

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISI inconvenience ON  
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

**Civil Revision No. 3712 of 2014**

Abdur Razzaq Morol

.....petitioner

-Versus-

Md. Abdur Rahim and others

..... Opposite parties

Mr. Md. Darul Alam, Advocate

..... For the petitioner

Mr. F.M. Mizanur Rahman, Advocate

..... For the Opposite Parties

Heard on: 31.10.2023, 20.11.2023,  
21.11.2023, 27.11.2023 and  
Judgment on 28.11.2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and decree dated 10.06.2014 (decree signed on 17.06.2014) passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Khulna in Title Appeal No. 97 of 2013 allowing appeal and reversing the judgment and decree dated 15.05.2013 (decree signed on 22.05.2013) passed by the learned Assistant Judge, Dumuria, Khulna in Title Suit No. 255 of 2009 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite parties as plaintiff filed Title Suit No. 255 of 2009 in the court of Assistant Judge, Dumuria, Khulna inter alia for permanent injunction in the suit land impleading the instant petitioners as defendants in the suit. The trial court upon

hearing the parties, taking depositions, adducing evidences and framing issues etc dismissed the suit by its judgment and decree dated 15.05.2013. Being aggrieved by the judgment and decree of the trial court the plaintiff in the suit (opposite party here) filed Title Appeal No. 97 of 2013 which was heard by the Joint District Judge, 2<sup>nd</sup> Court, Khulna. The appellate court after hearing the appeal however allowed the appeal by its judgment and decree dated 10.06.2014 and thereby reversed the judgment and decree of the trial court passed earlier. Being aggrieved by the judgment and decree of the courts below the defendant as petitioner filed a civil revisional application which is presently before this court for disposal.

The plaintiff's case inter alia is that the suit land is located at Angardoha Mouza under Upazila Dumuria, District- Khulna. The plaintiff got 025 acres of land from successor Monu Gazi. Having no title and possession the plaintiff tried to dispossess the plaintiff forcefully from the suit land on the basis of a so called deed dated 02.02.1958. By making amendment the plaintiff sought for another relief as to the kabala dated 02.02.2008 vide No. 443/58 is collusive, illegal, inoperative and not binding upon the plaintiff.

That the defendant by filing written statement contested the suit denying all allegation. Defendants claim inter alia that the suit land is owned and possessed by the defendants and they

purchased it through auction and got possession and possessing the lands for over 12 years. The defendants possessed 1.39 acres of land from 2 Khatians. They are enjoying the land in question by constructing rooms and living with their families. The land was never owned and possessed by the plaintiff. They demanded the lands in question only to grab the lands. They prayed for dismissing the suit with cost.

The trial court framed issues, witnesses were examined by both sides and both parties produced documents marked as exhibits.

Learned advocate Mr. Md. Darul Alam appeared for the petitioner while learned advocate Mr. F.M. Mizanur Rahman represented the plaintiff as opposite parties.

Learned advocate Mr. Md. Darul Alam for the petitioner submits that both courts below on misappraisal of the records and evidences came upon wrong finding that title and possession of the suit land belong to the plaintiffs. He submits that though the defendant purchased the suit land by auction sale due to default and failure of Abdul Gazi in payment of rent but however both courts below totally ignoring the issue of auction sale erroneously found the title and possession of the plaintiff in the suit land. He submits that S.A. and R.S. Khatian are till date wrongly recorded in the name of Abdul Gazi and Manu Gazi till date. He continues that since Abdul Gazi and Manu Gazi's heirs

relinquished their title and possession in the suit land several years ago, therefore the Record of Rights in their name is wrong. He argues that the defendants could prove their title and possession by way of registered kabala deeds through which they purchased 15 decimals of land from Manu Gazi's heirs. He submits that in particular the courts below came upon their wrong findings on the title of the plaintiff. He submits that the plaintiff claims that he derived his title in 'Ka' schedule land in S.A. Khatian No. 26 in 1.24 acres of land. He argues such claim of the plaintiffs is totally wrong since although Abdul Gazi was the original owner but subsequently Abdul Gazi's land was sold in auction by way of Certificate case being Certificate Case No. 21883/1960-61. He submits that in the face of Certificate case and judgment by an exparte order in the Certificate case the defendant's predecessors was the auction purchaser in the auction case. He submits that the land in S.A. Khatian 174 comprising of 15 decimals of land was lawfully purchased by the defendant's predecessors and such legality was proved by way of registered kabala deeds which has been duly produced by the defendants.

There was a query from this bench as to whether the defendants in the suit filed any cross appeal or appeal otherwise in the appellate court against the trial court's finding on title and possession of the plaintiff. To this query the learned advocate for

the petitioner concedes and admits that the petitioner did not file any cross objection or appeal in the appellate court against the findings of title and possession of the plaintiff in the suit land. He next contends that although the trial court gave erroneous finding on title and possession but however the trial court gave correct findings on the absence of boundary specification and correctly dismissed the suit. He contends that however the appellate court without giving proper finding on the schedule wrongly allowed the appeal. He concludes his submissions upon assertion that therefore the judgment of the appellate court ought to be set aside and the judgment of the trial court ought to be upheld and the Rule bears merit and ought to be made absolute for ends of justice.

