

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.1658 of 2008

Mozidul Haque and others

.....*Petitioners.*

-Versus-

Mst. Najrin Begum and others

.....*Opposite parties.*

None appears.

.....*For the petitioners.*

Mr. Md. Abdur Rouf, Advocate.

.....*For the Opposite parties.*

Heard and Judgment on 12.06.2024.

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 11.02.2008 passed by the Joint District Judge, 2nd Court, Chapainawabganj in Title Appeal No. 09 of 2006 reversing those dated 28.09.2005 passed by the Senior Assistant Judge, (In Charge), Nachole, Chapainawabgonj in Other Class Suit No. 54 of 1995 dismissing the suit should not be set aside.

Opposite Party Nos. 1-8 as plaintiff filed Other Class Suit No. 54 of 1995 in the Court of Assistant Judge, Nachole,

Chapainawabgonj against the petitioners and the government for permanent injunction.

Plaint Case in short, inter-alia, is that the schedule land along with non-suited land described in the plaint was recorded in Khatian No. 2 in the name of Bajendra Mohan Moitro Gopikul Moitro and from whom Afsar Ali, Amena Khatun and Jahanara Khatun took settlement in the year of 1352 B.S at a jama of taka 16. They got physical possession of this settle land. Afsar Ali and others paid rent to the Jamindar. Afsar Ali and others for convenience of possession of the land filed a Suit. In that suit the land lord and Govt. are the parties and this suit was ultimately compromised in term of solenama and the plaintiff paid rent after mutation of their names. Afsar Ali and others being in need of money sold the same on 14.01.1976 to Abdul Khaleque, father of plaintiff Nos. 1-4. Subsequently Abdul Khaleque transferred these land by register kabla in favour of plaintiff Nos. 1-4. One of the co-sharer Jahanara Khatun sold some land out of his sharer to Afsar Ali and Amena Khatun. Subsequently on 12.11.1976 by registered sale deed, 2.67 acres of land was sold in favour of Amena Khatun and Afsar Ali. Afsar Ali and Amena Khatun executed a Power of Attorney in favour of Doctor Azad Ali, on 11.11.77. Azad Ali on the strength of that power of Attorney

executed registered a kabala in favour of Hazara Khatun on 02.05.1985. Hazara Khatun subsequently for convenience of possession exchanged her land of Plot No. 185 and 186 with Plot No. 118 and 119 with Alhaj Nasiruddin and executed a registered deed of exchange. Afsar Ali also transferred some land to Azad Ali by registered deed. Plaintiffs are thus in possession in the suit land. As the defendant gave threat of dispossession from the schedule land, plaintiff filed the suit for permanent injunction against the defendant.

Defendant Nos. 1-9 contested the suit by filing written statement denying the plaint case alleging inter-alia that suit land is the khas land of the Govt. who got it from the ex-landlord as excess land and the S.A. and R.S. record were correctly prepared in the name of the Govt. of Bangladesh. Defendants are the members of the Nachole Varandi landless Somabaya Samity. They took lease of 1.06 acres of land with tank and it's bank of current plot No. 132 and old Plot No. 79. Along with the tanks, defendant took two more tanks of current Plot No. 245 and 55 and they are rearing fishes all these tanks. In order to grab the Govt. khas land plaintiff has created some collusive document and filed this false suit old Plot No. 227 and current plot no. 157 is pond. Defendant took lease the same from the Nachole Union Parishad.

Old plot no. 118 and current plot No. 371, there is a pond covering .67 acre. Defendants also taken lease of those ponds from the Union Parishad. Old Plot No. 17 and 16 are also khas land of the Govt. in which defendant No. 9 Robi Karmoker along with 08 others have been living by constructing house. These persons are necessary party of the suit. Other person, who took lease from Nachole Union Parishad from Plot No. 157 and 371 are also necessary party. Plaintiffs have no possession in any part of the suit land and hence suit is false and is liable to be dismissed with costs.

Defendant No. 11 also contested the suit by filing separate written statement, denying the plaint case, alleging, inter-alia that plaintiff's claim in the suit is false. They have created some false and collusive paper to grab this land. Suit pond is used by the general public and as such the landlord had no right to settle and lease out the same. After State Acquisition and Tenancy Act it was vested to the Govt. Plaintiff in collusive with the staff has created some paper although they do not have any title or possession in these land and hence the suit is thus liable to be dismissed.

