

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

Present:

Mr. Justice Md. Badruzzaman.

Civil Revision No. 605 of 2008.

Taj Mohammad and others
...Petitioners.

-Versus-

Alta Miah and others
....Opposite parties.

Ms. Urmee Rahman, Advocate with
Mr. Tabarak Hussain, Advocate.

...For the petitioners.

Mr. Md. Khaled Ahmed, Advocate with
Mr. Md. Habibur Rahman, Advocate.

...For opposite party No. 8

Heard on: 23.11.23, 13.12.2023 and 19.02.2024.

Judgment on: 20.02.2024.

This Rule was issued calling upon opposite parties No. 1-9 to show cause as to why judgment and decree dated 04.10.2007 passed by Joint District Judge, 2nd Court, Moulavibazar in Title Appeal No. 33 of 2002 analogously with Cross Objection No. 1 of 2002 dismissing the appeal and Cross-objection by affirming judgment and decree dated 20.02.2002 passed by learned Assistant Judge, Rajnagar, Moulvibazar in Title Suit No. 2 of 1997 dismissing the suit should not be set aside.

Facts relevant, for the purpose of disposal of this Rule, are that the father of petitioner Nos. 1-8 and petitioner No. 9 as plaintiffs instituted Title Suit No. 2 of 1997 against the opposite parties for a decree of declaration of title to .52 acre of land of S.A Plot Nos. 123, 124 and 138 of S.A Khatian Nos. 131 and 52 of Mouza- Adinabad, Police Station- Rajnagar, District-Moulvibazar, contending, *inter alia*,

that the suit land was originally owned and possessed by Anis Ullah, Mofiz Ullah and Hafiz Ullah who vide registered sale deed No. 1698 dated 15.04.1953 transferred 0.68 acre land including the suit land in favour of Monfar Ullah, Arab Ullah, Taimus Ullah and Muslim Ullah and S.A Khatian Nos. 131 and 52 were prepared and finally published in their names. While Monfar Ullah and three others were owning and possessing their purchased land, they transferred .28 acre land by registered sale deed No. 2670 dated 27.10.1962 in favour of plaintiff No. 1, Sakir Mohammad and Kadir Mohammad and handed over possession thereof to them. They also transferred .2450 acre land to Tara Miah by registered sale deed No. 2419 dated 28.05.1962 and .08 acre land to Alta Miah by registered sale deed No. 1716 dated 20.03.1976 and handed over possession thereof to them. While Tara Miah was owning and possessing his purchased land, he transferred 0.30 acre land by registered sale deed No. 3902 dated 05.09.1993 in favour of Sijil Miah, who thereafter, transferred the same to plaintiff No. 1 by registered sale deed No. 2744 dated 06.06.1995. On the other hand, Alta Miah transferred .08 acre land to plaintiff No. 2, Bhanu Bibi by registered sale deed No. 3155 dated 13.06.1979 and handed over possession thereof to her. In the aforesaid way, the plaintiffs became owners in possession of total .52 acre of land of S.A Plot Nos. 123, 124 and 138 and have been owning and possessing the same by irrigation and planting various trees thereon. The defendants have or had no right, title or interest in the suit property but during recent survey, a portion of land was wrongly recorded in the names of some of the defendants without having any title to or possession in the suit land. Since the defendants, on the basis of wrong record-of-rights in the recent survey claimed title to

the suit land, the plaintiffs have been constrained to institute the present suit for declaration of title.

Defendant Nos. 2, 4, 5, 7, 9-11, 16 and 17 filed joint written statements to contest the suit, denying the material averments of the plaint stating, *inter alia*, that the suit was not maintainable in its present form; that the suit was barred by limitation and that the plaintiffs had/have no right, title or interest in the suit land and the suit has been filed by suppression of facts. Their positive case was that originally the suit property belonged to Akhil Mohammad who died leaving behind three sons namely, Anis Ullah, Mufez Ullah, Hafez Ullah and one daughter Sokina Bibi and while they were owning and possessing the same, transferred .68 acre land including the suit land in favour of Monfar Ullah and three others and S.A Khatian Nos. 131 and 52 were prepared and finally published in their names in S.A Plot Nos. 126, 135 and 137. Said Monfar Ullah and others transferred .15 acre land from plot No. 124 and .0750 acre land from plot No. 135 to Tara Miah by registered sale deed dated 28.05.1962. Monfar Ulla and his brothers also transferred .15 acre land from S.A Plot No. 124 and .0750 acre land from S.A Plot No. 137 to plaintiff No. 1, Sakir Mahammad and Kadir Mahammad by registered sale deed dated 27.10.1962. Alta Miah, the son of Monfar Ullah, transferred one pua land to Gul Nahar and thereafter, Alta Miah, Muslim Ullah and Taimuj Ullah transferred .0450 acre land from Plot No. 135 to Fatik Ullah. Said four brothers namely Monfar Ullah and others transferred .06 acre land by registered sale deed dated 20.03.1973 to Alta Miah and thereafter, Alta Miah transferred .08 acre land to Sikija Bibi and Bhanu Bibi (plaintiff No. 2) by registered sale deed dated 13.06.1979. The land claimed by the plaintiffs appertaining to S.A Plot Nos. 123 and 138 is under

possession of Anis Ullah and others and accordingly, the said land has been correctly recorded in the revisional survey up to the attestation stage in their names. The plaintiffs filed the suit with false statements only to deprive them of their right, title and interest in the suit property and as such, the suit is liable to be dismissed.

