

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3354 of 2007

Most. Shakila Begum and others
.... Petitioners

-Versus-

Md. Atair Rahman and others
....opposite parties

Mr. M. Sadekur Rahman with
Mr. Mahbub-u-le-Islam, Advocates
.... For the petitioners
Mr. Abul Kalam Azad, Advocate
... For the opposite party
Nos.1 and 3.

Heard and judgment on 11.07.2023

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 14.05.2007 passed by the learned Additional District Judge 1st Court, Satkhira in Title Appeal No.168 of 1999 reversing those dated 14.10.1999 passed by the learned Assistant Judge, Additional Court, Satkhira in Title Suit No.353 of 1986.

Facts in short are that Mohorjan and Nur Jahan jointly purchased 54 decimals land in equal shares by registered kabala deed dated 16.06.1951. Plaintiffs are heirs of Nur Jahan and they claimed title and possession in 27 decimals land alleging that they are possession in above land by way of cultivation. But S.A. Khatian No.673 was erroneously

prepared in the name of Mohorjan for total 54 decimals land.

The suit was contested by defendant Nos.8-10 and 12-14 by submitting two separate sets of written statements. It was alleged by both above defendants that Nur Jahan transferred his share 27 decimals land to her sister-in-law Mohorjan by oral gift in 1360 B.S. and on the basis of transfer S.A. Khatian No.673 was rightly prepared for 54 decimals land in the name of Mohorjan. It has been alleged by defendant Nos.8-10 they have purchased 27 decimals land from Mohorjan by registered kabala deed dated 28.01.1965 and they are in possession in above land by constructing dwelling house. On the other hand defendant Nos.12-14 alleged that they purchased 27 decimals land from Mohorjan by registered kabala dated 24.03.1960 and they are in possession in above land by cultivation.

At trial plaintiffs examined two witnesses and defendant Nos.8-10 examined 3 witnesses and defendant Nos.12-14 examined 3 witnesses. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as defendant Nos.Ka-Ja and defendant Nos.12-14 were marked as Exhibit Nos.A-E respectively.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree defendant Nos.12-14 preferred Title Appeal No.168 of 1999 to the District Judge, Satkhira which was heard by the learned Additional District Judge who on consideration of submissions of the learned Advocates for respective parties and evidence on record set aside the judgment and decree of the Trial Court and remanded the suit for retrial.

Being aggrieved by above judgment and decree appellants as petitioners moved to this Court and obtained this Rule.

Mr. M. Sadekur Rahman, learned Advocate for the petitioners submits that in above suit plaintiffs gave evidence of two witnesses and produced documents. Two sets of defendants also examined 3 witnesses each and produced all their documents at trial which were marked exhibits. The learned Assistant Judge rightly observed that since the petitioners purchased 27 decimals land from Mohorjan by registered kabala deed dated 24.03.1907 they have good title and possession in above land but the fact remains that the petitioners possesses above 27 decimals land from the southern part of the plot. At paragraph No.9 of their written statements defendant

Nos.12-14 has clearly stated above fact of their possession in 27 decimals land from southern part of the disputed plot by way of cultivation. But the learned Judge of the Trial court most erroneously decreed the suit for 27 decimals land from the southern part of the disputed plot which is inconsistent, without any lawful basis, without any lawful evidence and not tenable in law. Before the Court of appeal no party asked for examination of additional witness not wanted to adduce further evidence and neither any party submitted any petition for local inspection on investigation of the disputed property. All three parties adduced their evidence at Trial Court which were available on record of the case. As such, the learned Additional District Judge should have passed a separate and independent judgment on the basis of independent assessment of evidence on record as provided under Order 41 of the Code of Civil Procedure. But the learned Additional District Judge instead of disposing the appeal on merit by giving an independent judgment on the basis of evidence on record has most illegally remanded this suit for retrial which is not tenable in law.

On the other hand Mr. Abul Kalam Azad, learned Advocate for the opposite party Nos.1 and 3 submits that on the basis of purchase of 27 decimals land

from Mohorjan by registered kabala deed dated 28.01.1965 defendant Nos.8-10 are in possession from northern part of the disputed plot by constructing dwelling house and plaintiffs are possessing 27 decimals land from the southern part of the disputed plot. Defendant Nos.12-14 do not have any lawful title or possession in the land of the disputed plot. On consideration of materials on record the learned Assistant Judge has rightly decreed the suit. The learned Additional District Judge should have on the basis of evidence adduced by the plaintiffs and defendant Nos.8-10 and 12-14 should have passed a complete judgment on merit after an independent assessment of evidence on record. But the learned Additional District Judge has unnecessarily and most illegally remanded the suit for retrial which is not tenable in law.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It turns out from the impugned judgment and decree passed by the Trial Court that the learned Assistant Judge clearly mentioned that on the basis of registered kabala deed dated 24.03.1960 which is earlier in time than the registered kabala deed dated 28.01.1965 defendant Nos.12-14 have acquired lawful title and possession in 27 land of Mohorjan

in the disputed plot and defendant Nos.8-10 did not acquire any title in the disputed land on the basis of purchase from Mohorhan by registered kabala deed dated 28.01.1965. Defendant Nos.8-10 did not prefer any appeal challenging above specific findings of the learned Assistant Judge in his judgment and decree. Nor the plaintiffs have preferred any cross appeal challenging above findings of the Trial Court. As such above mentioned submissions of the learned Advocate for the opposite party that defendant Nos.12-14 did not acquire any title or possession in the disputed plot on the basis of registered kabala deed dated 24.03.1960 is not tenable in law.

The learned Advocates for both sides have concurrently stated that there was no deficiency of evidence oral and documentary from all three parties of the suit and no party submitted any petition for adducing further evidence or local inspection or local investigation of the disputed property. As mentioned above the plaintiffs, defendant Nos.8-10 and 12-14 all three parties adduced separate evidence both oral and documentary at the time of the trial and above evidences are on record. No party sought to adduce further evidence or local inspection or local investigation of the disputed land. Instead of writing a full judgment on merit of

the appeal after an independent assessment of the evidence on record the learned Additional District Judge has without any lawful cause and reason most illegally remanded the suit for retrial which is not tenable in law.

It is well settled that a Court of appeal is a Court of both facts and laws and in an appropriate situation a Court of appeal can receive and record additional evidence instead of remanding the suit for retrial to the Trial Court.

On consideration of above submissions of the learned Advocates for respective parties and materials on record I am of the view that the ends of justice will be met if the impugned judgment and decree is set aside and the Court of appeal below is directed to dispose of the appeal on merit in accordance with law and expeditiously.

In above view of the materials on record this Court finds substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 14.05.2007 passed by the learned Additional District Judge 1st Court, Satkhira in Title Appeal No.168 of 1999 is set aside and the learned Additional District Judge is directed to dispose up above

appeal on merit on the basis of evidence on record and in accordance with law within a period of 3(three) months from the date of receipt of this judgment.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER