

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 614 of 2000

Dhirendra Nath Mondal and another

.....Petitioners.

-Versus-

Kumud Ranjan Sana and others

.....Opposite parties.

Mr. Shasti Sarker, Advocate

.....For the petitioners.

Mr. Bivash Chandra Biswas, Advocate

..... For the opposite parties.

Heard and judgment on 29th November, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 08.08.1999 passed by the Additional District Judge, 1st Court, Khulna affirming those dated 22.10.1994 passed by the then Subordinate Judge, 4th Court, Khulna in Title Suit No. 455 of 1994 dismissing the suit should not be set aside.

Fact relevant for disposal of this rule are that petitioners as plaintiff filed Title Suit No. 104 of 1992 before the Court of the then Subordinate Judge, 2nd Court, Khulna against the opposite parties for declaration of title in the suit land.

Plaint case in short, inter alia, is that the suit land appertaining to D.S. khatian No.6 of Mouza Kai Mukhi covering a total area of 12.75 acres originally belonged to Kanchan Dasi, who died leaving behind only son Bishonath as her legal heirs. While owning and possessing the said land that Bisho Nath also died leaving behind only son Satish Mondal, who used to possess the said land. Subsequently due to extreme salinity the suit land became unfit for cultivation and as such that Satish left his area and went to the house of one Raton Sana and were working there as a permanent worker. Satish Mondal since was an illiterate person relied upon to Ratan Sana for preparation of both R.S and S.A. record of right. Taking this advantage that Raton Sana by mis-representating the settlement employee got the suit land recorded both in R.S. and S.A. operation in the name of his wife Shayana Dasi and kept the matter concealed and telling Satish Mondal that the said record of right is duly prepared in his name.

In the year 1962-63 Satish Mondal died leaving behind both the plaintiffs as his legal heirs. Both the plaintiffs also used to reside in the house of Ratan Sana with their father Satish Mondal. In 1964 due to embankment as made by the Wafda, the Suit land became cultivable and as such the plaintiffs began cultivating the same. Both the plaintiffs used to pay rent for the suit land through Ratan Sana and on his death through his sons. Shayama Dasi died meanwhile leaving behind 2 sons Grish Chandra Sana, Nalini Sana and a daughter Punish Sarder as her legal heirs. Those heirs of Shayama Dasi also died leaving behind the defendant as their legal heirs. The defendant claimed title to the suit land on the basis of auction purchase in certificate Case No.637/ 42-43. In fact the auction sale of the suit land in the above certificate proceeding was been illegal and ineffective. No notice of the said proceeding was ever served upon Satish Chandra Mondal. Grish Sana and his brother Nalini Sana and their heirs did never possess the suit land. The plaintiffs came to know of the wrong record of the rights for the first time on 30th Kartick, 1399 B.S. and hence they filed the suit.

Defendant Nos.1-5 contested the suit by filing joint written statement denying the plaint case, alleging, inter alia, is that the suit land appertaining to D.S. Khatian No.6 covering a total area of 12.75 acres, originally belonged to Kanchan Dasi, who mortgaged the same to Grish Chandra Sana by a registered deed dated 26.2.26. Grish Sana obtained the deed in the Benami of his paternal uncle Basonta Kumar Sana. As one Bishomber Sarder, who used to look after Kanchan Bawa, managed to get a deed of gift in his name by Kanchan Bawa with respect to the suit land with some malafide motive behind. Grish Sana before registration of the Mortgage deed came to know of the fact of such deed of gift and as such he was reluctant to take mortgage. Thus Kanchan Bewa together with that Bishomber executed the deed of mortgage dated 26.2.26. The deed of gift in between Kanchan Bawa and Bishomber was never been acted upon. Since Satish Mondal, heirs of Kanchan Bewa failed to pay the mortgage money, Grish Chandra Sana filed Case No.47 of 1938 in the then Debt Settlement Board and obtained an award against Satish Chandra. In that Award, installments were allowed. Subsequently Satish Mondal with a view to paying the installments requested Grish

Chandra to get the suit land by way of settlement under that Grish and accordingly he settled the suit land with Satish Mondal. But Satish Mondal since failed to pay rent/as well as the installment of the award, Grish Sana started Certificate Proceeding No.736/42-43 in the Certificate Court Khulna, and obtained decree which was put to execution and the suit land was auction sold in that execution. Grish Sana purchased the said auction .During R.S. operation Grish and brother Nalini got the suit Land recorded in the name of their Mother Shayama Dasi. At the time of taking delivery of possession on the basis of auction purchase Satish Mondal pressed for a fresh settlement of his homestead land covering .33 acres of land and accordingly he was recognized tenant under Grish Chandra with respect to that .33 acres of land and .33 acres of land were recorded in the name of Grish Chandra as tenant under Shayama Dasi. And Grish was well aware of such record of right. Grish and Nalini used to possess the suit land and thereafter Grish Chandra Sana died leaving behind 2 sons, the defendant No.1 and 2 and Nalini also died leaving behind 3 sons, the defendants No.3-5 as his legal heirs. In this way the defendants No.1-5 used to possess 12-75 acres of land. Thereafter the

defendant No.1 transferred 1.65 acres of land to the plaintiff No.2 Kalipada Mondal by a registered Kabala dated 21.6.86 on the same date the defendants No.3-5 also transferred 1.65 acres of land to the plaintiff No.1 and delivered possession in their favour, thus the plaintiffs have got 3.30 acres of land in the suit khatian No.43 and the rest lands covering 9.27 acres of the said khatian the defendant Nos.1-5 have been possessing. Both the plaintiffs and defendant Nos. 1-5 are getting lease money for their respective land from one Jalil, who made a Fish Gher over the suit land and many other land of some other person. The plaintiffs have got no right, title, interest and possession in the suit land and as such the suit is liable to be dismissed with cost.

Subsequently suit was transferred to the Court of the then Subordinate Judge, 4th Court, Khulna and renumbered as Title Suit No. 455 of 94.

During trial following issues were framed.

- i) Whether the suit is maintainable to its present form or not?
- ii) Whether the suit is barred by limitation?

- iii) Whether the plaintiffs has got title and possession of the suit land?
- iv) Whether the plaintiff is entitled to get the decree for title or not?
- v) What more relief of reliefs the plaintiffs are entitled to get?

During trial plaintiff examined 4 P.Ws. and the defendant examined 3 D.Ws.

Considering the evidences and hearing the parties, the Subordinate Judge dismissed the suit on contest by his judgment and decree dated 22.10.1994.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 23 of 95 before the Court of District Judge, Khulna, which was subsequently transferred to the Court of Additional District Judge, 1st Court, Khulna, who by the impugned judgment and decree dated 8.8.99 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant rule.

Mr. Shasti Sarker, the learned advocate appearing for the petitioner drawing my attention to the written statements of the defendants together with document exhibited in court by the defendants submits that when the defendants admitted that Kanchan Dasi was the original owner and the plaintiffs are the successor of the original owner and further admits that by way of registered sale deed dated 21.06.1980 defendant transferred 3.30 acres of land out of the suit land to the plaintiffs, at least plaintiffs are entitled to get a decree for the said land, which has been admitted by the defendants. The learned advocate further submits that appellate court being the last court of fact although found the defendants all documents are rejected by the order of the Rin Shalishi Board and the auction documents of the defendants are not proved and cannot be relied upon as genuine, even then holding the document of paying rents as a basis of title, declined to pass a decree in favour of the plaintiffs. In the suit when defendants contention, which are denied by the plaintiff and the defendant could not prove the same in court and the plaintiffs chronology of successor of the C.S. recorded tenant Kanchan Dashi not been denied by the defendant rather admitted, plaintiff

is entitled to get a decree as prayed for. But the court below totally failed to appreciate this aspect of the case and dismissed the suit most arbitrarily.

Mr. Bivash Chandra Biswas, the learned advocate on the other hand, appearing for the opposite party opposes the rule and submits that although on the document as been submitted by the defendants i.e. exhibit-C, D and E, the appellate court found it difficult to accept as genuine but since the appellate court being the last court of fact found defendants are in possession in the suit land, the instant suit is not maintainable to its present form and as such court below rightly dismissed the suit. He lastly submits that since the rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

Since the S.A. and R.S. khatian were not been recorded in the name of the plaintiff rather it was recorded wrongly in the name of the defendants, plaintiff filed this suit for declaration of title simplicitor. Plaintiffs contention is that suit property measuring 12.75 acres of land was belonged to C.S recorded

tenant Kanchan Dashi. Who died leaving behind her son Biswanath. Thereafter after his death Sotish Mondal got the suit property as his legal heirs. Sotish Mondal died leaving behind the present plaintiff as his legal heirs. Thereby plaintiffs are the successor of the C.S. recorded tenant Kanchan Dashi. Plaintiffs further case is that Sotish Mondal was an illiterate person and worked in the house of Ratan Sana and to whom he entrusted the matter for recording the khatians into his name but clever Ratan Sana fraudulently recorded the R.S. and S.A. khatian into the name of his wife Shayma Dashi, although possession of the suit land is lying with the plaintiffs. On the other hand defendants claim that admittedly 12.75 acres of land under C.S. khatian No. 6 was owned and possessed by Kanchan Dashi, who settled the said land by way of mortgage on 26.02.26. Girish Chandra Sana paid the mortgaged money to Kanchan Dashi and the said mortgaged deed was taken by him in the name of his uncle Boshonto Kumar Sana, who is nothing but by a benamder. Since Kanchan Dashi failed to pay the mortgage money, Girish Chandra Sana instituted a Case being No. 47 of 38 before the Rin Shalishi Board against Sotish Chandra, the heirs of Kanchan Bewa and got award from

the Rin Shalishi Board of paying the said money on installment. But subsequently Girish Chandra Sana failed to pay the said installments then settled the suit land in favour of the Sotish Chandra. Thereafter when Sotish Chandra failed to pay the rents Girish Chandra Sana filed a certified case being No. 637 of 42-43 and got the suit property in auction and obtained possession through court. During R.S. operation Girish Chandra Sana recorded the suit property in the name of their mother Shayma Dasi. Subsequently when plaintiffs requested to stay on their dwelling hut defendants allowed to stay them on .33 acres of land, which was recorded into their names in the R.S. khatian but the rest property was correctly recorded in the name of Girish Chandra Sana. Girish Chandra Sana died leaving behind two sons namely Kumod Ranjan Sana and Jogobondhu Sana, who are the defendant Nos. 1 and 2 and Nalini Sana died leaving behind three sons Kalipada, Oshit and Ojith Sana, who are defendant Nos. 3-5. Defendants sold 3.30 acres of land from S.A. khatian No. 43 to the plaintiffs. Leaving behind that portion of land, rest 9.27 acres of land is now owning and possessing by the defendants and one Abdul Jalil is now possessing the same by fishing through a gher

to the entire suit land taking it also from the defendant and the plaintiffs.

Courts below taking into consideration the defendant contention i.e. Ext.C-E, which are the documents relating to award of the Rin Shalishi Board and the auction papers as placed by the defendants and the rent receipts of paying rents to the government by the defendants held that plaintiff failed to prove their title of the suit land rather the defendants contention of acquiring the property by way of Rin Shalishi Board and subsequently auction purchase are found to be correct and as such they concurrently dismissed the plaintiffs suit for title.

Going through the record, it is apparent that although in the written statements, defendants admits that Kanchan Dashi was a C.S. recorded tenant and after his death Sotish Mondal and thereafter the present plaintiffs became the subsequent successors of the C.S. recorded tenant Kanchan Dashi. But since the property was mortgaged to the defendant and failing to pay the mortgage money, an award was accorded by the defendant through Rin Shalishi Board and thereafter when the property was settled to the Satis Chandra but he also failed to pay the rent and then it was

again auction sold and the defendant purchased the same in auction and accordingly they owned and possessed the suit property, upon recording the name of their mother in the R.S. khatian and subsequently into their names in the S.A. khatian and paid rents to the government regularly. It is of no doubt that the plaintiffs are the successor of the C.S. recorded tenant. But the question remains whether the property has been acquired by the defendants by way of mortgage and award obtained from the Rin Shalishi Board or through auction sale as claim by the defendant.

Plaintiffs all through in their plaint as well as while deposing in court challenged all these documents as false and never been acted upon and by practicing fraud R.S. and S.A. khatian were recorded by the defendants into the name of their mother Shayma Sundari Dashi. Taking the advantage of these wrong recording they procured some rent receipt, in order to establish the possession of the defendants. Since which are been challenged by the plaintiffs as forged and concocted, defendants adduced some documents.

Now let us see how these documents established the title of the defendant in the suit property.

Ext.C has been produced and exhibited in court to show that an award was accorded from the Rin Shalishi Board on the mortgage. Ext.C is a paper with the head note that this is the order sheet of the board in a printed prescribed form. Although some remark was shown to be noted in Ga Tafsil page, wherein the name was noted as Girish Chandra Sana and in the remark column it has been noted that:

"মহাজন সতীশ মন্ডলের সর্ব্বরকমে ১৮ ধারা মতে ৯৯৮/৬ পাই টাকা ঋণ সাব্যস্ত করা গেল। পক্ষগন আপোষে ৬৯৮ টাকার ঋণ মিমাংশা করিলেন। ঘটক সন ১৩৪৬ সনে ৩৮ টাকা ও সন ১৩৪৭ সন হইতে সন ১৩৫৭ সন পর্য্যন্ত প্রতিবৎসর ৬০ টাকা হিসাবে মোট ১২/- বার্ষিক কিস্তিতে আদায় করিবে।"

But nowhere in the said documents contains either any signature of the Chairman or any member of the Rin Shalishi Board or contains any seal of the Rin Shalishi Board. Moreover these documents was also not been proved in court by adducing any witness. Accordingly unverified documents cannot create any title of the defendants. Ext.D a copy of the summons or notice through which defendant try to establish that they got a suit property purchased through auction and got delivery of possession

through court. But going through the said document it is difficult to find that whether it was at all relating to the suit land or not as well as against anybody on behalf of the plaintiffs. This document also cannot be a reliance document to form any opinion that the property was ever been sold in auction and the defendant or their predecessor got the property purchased through court in auction. Through the exhibited document, Ext.E the defendant try to say that defendant got a delivery of possession in the suit property in a case being No. 637/1944-40 but this document is also contains no seal, sign of the court as well as when it was applied for and collected from the court. Thus the appellate court being the last court of fact has rightly put question on his genuineness.