By the judgment and decree dated 28.09.2005, Trial Court dismissed the suit.

Being aggrieved there against plaintiff preferred Title Appeal No. 9 of 2006 before the Court of District Judge, Chapainawabgonj, which was heard on transfer by the Joint District Judge, 2nd Court, Chapainawabganj, who by the impugned judgment and decree dated 11.02.2008 allowed the appeal and after reversing the judgment of the trial court, decreed the suit.

Challenging the said judgment and decree defendant-petitioner obtained the instant rule.

Although the matter is posted in the list with the name of the learned advocate of the petitioners and it was adjourned on several days on the prayer of the learned advocate for the petitioners but no one appears to press the rule.

Mr. Md. Abdur Rauf, the learned advocate appearing for the opposite parties on the other hand, placing the judgment of the court below submits that Appellate Court being the last court of fact has rightly found that plaintiff has got a prima-facie case and got exclusive possession over the suit land and defendant failed to prove his alleged story of taking settlement by producing any registered document and oral witness before the court and accordingly Appellate Court committed no illegality in setting aside the said judgment of the trial court. The impugned judgment

is thus contains no illegality, he finally prays that rule contains no merits, it may be discharged.

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

This is a suit for permanent injunction. Plaintiffs claimed that plaintiff's predecessor Afsar Ali and others took settlement of the suit land from the Ex-Jamindar on 15th Choitra 1352 B.S. and while remaining in possession Afsar Ali and others filed a suit for partition being Other Class Suit No. 46 of 1974 and got a Solay decree from the court and possessing the suit land by rearing fish on the pond, which is a pond. When the defendants try to dispossess them from the suit land, they instituted this suit.

On the other hand, defendants claimed that suit property was admittedly belonged to Ex-Jamindar and after the abolishing of Jmaindari, it was acquired by the government as excess land and since the property is a pond and using by the local people, the Jamindar had no right to settle and lease out of this land and S.A and R.S. khatian were correctly been recorded in the name of the government and subsequently local fisherman, who are rearing fish in the suit pond.

In support of their respective case, plaintiffs have adduced a number of witnesses including a D.C.R and rent receipt as well as a decree obtained from a competent civil court in Other Class Suit No. 46 of 1974 and adduced a number of oral witnesses in support of his taking settlement and possession of the suit property.

On the other hand, defendants although adduced a number of oral witness in court and claimed that they have taken lease from the government but they have admitted that lease period has been expired and accordingly they are not in possession although they have failed to produce any document to prove that the property was ever been surrendered to the ex-landlord and any document of taking settlement from the government. Trial Court travelled beyond the pleadings and decided the suit as if it was either a suit for declaration of title or partition.

In a suit for permanent injunction, the main issue is to be decided that whether the plaintiff has got prima-facie case and got exclusive possession or not. The question of title may come incidentally. In the instant suit plaintiff claimed the property to have obtained settlement from the ex-landlord. Their title has been ascertained as well as their share have been allocated in a partition suit, which was instituted earlier in the year 1974 and that decree has not ever been challenged in any court. When the plaintiff's

title is been ascertained by a competent civil court in an earlier instituted partition suit, Trial Court most arbitrarily opined that, that decree was false and concocted one and plaintiffs failed to prove their title over the suit property illegally. This finding was reversed by the Appellate Court. Appellate Court further held that when the defendants failed to prove by way of any document that the property was been surrendered, the question of taking settlement by the defendants, considering the property as a vested property does not arise at all. In view of the fact, when the plaintiff's case was proved and their possession is been ascertained through a decree passed earlier in a partition suit being Other Class Suit No. 46 of 1974 and their possession is been confirmed through rent receipt, plaintiffs definitely has got prima-facie case as well as exclusive possession over the suit property and accordingly they are entitled to get an order of injunction, which was rightly been given by the Appellate Court.

Regard being had to the above factual aspect of this case, I am of the view that the appellate court committed no illegality in decreeing the suit after reversing the judgment of the trial court dated 28.09.2005.

I thus find no merits in this rule. 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.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

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