

Present:-***Mr. Justice Mahmudul Hoque*****Civil Revision No.2785 of 2008**

Dino Bondhu Sarkar being dead his legal
heirs; 1(a) Suvankar Sarkar and others
... Petitioners

-Versus-

Chittaranjan Biswas and others

... Opposite- parties

Mr. Sarder Abul Hossain with

Mr. Suvash Chandra Tarafdar, Advocates

...For the petitioners

Mr. Shasti Sarker, Senior Advocate

...For the opposite-party Nos.1-3.

Judgment on 8th July, 2025.

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 11.05.2008 passed by the learned Additional District Judge, 1st Court, Khulna in Title Appeal No.109 of 2006 allowing the appeal and thereby reversing the judgment and decree dated 20.02.2006 passed by the learned Senior Assistant Judge, Sadar, Khulna in Title Suit No.156 of 2001 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party Nos.1-3, as plaintiff, filed Title Suit No.156 of 2001 in the Court of Assistant Judge, Sadar, Khulna for declaration of title and also for declaration that the compromise decree passed in Title Suit No.283 of 1960 by the Court of First Munsif, Khulna and compromise decree passed by the Subordinate Judge, 1st Court, Khulna in Title Suit No.264 of 1959 is illegal, fraudulent, collusive, ineffective and not binding upon the plaintiffs and the registered kabala dated 04.06.1956 is illegal, collusive, without consideration and not binding upon the plaintiffs claiming that the land under C.S. Khatian No.128, P.S. Khatian No.289 and S.A. Khatian No.20 measuring an area of 12.55 acres within Mouza Harintana owned and held by Amoresh Chandra and Bimolesh Chandra Sarkar, accordingly C.S. khatian stand recorded in their names. Rent Suit No.137 of 1944 was started by zaminder for arrear rents in respect of 12.48 acres out of 30.75 acres land under C.S. khatian and the said land was put in auction in Execution Case No.111 of 1944 in which the predecessor of the plaintiff Tarika Nath purchased the land on 12.10.1944 and got possession on 29.12.1944, but P.S. and S.A. khatians stand recorded

in the name of heirs of Bonowarilal and others wrongly. Tarika Nath died leaving 2(two) sons namely, Mohadeb and Kali Charan Biswas. Mohadeb died leaving daughter Fuli Rani. Fuli Rani died leaving only son plaintiff No.3, Lalit. Kalicharan died leaving 2(two) sons, the plaintiff Nos.1 and 2. The plaintiffs have been possessing the suit land. The defendant Nos.1-16 started a V.P. Case No.376 of 1975-76, but on objection of the plaintiffs the said case was rejected in 2000 and in that miscellaneous case defendants disclosed about the decree in Title Suit No.283 of 1960 and Title Suit No.264 of 1959 claiming title in the suit land. Thereafter, the plaintiffs came to know about the kabala dated 04.06.1956 being No.5547 and then on 27.11.2001 the plaintiffs inspected case record of the said 2(two) suits and come to know about those fraudulent decrees. The defendants denied title of the plaintiffs on 25.11.2001 on the basis of fraudulent decree, hence, the present suit.

The defendant Nos.1, 4-9 and 11-16 contested the suit by filing a joint written statement contending inter alia, that in C.S. khatian Bonowari Lal had $\frac{1}{3}$ rd share and he took a loan from Bank and failed to repay the said loan and as such, his share was put in auction in Rent

Execution Case No.51 of 1958 and Khaleque Hachim, Krisna Chandra and Shefali Rani purchased the said land in auction in the benami of Manindra and Ram Chandra. When they refused to execute Nadabi Pattra, Khaleque and others filed Title Suit No.264 of 1959. The suit was decreed on compromise on 07.11.1960 and according to that decree defendant No.15 and Khaleque got 2·0850 acres each, Krisna Chandra got 1·00 acres land and Shefali got land of other Khatians. Krishna Chandra sold ·99 acre of land by kabala dated 03.05.1961 to defendant Nos.13 and 14 and Narendra Nath and mother of Dinobandhu on behalf of her minor son Dino Bandhu instituted Title Suit No.283 of 1960 against Bimolesh in respect of land of S.A. Khatian No.20. The suit was decreed on 18.04.1961 on compromise and Dinobandhu got 1·00 acre of land and Narendra got 1·00 acres of land each and Narendra Nath by kabala dated 23.09.1982 transferred the land to the defendant No.14. Osman died leaving 3(three) sons, 2(two) daughters and 1(one) wife and they have been possessing ·50 acre of land of Osman, defendant No.13 has been possessing·50 acre and defendant No.14 has been possessing 1·00 acre, defendant No.16 has been possessing 2·0850 acres and

defendant No.15 has been possessing 2.0850 acres of land. Amoresh, Amolesh, Bimolesh and Indubala by kabala dated 04.06.1956 transferred 6.3350 acres of land to the defendant Nos.4-8, mother of defendant Nos.10-12 and defendant No.9 and all of them have been possessing the said land jointly. The suit land enlisted as vested property and against that the defendants and their co-sharers filed Miscellaneous Case No.375 of 1975-76 which was allowed and 11.90 acres of land was released. The plaintiffs have no title and possession in the suit land. Khatians are correctly prepared so called auction purchase of the plaintiffs is not true and correct and as such, the suit is liable to be dismissed.