Learned Advocate Mr. F.M. Mizanur Rahman for the opposite parties vehemently opposes the Rule. Learned Advocate for the opposite party draws upon the fact that against the finding on the issue of title and possession by the trial court, the instant petitioner (defendant) did not file any appeal in the appellate court. He submits that in the absence of any cross objection or appeal in the appellate court against the positive findings of title and possession of the plaintiff in the trial court, the petitioner cannot raise this matter in civil revision here since their previous conduct falls under the doctrine of estoppel. He contends that since the petitioner did not raise the issue of title

and possession before the appellate court therefore at this stage they are estopped by the judgment of the trial court. He asserts that the bone of contention remaining for purpose of adjudication is whether the schedule and boundary specification has been adequately described or not. He submits that the trial court upon totally overlooking the plaint of the schedule wrongly came upon its finding and wrongly dismissed the suit on the ground of absence of boundary specification only. He submits that such misapplication of mind by the trial court caused grave injustice to the plaintiff. He points out that however the appellate court upon correct observation gave its finding to the effect that the plaintiff's plaint, schedule etc does not suffer from inappropriateness and also gave observation that the boundary specification had been adequately described.

He argues that since both courts below gave concurrent finding of title and possession of the plaintiff and since the issue of title and possession was not raised by way of cross appeal or appeal by the defendant petitioner therefore the issue of title is a decided issue. He submits that however the trial court committed grave injustice by its erroneous finding on boundary specification, but the appellate court correctly reversed the judgment of the trial court and gave correct finding and therefore the judgment of the appellate court ought not to be interfered with. He concludes his submissions upon assertion that therefore

the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, perused the application and materials on record. It appears that Abdul Gazi is the admitted owner particularly in S.A. Khatian 26 and Manu Gazi was the owner in S.A 174. However in this case I do not think it necessary to delve much into the factual issues of title and possession. The rationale of my opinion arises from the fact that the trial court gave findings on title and possession in favour of the plaintiff. Although the trial court gave findings on the issue of title and possession of the plaintiff but however the trial court dismissed the suit only on the ground of absence of boundary specification in the plaint. It is significant to note that against the findings of title and possession by the trial court, the defendants (petitioners here) did not file any cross appeal whatsoever. The plaintiff opposite party however filed appeal against the judgment and decree of the trial court. My considered view is that since the defendant petitioner did not file any appeal in the appellate court on the issue of title and possession therefore they are now barred by the doctrine of estoppel and cannot raise the issue of title and possession. Consequently the only issue remaining to adjudicate upon is the issue of boundary specification in the plaint. The trial court with regard to the 'Kha' schedule land made observation to the effect, as below:

“কিন্তু ‘খ’ তপশীল বর্নিত জমি বাবদ আরজিতে উল্লেখ করেন যে, গত ইং ৯/৬/০৯ তারিখে রেজিঃকৃত কবলা দলিলে বাদীপক্ষ কতটুকু জমি খরিদ করিয়াছেন তাহা সুনির্দিষ্টভাবে উল্লেখ করেন নাই। বাদীপক্ষ আরজিতে নালিশী তপশীল বর্ণিত জমির বর্ননা সঠিকভাবে উল্লেখ না করায় এবং তপশীলের চৌহদ্দি সুনির্দিষ্ট না হওয়ায় বাদীপক্ষ তাহাদের প্রার্থিত মতে প্রতিকার পাইতে হকদার নয়। সে কারণে ১-৩ নং বিচার্য বিষয়ে বাদীপক্ষের অনুকুলে এবং ৪ নং বিচার্য বিষয় বাদীপক্ষের প্রতিকুলে নিষ্পত্তি করা হইল।”

However the appellate court reversed such finding of the trial court and made the observation here under:

“On perusal of the schedule to the plaint it appears that the suit land is well demarcated and specific boundary is clearly mentioned in the schedule to the plaint as per Order 7 Rule 3 of the Code of the Civil Procedure, 1908. The learned assistant judge has failed to evaluate the schedule properly that’s why the suit having been dismissed.”

At another portion of the judgment the appellate court made observation:



“it appears that the learned trial judge was completely failed to evaluate the facts and conditions of law points while determining the issues regarding the boundary and specification of his suit land in his schedule to the plaint considering the materials on record. Actually the plaintiff has been able to prove that the plaintiff possessed the suit land by purchased and he has exclusive possession in the same. The schedule of the plaint was well demarcated and specification was given the same mentioning surrounding boundary of the suit land. As a result, learned court below have committed an error of law in assessing the witnesses which resulting a wrong decision which occasioning failure of justice by misreading, misinterpreting and non-considering the material evidence on record, thereby erroneously decided the fate of the suit.”

I have also examined the schedule to the plaint. It appears to me that the appellate court correctly gave its observation that the schedule is well demarcated and has been adequately described. I am also of the considered view that there is no significant inadequacy in the description in the schedule and boundary specification.

Under the facts and circumstances and relying on the findings of the judgment of the courts, in particular that of the appellate court I am of the considered view that the appellate court correctly gave its observation on the issue of boundary specification and I am also of the considered view that the plaintiff has title and possession in the suit land. I do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to costs.

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

Send down the Lower Court Records at once.

Communicate the order at once.

**Shokat (B.O)**