

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4701 of 2002

Sree Dinabandhu Deb

.....Petitioner.

-Versus-

Hari Mohan Kaibartta and others

.....Opposite parties.

Mr. A.B. Roy Chowdhury, Advocate

.....For the petitioner.

None appears

..... For the opposite parties.

Heard and judgment on 03<sup>rd</sup> March, 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 22.03.2001 passed by the then Subordinate Judge, 1<sup>st</sup> Court, Habiganj in Title Appeal No. 15 of 1995 affirming those dated 22.11.1994 passed by the Assistant Judge, Lakhai, Habiganj in Title Suit No. 240 of 1984 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for declaration of title by way of adverse possession and by amendment further prayed for a declaration that the deed dated 06.02.1979 is antedated, null and void against the opposite parties.

Plaint case in short, inter alia, is that the suit land originally belonged to Judhistir Kaibarta Das, Chandra Mohan Kaibarta Das and Surendra Kaibarta Das, who were owning and possessing the suit land by mourashi right. Accordingly their names were recorded properly. Subsequently they declared to sale the suit properties and decided to sale the property to the father of the plaintiffs at a consideration of Tk. 225/-. Thereby the predecessors of the defendants No.1-8 executed a sub-kabala deed on 08.11.54 and delivered possession to the father of the plaintiff. But the predecessors of the defendant No.1-8 failed to perform a registered deed. Subsequently Judhistir Kaibarta Das died leaving his three sons who are defendants No. 1to 3, Chandra Mohan Kaibarta also died leaving behind his only one son, who is defendant No.4 and Surendra Kaibarta Das died leaving behind his four sons who are the defendant Nos. 5-8. Subsequently Monomohan Deb died leaving his only one son who is the

plaintiff of this suit. Thereafter the plaintiff was possessing the suit land by cultivating various crops and rearing various fishes in the remaining two plots.

Defendant Nos. 4, 9 and 10 contested the suit by filing written statements denying the plaint case alleging, inter alia, that admittedly Judhistir Kaibarta Das, Chandra Mohan Kaibarta Das and Surendra Kaibarta Das were the original owner of the suit properties in equal share. Subsequently, Chandra Mohan Kaibarta Das became the owner of the suit properties along with other properties by family arrangement while Chandra Mohan Kaibarta Das had been owning and possessing the suit land he intend to sale the property to defendants No. 9 and 10 at a consideration of Tk.3,000/-. Accordingly the said Chandra Mohan Kaiborta sold out the suit property to defendant No.9 and 10 and put into them in possession and thus he became the owner of the suit property and possessing the same. The plaintiff has no right title and interest and possession over the suit properties. The father of the plaintiff was never in possession and the predecessor of the defendants No.1 to 8 did not execute any kabala so the plaintiff are not entitled to get any relief in this suit.

By the judgment and decree dated 22.11.1994, the Assistant Judge dismissed the suit on contest.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 50 of 1995 before the Court of District Judge, Habiganj, which was heard on transfer by the then Subordinate Judge, 1<sup>st</sup> Court, Habiganj, who by the impugned judgment and decree dated 22.03.2001 dismissed the appeal and affirmed the judgment of the trial court.

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

Mr. A.B. Roy Chowdhury, the learned advocate appearing for the petitioner drawing my attention to the plaint of this suit together with the evidences adduced in this case and the judgment passed by the court below submits that plaintiff prays for declaration of title in the suit land by way of adverse possession with the contention that his predecessor purchase the suit property by way of unregistered sale deed dated 8.11.1954 and since then they are in possession in the suit land and subsequently as and when the defendants did not execute and register the sale deed,

they filed the suit for registration of the sale deed as well as for title by way of adverse possession and in support of this contention although the plaintiff has adduced a number of witnesses including the attesting witness of the deed and the witness in support of the possession but the trial court upon disbelieving the witness of the deed i.e. P.W.2 most arbitrarily dismissed the suit. On the other hand appellate court without at all discussing the evidences in support of the possession adduced by the plaintiffs, he disbelieved the plaintiff witnesses and dismissed the appeal and affirmed the judgment of the trial court on dismissing the suit arbitrarily. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Although the notice of the rule was issued upon the defendants but no one appear to oppose the rule.

Heard the learned advocate and perused the Lower Court Record and the impugned judgment.

This is a suit for declaration of title by way of adverse possession. Monmohan Deb, the father of the plaintiff purchased the suit property at a consideration money of Tk.225/- from the

C.S. recorded tenant Judhistir Kaibarta Das, Chandra Mohan Kaibarta Das and Surendra Kaibarta Das by way of a unregistered sale deed dated 8.11.1955 and got possession in the suit property. Subsequently the said owner failed to execute and register the sale deed in favour of the plaintiff and thereafter died leaving behind the present defendants as their successors. Who finally failed to execute the sale deed in favour of the plaintiff, plaintiffs then filed the suit for title by way of adverse possession. In the plaint, plaintiff also stated that he is also possessed the suit land on 'ka' schedule, having a dwelling house as well as cultivating the rest land. By amendment of the plaint on 8.12.1982 the plaintiff further challenged the deed dated 06.02.1979, which was alleged to be executed by defendant No.4 in favour of Milon Bala Pal and Josna Khanom, who were added in the plaint as defendant No. 9-10, saying that these documents were null and void and antedated and not binding upon the plaintiffs.