To prove their case, the plaintiffs adduced oral and documentary evidence and on the other hand, the contesting defendants also adduced oral and documentary evidence and after considering the evidence and materials on record, the trial Court dismissed the suit by judgment and decree dated 20.02.2002. Being aggrieved by said judgment and decree the plaintiffs preferred Title Appeal No. 33 of 2002 and the contesting defendants filed Cross Objection No. 1 of 2002 before the learned District Judge, Moulvibazar, who transferred the same to 2nd Court of Joint District Judge, Moulvibazar for disposal who, after hearing the parties, dismissed both the appeal and cross objection by the impugned judgment and decree dated 04.10.2007

Being aggrieved by said judgment and decree, plaintiff No. 2 herself and successors of plaintiff No. 1 have come up with this application under section 115(1) of the Code of Civil Procedure, and obtained the instant Rule and Order of *status quo*.

Opposite Party No. 8 Abdus Sadek (defendant No. 10) has entered appearance by filing Vokatnama to contest the Rule.

In course of hearing of this Rule, the petitioners have filed an application praying for sending the suit back on remand for fresh trial by the trial Court contending, *inter alia*, that both the Courts below though found title to and possession of the plaintiffs in the suit land but dismissed the suit on the ground of prematurity of the suit because of the fact that the revisional survey khatian was not finally

published before filing of the suit. It has also stated that during pendency of the appeal, the record-of-rights was finally published and the plaintiffs brought the fact to the notice of the Court by way of amendment of the plaint at the appellate stage and the Court of Appeal allowed the amendment of plaint vide order dated 19.04.2007 but during hearing of the appeal, the plaintiffs could not adduce additional evidence in support of the amendment of the plaint.

Mr. Tabaruk Hussain, learned Senior Advocate appearing with Miss. Urmee Rahman learned Advocate for the petitioners submits that both the Courts below found title to and possession of the plaintiffs in the suit land but dismissed the suit on the ground that the suit was premature because the recent record-of-rights was not finally published. Learned Advocate further submits that since in the meantime, the revisional Khatians have been finally published, the prematurity has been cured and there is no bar to decree the suit in favour of the plaintiffs. Learned Advocate submits that for proper adjudication of the matter, the original suit should be sent back on remand to give the plaintiffs an opportunity to prove the fact that in the meantime, the recent record-of-rights has been finally published. Alternatively, learned Advocate submits that since the fact of publication of the record-of-rights in the Gazette Notification is a judicial noticeable fact, the same may be considered by this Court and accordingly, the Rule may be disposed of on merit considering the facts and circumstances of the case.

As against the above contention of the learned Advocate, Mr. Md. Khaled Ahmed, learned Advocate appearing for opposite party No. 8 submits that there is barring provision in section 144B challenging the record-of-rights in the Civil Court and as such, the suit

was not maintainable. Learned Advocate further submits that a remand order cannot be made as a matter of course and since the plaintiffs failed to establish that the record-of-rights has been finally published, they should not be given an opportunity to cure the defect by sending the suit back on remand. Learned Advocate finally submits that the concurrent findings of facts arrived at by the Court of appeal cannot be interfered with in revision and as such, the Rule is liable to be discharged.

I have heard the learned Advocates, perused the impugned judgment as well as the judgment passed by the trial Court, the evidence of the parties and other materials available on record. It appears that the trial Court as well as the Court of appeal, upon examination of the evidence and materials on record, gave specific findings that the plaintiffs could prove their title to and possession in the suit land; but dismissed the suit on the ground that the recent survey khatians have not been finally published. The Court of appeal, also, came to the conclusion that under section 144B of the State Acquisition and Tenancy Act, 1950, the civil Court has no jurisdiction to entertain a suit challenging any record-of-rights prepared and published under section 144 of the State Acquisition and Tenancy Act. It is to be noted that though the contesting defendants filed Cross Objection No. 1 of 2002 and the same was dismissed by the impugned judgment and decree but they did not challenge the same in any revision.

