

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 2406 of 2008

Nirmal Chandra Halder

...Petitioner

-Versus-

Hasina Begum and others

...Opposite Parties

Mr. Bhabesh Chandra Ghosh with Mr. Md.  
Mubarak Hossain, Advocates

...for the petitioner

Mr. Feroz Alam, Advocate

... for the opposite parties

Judgment on 4.10.2012

This Rule at the instance of the plaintiff-respondent was issued to examine the legality of judgment and decree dated 1.4.2008 (decree signed on 7.4.2008) passed by the Joint District Judge, Second Court, Jhalakathi in Title Appeal No. 146 of 2004 allowing the same and reversing those dated 24.10.2004 passed by the Senior Assistant Judge, Kathalia, Jhalakathi in Title Suit No. 134 of 1999.

The petitioner Nirmal Chandra Halder and his aunty Nando Rani Halder as plaintiffs instituted a suit for perpetual injunction on the averments, *inter alia*, that an area of 6.75 acres of land appertaining to C.S. Khatian No.29 of Koikhali Mouza under Police Station Kathalia, District Jhalakathi originally belonged to Gour Sunder Mondal and

others. Gour Sundar transferred  $6\frac{3}{4}$  bighas of land in favour of Jogesh Chandra Halder, Umesh Chandra Halder, Satish Chandra Halder and Sharat Chandra Halder, the predecessors-in-interest to the plaintiffs and proforma defendants 16-20 by way of a registered sale deed No.5 dated 3.1.1928. After so transfer, they were possessing the land by paying rents to the Government. As the land measuring 3.87 acres in plot Nos.756 and 701 and 1.72 acres of land in plot No.806 of C.S. Khatian No. 29 was wrongly recorded in S. A. Khatian No.393 in names of the previous owners Gour Sundar and others, their (plaintiffs and proforma defendants) predecessors filed a case being No.504 of 1956, which was ultimately allowed on compromise by judgment and order 11.11.1957. Consequently the record was correctly prepared in the names of their predecessors by including 1.72 acres of land in plot No.387 into S. A. Khatian No.735 under the same Mouza. The plaintiffs being heirs of the aforesaid Satish Chandra and Sharat Chandra inherited the land to the extent of their share. The sale deeds in names of the defendants Yasin Molla and others were false, forged, fraudulent and collusive and they had no possession in the land. The defendants had threatened the plaintiffs for making hindrance in their peaceful possession in the suit land on 3.1.1999. Thus the cause of action for the suit arose.

Initially the suit was for perpetual injunction for restraining the defendants from entering into the suit land or from dispossessing the plaintiffs therefrom. During pendency of the suit, plaintiff 2 died leaving

behind plaintiff 1 and proforma defendants 16-20 to inherit her left out properties and the plaint was amended to that effect by order dated 15.4.2002. Subsequently the plaint was amended again by incorporating a prayer for declaration that the defendants' title deeds as described in ~~the~~ schedule of the plaint were forged and not binding upon the plaintiff.

The predecessors-in-interest to opposite parties 1(ka)-(tha), 5(ka)-(kha) and opposite parties 3-4 and 6-8 being defendants 1-3, 5 and 12-15 contested the suit by filing a joint written statement denying the material facts of the plaint contending, *inter alia*, that the recorded tenant of Plot No.387, R.S Khatian No.394 corresponding to S. A. Khatian No.393 Bhupendra Nath Mondal and others sold the entire 172 decimals of land in the said plot by way of three registered sale deeds all dated 22.5.1956 in favour of the defendants. Since then they were in possession of the land by paying rents to the Government. Earlier the predecessors-in-interest to the plaintiffs and proforma defendants had tried to evict them from the suit land, in which event a petition under section 144 of the Code of Criminal Procedure was filed. In that proceeding the possession of suit land was determined in favour of the defendants. In fact the plaintiffs filed the present suit for grabbing the land.

On the above pleadings, trial Court framed the issues, namely, whether the suit was maintainable in its present form, whether the

plaintiffs had prima facie title and exclusive possession over the suit land and whether they were entitled to get the relief as prayed for.

Both the parties examined their witnesses and adduced documentary evidence in favour of their respective cases. After conclusion of trial, learned Senior Assistant Judge by his judgment and decree dated 24.10.2004 decreed the suit granting injunction in favour of the plaintiff and thereby restrained the defendants from entering into the suit land or disturbing the plaintiff's possession therein.

Some of the defendants, namely, Yasin Mollah and others preferred Title Appeal No.146 of 2004 before the District Judge, Jhalakathi against the said judgment and decree. Learned Joint District Judge, Second Court, Jhalakathi ultimately heard the appeal and allowed the same by judgment and decree dated 1.4.2008, challenging which the plaintiff-respondent moved in this Court with the present revisional application and obtained the Rule with an order of *status quo* in respect of possession of the suit land.

Mr. Md. Mubarak Hossain, learned Advocate appearing for the petitioner submits that although the appellate Court observed the trial Court's judgment to be defective because of not framing any issue on the validity of defendant's title deeds and deciding the same, disposed of the appeal with same mistake. He further submits that the basis of the appellate Court's judgment is that the khatian (exhibit: 2-ka) does not contain plot No.387, whereas the plaintiffs claimed .57 decimals of

land in plot No.387 of S.A. Khatian No. 735. Still the trial Court decreed the suit, which was not sustainable.

In fact the predecessors-in-interest to the plaintiffs and proforma defendants earlier had instituted Case No.504 of 1956, which was allowed on compromise by judgment and order dated 11.11.1957. In pursuance of the said judgment, Khatian No.735 was amended by inserting plot No.387 therein. Therefore the findings of the appellate Court are based on gross misreading of evidence and as such the impugned judgment and decree is liable to be set aside.

Mr. Feroz Alam, learned Advocate appearing for the opposite parties submits that the defendants claimed title to the suit land by virtue of three registered sale deeds. They also proved their possession in the suit land by exhibits:Gha-Gha(2), which were documents in respect of a proceeding under section 144 of the Code of Criminal Procedure. But the trial Court without considering those documentary evidence, decreed the suit for perpetual injunction in favour of the plaintiffs and thereby committed gross illegality and the appellate Court rightly passed the judgment.

On a query by the Court as to whether the present suit could be effectively disposed of without any declaration on validity of the title documents as described in schedule ~~1~~ Khaq of the plaint, both the learned Advocates have agreed that the Courts below ought to have framed an issue to that effect and decided the same.

Under the facts and circumstances I am of the view that the Courts below committed error of law in deciding the suit and appeal without framing issues on title of the plaintiffs, and on validity of the title documents of defendants as described in schedule ~~1~~Khaq of the plaint and deciding the same. The suit should, therefore, be remanded to the trial Court for framing and deciding the issues.

In the result the Rule is made absolute. The impugned judgment and decree dated 1.4.2008 passed by the Joint District Judge, Second Court, Jhalakathi in Title Appeal No. 106 of 2004 is hereby set aside. The suit is remanded to the trial Court. The trial court will frame issues on plaintiffs title to the suit land, and validity of the title documents of the defendants as described in schedule ~~1~~Khaq of the plaint, and will proceed to determine the issues. In doing so if the trial Court considers that further evidence is required to be adduced, it is at liberty to give the parties such opportunity.

Send down the lower Courts records.