Defendants claim that the document as been placed by the plaintiff is a created documents and forged document. Defendant No.4 became the owner and possessor of the suit property. He transferred the same in favour of the Milon Bala Pal and Most.

Josna Khanom by way of registered sale deed dated 06.02.79 and they are in possession in the suit property.

In the premises point to be considered in this case whether the plaintiff got the title of the suit land by way of adverse possession as well as through unregistered sale deed dated 8.11.1954 or not. This is not a simple suit for declaration of title, this is a suit for title by way of adverse possession also where determination of the possession of the suit land is a prime essence of the suit.

In order to prove the plaintiffs case, plaintiff has also adduced a number of witnesses including one Horendra Chandra Deb (P.W.2), who is the witness of the deed in question, who formally proved the deed, which was written in his presence and he witness the deed by putting his signature thereon. In his deposition he has said that:

"নালিশী ভূমির মালিক ছিলেন লালমোহন, রাজমোহন, যুধিষ্ঠির, চন্দ্রমোহন, সুরেন্দ্র। তাহারা নালিশী ভূমি বাদীর পিতা মনমোহন দেবের নিকট বিক্রয় করেন। উক্ত বিক্রি কবলা লেখার সময় আমি ছিলাম। এই কবলার তারিখ ১৩৬১ বাংলা ২২শে কার্তিক। নালিশী ভূমি ২২৫/- টাকা

বিক্রয় হয়। টাকা লেনদেনের সময় ও আমি ছিলাম। নালিশী কবলার সাক্ষী আমি ছিলাম। আমি সাক্ষী হিসাবে কবলায় দস্তখত করি। আমার সামনে রাখা কবলার সাক্ষী হিসাবে আমার সই আছে এই সেই সই।"

By this witness the plaintiff try to prove the execution of the said unregistered sale deed in favour of the plaintiff by the admitted owner Lalmohan, Rajmohan, Judhistir, Chandra Mohan and Surendra. None of them have come forward to challenge the execution of the said deed rather one Joti Mohan Das, the son of Chandra Mohan Das deposing in court on behalf of the defendant as D.W.1, who denied the execution of the said unregistered sale deed dated 8.11.1954 by saying that:

"নালিশী ভূমি বর্তমানে আব্দুল হেকিম ও মাখন পাল। নালিশী ভূমি আমি আব্দুল হেকিমের স্ত্রী ও মাখন পালের স্ত্রীর নিকট ৩০০০/- টাকা মূল্যে বিক্রয় করিয়াছি। আমি বিগত ৬/২/৭৯ইং তারিখে তাহাদের নিকট হইতে নগদ ৩০০০/- বুঝিয়া পাইয়া আব্দুল হেকিমের স্ত্রী ও মাখন পালের স্ত্রীর নামে কবলা সম্পাদন ও রেজিঃ করিয়া দিয়াছি ঐ একই তারিখে। এই একই তারিখে আমি না/ভূমি ৯/১০নং পক্ষভুক্ত বিবাদিনীর বরাবর দখল সমজাইয়া দিয়াছি।"

He further stated that:



"নালিশী ভূমি বিগত ১৩৬১ বাংলা ৮/১১/৫৪ইং তারিখে কি অন্য কোন তারিখে আমার পিতা লাল মোহন দাস যুধিষ্টির কৈবর্ত দাস, রাজ মোহন কৈবর্ত দাস সুরেন্দ্র কৈবর্ত দাস বাদীর পিতার বরাবর বিক্রয় করে নাই।"

He further said that:

"একজিবিট ১ কবলায় (deed dated 8.11.54) আমার পিতা দস্তখত করেন নাই বা অন্য নামও আমার পিতার নামে লেখা নয়। -----  
----- আমার সামনে রাখা একজিবিট-১ কবলার দস্তখত জাল, মিথ্যা। এবং কবলাও জাল।

This Joti Mohan Das a man aged about only 30 years only, when he was deposing in court on 16.07.1985 that means on the date of execution of the impugned unregistered sale deed, in the year 1954, he was not ever been born and accordingly had no personal knowledge about the execution of that document. Accordingly his testimony regarding the deed in question appears to be not sound and not acceptable in law. Save and accept this denial by an improper person there is nothing on record to deny the execution of the impugned deed in favour of the plaintiff. When by the attesting witness, plaintiff has successfully able to

prove the execution of the deed dated 8.11.54 and there is nothing on record to prove that this document was in any way was forged and concocted one, plaintiff is entitled to get a decree. Moreover plaintiff filed the suit for title by way of adverse possession.

Regarding the possession plaintiff has adduced witnesses.

