District: Netrokona

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 2669 of 2017

In the matter of :
Bibek Chandra Datta alias Bibekananda and others

… Petitioners

-Versus-

Md. Nazim Uddin being dead his heirs and others

…Opposite parties

Mr. Shishir Kanti Mazumder, Advocate
…For the petitioners

No one appears
…For the opposite parties

Heard on: 02.02.2025
Judgment on: 17.02.2025

The Revision is directed against certain findings of the Court of appeal below (Joint District Judge, First Court, Netrokona), given in the judgment and decree dated 05.04.2017 of Other Class Appeal No. 230 of 2010, arisen out of the

judgment and decree dated 03.11.2010 passed by the Assistant Judge, Barhatta, Netrokona in Other Class Suit No. 30 of 2006.

The predecessor of the opposite party Nos. 1-9 as plaintiffs filed Other Suit No. 05 of 1998 (renumbered as Other Suit No. 30 of 2006) before the Assistant Judge, Kalmakanda, Netrokona for declaration of 'Jote right' in the scheduled property stating, inter alia that 13.95 acres of land including the scheduled land was originally belonged to Amrita Sundari Mazumder in 8 annas share and the rest 8 annas were owned by Ahmed Talukder, Lehajuddin Talukder and Esha Talukder and the R.S. Khatian No. 42 was duly prepared in their name; an amicable partition was held among the 8 annas owners, Ahmed, Lehajuddin and Esha. Lehajuddin, the predecessor of plaintiffs got the scheduled property and he possessed the same by excavating ponds in Plot No. 2053 and 2063 and cultivating fish therein. Lehajuddin used to possess in total .86 decimals of land including the nama land of plot No. 2263 and the ponds. After his death his heirs are possessing of the same. The plaintiffs decided to take loan from the bank for excavation of

the tank and while he went to pay the rent for necessary preparation of taking loan came to know that .64 decimals of land in Plot No. 2053 and .86 decimals in Plot No. 2263 were recorded in the name of the predecessor of defendant Nos. 1-10 and defendant No. 11 and also .16 decimals of plot No. 2063 and .11 decimals in plot Nos. 2063 and 2385 recorded in the name of the predecessor of defendant Nos. 12-15 and having been known about the wrong recording the plaintiffs constrained to institute the suit.

The defendant Nos. 1/3-11/13-15 contested the suit by filing written statement denying the plaint case, contending inter alia that .36 decimals of land in R.S. Khatian No. 42 was recorded in the name of Lahaj Uddin and the said R.S. Khatina No. 42 was divided into several plots in R.O.R. Khatian and in R.O.R. Khatian No. 43, the name of predecessor of defendant Nos. 1-10 and 11 was published and R.O.R. Khatian No. 44 was prepared in the name of predecessor of defendant No. 12-14, Surendra Chandra Dey and the predecessor of defendant No. 15; and that R.O.R. Khatian No. 45 was prepared in the name of

Lehaj Uddin and 26 others. The 8 annas share of R.S. Khatian No. 42 in respect of 1.50 acres of land was belonged to Amrita Sundari Mazumder and who gave settlement in favour of the predecessor of the defendant Nos. 1-10 and defendant No.11 and the said defendants are in continuous possession thereof by mutating their name paying rent to the Government. The defendant No.1 on 17.03.1983 sold out .14 sataks of land from Plot No. 2263 and the purchaser has been inducted into the possession; the claim of the plaintiff is false and the suit is liable to be dismissed.

On conclusion of hearing learned Judge of the trial Court by his judgment and decree dated 03.11.2010 dismissed the suit on the finding that the suit is barred by limitation, suffers from defect of parties and the plaintiffs failed to prove their title as well as exclusive possession over the suit property.

Having been aggrieved by the judgment and decree of the trial Court, the plaintiffs preferred Other Class Appeal No. 230 of 2010 before the District Judge, Netrokona. On transfer, the said appeal was heard by the Joint District Judge, First Court,

Netrokona and by his judgment and decree dated 05.04.2017 dismissed the appeal, affirming the judgment and decree dated 03.11.2010 of the trial Court.

Mr. Shishir Kanti Mazumder, learned Advocate for the defendant-petitioners submits that the defendants filed this revisional application challenging certain findings of fact of the Court of appeal below regarding title and possession of the defendants. He next submits that the settled principle is that it is the plaintiff who is to prove his case independently by adducing adequate and reliable evidences and the defendants have no responsibility to disprove the plaintiffs' case or to prove the defendants' case; but the Court of appeal below at the time of affirming the judgment and decree of the trial Court travelled beyond the settled principle of law unnecessarily entered into the discussions of the title and possession of the defendants, although the defendants title or possession was not an issue of the appeal/suit before the appellate Court as well as before the trial Court and as such, for ends of justice, the said findings of fact is required to be expunged.