It appears that during pendency of the suit, a Survey Knowing Advocate Commissioner was appointed to identify the suit land who, after conducting survey submitted the report (Exhibit 5). Learned Advocate Commissioner found that .52 acre suit land is covered by the bia deeds and purchase deeds of the plaintiffs [i.e covered by

sale deed No. 1698 dated 15.04.1953 (Exhibit-6), sale deed No. 2419 dated 28.05.1962 (Exhibit-6/ka), sale deed No. 2670 dated 27.10.1962 (Exhibit-6/kha)] and said .52 acre land corresponds to .12 acre land of S.A plot No. 123, .32 acre land of S.A Plot No. 124 and .08 acre land of S.A Plot No. 138. The learned Advocate Commissioner deposed as P.W.5 and proved the report before the trial Court (Exhibit-5). The trial Court as well as the Court of Appeal, upon considering the sale deed dated 15.04.1953 being No. 1698 (Exhibit-6), sale deed No. 2419 dated 28.05.1962 (Exhibit-6/ka), sale deed No. 3155 dated 13.06.1979 (Exhibit-6/gha), sale deed No. 2670 dated 27.10.1962 (Exhibit-6/kha), sale deed No. 3902 dated 05.09.1993 (Exhibit-4), sale deed No. 2744 dated 06.06.1995 (Exhibit-4/ka), the Advocate Commissioner's Report dated 04.11.1998 (Exhibit-5), rent receipts (Exhibits-1 series) and the oral evidence of P.Ws. 1-6 and the evidence of the DWs 1-5, came to the conclusion that the plaintiffs could prove their title to and possession in the suit land. Though the defendants claimed a portion of the suit land and also claimed that they were possessing the same but they could not adduce any title document or deed of transfer showing that they have acquired title to in any portion of the suit land. However, the defendants produced two rent receipts (Exhibits ka and ka/1) showing payment of rent in respect of 0.12 acre land of Khatian No. 131 and 0.08 acre land of Khatian No. 52.

It is settled principle of law that mere payment of rent does not create any right or title in a landed property favour of the person who paid the rent and in the absence of any deed of transfer the rent receipts cannot create any title to any property. The Courts below did not give any finding in regards acquisition of title by the defendants in the suit land. From the evidence and materials on record, it is clear

that the defendants could not prove title to or possession of any portion of the suit land. Even in the written statement, they could not specify as to what quantity of land they have been owning and possessing.

It is not denial of the fact that during appellate stage the plaintiffs filed an application for amendment of the plaint and the amendment was allowed by the appellate Court vide order dated 19.04.2007. By said amendment the plaintiffs introduced some facts in the plaint stating that the recent R.S Khatian being Nos. 263, 240, 238, 218, 262, and 160 have been finally published by a Gazette Notification. The certified copies of those Gazette Notifications have been annexed by the plaintiff-petitioners in the application for remand as Annexure A series from which it appears that the said Khaitans, in the meantime, have finally published and certified copies have been supplied after such final publication. It is to be noted that unless the record-of-rights is finally published, no certified copies is supplied to anybody. Accordingly, it can be taken judicial notice that the R.S Khatians have been finally published during pendency of the appeal. The learned Advocate for the opposite party does not show that said Khatians have not been finally published. Accordingly, I am of the view that the recent R.S Khatians, in the meantime, have been finally published and the prematurity of the suit that has been found by the Courts below has, in the meantime, cured.

The Court of appeal held that the civil Court has no jurisdiction to try any suit against finally published record-of-rights in view of the provisions under section 144B of the State Acquisition and Tenancy Act, 1950. In the instant case, on perusal of the plaint, it is clear that the plaintiffs did not challenge the record-of-rights but they stated that the cause of action of the suit arose when the names of some of

the defendants was wrongly included in the revisional survey khatian along with the names of the plaintiffs. The reference of wrong record-of-rights has been mentioned in the suit for the purpose of describing the cause of action of the suit. The plaintiffs did not seek any relief directly challenging the record-of-rights. The plaintiffs have filed the suit for declaration of title simplicitor. A suit for declaration of title cannot be barred under the provision of section 144B of the State Acquisition and Tenancy Act. Moreover, though the defendants filed cross-objection challenging the judgment and degree of the trial Court and the same was dismissed but they did not challenge the same before any higher forum. Accordingly, it seems that they have waived their right in the suit property. It appears that the Court of appeal upon misconception of law wrongly held that the suit is not maintainable.

Considering the facts and circumstances of the case, I find no reason to send the suit back on remand to prove that the recent record-of-rights has been finally published. Both the Courts below concurrently found title to and possession of the plaintiffs in the suit property but dismissed the suit on the ground of prematurity, but in the meantime, the prematurity, if any, has been cured by publication of final record-of-rights. Accordingly, the plaintiffs are entitled to the decree as prayed for.

On perusal of the impugned judgment it appears that the Court of appeal took the right view that the plaintiffs could prove their title to and possession in the suit property and accordingly, rightly upheld the findings of the trial Court but committed illegality in dismissing the suit.

In that view of the matter, I find merit in this Rule.

In the result, the Rule is made absolute.

The impugned judgment and decree passed by the Court of appeal dated 04.10.2007 as well as the judgment and decree dated 20.02.2002 passed by learned Assistant Judge are set aside. The suit be decreed, as prayed for by the plaintiffs.

There shall be no order as to costs. The order of *status-quo* granted earlier is hereby recalled and vacated.

Let a copy of this judgment along with the L.C.R be sent down to the concerned Courts at once.

(Justice Md. Badruzzaman)