

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 2830 of 1998

Md. Osman Ali and another

.....petitioners

-Versus-

Sree Dula Urao and another

.....opposite parties

Mr. Md. Abdus Salam Mondal, Advocate

..... for the petitioners

Mr. Snehadri Chakrovorty with Mr. Tapas  
Bandhu Das, Mr. Sumon Ali and Mr. Nabil  
Ahmed Khan, Advocates

..... for the opposite parties

Judgment on 30.10.2024

At the instance of defendants this Rule was issued calling upon the plaintiff-opposite parties to show cause as to why the judgment and decree of the then Subordinate Judge, Court 1, Naogaon passed on 03.10.1996 in Title Appeal No.112 of 1989 allowing the appeal reversing the judgment and decree of the Assistant Judge, Sapahar, Naogaon passed on 30.03.1989 in Other Class Suit No.14 of 1986 dismissing the suit should not be set aside and and/or such other or further order or orders passed to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the plaintiffs instituted the suit on the averments that they took *pattan* .33 acres of land of SA *Khatian* 6/5 which is a part of RS *Khatian* 82 plot 898 corresponding to CS plot 873 from the then zaminders through a *hukumnama* dated 25<sup>th</sup> Chaitra, 1350 BS. They have been possessing the land on payment of rent to the zaminders and

accordingly SA *khatian* was prepared in their names. But RS *khatian* was wrongly prepared in the name of the Government while they filed application to the concerned authority under section 30 of the State Acquisition and Tenancy Act for its correction and accordingly an order was passed to that effect. In spite of that RS record was finally prepared in the name of the defendants who threatened plaintiffs of dispossession which clouded their title in the suit land, hence the suit for declaration of title simpliciter.

The defendants contested the suit by filing a set of written statement stating that their predecessor Samir Uddin and Abdul Majid by a *hukumnama* dated 3<sup>rd</sup> Baishakh 1349 BS took *pattan* .65 acres of land out of 2.80 acres of CS Plot 873 under *khatian* 6. Since then they have been possessing the aforesaid *pattani* land on payment of rent to the zaminders and subsequently to the Government. They further contended that RS *khatian* has been accordingly prepared for .65 acres of land in their names and they are in its peaceful possession. The suit has been filed on false statement and as such it would be dismissed.

In the trial, both the parties examined 3 witnesses each and produced documents in support of their respective claims. The Assistant Judge dismissed the suit while the plaintiffs preferred appeal before the District Judge, Naogaon. The then Subordinate Judge, Naogaon heard the appeal on transfer and allowed the same decreeing the suit by setting aside the judgment and decree passed by

the trial Court. Being aggrieved by the defendants approached this Court and obtained this Rule.

Mr. Md. Abdus Salam Mondal, learned Advocate for the petitioners taking me through the judgments passed by the Courts below submits that the plaintiffs claimed the land through a *pattan* in the year of 1350 BS but the record shows that plaintiff 1 was a just a baby at the time of taking *pattan* which is not believable. The land is not specified and as such the plaintiffs are not entitled to get decree in the suit. The recent record of right has been prepared in the name of the defendants and they are in possession of the suit land by paying rents to the concerned authority. Mr. Mondal pointing the documents of the plaintiffs submits that those are fake documents. The appellate Court most erroneously shifted the burden of proof upon the defendants and decreed the suit which cannot be sustained in law. In support of the submission Mr. Mondal refers to the cases of Noor Mohammad Khan & others vs. Government of the People's Republic of Bangladesh & others, 42, DLR 434 and Hedayetullah and others vs. Foyjun Nessa Begum and others, 18 BLC (AD) 139 and relied on the *ratio* laid in those cases.

Mr. Snehadri Chakrovorty, learned Advocate for the opposite parties on the other hand submits that the defendants in the written statement did not state that the land is unspecified. Moreover, SA *khatian* exhibit-2 proves that land measuring .33 acres was recorded in the name of the plaintiffs. Since as per SA record the land in the

plot is .33 acres, so it cannot be said that it is unspecified. The trial Court did not assess the evidence of the parties but dismissed the suit. In this case the balance of preponderance of evidence is to be considered which definitely goes in favour of the plaintiffs. The appellate court being the last Court of fact correctly assessed the evidence and decreed the suit. Nothing is found perverse in the judgment of the Court of appeal below and as such the Rule would be discharged. In support of the submission he refers to the case of Naresh Chandra Das and others vs. Nirmal Chandra Das and others, AIR 1989 Ori 248 and relied on the *ratio* laid therein.

I have considered the submissions of both the sides, gone through the materials on record and *ratio* of the cases cited by the parties. It transpires that the plaintiffs brought the suit praying for declaration of title in the suit land measuring .33 acres of SA *khatian* 6/5 which is a part of RS *khatian* 82 plot 898 and CS plot 873. On going through the plaint, written statement and evidence of both the parties, it transpires that both are in possession of lands as per RS record. The plaintiffs claimed title and possession in respect of .33 acres as per SA *khatian* exhibit-2, on the other hand, defendants claimed possession over .65 acres out of 2.80 acres of RS *khatian* exhibit-Ga. In cross-examination DW 2 Rahamat Ali stated, “নালিশী জমির পরিমান ২.৮০ একর। ২.৮০ একরের মধ্যে কয়টা খন্ড বা কেয়ার আছে তাহা বলতে পারবোনা। বাদী দুলা উরাও .৩৩ শতাংশ জমি দখল করে।” If the evidence of three witnesses of the plaintiffs is assessed with documents exhibited

along with the evidence of DW2, the possession of land measuring .33 acres as per SA *khatian* exhibit-2 certainly goes in favour of the plaintiffs. It is found that the plaintiffs paid rent to the zaminders through *dakhilas* exhibits-1(Ka) and 1(Kha) in respect of .33 acres of land. The authenticity of those documents including *hukumnama* was not challenged by the defendants. The defendants claimed taking *pattan* of the suit land from the then zaminders in the year 1349 BS on payment of rent through exhibits-A1-A3 for .65 acres. If their documents of *pattan* were found genuine the SA *Khatian* would have been prepared in their names in respect of the aforesaid quantum. But it has been prepared in the name of the plaintiffs in respect of .33 acres. If total land of SA *khatian* is .33 acres how the defendants took *pattan* .65 acres and paid rent for it. The findings of the Appellate Court that the documents of the defendants are not genuine appear to me correct upon scrutinizing those. Although the land as claimed by the plaintiffs measuring .33 acres is not specified in the plaint but they claimed whole of .33 acres of SA *khatian* exhibit-2. In that context the land is found to me specified. The witnesses of the defendants admitted in their evidence that the plaintiffs possess land which is a part of land of RS *khatian*. It is well settled position of law that possession follows title which is in favour of the plaintiffs. It is further found that the while the land was recorded in RS *khatian* in the name of the Government, the plaintiffs filed an application to the concerned Revenue Authority for correction of the erroneous record which was allowed through

exhibit-3 and order was accordingly passed. But inspite of that RS *Khatian* in respect of .65 acres out of 2.80 acres has been prepared in the names of the defendants which is found erroneous and it definitely clouded plaintiffs' title in the suit land. The evidence on record do not support the submission of Mr. Mondal that plaintiff 1 was a boy at the time of taking the land *pattan*.

I have also gone through the *ratio* of the cases cited by the learned Advocate for the opposite parties. The *ratio* laid in those cases do not match this case considering the facts and circumstances upon which the *ratio* has been laid. Although the judgment passed by the Court of appeal below is found a precise one but its ultimate decision is found correct. I find no misreading and con-consideration of the materials on record for which the decision passed by the appellate Court could have been otherwise.

In the aforesaid premises, I find no merit in this Rule. Accordingly, the Rule is discharged. No order as to costs. The judgment and decree passed by the appellate Court is hereby affirmed.

Communicate this judgment and send down the lower Courts' record.