

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.1092 of 1995

IN THE MATTER OF:

An application under Section 115 (1) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Fakir Chand Das and others

... Defendant-Petitioners

-Versus –

Kalipada Das and others

...Plaintiff -Opposite Parties

Mr. Mohammad Monir Hossain, Advocate

....For the petitioners

Mr. Muhammad Rejaul Hussain, Advocate

...For the Opposite Parties

Heard on 20.02.2024, 27.02.2024
and Judgment on 29.02.2024

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties No.1-6 to show cause as to why the judgment and decree dated 02.05.1989 and 09.05.1989 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.364 of 1984 dismissing the Appeal and affirming the judgment and decree dated 22.04.1984 and 29.04.1984 passed by the learned Munsif Court, Chattogram in Other Suit No.442 of

1983 decreeing the suit should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, are that schedule land is the khash Dakhali purchased land of Kailash Chandra. He purchased the schedule land from Kabel Krishna Mahajan vide kabala dated 10.03.1890 and possess it from purchase. Accordingly, C.S. was recorded in his name. Kailash dig a pond in schedule land and rearing fish therein, catching fishes and planted valuable trees on the bank of the pond and in this way he had been in possession in the schedule land. According to M.S., C.S. and R.S. survey the suit land is identical and same and its corresponding M.S. Plot are 49/50/52 respectively. Chandi charan and Ramcharan were two brothers of Kailash and all the three brothers had been in joint possession of suit pond due to same mess. Ram Charan died leaving son Jagabandhu. Jagabandhu died leaving behind plaintiff No.4-6 as heirs. Chandi Charan died leaving behind plaintiff No.3 as heirs. Kailash died leaving behind plaintiff No.1 and 2 as heirs. In this way, Kailash and his 2 brothers each possessed $1/3^{\text{rd}}$ share of the suit pond. The said suit pond was further excavated. The defendants or their predecessor had no title in the suit pond. They have no connection with the defendants pond. Nagendra the predecessors of the defendants were a clever and literate person. The said Nagendra Munshi recorded his name in R.S. record beyond the knowledge of Kailash and his two brothers, but by this way he never possess or claim it. R.S. record in the name of Nagendra is wrong. It is known that Carbon P.S. Khatian is recorded upon wrong R.S. Khatian.

The defendants threatened to dispossess the plaintiffs from suit pond upon wrong R.S. khatian and hence, this suit.

After receiving the summons petitioners No.1 and 2, defendants No.1 and 4 appeared in the Other Suit No.442 of 1983 and filed written statement categorically denying all the allegations of the plaintiffs and contested the suit. The contesting defendants' case in short is that, the defendants has been possessing the suit pond through predecessors by rearing fishes in the suit pond and catching fishes and planting valuable trees on the bank of pond denying plaintiffs all title within their knowledge beyond the statutory period of limitation. In this way also defendants title by way of adverse possession has been established in the suit pond against the plaintiffs. The plaintiffs have or had no title in the suit pond. The M.S. khatian, C.S. khatian and R.S. khatian record appended in the plaint of the plaintiffs are not identical and same. It shows that C.S. record in the name of Kailash, it was falsely recorded and also concocted and wrong. Kailash Chandra or his stated Kabel Krishna had no title in the suit pond. If there be any sale deed dated 10.03.1890 or any date in the name of Kailash from title less and possessionless Kabel Krishna, it is concocted, false, sham paper transaction and the same was never acted upon. According to this false deed Kailash Chandra never owned any title and never took any possession in the suit pond. The true fact is that suit pond was the khas dakhali taluk land of Jadhuram. Jadhuram's son Madhuram was the owner of said taluk. Madhuram died without son and his brother Ramcharan inherited Madhuram's share. Ramcharan died leaving son Trahiram as only heirs. Trahiram was an illiterate person, said Trahiram died leaving 2 sons

Surendra and Nagendra. Surendra died without son and his brother Nagendra inherited his share. Nagendra died leaving 4 sons defendants No. 1-4. The homestead of the plaintiffs' predecessor Kailash Chandra is contiguous to the defendants predecessor Trahiram's homestead. The plaintiffs predecessor Kailash Chandra use the suit pond with the permission of the predecessor of the defendants. The defendants are not withdrawn the permission given by their predecessor. The said Kailash was a literate and clever man. The said Kailash falsely and wrongly recorded his name in C.S. khatian and this wrong C.S. khatian never acted upon. The P.S. and B.S. recorded in the name of defendants. The defendants also filed additional written statement in support of their case.

After conclusion of the trial, hearing both the parties and considering all materials on record the learned Munsif, Banskhal, Upazilla, Chattogram passed the judgment and decree dated 22.04.1984 and 29.04.1984 in Other Suit No.442 of 1983 decreeing the suit.