Going through the aforesaid exhibited documents, it can easily be held that defendants contention of acquiring the property through Rin Shalishi Board or from court in a money suit not been proved by any document. Plaintiffs claim that they are in possession in the suit property, defendants never possessed the suit property.

Now let us see from the evidence, how this fact been established.

P.W.1 Dharendra Nath Sarder stated the fact as of his plaint and said that they are in possession in the suit property and further said that: "বিবাদীরা নাঃ জমি দখল করে না।"

P.W.2 Lolit Mohan Biswas, stated in his deposition that:

"বাদী বিবাদী চিনি। নাঃ জমিও চিনি। নাঃ জমির পাশে আমার জমি। নাঃ জমি বাদীরা দখল করে। বিবাদীরা নাঃ জমি দখল করে না। শতিশ দখল করিত নাঃ জমি। "

P.W.3 Kartik Chandra Dhali, stated the similar version and said that:

"বাদী, বিবাদী এবং নাঃ জমিও চিনি। নাঃ জমি আমার বাড়ীর পার্শ্বে। বাদীরা নাঃ জমি দখল করে। আগে শতিশ নাঃ জমি দখল করিত। বিবাদীরা নাঃ জমি দখল করে না।"

P.W.4 Moksed Ali Sana, stated in his deposition that:

"বাদী বিবাদী এবং নাঃ জমি চিনি। নাঃ জমি বাদীরা দখল করে। বিবাদীরা নাঃ জমি দখল করে না। নাঃ জমির পার্শ্বে আমার বাড়ী। আগে শতিশ দখল করতো।"

Through the adjacent land owner of the suit land plaintiff try to establish the fact that they are in possession of the suit land and the defendants did not possess the suit property.

On the other hand D.W.1 Kalipada Sana, while admitting that property was belonged to Kanchon Dasi try to say the fact that how it was acquired by them through mortgage and auction but regarding the possession he has said that:

"গিরিস নাঃ জমিতে দখল বসাইয়া দখল করিতেছিল। "

He further said that:

"জলিল সাহেবকে নীজ দিয়াছি এই জমি। আমরা ৯.২৭ একরের হারাহারি টাকা পাই। বক্রী জমির হারাহারি টাকা পায় বাদীরা।"

D.W.2 Bikash Chandra Chowdhury, an employee of the Jalil stated in his deposition that:

"মাছের ঘেরে চাকুরী করি। জলিল মিয়াদের ঘেরে। আমি ঘেরের জায়গায় একাউন্টেন্ট।"

D.W.3 Kalipada Sardar, stated in his deposition that:

"আমার জমি ঘেরের পার্শ্বে। বাদীরা ১০ বিঘা ফসল করে। বক্রী জমি নাঃ জমি বিবাদীরা দখল করে।"

He further stated that: "বাদীদের ১০ বিঘা খুঁট দিয়া ভাগ করা। "

Upon perusal of this statement of the witnesses, it is apparent that although defendant try to say that suit land is now possessed by one Jolil, who culturing fish there but D.W.3 did not support the defendants statements rather he has said different story saying that plaintiffs is in possession by separating the land and cultivating there. So when the plaintiffs possession in the suit land being admitted by the defendant witness D.W.3 and all the P.Ws. in a voice supported the possession of the plaintiffs in the suit land. By oral testimony, the plaintiffs possession also been proved in the suit land. Admitted position is that property are not been recorded in the name of the plaintiffs rather it was recorded in the R.S. and S.A. khatian in the name of defendants predecessor and pursuant to that wrong recording they are paying rents to the government. In the absence of any basis of wrong recording the R.S. and S.A. khatian rather defendants contention were not been proved by document as well as the possession being established in favour the plaintiffs, mere paying rents to the government cannot be a basis of title of defendants as well as plaintiffs contention cannot be thrown away and cannot be denied to pass a decree of

title in their favour. Both the courts below thus concurrently failed to assess this aspect of the case and dismissed the suit most illegally. The impugned judgment and decree passed by the courts below are not legal and sustainable in law, which is hereby set aside.

I thus find merit in this rule.

In the result, the Rule is made absolute and the impugned judgment and decree passed by the court below are hereby set aside and the suit is decreed in favour of the plaintiffs.

Send down the L.C.R along with the judgment to the courts below at once.