No one appears for the opposite parties.

From the record, it appears that both the Courts below concurrently found that the suit of the plaintiffs is barred by limitation and the plaintiffs failed to prove their title and exclusive possession into the suit land. It further appears that although the defendants in their written statement stated their specific case denying the material averments and cases of the plaint, but since the present suit was for declaration of plaintiffs' title, thus, the defendants had no legal obligation to disprove the plaintiffs' case or to prove the defendants' title/case and as such, as usual they did not take any initiative to prove defendants' specific case, brought under their written statement. In spite of that the Court of appeal below at the time of dismissing the appeal and affirming the judgment and decree of the trial Court unnecessarily entered into the discussion of title of the defendants, when the plaintiffs failed to discharge their primary onus to prove their case. In particular, the Court of appeal below made adverse remark regarding the title and possession of the

defendants, for better appreciation the said findings is reproduced herein below:

> ‘‘অপরদিকে বিবাদীপক্ষের দাবী পর্যালোচনা করিয়া দেখা যায়, আর,এস রেকর্ডীও অমৃত সুন্দরী মজুমদার খতিয়ান হিস্যায় অপরাপর ভূমি সহ নালিশী ২০৫৩ দাগে ৬৪ শতাংশ এবং ২২৬৩ দাগে ৮৬ শতাংশে স্বত্ববান দখলকার থাকিয়া ১-১১ নং বিবাদীগণের পূর্বে পত্তন ছিল। পরবর্তীতে ১-১১ নং বিবাদীগণ পত্তন গ্রহণক্রমে নিজ নামে খাজনাদি আদায়ে স্বত্ববান দখলকার থাকেন। ১নং বিবাদী ১৭/০৩/১৯৮৩ তারিখে ২০৬২ নং দলিল মূলে ২২৬৩ দাগে ১৪ শতাংশ অন্যান্য বিবাদীদের থেকে ক্রয় করে দখলে আছেন। কিন্তু বিবাদীপক্ষ উক্তরূপ দাবী করিলেও পত্তন দেওয়ার বিষয়ে কোন কাগজ দাখিল করেন নাই। ডি,ডব্লিউ-১ তাহার জেরাতে বলিয়াছেন, অমৃত সুন্দরী থেকে আমার পূর্ববর্তীরা যে পত্তন নিয়াছেন তার কোন কাগজপত্র দাখিল করি নাই। ফলে দেখা যায় যে, নালিশী ভূমিতে বিবাদীদের স্বত্ব, স্বার্থ ও দখল নাই।’’

From the trend of discussions of the Court of appeal below, it may wrongly presume that the issue of the suit is the defendants’ title and possession. Since, the present suit is one of declaration of ‘jote title’ of plaintiffs, the aforesaid findings of fact and the remarks made out by the Court of appeal below about the title and possession of the defendants was unwarranted and not at all necessary.

In the premise above, this Court finds merit in the Rule.

Accordingly, the Rule is made absolute.

The findings of fact as well as the remark made by the Court of appeal below so far it relates to certain findings: "অপরদিকে বিবাদীপক্ষের দাবী পর্যালোচনা করিয়া দেখা যায়, আর,এস রেকর্ডীও অমৃত সুন্দরী মজুমদার খতিয়ান হিস্যায় অপরাপর ভূমি সহ নালিশী ২০৫৩ দাগে ৬৪ শতাংশ এবং ২২৬৩ দাগে ৮৬ শতাংশে স্বত্ববান দখলকার থাকিয়া ১-১১ নং বিবাদীগণের পূর্বে পত্তন ছিল। পরবর্তীতে ১-১১ নং বিবাদীগণ পত্তন গ্রহণক্রমে নিজ নামে খাজনাদি আদায়ে স্বত্ববান দখলকার থাকেন। ১নং বিবাদী ১৭/০৩/১৯৮৩ তারিখে ২০৬২ নং দলিল মূলে ২২৬৩ দাগে ১৪ শতাংশ অন্যান্য বিবাদীদের থেকে ক্রয় করে দখলে আছেন। কিন্তু বিবাদীপক্ষ উক্তরূপ দাবী করিলেও পত্তন দেওয়ার বিষয়ে কোন কাগজ দাখিল করেন নাই। ডি,ডব্লিউ-১ তাহার জেরাতে বলিয়াছেন, অমৃত সুন্দরী থেকে আমার পূর্ববর্তীরা যে পত্তন নিয়াছেন তার কোন কাগজপত্র দাখিল করি নাই। ফলে দেখা যায় যে, নালিশী ভূমিতে বিবাদীদের স্বত্ব, স্বার্থ ও দখল নাই", is hereby expunged.

No order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.

Obaidul Hasan/B.O.