

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.4143 of 1999

Government of Bangladesh.

.....Petitioner.

-Versus-

Md. Babar Ali Mistry and others

.....Opposite parties.

Mr. Md. Ensan Uddin Sheikh, D.A.G.with

Mr. Mohammad Shafayet Zamil, A.A.G

with Mrs. Shovana Banu, A.A.G

.....For the petitioner.

Mr. Mohammad Hossain, Adv. With

Mr. Purnindu Bikash Das, Adv. with.

Mr. M. Saifuddin Khokan, Adv.

.....For the Opposite parties.

Heard and Judgment on 17.01.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party no. 1 to show cause as to why the judgment and decree dated 10.09.1998 passed by the learned Sub-Ordinate Judge, 1st Court, Satkhira in Title Appeal No. 108 of 1992 reversing those dated 31.03.1992 passed by the Additional Assistant Judge, Satkhira in Title Suit No. 275 of 1980 dismissing the suit should not be set aside.

Facts relevant for disposal of the rule are that opposite party as plaintiff instituted Title Suit No. 275 of 1980 before the Court of Assistant Judge, Satkhira for declaration that recording of the S.A. khatian was wrong and enlistment of the suit property as vested property is illegal and further declaration of title in the suit land.

Plaint Case in short inter-alia is that the suit property was belonged to Shuklal Roy, the predecessor of the defendant no. 1-3, who settled the same to the father of the plaintiff in Chaitra-1340 B.S. on payment of 50% crops of the suit property and subsequently petitioner's father executed a Registered Kobuliat on 09.04.1951 and remaining in the possession in the suit property. After his death plaintiff acquired the suit property and remaining possession. Subsequently plaintiff got to know that the S.A khatian was wrongly been prepared in the name of Defendant No. 1-3 and finally been declared as vested property illegally. Pursuant to the said listing property as vested property, defendant nos. 4-6 gave out to lease the suit property to somebody else and hence the suit.

Defendant No. 4-5 contested the suit by filing written statement denying the plaint case alleging, inter-alia, that admittedly suit property was belonged to Shuklal Roy. After his

death his heirs defendant nos. 1-3 got the property who left this country before Indo-Pak War of 1965 and the property has been enlisted as Enemy Property and finally vested property and a non resident property and it was leased out to one Nowsher Ali vide case no. 205(7)/79-80 and who is in possession in the suit property. Suit is false and is liable to be dismissed with cost.

By the judgment and decree dated 31.03.1992, trial court dismissed the suit on contest.

Challenging the said decree, plaintiff preferred Title Appeal No. 108 of 1992 before the Court of District Judge, Satkhira, which was heard on transfer by the then Sub-Ordinate Judge, 1st Court, Satkhira, who by the impugned judgment and decree dated 10.09.1998 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiff.

Being aggrieved there against defendant-petitioner obtained the instant rule.

Mr. Md. Ensan Uddin Sheikh, the learned Deputy Attorney General with Mr. Mohammad Shafayet Zamil, the learned Assistant Attorney General appearing for the petitioner drawing my attention to the judgment of the court below submits that when the plaintiff has totally failed to prove his Registered Kabuliat

dated 09.04.1951 by way of any evidence, trial court has rightly held the same as not valid document of title and dismissed the suit but the Appellate Court most illegally allowed the appeal and decreed the suit in favour of the plaintiff without applying his judicial mind.

He further submits that when the heirs of the original owner left this country long before 1965 and property has been enlisted as Enemy Property and finally government acquired the same as a vested property on listing the same in the Official Gazette, unless and until the said listing was challenged or being cancelled by the proper Revenue Authorities as well as Land Survey Tribunal, the instant Civil Suit appears to be barred under law and is liable to be dismissed but the court below failed to appreciate this aspect of this case and decreed the suit in favour of the plaintiff illegally. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Purnindu Bikash Das, the learned advocate appearing for the opposite party, on the other hand, drawing my attention to the provision as laid down under Section 145(A) of the State Acquisition and Tenancy Act submits that the instant suit was filed long before the Land Survey Tribunal came into force and

accordingly there is no bar to proceed with this instant suit and the impugned judgment suffers from any illegality.

She further submits that when plaintiff's basic deed of title, Registered deed no. 9451 (Exhibit-1) has proved in court, which has rightly been observed by the Appellate Court through which plaintiff's predecessor acquired the property and thereafter they are still remaining in this country and the said document has ever been challenged in court or declared by any means that it was a fake document, plaintiff acquired valid title in the suit property. Since the plaintiff and his heirs are very much in this country their property can not be enlisted as Enemy Property in any manner by dint of year P.O 78 of 1972.

She further submits that admittedly suit property was declared by the government as a vested property enlisting into the gazette published on 29.03.2012, which is illegal and thus having no basis at all. Since the law of enemy property itself died with the repeal of Ordinance No. 1 of 1969 on 23.03.1974 no further vested property case can be started thereafter on the basis of the law, which is already dead as being decided by our Appellate Division in the case of Saju Hosein and others Vs. Bangladesh and another reported in 58 DLR (AD) (2006) Page 177.

Accordingly the appellate court being the last court of fact has correctly found that the listing of the property as vested property is illegal and decreed the suit in favour of the plaintiff rightly.

He further submits that since the said judgment and decree contains no illegality, rule contains no merit, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a suit for declaration of title as well as further declaration that recording of the S.A. Khatian in the name of government as a vested property is illegal. Plaintiff's further case is that suit property was belonged to Shuklal Roy, from whom plaintiff's predecessor got the property by way of giving Registered Kabuliya on 09.04.1951 and after his death, plaintiff acquired the property as a successor and remaining in possession thereon. Defendants case is that the document dated 09.04.1951 through which plaintiff predecessor acquired the property by Registered Kabuliya is a forged document. After the death of Shuklal Roy, his sons left this country and permanently residing in India and accordingly property was declared as an Enemy Property and finally listed in the gazette as a vested property.

