

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.2195 of 2016

Abdur Razzak Sikder.

.....Petitioner.

-Versus-

Abdul Hai Sikder and others.

.....Opposite parties.

None appears.

.....For the petitioner.

None appears.

.....For the Opposite parties.

Heard and Judgment on 18.01.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the Opposite Party Nos. 1-5 to show cause as to why the judgment and decree dated 30.03.2016 passed by the Joint District Judge, Patuakhali in Title Appeal No. 132 of 2014 affirming those dated 31.08.2014 passed by the Assistant Judge, Kalapara, Patuakhali in Title Suit No. 117 of 2008 dismissing the suit should not be set aside.

Petitioner as plaintiff filed Title Suit No. 117 of 2008 before the Court of Assistant Judge, Kalapara, Patuakhali against the opposite parties for permanent injunction.

Plaint Case in short inter-alia is that plaintiff is a landless farmer. He applied for getting the settlement of the government khas land. Accordingly in the Settlement Case being no. 594K/1968-69 total 03 acres of land as 60 decimals of land from plot no. 8879, 20 decimals of land from plot no. 8878 and 220 decimals of land from plot no. 8657(1) was settled to the plaintiff. Accordingly a deed was registered on 07.07.1971. Plaintiff paid taxes and possessed the suit land on 06.10.2008. Defendants threatened to dispossess the plaintiff and as such he filed this suit for injunction.

Defendants contested the suit by filing written statement denying the plaint case alleging inter-alia that plaintiff and defendant nos. 1-2 are uterine brothers. In 1968-69 all of the brothers were minors. The eldest brother was very simple and the youngest brother was enough small and the plaintiff as second brother was as clever to receive the settlement property as considered disputed land from the government on behalf of his father named kalai Sikder. For those reason their father Kalai Sikder as guardian performed everything as required to file application taking possession of the allotted land etc. In the year 1968-69, the plaintiff was minor and had no ability to maintain the additional cost of the allotted lands. After settlement, father Kalai

Sikder and his three sons possessed the land with houses and cultivation. When the plaintiff and defendant Nos. 1-2 as sons grew older, father Kalai Sikder separated their house from his own and divided the settlement land into three equal portions as one acre per son and handover the possession to each son. But after Kalai Sikder's death several Salish held among the brothers for lands fertility of their own possesses land. In 1988 a salish comprising of local Chairman with others elite persons was held and an award was given to the plaintiff and defendants 1-2 regarding the three acres disputed land. The award of the Salish provided that each defendants 1 and 2 was entitled to get one acre of land by registered deed from the plaintiff. But violating the award the plaintiff filed the said suit to deprive the defendant 1 and 2 from the said land. The defendant 1 and 2 enjoyed the disputed land for 35-36 years by building house in the middle of disputed land regarding dag no. 8657 in 1975-76. After the settlement of the said disputed land, the father Kalai Sikder also got 1.50 acre land from another settlement case in the name of his elder son named A. Hasem (defendant) and also divided the land into three equal portions to the plaintiff and defendant nos. 1 and 2. Defendant no. 1 named A. Hai enjoyed the said land regarding dag number 8878/8879 and 8657 and also mortgaged that as khai Khalashi to different persons knowingly the plaintiff. Plaintiff also

signed to the mortgaged deed. Defendants never threatened the plaintiff regarding the possession, so the plaintiff is not entitled to get a declaration of permanent injunction against the defendants. Defendants enjoyed the disputed land for 35-36 years as possession described in the Ka schedule of the plaint.

By the judgment and decree dated 31.08.2014, Assistant Judge, Kalapara, Patuakhali dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 132 of 2014 before the Court of District Judge, Patuakhali, which was heard on transfer by the Joint District Judge, Patuakhali, who by the impugned judgment and decree dated 30.03.2016 dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved there against plaintiff-petitioner obtained the instant rule.

Although the matter is posted in the list for several days, mentioning the name of the learned advocates of both the sides but at the time of hearing none was found to place their respective cases.

Perused the impugned judgment and the lower court's record.

