

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

**Civil Revision No. 3883 of 2016**

Md. Abdur Rahim and another  
.....petitioners

-Versus-

Md. Shamsuddin and others  
..... Opposite parties

Mr. Md. Mamrujul Hossan, Advocates  
..... For the petitioners

Ms. Nahid Yesmin, Advocate  
..... For the Opposite Parties

Heard on: 03.05.2023, 07.05.2023,  
08.5.2023 and  
Judgment on 14.05.2023

Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and order dated 10.10.2016 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Mymensingh in Other Class Suit No. 89 of 2015 reversing the judgment and decree dated 31.03.2015 passed by the learned Assistant Judge, Ishwarganj, Mymensingh in Other Class Suit No. 118 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 party as plaintiff filed Other Class Suit No. 118 of 2009 in the court of Assistant Judge, Ishwarganj inter alia for declaration of title and recovery of Khas Possession in the suit land impleading the instant petitioners as defendants in the suit. The trial court upon hearing both parties adducing

evidences etc. dismissed the suit by its judgment dated 31.03.2015. Being aggrieved by the judgment and decree of the trial court the plaintiffs in the suit filed Other Class Appeal No. 89 of 2015 which was heard by the Additional District Judge, Mymensingh. Upon hearing, the appellate court allowed the appeal by its judgment and decree dated 10.10.2016 and thereby reversed the judgment and decree of the trial court passed earlier. Being aggrieved by the judgment and order of the appellate court the defendants in the suit as petitioners filed the instant civil revisional application which is presently before this court for disposal.

The plaintiff's case inter alia is that one Aftab Uddin got the suit land by settlement and sold the same to Samar Uddin vide a sale deed dated. 30.03.1954. Samar Uddin died leaving 4 sons namely Abu Sayed, Rafiq, Tamij and Firoj. While they were in possession in the suit land one A Rahman and others dispossessed them from the suit lands forcefully and then said 4 sons of Samar Uddin filed a suit being No. 70 of 1986 for declaration of title and recovery of khas possession and having got decree they recovered possession thereto by filing execution case No. 05 of 1992. They being owners and in possession in the suit land sold the same to the plaintiff in 1994 and they handed over possession to him by receiving the whole consideration money but the sale deed was not registered. Therefore, the sale

deed has been registered on 14.07.2008. The plaintiffs having got the suit land had been in possession thereto and on 10.12.2008 the defendants forcefully dispossessed them from the suit land. Hence the suit.

The defendant No. 1/2 contested the suit by filing written statement and denied the allegations made in the plaint. The defendants stated that there is no cause of action in the suit and is barred by limitation. That the suit is filed upon false statements and the suit is not maintainable. That the suit is barred by principles of estoppel, acquiescence, waiver and admission. The defendants further stated in the written statement that the alleged story of decree for declaration of title and recovery of khas possession in suit No. 70 of 1986 and getting possession in execution Case No. 05 of 1992 is false illegal, collusive and a paper transaction only. The alleged sale deed dated 14.07.2008 is false and illegal, because though the vendors were not B.S. recorded owner but by falsifying B.S Khatian papers the plaintiffs created those false documents. The suit land has been recorded in No. 1 Khas Khatian. The defendant's predecessor Falu Sheikh got suit land by pattan from the exlandlord in BS 1323. He died leaving 2 sons A. Rahman and A. Aziz. A. Rahman got the suit land by amicable settlement and at his death the defendant Nos. 1-2 being his sons got the same and have been in possession thereto since long. Earlier plaintiff's

predecessors Abu Syed and others filed a suit being suit No. 150 of 1984; which was dismissed and then by filing a suit being No. 70 of 1986 got a collusive and paper barred decree. The suit is false and prayed for dismissal of the suit.

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

Learned Advocate Mr. Md. Mamrujul Hassan appeared for the petitioner while Ms. Nahid Yesmin represented the opposite parties.

The learned Advocate Mr. Md. Mamrujul Hassan for the petitioner submits that the trial court correctly dismissed the suit upon correct finding but the appellate court upon wrong assumptions and misappraisal of the records allowed the appeal causing great injustice to the interests of the defendant petitioner. He submits that it is evident that the plaintiffs could not show S.A. khatian nor could they show B.R.S. He argues that the trial court correctly applied the provisions of Section 52 of the Registration Act on the principle that no sale deed can be registered when the vendor is not a recorded tenant. He agitated that the trial court upon examination found that even the B.R.S was not recorded in the name of the plaintiff's predecessor. He agitates that moreover the plaintiffs opposite party could not show anything except the sale deed No. 3267 dated 14.04.2008

which is the alleged sale deed which they purchased from their vendor. He continues that however the plaintiff opposite parties could not show any other documents to prove their possession. He contends that the plaintiffs also could not show neither any rent receipts in their name nor could that show any rent receipt of their predecessor. He submits that therefore even if the predecessor of the plaintiffs sold the land through the deed No. 3267 of 2008 however such sale deed is not a valid deed. He substantiates his argument upon assertion that to prove the validity of the plaintiff's deed of 2008 it was necessary for the plaintiffs to show the legal title of their predecessor.