Plaintiff Dinbondhu Deb deposed in court as P.W.1, who also asserted the fact narrated in the plaint and said that after the execution of the said unregistered sale deed, his father Monmohan Das and thereafter he is now possessing the suit land.

P.W.2 Horendra Chandra Deb, who is the witness of the deed also asserted the possession of the plaintiff by saying that:

"নালিশী কবলা মূলে বাদীর পিতা মনমোহন দেব নালিশী ভূমি দখল করিতেন এবং তাহার পর বর্তমানে নালিশী ভূমি মনমোহনের দেবের ছেলে মোকদ্দমায় বাদী দখল করে।"

He further asserted in his deposition that:

" নালিশী ভূমি ৯ ও ১০ নং বিবাদীকে কখনও দখল করিতে দেখি নাই।"

P.W.3 Girish Chandra Das, stated in his deposition that:

"আমি ছোটবেলা হইতে দেখিতেছি বাদীর পিতা ও বাদী নালিশী ভূমি দখল করিয়া আসিতেছে।"

He further asserted that:

"৯ ও ১০নং বিবাদী নালিশী ভূমি দখল করিতে দেখি নাই।"

P.W.4 Nondolal Das stated in his deposition that:

"নালিশী ভূমি বাদী দখল করে।"

He further stated that:

"মনমোহনের ছেলে বর্তমান বাদী নাঃভূমিতে মালিক দখলকার।"

By these witnesses plaintiff also try to establish the fact that after purchase the suit land by Monmohan, father of the plaintiff, suit property is all along is possessed by the plaintiffs and his predecessor. On the contrary Joti Mohan Das, son of Chandra Mohan Das a man of 30 years, who deposed on behalf of the defendant has asserted that he transferred the suit property to defendant Nos. 9-10 by way of registered sale deed dated 6.2.79 and claimed that:

"ঐ একই তারিখে আমি না/ভূমি ৯/১০ নং পক্ষভুক্ত বিবাদিনীর বরাবর দখল সমজাইয়া দিয়াছি। এরপর হইতে ৯ ও ১০ নং বিবাদিনী নালিশী ভূমি দখল করিয়া আসিতেছে।

He further said that:

"ইহা সত্য নয় যে, বাদী নালিশী ভূমিতে বিগত ইং ১৯৫৪ সন হইতে দখলকার আছে। "

Although in his deposition he tried to say that he being the successor of the C.S. recorded tenant being owned the share of his father and transferred the suit land in favour of the defendant Nos. 9-10 by way of registered sale deed dated 6.2.79 and he handed over the possession to them after the said sale deed but before that who possessed the suit land is not there in that on his deposition.

D.W.2 Shuklal Das stated in his deposition that:

"নালিশী ভূমি বর্তমানে আব্দুল হেকিম ও মাখন লাল দখল করে। ৪নং বিবাদী নালিশী ভূমি আব্দুল হেকিম ও মাখন লালের স্ত্রীর নিকট বিক্রয় করিয়াছেন।"

Makhon Lal Pal deposed in court as D.W.3 stated in his deposition that:

"নালিশী ভূমি আমি এবং আব্দুল হেকিম মিয়া দখল করিতেছি বর্তমানে। আমি এবং আব্দুল হেকিম নালিশী ভূমি ৪নং বিবাদীর নিকট হইতে খরিদ করিয়া আমাদের স্ত্রীদের নামে কবলা রেজিষ্ট্রি করিয়াছি।"

These are the witnesses adduced by the parties regarding the possession.

Upon perusal of the witnesses adduced as stated above it appears that the plaintiff witness in a voice has asserted that the plaintiff is in possession in the suit land since from their purchase by way of an unregistered sale deed in the year 1954. Although the sale deed, which has been executed and registered by defendant No.4 in favour of the defendant Nos. 9 and 10 i.e. dated 06.02.79 has been challenged by way of amendment of the plaint as null and void and not acted upon. In the said deed it was alleged to be transfer by the defendant No.4, son of Chandra Mohan, who claimed to have inherited the suit property from one of the C.S. recorded tenant, who obtained the same on an amicable settlement amongst the co-sharer but this contentions were not been proved by adducing any evidence. Accordingly story of acquiring the property by the defendant No.4 remains unproved. Moreover

when his predecessor is found to be executed a unregistered sale deed along with other C.S. recorded tenant in favour of the plaintiff predecessor Monmohan Deb, as such defendant No.4 acquires nothing in the suit property on which he got any saleable interest to sell the property to any person. Accordingly the deed dated 6.2.79 is a mere paper transaction and did not confirm any title in favour of the defendant Nos. 9 to 10. The court below concurrently failed to consider all these aspect of the case and dismissed the suit most arbitrarily.

Regard being had to the above law, fact and circumstances of the case, I am constrained to hold the view that both the court below concurrently erred in law in dismissing the suit without applying the judicial mind.

I thus find merit in this rule.

In the result, the rule is made absolute and the impugned judgment and decree passed by the court below is hereby set aside and the suit is decreed.

Send down the L.C.R along with the judgment to the courts below at once.