

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.1404 of 2008

Companigonj Bodiul Alam High School
represented by its Head Master

...Petitioner

-Versus-

Government of Bangladesh and others

...Opposite Parties

Mr. Md. Idrisur Rahman with Md. Shahidulla
and Md. Bodiuzzaman Tapadar, Advocates

...for the petitioner

Ms. Promila Biswas, D.A.G.

... for the opposite parties

Judgment on 17.11.2011

This Rule at the instance of plaintiff-respondent was issued on an application under section 115 (1) of the Code of Civil Procedure to examine the legality of judgment and decree dated 4.2.2008 (decree signed on 11.2.2008) passed by the Additional District Judge, First Court, Comilla in Title Appeal No.356 of 2007 allowing the same on setting aside those dated 27.6.2007 passed by the Assistant Judge, Muradnagar, Comilla in Title Suit No.98 of 2005 decreeing the suit.

The plaintiff's case, in brief, is that Harish Chandra Deb and others were original owners of 81 decimals of land at Mouza

Nagarpar within Muradnagar Police Station of Comilla District (more particularly described in the schedule of plaint). On behalf of them, their appointed Nayeb gave settlement of the same to Begumganj Junior High School (now Companigonj Bodiul Alam High School) by way of a *dakhila*. The said school being in possession of the suit land filed Miscellaneous Case No.17 of 1966-67 under section 143 of the State Acquisition and Tenancy Act and created separate khatian No.227 in its name. The creation of separate khatian in its name was subsequently affirmed by order dated 21.1.2001 passed in Miscellaneous Case No.4 of 2000-01 by the Additional Deputy Commissioner (Revenue), Comilla. During the revisional survey a draft proposal of khatian (D. P. Khatian No.5) was recorded in the name of the school. In that event, the Tahshilder of Nabipur (East) Union Land Office filed an objection under rule 30 of the Tenancy Rules, which was rejected. Thereafter, he (Tahshider) preferred an appeal under rule 31 of the said Rules against the aforesaid order of rejection, which was also dismissed. The school paid rents to the Government against the suit land up to 1411 B.S. and has been in possession thereof by constructing ground floor of a multistoried market and letting out the shops constructed to different tenants. The Assistant Officer of Nabipur (East) Union Land Office (defendant-opposite party No.5) threatened the plaintiff-school to evict from the suit land on different occasions and lastly on 26.9.2005, thus the cause of action for institution of the suit arose.

The Government-defendants (herein opposite parties) contested the suit by filing a joint written statement denying the material allegations of the plaint contending *inter alia*, that C.S. Khatian Nos.42 and 44 were recorded in the name of Harish Chandra Deb and others in respect of only 10 decimals of land. The said Harish Chandra Deb and others had no right, title and interest over the remaining 71 decimals of land in the said khatians; that the suit land was recorded as *khash* land of Government in S.A. Khatian No.1. The plaintiff. school never paid any rent to the Government by creating separate khatian and instituted the present suit with an ill motive to grab the Government land.

On the aforesaid pleadings the trial Court proceeded with trial after framing issues namely, whether the suit was maintainable in its form; whether the plaintiff had prima facie title and exclusive possession over the land and whether he was entitled to get the relief as prayed for.

In order to prove its case the plaintiff-school examined four witnesses including its Head Master Kazi Golam Sorwar and three others as P.Ws.1-4. Plaintiff-school also adduced several documentary evidence including eleven rent receipts showing payment of rents against the suit land up to 1411 B.S. (vide exhibit-3 series); a *dakhila* showing settlement of the suit land (81 decimals) in favour of Begumganj Junior High School (exhibit-4); rejection order

passed on the objection filed against the D. P. Khatian in name of the school (exhibit-5); order of creating separate khatian in Miscellaneous Case No.17 of 1966-67 in favour of the school (exhibit-6).

On the other hand, the defendants examined one witness namely, Md. Ruhul Amin, the Assistant Officer of Nabipur (East) Union Land Office and adduced some documentary evidence namely, the certified copies of C.S. Khatians as exhibit-Ka series and that of S.A. Khatians as exhibit:Ka-1 series.

After conclusion of trial, learned Senior Assistant Judge, Muradnagar, Comilla found the plaintiff-school in exclusive possession over the entire suit land, and decreed the suit by his judgment and decree dated 27.6.2007. Learned Judge, however, observed that the plaintiffs claim of title over the entire 81 decimals of land was not proved. In passing the said judgment, learned Judge relied on the case of Abul Hashem Dhali and others Vs. Md. Idris Bari and others reported in 15 BLD (AD) 106 to show that there is no scope of touching title in deciding a suit for perpetual injunction. He also relied on the case of Erfan Ali Vs. Joynal Abedin Mia (late) represented by his legal heirs Golenur and others reported in 35 DLR (AD) 216 to show the importance of rent receipts as evidence of possession and collateral evidence of title.

