 1-12 contested the suit by filing written statement denying the plaint case alleging, inter alia, that the suit land as described in schedule 'ka' within Pabna P.S. Mouja Rajapur, D.S. khatian No.35, former plot No. 209 measuring .94 decimals of land was belonged to permanent tenant Meher Ali Biswas under Mukta Shundari. While Meher Ali Biswas in ownership and possession of the suit property, .69

decimals of the land was acquired by Zilla Parishad to extend the Pabna Road and the remaining land of the said plot was under ownership and possession of Rajibulla Biswas @ Raton Biswas, predecessor of defendant No. 1-12. It was recorded in his name in S.A. recorded plot No.111, changing former plot No. 209 measuring .91 decimals of land in place of .94 decimals of land and 61 decimals of land in the name of defendant No.15 and 30 decimals of land of the predecessor of defendant Nos. 1-12 and wrongly recorded in the name, Tarini Charan, the defendant No.13. Whereupon he raised objection, which was accepted and the defendant No. 13 accepted the title of Rajibullah and his name was finally recorded in S.A. record. Then Rajibullah Biswas died leaving behind the defendant Nos. 1-2 opposite parties and their names were recorded in R.S. record. There was no salish over the suit property as alleged by the plaintiff. The suit is false and is liable to be dismissed with cost.

The learned Subordinate Judge, Pabna dismissed the suit on contest vide judgment and decree dated 30.01.2000.

Challenging the said judgment and decree, plaintiff preferred Other Class Appeal No. 10 of 2000 before the Court of

District Judge, Pabna, which was heard on transfer by the Additional District Judge, 2nd Court, Pabna, who by the impugned judgment and decree dated 29.04.2002 allowed the appeal and after reversing the judgment of the trial court decreed the suit.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Mr. Md. Ishaque Miah, the learned advocate appearing for the petitioner drawing my attention to the judgment of the trial court submits that Subordinate Judge after proper assessment of the evidence on record correctly found that plaintiffs did neither have any title nor possession over the suit land as well as found that the suit is barred by limitation and as such dismissed the suit correctly but the appellate court without reversing the said finding of the trial court most illegally allowed the appeal. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Md. Abdullah Al Mamun, the learned advocate appearing for the opposite party, on the other hand drawing my attention to the deposition of Tarani Charan Chewbe, who was

deposing in court as P.W.1 submits that he being the legal owner by way of purchasing the suit property from his aunty Mukta Sundari, sold the said property in favour of the plaintiffs and handed over the possession to him and thereby plaintiff has successfully able to prove his title and possession over the suit land. Moreover both the courts below when concurrently found that defendant totally failed to prove his title over the suit land and possession thereon, in that view of the matter the appellate court has rightly and correctly decreed the suit in favour of the plaintiff. The impugned judgment since thus contains no illegality and the rule contains no merits, it may be discharged.

Heard the learned advocate and perused the lower courts record and the impugned judgment.

This is a suit for declaration of title as well as further declaration that the registered sale deed dated 26.04.69 and 19.10.73 in favour of the plaintiff by the Tarani Charan Chewbe contains a wrong khatian number of 49 in place of khatian No. 45. According to the plaintiffs, admittedly the suit property was belonged to C.S. recorded tenant Mukta Sundari. At the time of D.S. operation Mukta Sundari was shown as land lord wherein

one Meher Ali Biswas was recorded as his borgader thereon (Ext.4). Mukta Sundari died leaving behind daughter Fulkumari and son Proboth Chandra Adhikari, who sold the same to Tarani Charan Chewbe, from whom plaintiff purchased the suit land by 2 sale deeds dated 26.04.69 and 19.10.73. But S.A khatian has wrongly been recorded in the name of the Rojibullah, the predecessor of the defendant Nos. 1-12 and one Hari Dasi, the predecessor of the defendant No.13 and remaining land was recorded in the name of Zilla Parishad. Since the said 2 deeds contains wrong khatian No.49 in place of khatian No. 45 due to the mistakes of the deed writer, the instant suit was instituted. Defendants contention is that Meher Ali Biswas was a tenant under C.S. land lord Mukta Sundari and thereafter he acquired title over the suit land and subsequently S.A. khatian and R.S. khatian were prepared correctly into the name of Rajibullah Biswas @ Raton Biswas, predecessor of the defendant No. 1-12. The plaintiff deeds are forged deeds and suit is false, which is liable to be dismissed.

