

Present:

**Mr. Justice Sheikh Abdul Awal**

**Civil Revision No. 3364 of 2017**

Sheikh Abu Sayed and another.

..... Defendant-petitioners.

Versus

Mostahidul Islam and others.

..... Plaintiff-opposite Parties.

Mr. Md. Taufiqul Islam, Advocate.

....For the Defendant-petitioners.

Mr. Md. Humayun Kabir Bulbul, Advocate

....For the Plaintiff-opposite-party Nos.1-7

**Heard on 01.09.2024, 03.09.2024 and**

**Judgment on 04.09.2024**

This Rule was issued calling upon the opposite party Nos. 1-7 to show cause as to why the impugned judgment and decree dated 28.08.2017 (decree signed on 31.08.2017) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Bagerhat in Civil Appeal No. 134 of 2011 affirming those dated 11.07.2011 (decree signed on 19.07.2011) passed by the learned Assistant Judge, Kachua, Bagerhat in Civil Suit No. 7 of 2004 dismissing the suit should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Material facts of the case, briefly, are that the opposite parties as plaintiffs instituted Civil Suit No. 7 of 2004 in the Court of the learned Assistant Judge, Kachua, Bagerhat impleading the petitioners as defendants for permanent injunction praying the following reliefs:

(ক) নিম্ন তফশীল বর্ণিত স্বত্ত্ব দখলীয় জমি বিবাদী পক্ষ বা তদপক্ষে কেহ কোন পাকা কনস্ট্রাকশন বা বেদখল করিতে না পারে বাদীল স্বত্ত্ব দখলীয় দাগভুক্ত জমি। সম্প্রতি অন্যায়ভাবে আত্মসাৎ বেদখল বা কোন প্রকার ক্ষতি করিতে না পারে বাব বাদীর দখলে কোন প্রকার বাধা বিঘ্ন সৃষ্টি করিতে না পারে তদমর্মে উক্ত বিবাদীগণ বিরুদ্ধে এবং বাদী অনুকূলে চিরকাল অস্থায়ী এবং বিচারান্তে চিরস্থায়ী নিষেধাজ্ঞা ডিক্রী হয়।

The plaintiffs' case, in short, is that the suit land belonged in Khatian No.1, Plot No. 3319, quantity of land .28 acres, Plot No. 3318/3582, quantity of land .05 acre, Plot No. 3384/3584, quantity of land .15 acre, Plot No. 3320 quantity of land .04 acre and plot No.3485/3484 quantity of land .07 acre total .59 acre are Government's khas land. As the predecessors of the plaintiffs namely Sheikh Belayet Hossain being landless, he applied to the defendant No.4 for settlement of land and accordingly, the defendant No.4 settled .59 acres of land in favour of the predecessor of the plaintiff's namely, Sheikh Belayet Hossain in Khatian No.1, Plot No. 3319, quantity of land .28 acre, Plot No. 3318/3582, quantity of land .05 acre, Plot No. 3384/3584, quantity of land .15 acre, Plot No. 3320 quantity of land .04 acre and plot No.3485/3484 quantity of land .07 acre through settlement case No. 416B/86-87 and a registered deed of settlement being No. 1671/89 dated 09.10.1989 was executed in favour of predecessor of the plaintiffs in respect of the aforesaid land. As per settlement, the plaintiff parties have been paying Salami of the land regularly. The plaintiffs took loan from Krishi Bank, Kuchua Branch, against that land and the plaintiffs have been possessing over the suit land more that twelve years. There is no Govt. path at plot No. 3320. On 25.01.2004, the defendant Nos.1-2 brought Cement, Sand and Bricks for construction on the suit land and hence, the predecessors of the plaintiffs instituted the suit for permanent injunction.

The opposite parties as defendants contested the suit by filing written statements denying all the material averments made in the plaint contending, inter-alia, that the plaintiffs have no cause of action to file the suit and the suit is not maintainable in its present form. The suit of the plaintiff is barred by law of limitation and hit by principle of estoppel, waiver and acquicence. The suit land of Plot No. 3319, 3320 and 3322 are govt. Khas land, the defendant- petitioners erected a shop at local hut which is on plot No.3322 and they have been running their business since 1992 A.D without any hindrance. The cause of action of the suit is false and as such, the suit is liable to be dismissed.

