

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 5828 of 2001

Dilip Kumar Khashkel being died his heirs
1(a) Kalpona Rani Khaskel and others
.....petitioners

-Versus-

Ranu Bala Khashkel and others
----- Opposite parties.

None Appears
----- For the petitioners

Mr. Md. Modersher Ali Khan, Advocate
----- For the Opposite Parties.

Heard on: 14.10.2018, 16.10.2018,
12.11.2018 and Judgment on 15.11. 2018.

Rule was issued in the instant Civil Revisional application calling upon opposite parties to show cause as to why the impugned judgment and decree dated 11.07.2001 passed by the learned Subordinate Judge, 2nd Court, Barisal in Title Appeal No. 81 of 2000 affirming the judgment and decree dated 27.04.2000 passed by the learned Senior Assistant Judge, Barisal in Title Suit No. 277 of 1998 should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The present petitioner as plaintiff instituted Title Suit No. 277 of 1998 in the Court of learned Senior Assistant Judge, Barisal praying for declaration of title and adverse possession impleading the present opposite parties as defendants upon trial

the court of learned Senior Assistant Judge, Barisal dismissed the suit by its judgment and decree dated 27.04.2000.

Being aggrieved by the judgment and decree of the trial court dated 27.04.2000 in Title Suit No. 277 of 1998 the plaintiffs as appellants preferred Title Appeal No. 81 of 2000 before the court of learned District Judge, Barisal which was subsequently heard by the court of 2nd Subordinate Judge, Barisal. After hearing both sides the Appellate Court disallowed the appeal and thereby affirmed the judgment and decree dated 27.04.2000 passed by the learned Senior Assistant Judge. Being aggrieved and dissatisfied by the judgment and decree of the appellate court the sole plaintiffs appellants as petitioners filed the Civil Revisional application which is before me for disposal.

Facts relevant for disposal of the Rule in short is that the original owner Sree Dharendra Nath was owner and in possession of the schedule land by way of inheritance. He transferred the suit land to the plaintiffs comprising of land measuring .18 decimals from khatian No. 173, .30 decimal from khatian No. 176, area 1.10 (one acre ten decimals) from khatian 172 by way of baina nama on 16.02.1968. The same day the whole consideration money was received by the said owner Sree Dharendra Nath and possession was handed over also on that day. Since 16.02.1968 the suit land is under peaceful possession of the plaintiff-appellant-petitioner. After some days the plaintiff

requested the defendant to complete the registry of the suit land as per bainanama. The said Dherendra Nath was suffering from illness, subsequently liberation war started and more than 3 years passed. Thereafter the vendor Dherendra Nath died in the year 1976 leaving behind his wife who was greedy and under different pretext she delayed and finally refused to register the Sabkabala in favour of the plaintiff. As because the executants received whole consideration money and the wife Ranu Bala has no interest in the suit land. The Defendant under various pretext delayed the registry and finally refused to register the suit land on 30.11.1985 meanwhile the plaintiff appellant petitioner have been living in the suit land for more than 12 years without any interference from any corner.

The defendants (being opposite party No. 2) in the instant civil revision filed a written statement denying the materials allegations and inter alia stated that the suit cannot run in its present form as being barred by limitation and barred by Section 42 of Specific Relief Act. It is also stated that the bainanama of the plaintiff is false as because plaintiff was a minor at the time of making the Bainanama. The bainanama is antedated. The defendant No. 2 also stated that the original owner Sree Dhirendro Nath loved the defendant No. 2 very much and he gave the suit land in favour of the defendant No. 2 by a registry deed on 2.10.1970 measuring land 1.70 acres. The defendant also stated in his written statement that the father of the defendant

took possession on behalf of the defendant No. 2. The defendant No. 1 also stated that the suit land was received by the defendant No. 2 after attaining majority and now he is possessing the suit land. The defendant also stated that the defendant No. 2 also handed over .10 decimals of land by way registered sale deed and the father of the plaintiff is the identifier of the same deed. The defendant further stated that the wife of late Dherendro Nath is staying in the house of Dhirendro Nath and the plaintiff has no any possession over the suit land and the suit is liable to be dismissed.

The matter appeared for several days in the cause list for hearing but however none appeared for the petitioner while Mr. Modersher Ali Khan, Advocate represented the opposite party. I am inclined to dispose of the matter for ends of justice.

Learned Advocate for the opposite party No. 2 submits that both the courts below upon correct appraisal of evidences and interpretation of the laws lawfully came upon their concurrent findings and the judgments of the courts below do not call for interference. He submits that both the courts below came to the concurrent finding that the petitioner was a minor at the time when he claims to have purchased the suit land upon being party to a bairanama for purpose of purchase. He submits that moreover it is an unregistered bairanama that the petitioner is claiming from. He takes me to the judgments and contends that

both courts upon adducing evidences came upon their finding that the petitioner was a minor at that time and therefore was not legally competent to be a party to any legal instrument. He further submits that both courts also upon deposition of witnesses came upon the concurrent findings of possession of the defendants and found that the plaintiffs were not in possession. He also submits that the courts below upon proper scrutiny into the documents placed, came upon the finding that there is no specification in the schedule of the suit land in the plaint. He further submits that the trial court gave a finding that there is inconsistency in the date of the bainanama. In this context he pursued that this inconsistency proved that the bainanama was only a subsequent creation. In the light of his submissions he concludes that the Rule bears no merit and ought to be discharged.

Heard the learned Advocate for the opposite party No. 2, perused the application and the materials on records before me. Upon examination it is apparent that both courts below gave concurrent findings of fact regarding the plaintiff being a minor at the time of the so called unregistered bainanama. It also appears from the judgments that the courts below gave specific consistent findings on the plaintiffs not being in possession and the defendants being in possession. After scrutiny I find that the courts below came upon both their findings on the issue of minority and the issue of possession upon discussing the

deposition of the witnesses and evidences. As to non specification of the suit land in the schedule of the plaint the courts below also came upon a correct, consistent finding. Regarding the issue of limitation the trial court in its finding stated that the suit is barred by limitation. But however the appellate court was silent on that point.

Be that as it may considering the whole scenario of the case I am of the considered view that the instant Rule bears no merit otherwise therefore the issue of limitation need not be dwelt upon further.

From the foregoing discussions made above I am inclined to hold that both the courts upon proper assessment of evidences and deposition and taking other facts and circumstances properly into consideration came upon their concurrent and consistent findings and there is no reason to interfere with those. I find no merit in this Rule.

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

Send down the lower courts records at once.

Communicate the judgment at once.