

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.1401 OF 2017.

A. Razzak Mridha and others

..... Defendant-Petitioners.

-VERSUS-

Md. Shahadath Hossain being dead,
his legal heirs:

Khairun Nessa and others.

..... Plaintiff-Opposite parties.

Mr. A.K.M. Shamsul Haque with
Mr. Mohammad Kamruzzaman,
Advocates

-----For the petitioners.

Mr. Sadananda Rana, Advocate

..... For the opposite parties.

**Heard on 06.11.2024, 12.11.2024
and 20.11.2024.**

Judgment on 27.11.2024.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 02.02.2017 passed by the learned District Judge, Magura in Title Appeal No.117 of 2016 allowing the appeal

and reversing the Judgment and decree dated 16.08.2016 passed by the learned Senior Assistant Judge, Mohammadpur, Magura in Title Suit No.16 of 2013 dismissing the suit 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 facts in brief for the disposal of Rule are that opposite party No.1, as a plaintiff, filed Title Suit No.16 of 2013 before the Assistant Judge, Mohammadpur, Magura for a declaration of title, contending inter-alia, that the land-in-question of area 44 decimals out of 88 decimals under C.S. Khatian No.116, Mouza- Sham Nagar No.75, Mohammadpur, Magura originally owned by Eakub Mridha and the rest 44 decimals owned by Rokeya Khatun of said Khatian No.116, Eakub Mridha who died leaving only son Atiar Rahman who got entire 44 decimals of land from his father as only legal heirs and on 4.04.1946 the said Atair Rahman transferred the same in favor of one Badan Mollah through Registered Patta No.2447 dated 04.04.1946. Thereafter, Badan Molla died, leaving one son and one daughter of Muminuddin Mollah and Chatu Bibi,

respectively. Thereafter, the said Mominuddin Molla and Chutu Bibi have transferred the same in favor of Nurul Islam and Rahima Pervin through registered Deed No.162 dated 15.01.1998 and thereafter on 04.02.2002 through the Registered Deed No.463 the plaintiff purchased the said suit land from Nurul Islam and Rahima Pervin and as stated above the plaintiff has become the owner of the suit land. In the present survey, the plaintiff's name was rightly recorded in R.S. Khation of the suit land, but the defendant, on the strength of the S.A. Record, claimed the land as such the cause of action of the present suit has arisen.

Defendant Nos. 2-4 contested the suit by filing a joint written statement denying the case of the plaintiff contending inter-alia that the deed dated 04.04.1946 was not a sale deed rather, it was a mortgaged deed, and as per terms of the mortgage deed, Atiar Rahman repaid the money, and the Badan Mollah return the original copy of the deed in favor of Atiar Molla and thereafter the said Atiar Molla transferred the suit land on 21.04.1953 in favor of defendant No.1 through a registered patta. Accordingly,

handed over possession in favor of defendant No.1. The mortgaged Patta dated 04.04.1946 was handed over in favor of defendant No.1 by the said Atiar Rahman, and as per the purchase deed of the defendant No.1 S.A. Khatian No.99, S.A., i.e., record of the suit land was rightly prepared in the name of the defendant No.1 as such the plaintiff has no right, title and possession over the suit land. Hence, the suit is liable to be dismissed.

The learned Senior Assistant Judge, Mohammadpur, Magura, framed necessary issues to determine the dispute involved between the parties.

Subsequently, the learned Senior Assistant Judge, Mohammadpur, by the Judgment and decree dated 22.08.2016, dismissed the suit based on the finding that the suit land is not specified.

Being aggrieved, the plaintiff-opposite party, as appellant, preferred Title Appeal No.117 of 2016 before the District Judge, Magura. Eventually, the learned District Judge, Magura, by the Judgment and decree dated 02.02.2017, allowed the appeal after setting aside the Judgment and decree of the trial Court.

Being aggrieved, the defendant-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. A.K.M. Shamsul Haque, the learned Counsel appearing on behalf of the petitioner, submits that the suit is barred under Order VII Rule 3 of the Code of Civil Procedure; the appellate court did not reverse the finding of the trial Court, especially in respect of specification/boundary of suit land as well as did not discuss the evidence which is mandatory in case of reversing the Judgment of trial Court and as such the impugned Judgment and decree of appellate Court is not a proper Judgment of reversal as such the Rule may be absolute.

Mr. Sadananda Rana, the learned advocate appearing on behalf of the opposite parties, opposes the contention made by the learned advocate for the petitioner and submits that the appellate court below, having considered all the material aspects of the case and reversing the findings of the trial Court as well as discussing the evidence rightly passed the impugned Judgment and

decree under Order XXXIX Rule 31 of the Code of Civil Procedure.

I have anxiously considered the submissions advanced by the Bar, perusing the Judgment of the courts below and oral and documentary evidence on the records.

It manifests that the trial court, considering the evidence on record, found the plaintiff's possession over the suit land but dismissed the suit as the plaintiff failed to provide any specification/boundary of the suit land.