Being aggrieved by and dissatisfied with the judgment and decree dated 22.04.1984 and 29.04.1984 passed by the learned Munsif, Banskhal, Upazilla, Chattogram in Other Suit No.442 of 1983 the petitioners preferred Other Appeal No.364 of 1984 before the learned Court of District Judge, Chattogram. Thereafter, the said appeal was transferred to the learned Sub-ordinate Judge, Patiya, Chattogram for hearing and disposal. After hearing both the parties, the learned Sub-ordinate Judge, Patiya, Chattogram dismissed the Other Appeal No.364 of 1984 and thereby affirmed the judgment and decree dated 22.04.1984 and 29.04.1984 passed by the learned Munsif, Banskhal, Upazilla, Chattogram in Other Suit

No.442 of 1983 decreeing the suit by his judgment and decree dated 02.05.1989 and 09.05.1989.

Being aggrieved by and dissatisfied with the judgment and decree dated 02.05.1989 and 09.05.1989 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.364 of 1984, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Mohammad Monir Hossain, the learned Advocate appearing for the petitioners submits that the learned Courts below erred in law in not considering that Kabel Krishna Mahajan the vendor of Kailash Chandra did not disclose in the said sale deed No.734 dated 10.03.1890 from whom or how he acquired title and plaintiffs also never disclose in plaint and their deposition also or by showing and producing any documents and adducing any witnesses that how or whom their predecessors vendor claim or got title or the suit land, which is obviously a mood question to establish their title in this suit land.

The plaintiffs at first ought to establish their predecessors vendor Kabel Krishna Mahajan's title, without establishing Kabel Krishna Mahajan's title in the suit pond, Kailash or his heirs plaintiffs do not claim or establish their title in the suit pond and plaintiffs failed to do so, committed an error of law resulting in an error in the decision occasioning failure of justice.

He further submits that both the Courts below ought to consider that Kabel what title transfer to Kailash or Kailash what title purchase from Kabel on the other hand Jadhuram was a tenant according to Moghee

Chitta i.e. Jadhuram was a permanent tenant in respect to suit land. According to Moghee Chitta, the plaintiffs failed to meet this mood question to establish their title by adducing evidence of producing documents, which establish/prove the defendants definite case that plaintiff predecessor Kailash fraudulently and collusively created a false deed/documents from possession less and titleless Kabel Krishna Mahajan to grab the suit land and that the Chittas (Ext.C) of Moghee survey are the documents of title. P.W.1 Shanti Pada Das in his cross-examination stated that- “কৈলাস চন্দ্র কেবলকৃষ্ণ মহাজন হইতে খরিদ সুত্রে নালিশী জায়গা পাইয়াছিল। কেবলকৃষ্ণ মহাজন কোথায় পেয়েছে জানিনা। কেবলকৃষ্ণ কিভাবে জমি পাইয়াছিল সেই ধরনের দলিল দাখিল করি নাই। দলিলে লিখা আছে এম.এস. এর ৪৯/৫০/৫২ তিন দাগের আনদর নালিশী পুকুর। এম.এস. এ পুনি লিখা আছে।” It proves the defendants definite case is that Kailash nothing acquire from Kabel by the said kabala dated 10.03.1980 and the facts of the plaintiffs is that Kailash dig the suit pond is false. As the Kailash was living in the contiguous homestead he had been permitted by defendants predecessor Trahiram to utilize or use water of the suit pond and plaintiffs and their predecessor are mere permissive possessor in the same part of the suit pond and R.S. khatian, P.S. khatian and B.S. khatian record in the name of defendants shows the defendants possession in the suit land and C.S. khatian was recorded upon the false footing at the instance of literate and clever Kailash which had or have not create any right, title and interest in favour of Kailash or his heirs. On the other hand the presumption of the correctness of the R.S. khatian prepared under Bengal Tenancy Act (VIII of 1885) is that when R.S. record of right is finally prepared and published the C.S. record of right cannot have any presumptive value to rebut the

presumptive value of R.S. record of right. Both the learned Courts below should have held so and arrived at findings that the suit is not maintainable in its present form and should dismissed the suit.

