IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Md. Emdadul Huq

Civil Revision No. 3881 of 2005

Nazrul Fakir and another
.....Petitioners.
-Versus-
Sreedeb Kumar Ghose and others.
…….Opposite parties.
None appears.
..... For the petitioners.
Mr. Bivash Chandra Biswas with
Mr. Md. Didar Ali Fakir, Advocates
..... For the opposite parties.

Hearing: The 27th and 28th October, 2014.
Judgment on : The 12th November, 2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and decree dated 21-04-2005 by which the learned Joint District Judge, 1st Court, Narail dismissed Title Appeal No. 148 of 2003 and thereby affirmed those dated 16-9-2003 passed by the learned Senior Assistant Judge, Lohagora, Narial decreeing Title Suit No. 155 of 1996 instituted by the opposite party No.1 (plaintiff) for declaration of his title to and recovery of possession of the suit land.

Case of Plaintiff (opposite party No.1):

Plaintiff (Opposite party No.1), claims that the suit land as described in the schedule to the plaint originally belonged to the four C.S recorded tenants being Uttom Kumar Ghosh, Someshwar Ghosh and two others, having equal shares.

By two registered kabalas dated 04-05-1943 and 07-05-1945, one Chaplola Bala purchased the suit land from the heirs of the said two brothers Uttam and Someshwar and the S.A. khatian No. 288 was prepared in her name. Subsequently Chapola Bala sold the suit

land by a kabala dated 9-5-1974 to one Shabitri who sold the same to the plaintiff by kabala dated 10-4-1984. Plaintiff had been in possession of the land. He also obtained mutation and paid rent.

But defendant Nos. 1 and 2, on 05-11-1996, threatened plaintiff's possession on the claim that they had acquired the suit land in an auction proceeding pursuant to the decree in a Rent Suit initiated against the said Chapola Bala. So plaintiff filed the present suit initially for a decree of permanent injunction. But, during pendence of the suit, the defendants dispossessed the plaintiff on 20-11-1996. So plaintiff amended the plaint and prayed for declaration of his title to and khas possession of the suit land.

Case the of defendants-petitioners:

Defendant Nos. 1 and 2, in their written statement, deny plaintiff's title and possession and also the alleged dispossession. They contend that the suit is not maintainable, that it is bad for defect of party and barred by limitation and also by the principles of estoppel, waiver and acquiescence.

However the defendants admit that the suit land was acquired by Chapola Bala from the heirs of the C.S. tenants. But they claim that the interest of Chapola Bala had extinguished as a result of the decree passed against her in Rent Suit No. 301 of 1962 of the Second Court of Munsif, Narail. The decree was put in execution in Rent Execution Case No. 103 of 1963 in which defendant No. 2, Monsur Sheikh auction purchased the suit land. The auction sale was confirmed on 03-9-1963 and the said Monsur Sheikh got delivery of possession through court. Defendant No.1 is the brother-in-law of Monsur Sheik and they have been in joint possession pursuant to an arrangement of an exchange of the non-suit plot No. 492 of the neighboring mouza.

Proceedings and decisions of the Courts below.

At the trial, plaintiff produced oral and documentary evidence through four witnesses including an advocate commissioner (P.W.1) who conducted a local inspection about the

existence of thatched rooms on the suit land. All the P.W's were cross-examined by the defendants. But the defendants did not produce any evidence, whether oral or documentary.

Upon discussion of the evidence on record the trial Court decided all the issues in favour of the plaintiff and decreed the suit.

In the Appeal preferred by the defendant, the appellate Court concurred with the findings and decision of the trial Court and dismissed the Appeal by the impugned judgment and decree.

Deliberation in Revision

At the hearing of this Revision, none appears for the petitioner defendants, although the matter has been appearing in the list with the names of the learned advocates for both sides on consecutive days.

Mr. Bivash Chandra Biswas with Mr. Didar Ali Fakir, the learned advocates, for the opposite party plaintiff, submits that the issues raised in the suit are questions of fact and both the courts below, on consideration of the evidence on record, decided all the issues in favour of the plaintiff with regard to title, possession and dispossession and therefore no interference is necessary in this Revision.

Mr. Fakir, the learned Advocate, lastly submits that the appellate Court legally and correctly rejected the application of the defendants filed in the Appeal for remand of the suit and that similar grounds taken in this Revision need can not be considered.

Findings and decisions in Revision:

In the Revisional application the petitioners have taken the grounds that the plaintiff could not prove his case by credible evidence and that the defendants filed some documents but did not produce them in evidence, and yet the trial court erroneously held that those documents were forged and that the appellate court should have sent the suit back on remand.

I have perused the materials on record and considered the submission of the learned advocates for the opposite party

(plaintiff) and the above grounds taken by the defendant-petitioners in the revisional application.

Both sides admit that Chapola Bala acquired the suit land from the heirs of the C.S tenants and the S.A record was prepared in her name.

Plaintiff claims title and possession by virtue of purchase from the successor-in-interest of the said Chapola Bala. On the contrary defendants claim their title and possession on the basis of auction purchase in an Execution Case pursuant to the decree passed in a Rent Suit.

So the burden lies upon both sides to prove their respective claim.

With regard to proof of the claim of the plaintiff, I find that both the courts below, upon consideration of the oral and documentary evidence, recorded concurrent findings in favour of the plaintiff with regard to his title, possession and dispossession.

I find nothing on record to disagree with the findings of the courts below on these questions of fact.

With regards to defendant's claim both the courts below found that defendants failed to prove their case by producing any evidence whatsoever.

From the record of the trial Court it is revealed that the defendants participated in peremptory hearing of the suit by cross-examining the P.Ws. and took several adjournments, but did not produce any evidence in the trial Court.

In the appeal the defendants did not take any attempt to produce any additional evidence. They simply filed an application (Annexure-C) for remand on the ground that they wanted to produce evidence.

From the certified copy of that application (Annexure-C), it appears that they have not stated any legal or other acceptable reason for sending the suit back on remand except their own failure to produce any evidence.

The appellate court considered the application in its judgment and found that there was no ground for remand.

I agree with the decision of the appellate court on the issue of remand simply because the defendants (appellant) did not take any step to adduce any evidence whether in the trial or in the appeal.

However it appears that the learned Assistant Judge as the trial court considered the photo copy of a bainama filed by the defendants and recorded the following observation and findings:

> "ঐ ফটোকপিতে অনেক উপরিলিখিত দেখা যায় এবং ভিন্ন লেখক কর্তৃক নড়াইল ২য় মুনসেফী আদালত শব্দটি লেখা দেখা যায়। অত্রাদালত পুরো একশত ভাগ নিশ্চিত যে, বিবাদী পক্ষ সম্পূর্ণ জাল জালিয়াত ভাবে ঐ কাজ সৃষ্টি করেন"।

It is evident that the trial Court recorded the above finding on the basis of a photo copy that was neither admitted in evidence, nor even produced by the defendant for admission thereof as evidence. So the above finding was not legally recorded and hence to be ignored.

In view of the above, I hold that the Rule is to be discharged with a direction to ignore the above finding of the trial court.

In the result, the Rule is discharged with the direction that the observation and finding of the trial Court in the body of the judgment with regard to the alleged forgery of the bainama referred to therein is to be ignored.

No order as to costs.

Send down the lower court records with a copy of this judgment.

Habib/B.0