

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

Present

Madam Justice Kashafa Hussain

Civil Revision No. 968 of 2008

Md. Yead Ali Khan alias Md. Ead Ali Khan
.....petitioner

-Versus-

Md. Ziarot Ali Khan and others
..... Opposite parties

Mr. A.R.M Hassanuzzaman, Advocate
..... For the petitioner

Mr. Md. Khurshedul Alam, Advocates
..... For the Opposite Parties

Heard on: 16.10.2023, 12.11.2023,
13.11.2023 and

Judgment on 19.11.2023

Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned Judgment and decree dated 22.08.2007 (decree signed on 29.08.2007) passed by the learned Joint District Judge, 1st Court, Sherpur in Other Appeal No. 120 of 2005 dismissing the appeal and thereby affirming the judgment and decree dated 09.10.2005 (decree signed on 16.10.2005) passed by the learned Senior Assistant Judge, Jhinaigati, Sherpur in Other Suit No. 19 of 2000 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 instant petitioner as plaintiff filed Other Suit No. 19 of 2000 in the court of Senior Assistant Judge, Jhinaigati, Sherpur praying for declaration of title along with Khas possession in the

respect of the suit property impleading the instant opposite parties as defendant in the suit. The trial court upon framing issues, adducing evidences and taking depositions etc. dismissed the suit by its judgment and decree dated 09.10.2005. Being aggrieved by the judgment and decree of the trial court the plaintiff in the suit as appellant in the appeal filed Other Appeal No. 120 of 2005 which was heard by the Joint District Judge, 1st Court, Sherpur. The appellate court upon hearing the parties dismissed the appeal by its judgment and decree dated 22.08.200 and thereby affirmed the earlier judgment of the trial court. Being aggrieved by the judgment and decree of the courts below the plaintiff in the suit being appellant in the appeal as petitioner filed a civil revisional application which is presently before this court for disposal.

The Plaintiff's case inter alia is that the suit land under C.S. Khatian No. 245 belonged to Kali Bhattacharya and also possessed by Ganendra Chowdhury and Situ Sheikh was the tenant. Situ failed to pay tax and the then Zaminder Sattendra Chowdhury filed tax case No. 1732 of 1940 and obtained decree, filing Execution Case No. 302 of 1941 he purchased the land in the auction sale and he got possessions of the suit land on 09.01.1941. That thereafter Sattendra Mohan Chowdhury transferred 35 decimals of land to Sabed Ali by a Kabuliyat

dated 28.04.1945. That thereafter the land was recorded in the name of Sabed Ali in the ROR Khatian and he transferred 25 decimals of land to his daughter Sahera by a Heba-bill-Ewaz deed dated 28.08.1978 and also transferred and gifted 33 decimals of land to his daughter Soruternessa and after his death the said Soruternessa sold 3 decimals of land to the plaintiff by a kabala deed dated 04.11.1982 and transferred 5 decimals of land by another exchange deed dated 28.06.1982. That Sahera transferred 5 decimals of land to the plaintiff by an exchange deed dated 05.08.1982. That Shamirand and Kamol sold 7 decimals of land to the plaintiff by a kabala deed dated 12.08.1996. Thus the plaintiff upon obtaining 20 decimals of land have been possessing the same. That the suit land was correctly recorded in the name of Sabed Ali and the defendants dispossessed the plaintiff from the suit land on 20.09.1996. Hence the plaintiff brought the suit for declaration of title and recovery of Khas possessions over the suit land.

That the defendant Nos. 1-4 contested the suit by filing written statement denying all the material statements made in the plaint contending inter alia that the suit is not maintainable, barred by limitation and suffers from defect of parties. That the plaintiff had never been in possession of the suit land. That the suit land belonged to Situ Sheikh who sold 41 decimals of land

from the plot No. 479 to Siraj Ali and Umed Ali by a kabala deed dated 21.07.1925. That Situ Sheikh died leaving behind two sons Niat Ali and Sabed Ali and three daughters namely Kuleman, Maleka and Saleha. That Sabed Ali transferred 10 decimals of land by a kabala deed dated 17.08.1987 to Zinnat Ali, son of Niat Ali. That Iman Ali and others sold 1.75 decimals of land to the defendant No. 4 by kabala deed dated 02.10.1989. That Soruternessa and others sold 1.5 decimals of land to the defendant No. 4 by a kabala deed dated 02.10.1989. That Alimuddin sold 7 decimals of land to the defendant No. 4 by a kabala deed dated 24.09.1989. That Zinnat Ali sold 10 decimals of land to the defendant No. 4 by a kabala deed dated 29.09.1988. Thus the defendant No. 4 upon obtaining 20.25 decimals of land has been possessing in the plot No. 479 and the suit land was never auctioned or sold for the above reasons. That the plaintiff has no right, title, interest and possessions in the suit land. Therefore, the plaintiff's suit is liable to be dismissed.

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

Learned Advocate Mr. A.R.M Hassanuzzaman appeared for the petitioner while learned Advocates Mr. Md. Khurshedul Alam represented the opposite parties.

Learned Advocate Mr. A.R.M Hassanuzzaman for the petitioner submits that both courts below upon misappraisal of the material facts and non consideration of evidences gave wrong findings and therefore these judgments are not sustainable and ought to be set aside. He submits that the plaintiff claimed their valid title by way of auction sale by Sattendra Mohan the original Zaminder followed by Kabuliyat to Sabed Ali further followed by transfer by Sabed Ali to his daughters by Registered Heba-bill-ewaz and while was followed by transfer by the daughters by several registered kabala deed to the present plaintiff. He contends that however the courts below totally ignored the several registered documents inter alia by way of Heba Bill Ewaz deed and kabala deeds. He submits that the courts ought to have relied on the registered kabala deeds since the defendants could not prove these registered deeds as unlawful and invalid deeds. He submits that therefore on the face of several valid registered deeds the plaintiff could satisfactorily prove their valid title in the suit land.

On the issue of possession he contends that the plaintiff was unlawfully dispossessed by the defendants from the suit land and the PWs in their oral evidences proved their lawful possession prior to the unlawful dispossession. On further query on issue of possession from this bench, the learned advocate for

the petitioner however conceded that they could not show any record of rights nor any other documents by way of rent receipts etc in favour of the plaintiff. Upon more query from this bench the learned advocate for the petitioner also concedes that although they claim their source of title through auction sale by the said Zaminder Sattendra Mohon but however there are no documents in the LCR. He however submits that that on the face of some registered kabala deeds and since they were unlawfully dispossessed the plaintiffs could establish their valid title but the courts totally ignored the evidence of the plaintiff's title to the suit land. The learned advocate for the petitioner points out to the Kabuliyat given by Sattendra Mohan and which Kabuliyat dated 28.04.1945 was produced as exhibit-2 series. He submits that therefore it is evident that Sattendra had valid title as Zaminder which is substantiated by the Kabuliyat and such Kabuliyat also proves that the plaintiff's claim their title through a valid source. He concludes his submissions upon assertion that however both courts upon misappraisal of facts and evidences came upon wrong findings and both the judgments of the courts below ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Khurshedul Alam for the defendant-opposite parties opposes the Rule. At the

onset of his submissions he points out that following the principle of Section 101 of the Evidence Act, 1872 the onus of proving the case lies upon the plaintiff. He submits that although the plaintiffs claim title and possession followed by subsequent dispossession by the defendants but the plaintiffs could not at any stage show any valid documents of their source of original title. He argues that since the plaintiffs claim their original title from Sattendra the said Zaminder, but however the plaintiffs could not show any C.S. record in the name of Sattendra. He submits that in the absence of any C.S record in the name of Sattendra by any other valid documents it is doubtful as to whether there existed any Zaminder by the name of Sattendra at that time.

On the issue of Kabuliyat, learned advocate for the opposite parties points out that for sake of discussion even if one Zaminder Sattendra had given any Kabuliyat to Sabed Ali however the Kabuliyat (exhibit-2 series) clearly manifest that such Kabuliat was granted for a period of 3 (three) years. He submits that even if the Kabuliyat was granted by Sattendra comprising of 35 decimals of land on 28.04.1945 exhibit-2 series, the tenure for such term of 3 years of the Kabuliyat expired on 28.04.1948. He argues that therefore leaving other legal issues aside, even by operation of the documents and

operation of law such Kabuliyat did not even exist after 28.04.1948. He continues that therefore all the transfers that has been shown through the registered kabala deeds, even if they are registered kabala deeds but however such deeds cannot be validly acted upon by operation of law since Sabed Ali had no lawful right to transfer any land to any person after the expiry of the Kabuliyat. He submits that therefore the Heba-bill-ewaz and other documents shown to have been transferred by Sabed Ali and subsequently by his daughters are invalid documents. He further points out that therefore the kabala deeds by which Sabed Ali's daughters transferred the land to the plaintiff are also invalid deeds since the source of title is defective.

On the issue of Sattendra the said Zaminder, the learned advocate for the opposite parties reiterates that even if Sattendra had granted a Kabuliyat the validity of such kabuliyat could not be proved by the plaintiff since neither is there any C.S. record in the name of Sattendra nor could the plaintiffs show any nothi or materials of the auction sale through which it is claimed that Sattendra purchased the suit land. He submits that therefore in the absence of any valid documents as to the original source of title and also that the Kabuliyat exhibit-2 series was for a period of 3(three) years and given that the plaintiff also relies upon the Kabuliyat therefore the plaintiff could not show his source of

title while claiming the land. He reiterates that in the absence of any evidences and valid documents to show their source of title all subsequent documents are even if executed are invalid documents and cannot be acted upon in the eye of law.

On the issue of possession, he continues that although the plaintiff claims recovery of khas possession however the plaintiffs could not show any valid documents on possession by way of rent receipts, ROR etc. He argues that further the Pws also could not show the manner in which they were dispossessed by the defendants. He contends that therefore both courts below correctly came upon their correct findings. He concludes his submissions upon assertion that therefore those judgments need no interference and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on record. It is a settled principle of law that whatever weakness the defendants may have if any, however onus lies on the plaintiff to prove his case and weakness of the defendant cannot be taken advantage of. With such principle in mind, I have examined the plaintiff's claim in the case before me. The plaintiff claims their original source of title through the Zaminder Sattendra Mohon Chowdhury. It is the plaintiff's claim that following an auction

sale due to failure to pay rents by the tenant Setu Sheikh, the Zaminder Sattendra purchased the land in auction sale by Zaminder Tax Case No. 1732 of 1940 and obtained decree followed by an execution case being Execution Case No. 302 of 1941. It is the plaintiff's further claim that following the auction sale the land comprising of 35 decimals was granted to Sabed Ali by a Kabuliyat dated 28.04.1945. The plaintiff also claims that such transfer was followed by way of Heba bill ewaz by Sabed Ali to his 4 daughters followed by subsequent transfers by the four daughters of Sabet Ali to the plaintiff by some registered kabala deeds.

My considered view is that whatever registered kabala deeds may have been produced by the plaintiff to establish his claim of title, I am inclined to examine the source of the claim of the plaintiff. To examine the source of the plaintiff it is necessary to examine such source through valid documents in support of the plaintiff's claim. However after examination into the records, I do not find anything in the records which may indicate that the said Sattendra Mohon the Zaminder was the C.S. owner. No C.S Khatian has been produced to vindicate the plaintiff's claims of Sattendra being the C.S. owner. Moreover although the plaintiffs claim that Sattendra subsequently purchased the land in auction sale due to the failure of the tenant Setu Sheikh to pay tax, but

however no documents of such auction sale was produced in the courts below. The plaintiffs trace their title upon claiming that the original Zaminder obtained the land in auction sale followed by Tax Case No. 1732 of 1940 further followed by Execution Case No. 302 of 1941. However no documents of any Tax Case or Execution Case could be produced by the plaintiff to prove their claim. I am inclined to opine that whatever subsequent Heba bill ewaz deed may have been executed followed by registered kabala deeds of purchase and which has been produced as exhibits but since the plaintiffs could not establish their original title by producing cogent evidences particularly documentary evidences therefore such claim cannot be relied upon.

The only documents of possession or claim to title whatsoever produced by the plaintiff is a Kabuliyat granted to Sabet Ali by the said Sattendra Mohon Zaminder by Kabuliyat dated 28.04.1945. Upon examination of the Kabuliyat it appears that both courts below correctly observed concurrently that such Kabuliyat even if at all granted for a period of 3(three) years. Therefore for sake of discussion even if the Zaminder granted any Kabuliyat to Sabet Ali such Kabuliat was granted for a period of 3(three) years which expired on 28.04.1948. Therefore it is clear that even if Sabet Ali was in possession between 1945-

1948 in the suit land, however such tenure expired in the year 1948. Consequently, the plaintiff failed to prove their claim of title in fold two ways. Firstly the plaintiffs failed to show the documents relying on their original source of title given that they could not produce any C.S., nor could they produce any documents of the case followed by auction sale. Secondly the Kabuliyat exhibit- 2 series on which the plaintiff also relied upon to prove their title such Kabuliyat even if it was granted on 28.04.1945, nevertheless it was granted for a period of 3(three) years and it expired on 28.04.1948. Therefore none of the documents being Heba-bill-ewaz or the subsequent kabala deeds, such documents are inherently invalid documents and cannot establish nor confer any valid title to the plaintiffs.

On the issue of possession it is needless to state that in the absence of title, possession is not so much relevant. However since the plaintiffs claims possession followed by dispossession of the defendants, I have examined the evidences thereto. I have examined the oral evidences. From the oral evidences it is clear that the plaintiff could not give any cogent evidences of possession by them. Although the plaintiffs claim dispossession from the suit land by the defendants on 20.09.1996 but they could not give any specific oral evidences as to the manner of dispossession, nor could any of the PWs describe the exact time,

date etc. by which the plaintiffs were dispossessed. A vague claim of dispossession in the absence of cogent evidences cannot establish the claim of possession nor dispossession. Moreover I do not find any rent receipts, ROR etc in the name of the plaintiffs. It appears that in the evidences the plaintiffs as PWs were silent on the issue of R.S, B.R.S, rent receipts etc.

Therefore under the foregoing discussions and under the facts and circumstances, upon hearing the parties and relying on the materials placed before me, I do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to costs.

Send down the lower court record at once.

Communicate the order at once.

Shokat (B.O)