The learned Advocate lastly submits that both the learned Courts below had erred in law in so far on the findings arrived at by them they should have held that plaintiffs are failed to prove their own case by producing documents and adducing evidences, plaintiffs are failed to identical Maghee Chitta plots No49, 50 and 52 corresponding to C.S. plots No.11697, 11698 through local investigation by survey knowing learned Advocate and for the plaintiffs to succeed they have to make out a title beyond the all shadow of doubt in their favour and the Burdon of proof regarding title on their own shoulder, but they hopelessly failed and on the other hand, the defendants are prove their own case successfully by adducing evidences and producing M.S. khatian (Ext.C) R.S. khatian (Ext.B), P.S. khatian (Ext.B-1), Rent Receipts (Exts.A-A(3)) etc. Both the Courts below erred in law in so for as an findings arrived at by them they should have held that the plaintiffs title is effected by the adverse possession of the defendants denying the plaintiffs title beyond the statutory period of limitation and hence the suit is barred by limitation. The impugned judgments based on mere surmise, conjecture and beyond the facts and circumstances of the case, hence both the learned Courts below committed an error of law resulting in an error in this decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Muhammad Rejaul Hussain, the learned Advocate appearing for the opposite parties submits that schedule land is

the khash Dakhali purchased land of Kailash Chandra. He purchased the schedule land from Kabel Krishna Mahajan vide kabala dated 10.03.1890 and possess it from purchase. Accordingly, C.S. was recorded in his name. Kailash dig a pond in schedule land and rearing fish therein, catching fishes and planted valuable trees on the bank of the pond and in this way he had been in possession in the schedule land. According to M.S., C.S. and R.S. survey the suit land is identical and same and its corresponding M.S. Plot are 49/50/52 respectively. Chandi charan and Ramcharan were two brothers of Kailash and all the tree brothers had been in joint possession of suit pond due to same mess. Ram Charan died leaving son Jagabandhu. Jagabandhu died leaving behind plaintiff No.4-6 as heirs. Chandi Charan died leaving behind plaintiff No.3 as heirs. Kailash died leaving behind plaintiff No.1 and 2 as heirs. In this way, Kailash and his 2 brothers each possessed $1/3^{\text{rd}}$ share of the suit pond. The said suit pond was further excavated. The defendants or their predecessor had no title in the suit pond. They have no connection with the defendants pond. Nagendra the predecessors of the defendants were a clever and literate man. The said Nagendra Munshi recorded his name in R.S. beyond the knowledge of Kailash and his two brothers, but by this way he never possessed or claimed it. R.S. record in the name of Nagendra is wrong. It is known that Carbon P.S. Khatian is recorded upon wrong R.S. Khatian. The defendants threatened to dispossess the plaintiffs from suit pond upon wrong R.S. khatian. So, the the instant Rule is liable to be set-aside. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the petitioners and the submissions of the learned Advocate for the opposite parties, the papers and documents as available on the record.

It appears from exhibit-1 of the record that, Kailash Chandra, predecessor of the plaintiffs, purchased the Nalishi pond from the moneylender on 10.03.1990 under a registered lease and it is seen from exhibit-2 that the possessor of the Nalishi pond is mentioned Kailash Chandra became owner by purchase from Kabel Krishna. Exhibit-3 -3(Tha) is submitted by the plaintiffs-opposite parties as dakhila of the rent. In that Exhibit-3(Ta) is in the year of 1935 and Exhibit-3 is in the year of 1983 dakhila. On the other hand, exhibit-Ka-Ka(3) is submitted by the defendants-petitioners as dakhila of rent and exhibit-Ka(3) is dakhila of rent year of 1975. No previous dakhila could be submitted. It appears from the exhibit-Kha and Kha(1) that 5 Annas 6 Ganda 2 Kranti portion is recorded in the suit dag in the name of the defendants predecessor. But, from C.S. Khatian (exhibit-2) it appears that, the suit land (pond) is recorded in the name of Kailash Chandra by purchase. No documentary evidence could be produced as to why the names of the predecessor of defendants R.S. and P.S. were recorded in the khatian. Again, from the deposition and cross-examination of the defendant's witness No. 1, it is seen that the plaintiffs and their predecessors were mentioned as being in possession by permission and the defendant's witness No. 2 stated in his

cross-examination that the suit pond was previously in the possession of Kailash Chandra and others but not now.

Considering the facts, circumstances and evidence on record it is found that plaintiffs have prior possession over the suit land and presently the plaintiffs-opposite parties have right, title and possession over the suit land and there is not right, title and possession of the defendants-petitioners over the suit land.

Therefore, on the basis of the above discussion, it can be concluded that the plaintiffs have prior possession of the suit pond and it is proved from the submitted Exhibit-1 and Exhibit-2 that the ownership interest of the plaintiffs is also in the suit pond.

Considering the above facts and circumstances, I find that the judgment and decree dated 02.05.1989 and 09.05.1989 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.364 of 1984 dismissing the Appeal and affirming the judgment and decree dated 22.04.1984 and 29.04.1984 passed by the learned Munsif Court, Chattogram in Other Suit No.442 of 1983 decreeing the suit rightly and is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 02.05.1989 and 09.05.1989 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.364 of 1984 dismissing the Appeal and affirming the judgment and

decree dated 22.04.1984 and 29.04.1984 passed by the learned Munsif Court, Chattogram in Other Suit No.442 of 1983 decreeing the suit is hereby upheld and confirmed.

Send down the L.C.R. along with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer