

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

Present

Madam Justice Kashafa Hussain

**Civil Revision No. 4427 of 2016**

Jahangir Alam and others

.....petitioners

-Versus-

Md. Rafiqul Islam and others

..... Opposite parties

Mr. Prasanta Kumar Nath, Advocate

..... For the petitioners

Mrs. Nahid Yesmin, Advocate

..... For the Opposite Parties

Heard on: 24.07.2023, 01.08.2023,  
13.08.2023 and

Judgment on 27.08.2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and decree dated 25.07.2016 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Comilla in Title Appeal No. 228 of 2014 affirming the judgment and decree dated 13.10.2014 passed by the learned Senior Assistant Judge, Burichang, Comilla in Title Suit No. 106 of 2013 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. 106 of 2013 in the court of Senior Assistant Judge, Burichang, Comilla inter alia for permanent injunction impleading the instant petitioners as defendants in the suit. The trial court upon hearing the parties allowed the suit by its judgment and decree

dated 13.10.2014. Being aggrieved by the judgment and decree of the trial court the defendant appellant in the suit (petitioner here) filed Title Appeal No. 228 of 2014 which was heard by the Additional District Judge, 3<sup>rd</sup> Court, Comilla. The appellate court after hearing the appeal however dismissed the appeal by its judgment and decree dated 25.07.2016 and thereby affirmed 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 owner of the suit schedule land with other non-schedule land was Sree Hari Chandra Dey, Sree Sora Moni Deb Nath, Sree Bishambor Deb Nath and Sree Jogash Chandra Deb Nath. That during the time of their ownership they sold it to the father of plaintiff, Dudu Mia by deed No. 7981 dated 10.07.1956 and thereafter R.S. Khatian No. 284, dag No. 288 and area of land 10 decimals was circulated in the name of Dudu Mia and after death of Dudu Mia, father of the plaintiff, plaintiff became owner of the suit land with other non schedule land by inheritance and mutated his name by mutation case No. 170 of 87-88 and created mutation khatian No. 394 in favour of plaintiff. Thereafter during the Bangladesh Survey, B.S. Khatian D.P. No. 434 and dag No. 948 was properly circulated in the name of plaintiff and his family

members. Thereafter 2(two) sisters of plaintiff namely Jahanara Begum and Monowara Begum gave gift of their portions in favour of plaintiff by Gift Deed No. 3467 dated 15.06.1994 and accordingly plaintiff became owner of the suit schedule land with other non-schedule land and since then has been possessing the same peacefully. But on 15.11.2013 A.D. the defendants threatened to dispossess them from the suit land claiming their title to it and hence the suit is for with the prayer of restraining the defendants from entering into the suit land perpetually.

That the defendant Nos. 3-8 contested the suit by filing written statement denying all the material facts averred in the plaint and contended, inter alia, that the suit is bad for defect of parties, barred by limitation and the plaintiff has neither possession nor title to the suit land as their predecessor got it in exchange from father of the plaintiff and hence they pray to have the suit dismissed with costs.

Although the matter appeared in the list for several days when the matter was taken up for hearing none appeared for the petitioner. However learned advocate Mrs. Nahid Yesmin appeared for the plaintiff as opposite parties.

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

Learned Advocate Mrs. Nahid Yesmin for the opposite parties vehemently opposes the Rule. She submits that both courts below upon proper appraisal of facts and circumstances came upon their correct findings and those need no interference with. She submits that the main issue to be adjudicated upon in a suit for permanent injunction is the issue of exclusive possession. She submits that it is clear from the materials and evident from the records that the plaintiffs could satisfactorily prove their exclusive possession both by documentary and oral evidences. She points out to exhibit Nos. 1,2,3,4 and 5 etc. From these documents, she points out that it is clear that the plaintiffs are in exclusive possession in the suit land. She further submits that the oral evidences of the PWs No. 1, 2, 3 and 4 are corroborative evidences and the defendants could not controvert the oral evidences of the PWs. She asserts that the plaintiffs by exhibit Nos. 1,2,3,4 and 5 could satisfactorily prove both title and exclusive possession which the defendants could not disprove any stage. She further submits that the courts below particularly the appellate court correctly found that the মৌখিক ewaj exchange relied upon by the plaintiffs cannot stand or any legal footing since under the provisions of Section 54 read with section 118 of the Transfer of Property Act and Immovable Property read with section 17 of the Registration Act of immovable must be validly registered by a valid instrument. She submits that therefore in the eye of law the transfer that was claimed by the defendants is not

a valid transfer at all since they relied upon a মৌখিক ewaj exchange deed. She submits that the defendants could not at any stage disprove the plaintiff's evidence of exclusive possession. She concludes her submissions upon assertion that therefore the courts below correctly gave the judgment and decree and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates for the opposite parties, also perused the application and materials. The original owner of the suit land is admitted. The dispute arises from the plaintiff's claim that the suit land was sold to the plaintiff's father দুদু মিয়া on 10.07.1956 by a kabala deed followed by other documents of possession while the defendants claim that Korpuler Nessa entered into on ewaj exchange with দুদু মিয়া in 1959.

The plaintiffs to prove their title and exclusive possession produced same documents. Those are exhibit-1 which is kabala deed No. 7981 dated 10.07.1956 which is the plaintiff's father kabala deed from his Baiya, exhibit-2 which is the R.S. Khatian, exhibit-3 which is mutation Khatian No. 118-181, exhibit- 4 which is the দানপত্র deed from the plaintiff's sister dated 15.06.1994 and exhibit- 5 which are the rent receipts. From these documents it appears that the plaintiffs claim title originally through kabala deed and eventually mutation was done in their

name and that they have been paying tax. The defendants could not at any stage disprove the veracity or genuineness of these documents. I have also examined the oral evidence of PW- 1,2,3 and 4. I do not find any inconsistency in the evidences on the issue of possession.

It also appears that the defendants could not controvert the oral evidences of the PWs on the issue of possession. The basic principle in a suit for permanent injunction is proof of exclusive possession along with valid title. I am of the considered view that in this case the plaintiffs by way of exhibit Nos. 1-5 and also through the oral evidences could satisfactorily prove exclusive possession along with title. On the other hand the defendants relied on an ewaj exchange deed to prove their title and possession. However it is evident from the records that such ewaj exchange deed is claimed to be a মৌখিক oral exchange deed. I am of the considered view that the appellate court correctly made observation that following the provisions of Section 54(A) and Section 118 of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908 that a মৌখিক oral transfer of property of immoveable property is not a valid transfer since to constitute a valid transfer of immovable property, such property must be registered by a valid instrument. Such being the position of the law it is evident that the oral transfer claimed by the defendants cannot stand on any legal footing at all.

Under the facts and circumstances and relying on the concurrent findings of the judgment of the courts below, I am of the considered view that both courts below correctly gave the judgments. 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)**