It manifests from the record that the plaintiff side, in order to prove his case, examined as many as 3(three) witnesses and submitted necessary documents marked as exhibits-1-7. On the other hand, the defendants examined as many as 2(two) defense witnesses and submitted documents marked as Exhibits-Ka-Ga.

I have scrutinized each deposition and cross-examination of the witnesses and anxiously considered both parties' exhibited documents. It appears that though the appellate court did not discuss the evidence in its Judgment but after perusal of the appellate court's Judgment, it appears that the learned Judge of the

appellate while reversing that findings of the trial court considered the evidence and other materials on record and says that the learned judge of the trial court found that - “আবার বর্তমান রেকর্ড বাদীর নামে হয়। যা বাদীর দখলের সমর্থনে জোরালো লক্ষ্য হিসাবে ব্যবহারযোগ্য। তবে বাদী আংশিক দখলের দাবী করে কিন্তু সাক্ষ্য প্রমাণে জমির সুনির্দিষ্ট করনে ব্যর্থ হয়েছে বিধায় বিচার্য বিষয় সমূহ বাদীর প্রতিকূলে নিষ্পত্তি করা হইল।”

It appears that P.W.1 in his deposition stated in support of the statement of the plaintiff and in the cross-examination nothing was deposed, P.W.2- in his deposition corroborated the evidence of the P.W.1 stated that;- "বাদী বিবাদী ও মামলার জমি চিনি। এই জমি বাদী শাহাদাত ভোগ করে। বিবাদী রাজজাক বা সন্তোষ মুধাকে ভোগ করতে দৌহ নাই। In cross he stated that-"জমির পাশে একটু দূরে আমার বাড়ী, P.W.3 in his deposition also corroborated the evidence of P.W.1 stated that- "বাদী বিবাদী ও মামলার জমি চিনি। এই জমির ২০০ গজ পূর্বে আমার জমি আছে। বাদী শাহাদাত ফকির ভোগ করে বিবাদী রাজজাক বা সন্তোষকে ভোগ দখল করিতে দেখি নাই।

Further, the plaintiff-opposite parties produced S.A. Khatian No.99, marked as Exhibit-1, C.S. Khatian No.116, marked as Exhibit-2, R.S. Khatian No.232, marked as Exhibit-4, paid rent to the government marked as Exhibit-5, Registered Patta dated 26.04.1946 marked as Exhibit-5, and the latest R.S. Khatian No.232, R.S. Dag Nos.439, 440, 442, 471 and 473 in total 1.76 acres of land had been prepared in the name of the plaintiff-opposite party; moreover, the plaintiff-opposite party enjoying the suit land by mutation his name and regularly paying land taxes to the government, and witnesses of plaintiff identified the plaintiff suit land and says that the plaintiff enjoys the possession of the suit land.

In view of the above, since the suit land is ascertainable, there was no necessity to give any specifications/boundary of the suit land as there was full compliance with the provisions of Order VII Rule 3 of the Code. In this context, we may refer to the case of Karim Khan and others vs. Kala Chand Miah and others, reported in 7SCOB(2016)AD page 32. Wherein it is held that—

The plaintiff mentioned the number of the C.S. and S. A. Khatians and also the plot numbers in the suit, and thus, there was full compliance with the provisions of Order VII Rule 3 of the Code.

Furtyher, in the case of Hossain (Md) and others vs. Dilder Begum, and others reported in 9 MLR (AD) 361 where their Lordships held that-

“Though there is conflict between the C.S. and R.S. Khatian, the R.S. Khatian will prevail over the former.”

In a case of conflict, the R.S. record of rights shall prevail over the C.S. record. According to R.S. Khatian, 1.76 acres, prepared in the name of the plaintiff-opposite parties, but they claim land only .44 acres in R.S. Dag Nos.439 / 440 exclusive position of the plaintiff, based on registered patta No.2417 dated 04.04.1946 (Exhibit-5), registered deed No.161 dated 15.01.1998 (Exhibit-6) and registered deed No.463 dated 04.02.2002 (Exhibit-7) and paid rent to the government by the plaintiff opposite parties based on Patta dated 04.04.1946 and in the Patta nowhere mention it is a mortgage deed and the defendants submitted no Ekrarnama. Accordingly, the registered Patta

is not a mortgage deed in accordance with law under Sections 95 and 95A of the State Acquisition and Tenancy Act,1950. In this regard the court of appeal below in his findings says that- "বাদীপক্ষ হইতে ১৯৪৬ সালের তথা ২৬/০৪/১৯৪৬ তারিখের ২৪১৭ পাট্রার জাবেদা নকল প্রদর্শনী- ৫ দাখিল করা হইয়াছে। অপরদিকে বিবাদীপক্ষ হইতে ২১/৪/১৯৫৩ তারিখের ২৪৬৮ পাট্রার জাবেদা নকল (প্রদর্শনী- খ) দাখিল করা হইয়াছে। বিবাদী হইতে দাখিলকৃত পাট্রার গর্ভে উল্লেখ আছে যে, আতিয়ার রহমান বদন মোল্লার নিকট হতে টাকা কর্জ করিয়া ১৯৪৬ সালের ২৪১৭ নং পাট্রা রেজিস্ট্রি করিয়া দিয়াছিল এবং পরবর্তীতে টাকা পরিশোধ করিয়া বদন মোল্লার নিকট হইতে উক্ত পাট্রা ফেরত লইয়াছিল।" "কিন্তু ১নং বিবাদী পক্ষ হইতে কিংবা প্রতিদ্বন্দী ২-৪নং বিবাদী পক্ষ হইতে ১৯৪৬ সালের ২৪১৭ নং মূল পাট্রা দাখিল করা হয় নাই।"

