

Bench:
Mr. Justice Bhishmadev Chakraborty
Civil Revision No. 1917 of 2018
Abdul Kadir and others
.....defendant-petitioners
-Versus-
Mohammad Jamshid Miah and others
.....plaintiff-opposite parties
Mr. Mohammad Yeasin Khan, Advocate
.....for the petitioners
Mr. Mohammad Abul Kashem Bhuiyan,
Advocate
.....for opposite parties 1 and 2

Judgment on 12.06.2024

At the instance of the defendants leave was granted and rule was issued calling upon opposite parties 1-3 to show cause as to why the judgment and order of the District Judge, Bahmanbaria passed on 31.01.2018 in Civil Revision No. 15 of 2016 rejecting the revision should not be set aside and/or such other order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule operation of the impugned judgment and order passed by the District Judge and all further proceedings of Title Suit No. 36 of 1998 pending in the Court of Joint District Judge, Court No.2, Brahmanbaria was stayed for a limited period which was subsequently extended till disposal of the rule.

The material facts for disposal of the rule, in brief, are that opposite parties 1-3 herein as plaintiffs instituted Title Suit No. 36 of

1998 in the Court of Joint District Judge, Court No.2, Brahmanbaria on 15.09.1998 praying for recovery of possession of the suit land as described in schedule 3- 10 to the plaint by evicting defendants 1-21 therefrom. The petitioners as defendants contested the suit by filing written statement denying the averments made in the plaint. After conclusion of examination of witnesses of the parties the trial Court fixed the next date of the suit for hearing of argument. At this stage the contesting defendants filed an application under section 13 (1)(ka)(kha) of Arpito Sampatti Prottarpon Ain, 2001 (Ain, 2001) praying for abatement of the suit. In the application they took grounds that .23 acres of land of plot 225 and .23 acres of plot $\frac{224}{365}$, $\frac{224}{366}$ of SA *khatians* 92 and 125 respectively have been included in the Additional Gazette published on 30.12.2012 which is within the schedule of this suit. The parties to this suit also filed Arpito Sampatti Tribunal Cases 455, 22 and 24 of 2013 before the concerned Tribunal to release the land which are still pending. Therefore, this suit is to be abated according the aforesaid provisions of the Ain, 2001.

The Joint District Judge heard both the parties to the said application and rejected it by the order passed on 27.4.2016. Being aggrieved by the contesting defendants filed Civil Revision No. 15 of 2016 under section 115(2) of the Code of Civil Procedure (the Code) before the District Judge, Brahmanbaria. The District Judge by the judgment and order passed on 31.01.2008 rejected the revision and

affirmed the order passed by the Joint District Judge. The aforesaid judgment and order of the District Judge prompted the petitioners to approach this Court with this application under section 115(4) of the Code upon which the leave was granted and rule was issued with an *ad interim* order of stay of all further proceeding of the suit.

Mr. Mohammad Yeasin Khan, learned Advocate for the petitioners takes me through the judgment and orders passed by the courts below and other material on records. He then refers to the provisions of sections 10, 11 and 13 of the Ain, 2001 and submits that it is admitted facts that a part of the property as described in the schedule to the plaint has been included in the additional Gazette of Arpito Sampatti published in 2012 and three cases bearing numbers 455, 22 and 24 of 2013 are still pending before the Tribunal for adjudication. Since the matter is *in seisin* of the Tribunal, the instant suit for the same property is to be abated under the provisions of the Ain, 2001. The law provides that as per the decision of the tribunal, if any, the authority can take action and handover possession of the dispute land to its original owner. He then submits that in Title Suit No 40 of 2005 which was filed by the selfsame party in respect of land described in the schedule of that suit, the Court passed order of abatement on 27.04.2016. In this case, the trial Judge also framed an issue as to whether the plaintiffs have title in the suit land. Therefore, the question of title in respect of the suit land is very much involved in

this suit. The finding and decision of the Courts below, therefore, cannot be sustained in law. The revisional Court below in rejecting the revision and affirming the order passed by the trial Court committed error on an important question of law which is required to be interfered with in this revision. The rule, therefore, would be made absolute and the judgment and orders passed by the courts below be set aside.

Mr. Mohammad Abul Kashem Bhuiyan, learned Advocate for opposite parties 1 and 2 on the other hand opposes the rule and submits that this is a suit for recovery of possession by evicting defendants 1 – 21 from the suit land and no question of title is involved here. The title of the plaintiffs has been declared in the earlier suit which has been affirmed up to the appellate division. This suit is between two private parties. The Courts below elaborately discussed the points of law and fact and correctly rejected the application for abatement. There is no error on point of law in the impugned judgment and as such it may not interfered with by this Court in revision.