There was a query from this bench regarding the exparte decree in Other Suit No. 70 of 1986 in which the present plaintiffs predecessor was the plaintiffs and the present defendants predecessor were defendants. The learned advocate for the petitioner controverts the claim of the present plaintiffs through the exparte decree in Other Suit No. 70 of 1986. He submits that although the nothi of the exparte decree was produced by the plaintiffs as exhibits particularly exhibit Nos. 2 and 3 which are the judgment and decree and the দখলি পরোয়ানা respectively, but however only the production of exhibits No. 2 and 3 does not conclusively establish that the schedule of the present suit land and the schedule of the suit land in Other Suit No. 70 of 1986 is the same. He argues that although the plaintiffs

obtained an ex parte decree in Other Suit No. 70 of 1986 followed by delivery of possession but however the plaintiffs could not prove that the subject matter of the ex parte decree and the subject matter of the present suit involves part and parcel of the same land.

He next argues that the appellate court upon total misreading and misinterpretation of the actual facts only relied on the নথি of Other Suit No. 70 of 1986 relying on exhibit Nos. 2 and 3. He submits that the appellate court did not examine the ingredients and the schedule of the deed being kabala deed No. 3267 of 2008 which is exhibit No. 1 and thereby deviated from his legal and lawful duty to examine and compare with the schedule land of the deed in Other Suit No. 70 of 1986.

He agitates that the appellate court incorrectly found the possession of the plaintiffs only based on the দখলি পরোয়ানা being exhibit-2 in other suit No. 70 of 1986. He argues that in the absence of any rent receipts or কবুলিয়ত or any other documents such assumption of the appellate court is incorrect. He draws the bench to the judgment of the trial court in which the trial court made observation that the plaintiffs who is the transferee as well as the deed writer by execution of the alleged deed of 2008 committed offence under section 467 and 468 of the Penal Code. He submits that it is evident that the trial court found the deed to be a false deed given that the plaintiffs could not show any

substantive documents to prove their title and possession or the title of the particular source of title of their Baya. He reiterates that since the Baya himself did not have valid title in the instant suit land therefore the plaintiffs also do not have title in the suit land by way of any sale deed whatsoever.

He contends that the plaintiffs could not anywhere prove as to how and when they were dispossessed. He submits that the mode of possession of the plaintiffs was also not clarified anywhere during the proceedings. He submits that only delivery of possession in Other Suit No. 70 of 1986 cannot substantiate the claim of the plaintiffs that they were dispossessed from the suit land by the instant defendant petitioner. He argues that the appellate court upon relying upon the oral evidences of the PWs 2, 3 and 4 on issue of possession committed a grave wrong and therefore such finding is not sustainable. He concludes his submission upon assertion that therefore the judgment of the trial court ought to be upheld and the judgment of the appellate court ought to be set aside and the Rule be made absolute for ends of justice.

On the other hand learned Advocate Ms. Nahid Yesmin for the opposite parties opposes the Rule and submits that the trial court upon total misconception of the facts and upon ignoring the নথি of Other Suit No. 70 of 1986 came upon erroneous finding causing grave injustice to the interest of the

plaintiffs opposite parties. She submits that the appellate court upon correct evaluation of the নথি of Other Suit No. 70 of 1986 correctly found their title and therefore the judgment does not need interference.

She next argues that the appellate court also correctly relied upon the oral evidences of the PWs including PW-2, 3 and 4 who all gave corroborative evidences regarding the plaintiffs' claim of dispossession by the defendant petitioners.

She submits that the plaintiffs could prove their substantive title by way of the exparte decree in Other Suit No. 70 of 1986. She contends that the judgment of Other Suit No. 70 of 1986 was produced as exhibit- 2 followed by দখলি পরোয়ানা exhibit-3. She submits that both these documents, exhibit-2 substantiate the claim title of the plaintiffs whereas exhibit-3 is evidence of delivery of possession to the predecessor of the plaintiffs. She argues that these two documents conclusively prove that the plaintiffs predecessor had lawful possession and title through court order exhibit-2 and also obtained lawful delivery of possession through exhibit-3. She submits that therefore the plaintiff's deed exhibit-1 which is the sale deed through which the plaintiff purchased the suit land from their বায়া who is the decree holder in Other Suit No. 70 1986 and holds lawful title in the suit land. She agitates that therefore the appellate court correctly found that the plaintiffs has title and

possession to the property. She next argues that the plaintiffs could show through the chain of documents the valid title to the property of their predecessor followed by title through transfer by the sale deed.

