

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.4167 of 2013

Sri Dhirendra Nath Pramanik.

.....Petitioner.

-Versus-

Boykuntha Nath Pramanik.

.....Opposite party.

None appears.

.....For the petitioner.

Mr. Md. Humayun Kabir Adv.

.....For the Opposite party.

Heard and Judgment on 25.01.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why judgment and decree dated 16.01.2013 passed by the Joint District Judge, 2nd Court, Natore in Title Appeal No. 144 of 2007 affirming those dated 12.11.2007 passed by the Assistant Judge, Additional Court, Sadar, Natore in Other Class Suit No. 42 of 2003 dismissing the suit should not be set aside.

Petitioner as plaintiff filed Other Class Suit No. 42 of 2003 before the Court of Assistant Judge, Sadar, Natore for declaration of title and for further declaration that recording of S.A. and R.S. khatian are wrong.

Plaint Case in short inter-alia is that one Ganga Dhar was the C.S. recorded tenant of the suit land then he settled the land to Sremoti Ranibala Dashya then said Ranibala Dashya being owner in possession proposed to sell out the suit land as such the mother of the plaintiff agreed to purchase the suit land for his beloved son and accordingly she paid the consideration money and purchased the land in the name of plaintiff by two registered saf-kabala deed being nos. 12635 and 12636 dated 15.12.1955. At the time of preparation of S.A. record, the father of the plaintiff was no more and the plaintiff was young as such the elder brother of the plaintiff, the defendant was the person to look after the preparation of record and he recorded the land in his name instead of the plaintiff and same thing he did at the time of preparation of R.S. record, Defendant assured the plaintiff that though the records have been prepared in his name, he would never claim the suit land. Plaintiff had/has been in possession of the suit land and the defendant never possesses the suit land. Therefore the defendant claimed title over the suit land in the year of 2003 then the plaintiff demanded the papers of the suit land from the defendant but the defendant in deferent pretext deferred to give the papers then the plaintiff obtained the certified copy of the record of right and found that in S.A. and R.S. khatian, the name of the defendant along with the plaintiff has been recorded. Plaintiff also found that

the name of Ranibala Dashya was also recorded erroneously, due to erroneous entry of the S.A. and R.S. khatian, the title of the plaintiff has been clouded as such he filed this suit.

Opposite party as defendant contested the suit by filing written statements, denying the plaint case alleging, inter-alia, that the father of the plaintiff and the defendant died in the year 1955 since then their mother maintained them from the joint property and therefore the mother of the plaintiff and the defendant from the account of joint family purchased the suit land for the interest of the joint family, though the saf-kabala deed stand in the name of the plaintiff, Plaintiff and the defendant both were minor and they have 5/6 years age deference. Subsequently some other property also purchased in the name of the defendant and the plaintiff but all the property have been possessed by the plaintiff and the defendant jointly in ejmali, Plaintiff and the defendant are in joint possession of the suit land and therefore by amicably the defendant is in possessions of part of the suit land, plaintiff in collusion of the village bad person filed this suit.

During trial following issues were framed-

1. Whether the suit is maintainable in it's present form?
2. Whether the suit is bad for defect of parties ?
3. Whether the suit is barred by limitation?

4. Whether the plaintiff is the owner and possessor of the land?

5. What other relief or relieves plaintiff is entitled to get?

By the judgment and decree dated 12.11.2007, the Assistant Judge, Additional Court, Sadar, Natore dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 144 of 2007 before the Court of District Judge, Natore, which was heard on transfer by the Joint District Judge, Second Court, Natore, who by the impugned judgment and decree dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved there against plaintiff-petitioner obtained the instant rule.

Although the matter is posted in the list for several days and finally posted today for delivering of judgment, mentioning the name of the learned advocate appearing for the petitioner but no one appears to press the rule.

Mr. Md. Humayun Kabir, the learned advocates appearing for the opposite party on the other hand drawing my attention to the judgment of the court below submits that both the court below

concurrently found that property was purchased by the mother of the plaintiff and the defendant from the interest of the joint family property. At that time both plaintiff and defendant were minor and it was in fact purchased in the name of plaintiff by their mother, accordingly plaintiff since could not prove that the property was acquired by the plaintiff alone by the money obtained from Annyaprshan, as such rightly dismissed the suit. Moreover both the court below correctly found that both the plaintiff and defendant are in possession in the suit property. Plaintiff did not have sole possession of the suit property and as such suit is not maintainable and accordingly dismissed the suit rightly. Since the concurrent findings of the court below, there is no misreading and non reading of the evidences, rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the impugned judgment and the L.C. Records.

This is a suit for declaration of title and further declaration that S.A and R.S. khatian were wrong. Ranibala Dashya is the owner of the suit property, who sold it to the plaintiff and plaintiff's mother named Chandra Bala purchased the same in the name of the plaintiff on the money obtained from Annyaprshan by registered sale deed dated 15.12.1955. Subsequently plaintiff's

father intentionally recorded the suit property in the name of plaintiff and defendant in equal 08 annas share illegally. Plaintiff is the sole owner of the suit property, which was purchased from the money obtained from his Annyaprshan. Defendant did neither have any title nor possession into the suit property. The recording of the S.A. and R.S. khatian since are wrong, he filed this suit. On the other hand, according to the defendant, the suit property was admittedly purchased by the mother of the plaintiff and defendant in the name of plaintiff, who is the younger son, on the income of the joint family property and subsequently both the plaintiff and defendant possessed the suit property jointly and cultivated the same and thereby all the S.A. khatian is recorded in the name of their mother Ranibala Dashya and subsequently R.S. khatian was correctly been recorded in both the name of the plaintiff and defendant. Property was acquired from the income of the joint family property not by way of the money obtained from the Annyaprshan as being said by the plaintiff. Court below while deciding the suit found that plaintiff's contention that property was purchased on the money obtained from Annyaprshan by the plaintiff was not proved by any evidence, rather the plaintiff admits that plaintiff and defendant are remaining in the same mess and cultivated the property jointly and the other witnesses of the

plaintiff also admits that property was jointly possessed by both the plaintiff and defendant.

Considering all the aspects of this case court below concurrently found that since plaintiff failed to prove his exclusive title and possession over the suit land, the suit was dismissed by the court below. Moreover upon considering the rent paid by the defendant, which is the prove of possession also asserted that plaintiff is not exclusive possession of the suit property and as such the instant suit for simple declaration of title is not maintainable.

Regard being had to the above factual aspect of this case, I am of the opinion that in the said concurrent findings of court below contains no misreading and non reading of evidences, the rule contains no merits to interfere with.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the Court below are hereby affirmed.

Let the order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the L.C.R. and communicate the judgment to the court below at once.