Now the moot question to be decided in this case whether plaintiffs acquired this property by dint of Registered Kabuliat dated 09.04.1951 or it was acquired by the government as vested property. Property was alleged to be acquired by the plaintiff through that document, obviously question of recording the property as a vested property for government on the ground that the owner and his heirs left this country keeping the property uncared of, which was acquired by the government as a Enemy Property does not arise at all But if the document is found to be forged one and not been proved in court, defendant-petitioner has got the case.

Now let us see how this contention is proved in court through evidence. Respective parties adduced evidence in court.

P.W.1 while deposing in court has stated in his deposition that-

‘মালেকের চাহিদা মোতাবেক আমার পিতা ইং ৯.৪.৫১ তারিখে রেজি: কবুলিয়াত প্রদান করে। উক্ত বাকের মিস্ত্রি মারা গেলে পর আমি একাই ওয়ারিশ থাকি এবং না: জমিতে এইভাবে স্ত্রীবান ও দখলকার আছি।’

He further said that

‘আমার পিতার প্রদত্ত ৯.৪.৫১ ইং তারিখের রেজি: কবুলিয়াত তলব দিয়াছি। এইটা ৯.৪.৫১ ইং তারিখের রেজি: কবুলতির জাবেদা নকল গ্রহীতা শুকলাল দাতা বাকের মিস্ত্রী আলেখ্য নং-১।’

Even no where from the lower court's record it will appear that by producing any document or through any oral testimonies it has been proved that the said document dated 09.04.1951 (Exhibit-1) was either been not acted upon or a forged document. Taking into consideration of this fact together with the evidence adducing in this case by both the parties as well as considering the findings of the trial court, the appellate court being the last court of fact held that

‘অত্র মামলায় বিজ্ঞ নিম্ন আদালতের প্রদত্ত রায় এবং সাক্ষ্য প্রমাণাদি বিশ্লেষণ করিলে দেখা যায় যে, এই আপীলকারী বাদীপক্ষ বিজ্ঞ নিম্ন আদালতে নালিশী জমিতে ইং ৯/৪/৫১ তারিখের রেজিস্ট্রী কবুলতি (প্র:-১) এবং উক্ত কবুলতি মূলে প্রাপ্ত নালিশী জামিতে স্বত্ববান এবং দখলকার থাকার বিষয় প্রমাণে সক্ষম হওয়া স্বত্ত্বেও বিজ্ঞ নিম্ন আদালত অযৌক্তিকভাবে মামলাটি ডিসমিস করেন মর্মে দেখা যায়। শুকলাল রায় স্বয়ং নালিশী জমি বাদী পক্ষের মৌরশ পিতা বাখের মিস্ত্রী বরাবর বন্ধোবস্ত প্রদান করেন তাহা প্রমানিত। কাজেই শুকলাল এর মৃত্যুর তদ্বীয় ৩ পুত্র নালিশী জমি প্রাপ্ত হইয়াছিলেন আদৌ তাহা সঠিক নহে। নালিশী জমি অত্র সম্পত্তি হওয়া কিংবা এই জমিতে সরকার পক্ষের স্বত্ব এবং দখলের বিষয় আদৌ প্রমানিত হয় নাই মর্মে দেখা যায়।’

In the supplementary affidavit filed by the petitioner a photostat copy of the gazette notification dated 29.03.2012 (Annexure B) has been placed before this court. In the said gazette notification it appears that in column 201 property of Shudir Kumar and others, which is the schedule land of this suit appears to be gazetted as a vested property. In the said list, it appears that property was sworn to be vested property by V.P. Case No. 205/79-80 dated 03.05.1979.

Save and acceptance this documents there is no other paper as has been placed before this court to show and prove that property was taken as Enemy Property and enlisted subsequently as vested property after the promulgation of P.O. 1972. Ordinance No. 1 of 1969 through which property was enlisted as vested property was found to be repealed after 23.03.1974. Anything listing as vested property starting a V.P. Case thereafter appears to be illegal and got no basis as being held by our Apex Court in the case of Saju Hosein and others Vs. Bangladesh and another reported in 58 DLR (AD) (2006) page 177.

When the petitioner document dated 09.04.1951 a Registered Kabuliat through which plaintiff's predecessor acquired the property is found to be not a forged document and acted upon and the heirs of the plaintiff' predecessor are very

much there in this country, the listing of the property sometimes after 23.03.1974 has got no basis, the title and the observations of the Appellate Court while decreeing the suit in favour of the plaintiff appears to be contains no illegality.

Now the question left whether the suit is maintainable or not since all publication, or order of the revenue authority can only be rectified by the Land Survey Tribunal constituted under section 145A of the State Acquisition and Tenancy Act. State Acquisition and Tenancy Act was amended by Act No. IX of 2004 upon inserting provision of 145A through which Land Survey Tribunal was established. Before that all correction was made through Civil Court since Tribunal was not there. The present suit was filed on 26.5.80 long before establishing of the Tribunal as well the State Acquisition and Tenancy Act was amended. As such the instant suit filed for correction of wrong recording the khatian as vested property was very much maintainable.

Regard being had to the above law, facts and circumstances of the case, I do not find any grounds to interfere in this rule. Accordingly the rule devoids any merits for consideration.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the Appellate Court is hereby affirmed.

Send down the L.C.R. and communicate the judgment to the court below at once.