

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 2752 of 2016

*Md. Mamtazuddin being dead his legal
heirs Most. Morium Akter and others*

.....Petitioners.

-Versus-

Md. Rabiul Alam and others

.....Opposite parties.

Mr. Md. Mubarak Hossain, Advocate

.....For the petitioners.

None appears.

.....For the opposite parties.

Heard and Judgment on 20th February, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party no. 1 to show cause as to why the impugned judgment and decree dated 15.06.2016 passed by the Additional District Judge, 3rd Court, Cumilla in Title Appeal No. 93 of 2014 (Civil Appeal No. 93 of 2014), reversing those dated 18.03.2014 passed by the Assistant Judge, Laksam, Cumilla in Title Suit No. 125 of 2006 (Civil Suit No. 125 of 2006) decreeing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for perpetual injunction against the opposite parties.

Plaint case in short inter alia is that Monir Uddin is the predecessor of plaintiff no. 2 and defendants in the suit and plaintiff no. 1 is the husband of plaintiff no. 2 and plaintiff no. 1 and 2 have owned 29 decimals land of the disputed C.S. Plot No. 139 as described in the schedule of the plaint. Plaintiff no. 1 Md. Mamtazuddin got 14½ decimals of land through deed of exchange No. 16281 dated 09.12.1989 from one Md. Samsul Haque and plaintiff no. 2 Most. Mahmuda Khatun, the heirs of Monir Uddin got the rest 14 ½ decimals of land by way of inheritance and amicable partition. Since the defendants are ill natured, they have threatened the plaintiffs to dispossess from the suit land and hence they filed this suit.

Defendant Nos. 1-3 contested the suit, by filing written statement denying the plaint case alleging, inter alia, that plaintiffs are in possession on entire 29 decimals of land, on which 14 ½ decimals of land had obtained lease from their father Monir Uddin to the plaintiff no. 1, who fixed a veqoathed kindergarten school in that land. Amongst the heirs of Monir uddin an Osiatnama was executed on 05.04.2000 A.D. through that Osiatnama defendants became owner of the disputed land. Plaintiffs have neither title nor possession in the suit land and hence they pray for dismissal of the suit.

By the judgment and decree dated 18.03.2014 the Assistant Judge, decreed the suit on contest.

Challenging the said judgment and decree, defendant preferred Title Appeal No. 93 of 2014 before the Court of District Judge, Cumilla, which was heard on transfer by the Additional District Judge, 3rd Court, Cumilla, who by the impugned judgment and decree dated 15.06.2016 allowed the appeal and set aside the judgment of the trial court.

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

Mr. Md. Mubarak Hossain, the learned advocate appearing for the petitioners drawing my attention to the judgment of the court below submits that this is a suit for perpetual injunction wherein main question to be decided, who is in actual and exclusive possession into the suit land. Both the courts below although found that the plaintiffs are in possession in the suit property, the trial court decreed the suit in favour of the plaintiffs but the Appellate Court upon wrong notion most arbitrarily dismissed the suit. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Although the matter is posted in the list for several days and finally posted today for delivering judgment although a vokalatnama was filed by one advocate Mr. Sayed Erfan on behalf of the opposite party but no one appears to oppose the rule.

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

This is a suit for perpetual injunction. The paramount consideration in a suit for perpetual injunction is whether the plaintiffs have been successfully able to prove their exclusive possession in the suit land or not, question of title may be looked into incidentally but decision on title in such a suit is not a guiding principle for holding that the suit is not maintainable without a partition suit. The main criterion of such a suit is whether the plaintiffs are in possession and whether they are threatened by the defendants to dispossess or any other disturbance.

Going through the judgment of the court below it appears that trial court upon discussing the fact and scenario of this case together with evidence adduced in this case found that since the defendants have admitted the plaintiffs possession in the suit land in favour of the plaintiffs while they said that plaintiff no. 2 has not owned the disputed 14½ decimals of land out of disputed 29 decimals of land from her father by way of inheritance and the

defendants are the owners of that 14½ decimals of land through the registered Osiotnama (Exhibit No. Ka), the plaintiff no. 1 is the lessee in the disputed 14½ decimals of land and further said that plaintiff no. 1 can not pay the rent to the contesting defendants and for this reasons, the contesting defendant no. 3 coming the country and requested the plaintiff no. 1 to surrender the possession of the aforementioned disputed 14 ½ decimals of land in favour of the contesting defendants, therefore, the Court finds that the contesting defendants have admitted the plaintiff's possession in the suit land and they have also admitted that the threaten to the plaintiffs to dispossess from the suit land by asking to surrender the possession to them on 14 ½ decimals of land and thereby the plaintiff cause of action as well as the case has been proved on admission and as such he decreed the suit in favour of the plaintiffs.

On the other hand, Appellate Court being the last court of fact although found that the plaintiffs are able to prove their possession over the suit land but that possession can not be defended by law as the right of possession through some sort of lease not proved to the satisfaction of the court gives any sort of right that can be protected by law under section 54 of the specific Relief Act, 1877. Since, neither claim of getting half of the suit

land (14½ decimals of land) on amicable partition nor getting the same as lease is proved, so the plaintiffs right to or enjoyment of the suit property is not proved and has got no right to possess the same.

In fact, in a suit for perpetual injunction, the Appellate Court travelled beyond his jurisdiction. In a suit for injunction it has been stated above that the court can consider only, who is in possession in the suit land. If the plaintiffs successfully able to prove their exclusive possession over the suit land, they are entitled to get an order of injunction from the court. When both the courts below concurrently found that plaintiffs are in possession in the suit land, they are entitled to get an order of injunction but the appellate court totally failed to consider this aspect of this case most arbitrarily.

Regard being had to the above law, facts and circumstances of this case, I am of the view that the judgment passed by the Appellate Court, reversing the findings of the trial court arbitrarily is not sustainable in law, which is liable to be set aside. I find substance and merits in the rule.

According the Rule is made absolute without any order as to costs. The judgment and order passed by the Appellate Court is

hereby set aside and the judgment and order passed by the trial court is hereby upheld.

Let the order of stay 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.