The trial court framed 7(seven) issues for determination of the dispute. In course of hearing the plaintiffs examined 3(three) witnesses as P.Ws and the defendant examined 4(four) witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing dismissed the suit by its judgment and decree dated 20.02.2006.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court the plaintiff preferred Title Appeal No.109 of 2006 before the learned District Judge, Khulna. Eventually, the appeal was transferred to the Court of learned Additional District Judge, 1st Court, Khulna for hearing and disposal, who after hearing by the impugned judgment and decree dated 11.05.2008 allowed the appeal and sent back the suit on remand to the trial court for hearing afresh by reversing the judgment and decree of the trial court. At this juncture, the defendant-petitioners moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Sarder Abul Hossain with Mr. Suvash Chandra Tarafdar, learned Advocates appearing for the petitioners submit that both the courts below concurrently found and observed that the suit of the plaintiff is bad for defect of parties, on that ground instant suit is incompetent, accordingly, the trial court dismissed the suit. For filling up lacuna giving latitude to the plaintiffs the suit is not liable to be sent back on remand to the trial court and as such, the appellate court

has committed error of law in the decision occasioning failure of justice.

He further argued that about other documents like execution proceedings in respect of suit property are matter of documents and available in record. The appellate court is competent to sit over the judgment of the trial court and dispose of the suit on the evidence available in record under Section 107 of the Code of Civil Procedure. As such, instead of disposing the appeal itself by sending the same on remand to the trial court has committed error of law in the decision occasioning failure of justice and as such, the judgment and decree under challenged is liable to be set aside.

He finally argued that in C.S. Khatian, name of Tarika Nath is absent, but the plaintiffs claimed the property as heirs of Tarika Nath, as such, they could not prove their chain of title but the appellate court failed to appreciate the findings of the trial court in this regard.

Mr. Shasti Sarker, learned Senior Advocate appearing for the opposite party Nos.1-3 submits that the appellate court while allowing the appeal and remanding the suit to the trial court on remand observing that the trial court in its judgment found that in C.S. and

S.A. khatians predecessor of the plaintiffs name Tarika Nath is absent, but failed to find that Tarika Nath acquired the property by auction purchase in Rent Execution Case No.111 of 1944 on 12.10.1944 and got delivery of possession on 29.12.1944, but said fact has not been discussed by the trial court in its judgment. Whether Tarika Nath purchased the property in auction, got possession and had been possessing the suit land by erecting homestead thereon, whether $\frac{1}{3}$ rd of the property owned by Bonowarilal was put in auction in Rent Execution Case No.51 of 1958 in which one Khaleque and others purchased the same and wrongly found that the property is under possession of the defendant has not been decided properly. The trial court in respect of possession has given contradictory observations. The plaintiff challenged the decree in Suit No.283 of 1960 but did not make all the parties in the said decree as party in the instant suit. The appellate court observed that in the absence of discussion of any evidence by the trial court in respect of possession of the parties to the proceedings and inappropriate observation about recording of name of Tarika Nath in S.A. khatian in the year 1944 and absence of sufficient discussion about auction sale in 2(two) execution cases, purchase of

the property by Tarika Nath, Khaleque and others as well as defect of parties in suit has not been conclusively decided. Though, the plaintiff claimed that Narandra Nath Sarker and Osman Gazi are fictitious persons having no existence they ought to have made party.

Mr. Shasti Sarker submits that the appellate court rightly sent the suit on remand to the trial court for fresh trial on the findings and observations made in the judgment and as such, committed no error of law in the decision occasioning failure of justice.

Heard the learned Advocates for both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and documentary available in the lower court records and the impugned judgment and decree of both the courts below.

Fact of the case need not be repeated again. From perusal of judgment of the trial court, it appears that upon discussion of the evidences both oral and documentary trial court found and observed that the suit suffers from defect of parties and also observed that some of the rent receipts found overwriting and also observed that in C.S.

and S.A. khatians name of Tarika Nath is absent. Because of absence of name in the khatian whether a person lost title in the suit property without giving finding his basis of title, where it has been claimed by the plaintiffs that the property in question was put in auction in Rent Execution Case No.111 of 1944 and their predecessor Tarika Nath purchased the same in auction on 12.10.1944 and got delivery of possession on 29.12.1944 and they have been possessing the same right from their predecessor as homestead living therein. The trial court in its judgment did not discuss about possession of the parties in the suit property discussing the evidences in record both oral and documentary. To decide a dispute between the parties, the court ought to have discussed all the evidences available in record giving definite and explicit finding on every evidence both oral and documentary. But the trial court while dismissing the suit touched the evidences partially and considered those evidences superficially, not in its true perspective in accordance with law. Where a suit has not been disposed of in the light of the evidences in record and their validity in the eye of law, I think that by sending the suit on remand to the trial court for fresh trial, the appellate court committed no error of law in

the decision occasioning failure of justice. Had the petitioners conceding remand of the suit participated in the hearing before the trial court, this suit could have been disposed of by the trial court at least before 15 years from date. Therefore, I find that the appellate court rightly allowed the appeal and remanded the suit to the trial court.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 6(six) months from the date of receipt of this judgment and order giving top most priority and considering age of the litigation.

Communicate a copy of the judgment to the Court concerned
and send down the lower court records at once.

Helal/ABO