The defendant No. 4 (Additional Deputy Commissioner (Revenue), Bagerhat contested the suit by submitting a written statement denying the material allegation of the plaint stating , inter alia, that the plaintiffs have no cause of action to file the suit and the suit is not maintainable in its present form. The suit and is Government khas land and the plot No. 3322, quantity of land 3 decimal is khas land. The land was given lease Bangla 1411 to the Soaib Sheikh. There is no possession of the plaintiffs on the land of plot No. 3322, the suit is liable to be dismissed.

At the trial the plaintiff side examined 2 witnesses and the defendant side also examined 3 witnesses and both the parties exhibited some documents to prove their respective cases.

The learned Assistant Judge, Kachua, Bagerhat after hearing the parties and on considering the evidence and materials on record by his judgment and decree dated 11.07.2011 decreed the suit in favour of the plaintiffs.

The defendants, thereafter, preferred Civil Appeal No. 134 of 2011 before the learned District Judge, Bagerhat which was

subsequently transferred to the Court of the learned Joint District Judge, 1<sup>st</sup> Court, Bagerhat for disposal, who by the impugned judgment and decree dated 28.08.2017 (decree signed on 31.08.2017) dismissed the appeal and affirmed the judgment and decree of the trial Court dated 11.07.2011.

Aggrieved defendants then preferred this revision application and obtained the present rule.

Mr. Md. Taufiqul Islam, the learned Advocate appearing on behalf of the defendant-petitioners at the very outset takes me through the pleadings of the parties and the evidence of PWs & DWs and then submits that both the Courts below without considering the case of the defendants that there is existence of the shop of the defendant-petitioners on the disputed land most illegally decreed the suit in favour of the plaintiffs on the finding that the plaintiffs have right, title and possession over the suit land, which occasioned a failure of justice. He next submits that the plaintiffs filed the suit on false averments inasmuch as the defendants never tried to dispossess the plaintiffs from their land.

Mr. Humayun Kabir Bulbul, the learned Advocate appearing for the plaintiff-opposite party Nos.1-7, on the other hand, supports the judgments of 2 Courts below, which were according to him just, correct and proper.

Having heard the learned Advocates for both the sides, perused the revision application, judgments of 2 (two) Courts below, deposition of witnesses and other materials on record, the only question calls for consideration in this Rule whether the Courts below committed any error in decreeing the suit in favour of the plaintiffs.

On scrutiny of the record, it appears that the plaintiff-side to prove the case examined 2 witnesses out of whom PW-1, Feroza Begum, (wife of original plaintiff) stated in her deposition that- “বাদী শেখ বেলায়েত আমার স্বামী। উনি মারা গেলে আমরা বাদীপক্ষ। বাদীপক্ষে জবানবন্দী করছি। নাঃ জমি সরকারের ছিল। স্বামী ভূমিহীন হিসেবে পায়। ৫৯ শতক পাই। আমরা দখল পাই। ৪১৬ বি ৮৬-৮৭ নং সেটেলমেন্ট কেস। ৯.১০.৮৯ তাং দলিল পাই। নামপত্তন চাই। খাজনা দিই। এখানে আমাদের বাস্তু বাগান আছে। হাবিবুর রহমান উচ্ছেদের জন্য মামলা করে হেরে যায়। আপিলেও পরাজিত হয়। ২০০৪ সালে বেদখলের হুমকি দেয়। চিরস্থায়ী নিষেধাজ্ঞা চাই। সত্য নয় ১/২ নং বিবাদী বন্দোবস্ত পেয়ে দখল করে। সত্য নয় আমাদের বন্দোবস্ত বেআইনী। সত্য নয় ৩৩২০ দাগ রাস্তা। ৩৩২২ দাগ রাস্তা। সত্য নয় ৯২ সাল থেকে দখল করে। সত্য নয় বিবাদীর ডিসিআর পেয়ে দখল করে। দাখিলী খাজনার দাখিলা বন্দোবস্ত দাখিলের নকল প্রদ-১/২ ৬৪ নং খতিয়ান।” This witness in her cross examination denied the suggestion in the following language- “সত্য নয় দখল করি না। দোকান আছে আরজিতে বলেছি।” PW-2, Ansar Sheikh stated in his deposition that- “পক্ষ ও নালিশী জমি চিনি। নাঃ জমি বাদী দখল করে। বেলায়েত জমি পেয়ে যায়। গাছপালা লাগায়। রাস্তার পরে বিবাদীর দোকান আছে।”

DW-1, Md. Shoab Sheikh stated in his deposition that he possessed the suit daag No. 3332. In cross examination he stated that - “২০০১-২০০২ সাল ডিসিআর নেই। পরেও নেই। ৩ শতক জমি। ৩৩২২ দাগ লেখা আছে। অন্য দাগে বন্দোবস্ত নেইনি। বর্তমানে ডিসিআর নেই না। সরকারী জায়গায় আছি। বেলায়েত হোসেনকে চিনি।” DW-2, Hemayet Sheikh stated in his deposition that there is existence of shop in the suit land being daag No. 3322. DW-3, Afzal Sheikh stated in his deposition that there is existence of shop in the suit land.

From the above quoted evidence, it appears to me that PW-1 and PW-2 both of them in their respective evidence clearly stated that the plaintiffs got the land by way of Settlement Case No. 416 B 86-87 and thereafter, they got deed on 09.10.1989 and have possessed the suit land. DWs in their respective evidence could not show any scrap

of paper that the plaintiffs are not in possession in the suit land, they inconsistently deposed before the trial Court that they possessed the suit land.

On an analysis of the evidence of the parties, it appears that the evidence of PWs indicates true position of the suit land. Weighing the evidence of both the parties, I find that the evidence in plaintiff side is credible and tenable in Law

The trial Court below as first Court of fact on due consideration of the entire evidence and materials on record justly came to the conclusion that- “পক্ষান্তরে বাদীপক্ষ কর্তৃক দাখিলী খাজনার দাখিলা (প্রদর্শনী-১ সিরিজ) এবং ডি,সি,আর এর কপি (প্রদর্শনী-২ সিরিজ) পর্যালোচনা দেখা যায় যে, আরজির তপশিল বর্ণিত নালিশী জমি বাবদ বাদীপক্ষ নিয়মিত খাজনা পরিশোধ করেছেন। এসব কাগজপত্র সম্পর্কে বিবাদীপক্ষ জেরার মাধ্যমে বা সাক্ষ্য প্রমাণের মাধ্যমে এমন কোন তথ্য উপস্থাপন করতে পারেন নাই যা হতে এসব দালিলিক সাক্ষ্যকে অবিশ্বাস করা যায়। এসব সাক্ষ্য প্রমাণ বিবেচনান্তে নালিশী জমিতে বাদীপক্ষের নিরঙ্কুশ দখল রয়েছে মর্মে প্রতীয়মান হয়।”

This finding being purely a finding of fact based on proper appreciation of the evidence and materials on record.

On going through the judgment of the trial court together with the evidence and materials on record, it appears to me that the trial Court below committed no illegality in decreeing the suit. The impugned judgment is a judgment of affirmance. On a reading of the impugned judgment, it appears that the appellate court below in its turn after a detailed discussion of the entire evidence and materials on record concurred with the findings of the trial Court. In affirming the judgment of the trial Court, the learned Joint District Judge, 1<sup>st</sup> Court, Bagerhat did not commit any illegality whatsoever.

By the way it may be observed that defendants having a shop near about the suit land. On a query from the Court Mr. Humayun Kabir, the learned Advocate for the plaintiff-opposite parties informs

that the plaintiffs have/had no connection or interest over the shop of the defendant-side inasmuch as admittedly the shop of the defendant-side is not situated on the suit property.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged without any order as to costs. The order of stay granted earlier by this Court stands vacated.

Let a copy of this judgment along with lower Courts' record be sent down at once.