On this particular point the trial Court in his findings says-"আতিয়ার রহমান থেকে ১নং বিবাদী ২১/৪/৫৩ তারিখের রেজিস্ট্রী পাট্রা মূলে স্বত্ব দখলকার হয়।" "অত্র জমি প্রথমত মহম্মদপুর সব রেজিস্ট্রী অফিসে ১৯৪৬ সালের ২৪১৭ নং রেজিস্ট্রি পাট্রা মূলে আমি দিন মোল্লার নিকট পাট্রা রেজিস্ট্রী করিয়া টাকা কর্জ

লইয়াছিলাম।" "বিবাদীপক্ষ হইতে দাবী করিলেও দেখা যায় ২৬/৪/৪৬ তারিখের দলিলের সাথে কোন ফেরত দলিল নাই।" "বিবাদী যেমন মূল দলিলটি দাখিল করিতে পারে নাই এবং পৃথক কোন চুক্তি দেখাইতে পারে নাই তাই প্রাথমিকভাবে বদন মোল্লার ফেরত দলিলটি প্রমান হচ্ছে না।"

At this particular point, the registered patton dated 21.04.1953 was not proved in accordance with the law. Both the Courts below concurrently found that S.A. Khatian was prepared in the name of defendant No.1- Santosh Kumar Saha, but no rent was paid to the government. In this regard, Section 106 of the Evidence Act provided that--

"Burden of proving fact, especially within the knowledge of any person, the burden of proving that fact is upon him."

Considering the above, it manifests that the defendant petitioner's registered Patta dated 21.04.1953 (Exhibit-Kha) is not at all proved in accordance with the law. Moreover, on the strength of patta defendant No.1-Santos Kumar Saha executed a registered deed

dated 27.01.2013 in favor of the defendant petitioners 2-4 (Exhibit-Ga) mentioned R.S. Dag No.439 included R.S. Khatian No.232 (Exhibit-4) in the name of the plaintiff. In this regard, the trial Court held that:

"উক্ত দলিল পর্যালোচনায় দেখা যায় যে, এস.এ. ও হাল রেকর্ড সন্তোষের নামে উল্লেখ করে। কিন্তু হাল রেকর্ড এই বিবাদী নামে হইয়াছে এমন কো প্রমান দেখাইতে পারে নাই। আবার এই দলিলে চৌহদ্দীর উল্লেখ করে সেখানে উত্তরে শাহাদাত লিখিত। তাহাতে এখানে দাগের মধ্যে শাহাদাতের দখল প্রাথমিকভাবে প্রমানিত হচ্ছে।"

In this regard, the Registration Act, 1908 (Amendment) Act, 2004 Section 52Ka(Ka), the registering officer shall not register unless the following particular instrument, namely:

"(a) the latest Khatian of the property prepared under the State Acquisition and Tenancy Act, 1950, in the name of the seller, if he is owner of the property otherwise then by inheritance".

Accordingly, the registered deed dated 27.01.2013 in favor of defendants 2-4 is void ab initio. Hence, the learned

Appellate Court passed the Judgment in accordance with the R.S. Khatian No. 232 (Exhibit-4) prepared in the name of the plaintiff under consideration under Order 41 Rule 31 of the Code of Civil Procedure.

Considering the above facts and circumstances and relying upon the decision as mentioned above, it appears that the appellate court rightly reversed the finding of the trial Court and allowed the appeal considering the record of rights C.S., S.A. and R.S. Khatian, R.S. Khatian prepared in the name of the plaintiff-opposite parties exclusively. Therefore, it appears that the appellate court below rightly considers Order VII Rule 3 of the Code of Civil Procedure, the numbers in a record of the settlement of survey, boundaries, or numbers specifically mentioned in the plaint, rightly and justifiedly held that the plaintiff proved the exclusive possession of the suit land by the given oral and documentary evidence. Therefore, I do not find any merit in the submission of the learned advocate for the petitioner. Consequently, it appears to me that the Rule has no merit

Resultantly, the Rule Discharged.

The impugned Judgment and decree dated 02.02.2017 passed by the learned District Judge, Magura, in Title Appeal No.117 of 2016 is hereby affirmed.

Communicate the Judgment and send down Lower Court Records at once.

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(Md. Salim, J).