This is a suit for permanent injunction, which was filed by the plaintiff against the defendants, who are his uterine brother. Plaintiff's claimed that he took settlement of 03 acres of land from different plot and remaining in possession. Since the defendants threatened to dispossess him, he instituted this suit. On the other hand defendants claimed that at the time of taken settlement in the year 1968-1969, these defendants were minor and as such his father Kalai Sikder took settlement from joint property income in the name of his elder son plaintiff and thereafter he divided the property amongst his 03 sons. Plaintiff and the defendants gave 01 acre of land to each of them, who are now owning and possessing. While there was a dispute earlier, an award was given by the Salish board comprising by the Chairman by the then Union Parishad along with other members, wherein plaintiff agreed to execute and register separate deed on 01 acre of land each to all the brothers but in spite of doing the same, plaintiff instituted this suit.

Record shows that an award of the Salish board as been contended by the defendants was placed in court and marked exhibited as exhibit no. ka. In the said award it was stipulated that-

শালিসীর আলোচ্য বিষয়:-

যৌথ পরিবারভুক্ত থাকা অবস্থায় লতাচাপলী মৌজার ১৩০২ নং খতিয়ানের ৮৮৭৯, ৮৮৭৮ ও ৮৬৫৭ নং দাগের ০৩ (তিন) একর জমির অংশ হারে দলিল সম্পাদন করা প্রসংগে।

শালিসীর কার্যক্রম

জনাব আ: হাই, প্রাক্তন চেয়ারম্যান, লতাচাপলী ইউনিয়ন, শালিসী বোর্ডের আহ্বায়ক হিসাবে সভাপতির আসন গ্রহন করেন। অতঃপর কালামে পাক তেলোয়াতের মাধ্যমে শালিসী কার্যক্রম শুরু হয়। উভয় পক্ষের বক্তব্য শ্রবন করা হয়। সাক্ষ্য প্রমাণে দেখা যায় লতাচাপলী মৌজার ১৩০২ নং খতিয়ানের ৮৮৭৯, ৮৮৭৮ ও ৮৬৫৭ নং দাগের ০৩(তিন) একর জমি উভয় পক্ষের পরলোকগত পিতা কর্তৃক তাহাদের যৌথ পরিবারের সময়ে ২য় পক্ষের নামে বন্দোবস্ত আনা হয়। এক তদনুযায়ী উভয় পক্ষের পরলোকগত পিতা তাহার জীবিত থাকা অবস্থায় তাহাদের তিন ভাইয়ের মধ্যে প্রতি নামে ০১(এক) একর করে বন্টন করিয়া দিয়ে যান। তাহাদের পিতার বন্টন অনুযায়ী পক্ষদ্বয় বিগত ২৫ বছর যাবত ভোগ দখল করিয়া আসিতেছে। শালিসী বোর্ডে সর্বসম্মতি এই সিদ্ধান্ত গৃহীত হয় যে, ২য় পক্ষ আগামী ১(এক) মাসের মধ্যে অপর দুই ভাইকে প্রতি নামে ১(এক) একর করিয়া উক্ত খতিয়ানের জমি রেজিস্টারী কবালা দলিল মূলে হস্তান্তর করিয়া দিবেন এবং ১ম পক্ষ গং দলিল খরচ বহন করিবেন। ২য় পক্ষ ইহার অমান্যতা করিলে ১ম পক্ষ কে আদালতের আশ্রয় গ্রহন করার জন্য বলা হইল।

অতঃপর শালিসী বোর্ডের আহ্বায়ক সকলকে ধন্যবাদ জানিয়ে
শালিসী কার্যক্রমের সমাপ্তি ঘোষণা করেন।’

Both the courts below upon considering this document together with the oral testimonies of both the parties found that plaintiffs are not in exclusive possession in the suit land. Defendants are also possessed the suit land along with the plaintiffs and accordingly the instant suit for permanent injunction is not maintainable. Moreover regarding the giving threat of dispossessing the plaintiff on the claim of the plaintiff as mentioned was not proved by any corroborative evidence and as such both the courts below concurrently held that

Plaintiff could not prove his case by adducing proper evidence and as such suit was dismissed by the court below.

Upon going through the records and perusal of the impugned judgment and the grounds taken in the revisional application, I do not find the said impugned judgment contains any misreading or non reading of the evidences.

Regard being had to the above facts and circumstances of the case, since in the concurrent judgment of the court below contains any illegality, accordingly the rule devoids any merits for consideration.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the courts below are hereby affirmed.

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

Send down the L. C. Records and communicate the judgment to the court below at once.