Upon a query from this bench regarding the absence of rent receipts even in the name of their বায়া, she submits that although the plaintiffs nor their Baya could produce their rent receipts whatsoever, but however the judgment and decree in Other Suit No. 70 of 1986 followed by the দখলি পরোয়ানা exhibit-2 is substantive proof of their title followed by possession. There was a query from this bench regarding the absence of Record of Rights. She replies that it is a principle of law that record of rights can be only evidence of possession and cannot be evidence of title. She reiterates that since the plaintiffs could prove their predecessor's title in Other Suit No. 70 of 1986 followed by valid delivery of possession, therefore the absence of Record of Rights cannot invalidate a valid judgment and decree creating valid title of the plaintiff's predecessor which was ultimately followed delivery of possession exhibit-3 and by the plaintiff's title through a valid sale deed. She concludes her submissions upon assertion that the appellate court correctly gave the judgment and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on records including both the judgments of the courts below. The plaintiffs claim their title through a sale deed of 2008 through which they claim purchase from their vendor and which sale deed was produced as exhibit-1. The defendants evidently denied the title of the plaintiff.

Now, it is a principle of law that whatsoever may be the facts and circumstances but the plaintiff must establish his case. The trial court mainly dismissed the suit on the ground of the record of rights not being prepared in the name of the plaintiffs. The trial court also observed that no sale deed can be registered when the vendor is not a recorded tenant. However strangely enough the trial court did not discuss the plaintiffs averments regarding the judgment and decree in Other Suit No. 70 of 1986 exhibit-2 followed by the দখলি পরোয়ানা exhibit-3. The plaintiffs substantive claim to title from 2008 is through their vendor who they claim to be the original lawful owner of the suit land through an ex parte decree in Other Suit No. 70 of 1986. It is true that the plaintiffs could not produce any rent receipts nor could they produce record of rights including that of their predecessor.

My considered view is that it is a settled principle that record of rights, rent receipts whatsoever are evidences of possession. Moreover record of rights is only upon an order by

an executive authority. The Record of rights cannot be a conclusive evidence of title of any person. The trial court found that the plaintiff's deed, deed writer committed 'offence' under section 467 and 468 by creating a 'false' deed. In my considered view the trial court ought not to have jumped into a conclusion alleging a criminal offence in the absence of any formal proceeding to the effect and in the absent of cogent evidences. The trial court upon surmise and conjecture ought not to have reached its conclusion. Strangely enough the trial court did not elaborately discuss the records of the নথি of Other Suit No. 70 of 1986 exhibit- 2 judgment and decree followed by exhibit-3 দখলি পরোয়ানা। From both these judgments it appears that the judgment and decree was passed and delivery of possession was also given to the plaintiffs predecessor produced as exhibits in that suit in which the present petitioners predecessor were also defendants. In the previous suit the plaintiffs predecessor obtained decree against a plot of land.

The plaintiffs claim that the suit land which is the subject matter of Deed No. 3267 dated 14.07.2008 the schedule of the land and the schedule of land in the expartee decree comprises of the same plot of land. Conversely, the defendant petitioners argued that the land in the document and the subject matter of the suit land in the Deed of 2008 and the expartee decree may not be the same. It appears that none of the courts below compared

exhibit-1 deed No. 3267 dated 14.07.2008 particularly the schedule of the land with the schedule of the land in the exparte decree in Other Suit No. 70 of 1986 exhibit-2.

My considered finding is that if it is found that the part and parcel of land in the exparte decree in Other Suit No. 70 of 1986 and the schedule of the land in the sale deed 3267 dated 14.07.2008 is the same in that event the plaintiff can establish his case. If it is found that the two schedules are the same, in that event it will be conclusive proof that the plaintiff's predecessor also obtained valid title to the property. And that will also prove that subsequently the plaintiffs was unlawfully dispossessed from the suit land since exhibit-3 is the দখলি পরোয়ানা which substantiates the possession of the plaintiff's Baya.

Under the forgoing discussions and under the facts and circumstances, upon hearing the parties and examining the documents, I am of the considered view that this is a fit case for remand and the case may be sent on remand to the appellate court. I am inclined to dispose of the Rule with directions and observations.

In the result, the Rule is disposed of with directions and the observations made above. This matter is sent back on remand to the appellate court being the last court of facts. The appellate court is hereby directed to examine the exhibit-1 kabala deed 3267 dated 14.7.2008 and also examine the judgment and decree

in Other Suit No. 70 of 1986 which is exhibit-2 and compare and examine the schedule of the suit land in the two documents. The appellate court upon examination shall dispose of the appeal relying on the observations and findings in this judgment. The appellate court is further directed to dispose of the matter as expeditiously as possible preferably within six months of receiving the copy of the judgment and order.

Send down the Lower Court's Record at once.

Communicate the order at once.

**Shokat (B.O)**