I have considered the submissions of both the sides, gone the materials on record and the provisions of law as referred to by the parties. It is admitted facts that in the additional gazette published in 2012 the suit property has been included in the 'Ka' list as Arpito Sampatti. It is further admitted that against the said gazette

notification both the parties went to the tribunal and Arpito Sampatti Tribunal Cases 455, 22 and 24 of 2013 are pending for adjudication. In the application for abatement, the petitioners took grounds that since the suit land has been included in the 'Ka' list of the gazette as arpito sampatti, therefore, the instant suit pending before the Joint District Judge in respect of the selfsame land should be abated under the provisions of section 13 (ka) and (kha) of the Ain, 2001. I have gone through the related provisions of law. It is found that section 10 of the Ain deals with the procedure of filing any suit to the tribunal for the land gazetted and also the procedures of the tribunal in disposing the cases; section 11 deals with the procedure of execution of a decree passed by the tribunal and section 13 deals with the abatement of the civil suits the property of which has been gazetted or declaration of title has been sought in the land or any claim has been made that it is arpito sampatti or any claim pending before the superintendent and in those cases the suit, so far it relates to the inclusion of the land in the gazette be abated and no order is required from Court for such abatement.

In this suit the prayer has been made as under-

“(ক) নালিশী তৃতীয় হইতে দশম তপছিলোক্ত ভূমি হইতে ১-২১ নম্বর বিবাদীগণকে উচ্ছেদক্রমে সর্বপ্রকার বাধা বিঘ্ন অপসারণে বাদীগণ বরাবরে খাস দখল পাওয়ার ডিক্রী প্রদান করিতে,

(খ) বিজ্ঞ আদালতের নির্দিষ্ট সময় মধ্যে ১-২১ নম্বর বিবাদীগণ নালিশী তৃতীয় হইতে দশম তপছিলোক্ত ভূমির খাস দখল বাদীগণকে বুঝাইয়া না দিলে

বাদীগণ বরাবরে সর্বপ্রকার বাধা বিঘ্ন অপসারণে আদালত যোগে খাস দখল প্রদান করার ডিক্রী দিতে, ।”

The aforesaid prayer shows that the plaintiffs made prayer in the suit only for recovery of possession of the schedule suit land by evicting defendants 1-21 therefrom. Admittedly, the defendants 1-21 are the private parties. The plaintiffs did not seek any relief against the government or did not pray for declaration of title or that the suit property is not vested or arpitto sampatti. Although the trial Court framed an issue whether the plaintiffs have title and interest in the suit land but considering the facts and prayer of this suit, the issue so framed is found unwanted and meaningless. The plaintiffs averred in the plaint categorically that they got a decree of title in respect of the suit land earlier which has been affirmed up to the appellate division and thereafter they instituted this suit for recovery of possession against the private parties who are the illegal possessors. Mr. Khan submitted that the selfsame Court passed an order of abatement of Title Suit No.40 of 2005 which is of similar nature to the present one, property of which has been Gazatted. On going through the plaint of the aforesaid suit, I find that there the plaintiffs claimed title and joint possession in the suit land. The relief sought in the aforesaid suit and this suit is quite distinguishable, because here the plaintiffs did not pray for declaration of title in the suit land. The Courts below elaborately discussed the provisions of law and rejected the

application of the petitioners under section 13 of the Ain, 2001. Moreover, the provisions of section 6 of the Ain, 2001 protects a property from inclusion it in the gazette of arpito sampatti, title of which has been declared earlier finally by a competent Court.

I failed to understand how this property has been included in the 'Ka' list of the gazette because the title of the plaintiffs in the suit land has been declared by a competent Court which has been affirmed up to the appellate division. It is certainly an ill deceive of the petitioners to hold their illegal possession in the suit land for long years. It is found that this property was not listed and in the original gazette but included and published in the additional Gazette.

Considering the relief sought in the suit, the position of law and other materials on record, I find that the Joint District Judge correctly rejected the petitioners' application filed under section 13 of the Ain, 2001 for abatement of the suit. The order was affirmed by the District Judge in revision under section 115(2) of the Code as per law. I find no error on an important question of law in the impugned judgment passed by the revisional Court for which it may be interfered with.

Therefore, I find no substance in the submission of Mr. Khan. The Rule, therefore, bears no merit.

Resultantly, the rule is discharged. No order as to costs. The order of stay stands vacated. The trial Court shall proceed with the suit and dispose of it expeditiously.

Communicate this judgment to the concern Courts.