In view of the above respective cases of both the parties, it is the main question to be decided in the suit is that whether the

defendant acquired any title in the suit property and that whether the recording of the S.A. and R.S. khatian were correct or not. Plaintiffs claim the title over the suit land as being purchaser from one Tarini Charan Chowbe, who purchased the suit property from his aunty Mukta Sundari, who is the C.S. recorded owner of the property. The said deeds dated 26.04.69 and 19.10.73 were exhibited in court as Ext. 1 and 2 and been proved through the executant of the said deeds Tarani Charan Chewbe, who is deposing in court as P.W.1, who is a man of more than 80 years of age. Who has categorically proved the said deed in court and proved that he has purchased the suit property and subsequently transferred the same by the said sale deeds in favour of the plaintiff and handed over the possession to the plaintiff. While deposing in court P.W.1 Tarini Charan Chewbe also stated that Meher Ali Biswas was a borgader under his aunty Mukta Sundari along with the other borgaders, who paid borga crops to Mukta Sundari and thereafter to the Tarini Charan as a borgader. D.S. khatian No.30 (Ext.4) was produced in court. Upon perusal of the said D.S. khatian court below concurrently found that name of Mukta Sundari was appeared in the said khatian as the owner of

the suit property, under whom Meher Ali Biswas was shown as his borgader.

Upon perusal of this D.S. khatian (Ext.4) the court below concurrently held that:

"দাখিলকৃত ডি,এস খতিয়ান প্রদর্শনী-৪ ও উপরোক্ত আলোচনা হইতে ইহা সুনির্দিষ্ট ভাবে প্রমানিত হয় যে, নালিশী জমি মুক্তা সুন্দরীর স্বত্ব দখলীয় ছিল এবং মেহের আলী মুক্তা সুন্দরীর বর্গাদার ছিলেন এবং মুক্তা সুন্দরীর মৃত্যুর পর তাহার ওয়ারিশ প্রবোধ কুমার অধিকারী এবং ফুল কুমারীর উক্ত ডি,এস, খতিয়ান ভুক্ত ২০৯ দাগের ৯৪ শতক জমিসহ আরো কতক জমি ০৩.০১.৩৯ইং তারিখে তারিনী চরন চৌবে ও শ্যামাচরন চৌবের নিকট হস্তান্তর করিয়াছিলেন।"

But the trial court although found the above observation but subsequently came to an erroneous observation that the plaintiff did not acquire any title from Tarini Charan in the suit property. But it is surprising to notice that when Tarini Charan (P.W.1) by himself admits before the court that he being the rightful owner and possessor of the suit property has transferred the same in favour of the plaintiff by way of the said two sale deeds thereby

plaintiffs title over the suit property has rightly been assessed by the appellate court in favour of the plaintiffs. On the other hand regarding the claim of the defendants, although trial court dismissed the suit but held that:

"বিবাদীপক্ষ ডি,এস, ৩নং খতিয়ানের সুনির্দিষ্ট বিরোধিতা না করিলেও তাহারা মেহের আলী বিশ্বাস মুক্তা সুন্দরীর অধীনে রায়তি স্বত্বে স্বত্ববান ও দখলকার ছিলেন দাবী করেন। কিন্তু উক্ত মেহের আলী বিশ্বাসের রায়তি স্বত্বের সমর্থনে বা রায়তি স্বত্ব কোন এক সময় পর্যন্ত অব্যহত থাকা বা হস্তানর করার সমর্থনে বা উক্ত মেহের আলী বিশ্বাসের স্বত্ব তাহাদের উপর অর্পিত হওয়ার সমর্থনে তাহারা কোন কাগজাদি বা কোন সাক্ষ্য প্রমানাদি আদালতে উপস্থাপন করেন নাই।"

These findings although not been challenged by the defendant in any appeal and the appellate court while deciding the appeal has come to a finding that:

"বিবাদীপক্ষ বিজ্ঞ নিম্ন আদালতের উক্ত সিদ্ধান্তের অসম্মতিতে কোন আপীল বা ট্রাস আপীল করেন নাই। এম্মলে প্রকাশ থাকা বাঞ্চনীয় যে উক্ত দায়ক বিবাদীদক্ষ শ্যামাচরন চৌবে কিংবা তারিনী চরন চৌবের নিকট হইতে হস্তান্তর সূত্রে নালিশী জমি দাবী করেন না, বরং মেহের আলী বিশ্বাসের নিকট হইতে ক্রমিক হস্তান্তর সূত্রে নালিশী জমি দাবী করেন। এমতাবস্থায় বিজ্ঞ নিম্ন

আদালত বাদীর মোকদ্দমাটি ডিসমিস করিলেও নালিশী জমিতে যে উক্ত দায়ক বিবাদীপক্ষের কোন স্বত্ব নাই মর্মে সিদ্ধান্ত গ্রহন করেন তাহা তর্কিত রায়ে সুস্পষ্টভাবে প্রতিভাত হয়।"

In that view of the matter when plaintiff title is being found by the court below as been proved through P.W.1 Tarani Charan as well as plaintiffs possession also been affirmed by all the P.Ws including that Tarini Charan P.W.1 and the defendant claim has not been proved by any means as concurrently been affirmed by the court below, the appellate court being the last court of fact has rightly decreed the suit in favour of the plaintiff. Since the impugned judgment contains no misreading or non-reading of the evidences. I find no merits in the rule.

In the result, the Rule is discharged and the judgment and decree passed by the appellate court is hereby affirmed.

The order of stay granted earlier is hereby recalled and vacated.

Send down the Lower Court Records and communicate the judgment at once.