The Government, represented by the Deputy Commissioner, Comilla and other defendant-officials preferred Title Appeal No.356 of

2007 before the District Judge, Comilla challenging the said judgment and decree of trial Court. The Additional District Judge, First Court, Comilla ultimately heard the appeal and though found exclusive possession of the plaintiff-school over the suit land, allowed the same in contrary by his judgment and decree dated 4.2.2008 giving rise to the instant civil revision. Learned Additional District Judge passed his judgment on the grounds that:

- (a) the *dakhila*, upon which the plaintiff-school claims its title over the suit land, appears to be forged and therefore, the school has no prima facie title over the same.
- (b) it appears from exhibit-Ka series that the suit land was a cattle-field used by the people and it is not clear as how the owners of C.S. Khatian Nos.42/44 acquired the land. Even if the alleged settlement in favour of the school is admitted, it could not acquire title on more than 10 decimal of land in Plot No.150 in C.S. Khatian Nos.42/44.
- (c) That the trial Court found no prima facie title of the plaintiff-school over the suit land except 10 decimals, but it did not file any cross-objection against the said finding.

Mr. Md. Idrisur Rahman, learned Advocate appearing for the petitioner submitted that both the Courts below concurrently found exclusive possession of the plaintiff-school over the entire suit land, but the appellate Court dismissed the suit touching the complicated

question of title and thereby virtually decided the title of the suit land against the plaintiff, which is beyond the scope of a suit for perpetual injunction. Since the present suit was for perpetual injunction, there was no legal requirement to challenge the observation of trial Court regarding the plaintiff's title over the suit land.

On the other hand, Ms. Promila Biswas, learned Deputy Attorney General appearing for the Government-Opposite Parties submitted that in a suit for perpetual injunction, the Court can look into the question of title incidentally, which the appellate Court did in the present case and found no prima facie title in favour of the plaintiff-school. Therefore, the school being a trespasser in the suit land is not entitled to get any relief by way of injunction. The lower appellate Court in dismissing the suit, did not commit any error of law and as such the Rule is liable to be discharged.

I have gone through the records including the judgments of the Courts below and considered the submissions of the Advocates for both the parties. A suit for perpetual injunction is actually a suit for protection of possession, in deciding which the Court needs not to enter into any disputed and complicated question of title, except to the extent that it would help the Court in finding possession of the parties. This view lends supports from the cases of Akhter Hossain (Md.) alias Akhter and others Vs. Shamsuddin Moulvi alias Md. Shamsul Huq and others reported in 8 BLC (AD) 72 , Jobayer

Hossain and others Vs. Noor Hafez and another in 56 DLR (AD) 22, and also from 15 BLD (AD) 106, which the trial Court relied on.

In the present case the alleged *dakhila* whether a forged or genuine document and if genuine whether it conveyed title of the entire suit land to the plaintiff-school is a complicated and disputed question of title, which can be decided in a title suit. But it can be safely said that the plaintiff-school by adducing oral and documentary evidence including the *dakhila*, upon which it claimed its title over the entire suit land (81 decimals); eleven rent receipts showing payment of rent against the suit land up to 1411 B.S.; rejection order on the objection filed by the Tahshilder against the D. P. Khatian proposed in name of the school and order of creating separate khatian in Miscellaneous Case No.17 of 1966-67 in its favour, has been able to prove its prima facie title and exclusive possession over the suit land.

The appellate Court itself in its judgment found that "The plaintiff-school created separate khatian in its name long before and paid rents to the Government against the suit land. During the revisional survey, D.P. Khatian was recorded in its name, and an objection and appeal under the Tenancy Rules filed by the Government were also rejected and dismissed."

In view of exclusive possession of the plaintiff-school in the suit land as concurrently found by the Courts below, the school is entitled to a decree for perpetual injunction. Besides that, the plaintiff being a school, a sort of public interest is also involved in the case.

For the reasons stated above, I find substance in submissions of learned Advocate for the petitioner. The impugned judgment and decree of the lower appellate Court does not appear to be legally sustainable and as such it is liable to be set aside. The complicated question of title is, however, kept open to be decided in a proper suit.

In the result, the Rule is made absolute. The impugned judgment and decree dated 4.2.2008 passed by the Additional District Judge, First Court, Comilla in Title Appeal No.356 of 2007 is hereby set aside and those dated 27.6.2007 passed by the Assistant Judge, Muradnagar, Comilla in Title Suit No.98 of 2005 is restored. The defendants are restrained from disturbing the plaintiffs possession in the suit land and also from allotting the same elsewhere.

Send down the lower Courts records.