

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 5026 of 2015

Marfuzzoha (Tara)

..... Petitioner

-Versus-

Ramjan Ali and others

..... Opposite-Parties

Mr. Ahia, Advocate with

Mr. Syed Bashir Hossain Chowdhury, Advocate

... For the Petitioner

Mr. Suproakash Datta, Advocate with

Mrs. Afifa Begum, Advocate

... For the Opposite Party No. 1

Judgment on 23.10.2025

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 21.05.2015 and 27.05.2015 respectively passed by the learned Additional District Judge, Meherpur in Title Appeal No. 07 of 2009 dismissing the appeal and affirming the judgment and decree dated 21.10.2008 and 26.10.2008 respectively passed by the learned Joint District Judge, 1st Court, Meherpur in Title Suit No. 19 of 2002 decreeing 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 No. 1, as plaintiff, filed Title Suit No. 124 of 1997 in the

court of learned Assistant Judge, Meherpur which on transfer renumbered as Title Suit No. 19 of 2002 to the court of learned Joint District Judge, 1st Court, Meherpur for declaration of title in 1.62 acres of land within Mouza-Meherpur, S.A. Khatian No. 880, Plot Nos. 4217 and 4228, R.S. Plot No. 7040 claiming that the same belong to the plaintiff and his two brothers namely Pachu Sheikh and Najimuddin, in equal share, thus each of them got 54 decimals of land. Pachu Sheikh and Nijamuddin sold their share measuring 1.08 acres to their father Faraz Ali vide deed No. 7071 dated 20.07.1977. Said Faraz Ali transferred 1.08 acres of land by way of gift to the plaintiff Ramjan Ali from the suit plot vide deed No. 8647 dated 01.12.1994. So, he got entire 1.62 acres from the suit plot, for which the defendant Nos. 2-3 became jealous and started disturbing him, consequently, the defendant Nos. 1-3 in connivance with each other the names of the defendant Nos. 4-12 wrongly recorded in the khatian for an area of 49 sataks. Thereafter, defendant Nos. 2 and 3 tried to dispossess the plaintiff from the suit land, hence the instant suit.

The petitioner, as defendant No. 5, contested the suit by filing written statement denying all the material allegations made in the plaint, contending that the plaintiff has no right, title, interest or possession in the

suit land. The suit is not maintainable in its present form; barred by limitation and barred under Section 42 of Specific Relief Act, insufficient court fees paid etc. Further case of the defendant is that, the disputed land recorded in Khatian No. 1853 and one Golam Mostafa was the owner of that land by way of exchange who transferred 66 decimals of land including 6 decimals from S.A. Plot Nos. 4217 and 4455, 2 decimals of land from Plot No. 4226 and also from Plot No. 4222 to the father of the defendant Shamsuzzoha vide deed No. 4611 dated 31.12.1966 and handed over possession. Thereafter, Shamsuzzoha died leaving behind this defendant and other co-sharers. R.S. khatian prepared in R.S. Plot No. 7040 in the name of this defendant, his other brother, sisters and mother. So, there is no defect in R.S. record. The plaintiff has no right, title, interest or possession in the suit land. The case itself is a collusive one. The chain of the document from the C.S. record has not been disclosed in the plaint, the documents on the basis of which the suit has been filed are forged and fraudulent one, as such, the suit is not maintainable at all. All the C.S. S.A. and R.S. recorded tenants have not been made parties in the suit, hence, he prayed for dismissal of the suit.

The trial court framed 4 (four) issues for determination of the dispute between the parties. In course of hearing the plaintiff examined as many as 5 (five) witnesses as PWs and submitted some documents in support of his claim which were duly marked as exhibits. The defendant Nos. 2-3 though filed written statement did not come forward to contest the suit. Defendant No. 5 contested the suit by filing written statement and at the time of hearing deposed in part and did not file single scrap of paper in support of his written statement rather left the suit uncontested. After long time again appeared in the suit and prayed for time. The trial court on two occasions allowed time awarding cost of Tk. 1000/-, but finally defendant No. 5 did not come forward to contest the suit even to pay the costs, consequently the trial court on the evidence both oral and documentary available in record, by its judgment and decree dated 21.10.2008 decreed the suit. Thereafter, the defendant No. 5 filed Title Appeal No. 07 of 2009 before the District Judge, Meherpur. Eventually, the appeal was transferred to the court of Additional District Judge, Meherpur who after hearing by the impugned judgment and decree dated 21.05.2015 dismissed the appeal and thereby affirmed the judgment and decree of the trial court. At this juncture, the petitioner 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. Ahia with Mr. Syed Bashir Hossain Chowdhury, learned Advocates appearing for the petitioner submit that the plaintiff in his plaint did not specify the suit property giving specific boundary, as such, on a vague schedule a suit for simple declaration of title is not maintainable, but the trial court utterly failed to appreciate the provision of law as well as the appellate court committed an error on the decision occasioning failure of justice by dismissing the appeal.

He argued that the opposite party, as plaintiff, subsequently filed another suit being Title Suit No. 04 of 2007 in the court of Senior Assistant Judge, Meherpur against the petitioner along with others for a decree of permanent injunction, wherein, the plaintiff got the plaint amended incorporating the fact that during pendency of the suit, the defendants dispossessed the plaintiff from the suit land on 13.02.2013. Except this petitioner, none contested the instant suit claiming that the defendants are in possession.

Mr. Suproakash Datta with Mrs. Afifa Begum, learned Advocates appearing for the opposite party No. 1 submit that the instant suit was

filed in the year 1997 being Title Suit No. 124 of 1997 subsequently renumbered as Title Suit No. 19 of 2002 on transfer to the court of Joint District Judge, 1st Court, Meherpur and the suit was decreed on 21.10.2008 and the appeal also disposed of on 21.05.2015. Both the courts concurrently found title of the plaintiff in the suit property and subsequent suit for injunction and amendment thereto is a subsequent fact and those facts cannot affect the merit of the present suit.

It is also argued that, the petitioners claimed the property on the basis of a registered deed No. 4611 dated 31.12.1966 by which their father Shamsuzzoha purchased 66 sataks of land from Plot Nos. 4217 and 4455 from one Golam Mostafa who got the property by exchange, but all the heirs of Shamsuzzoha did not contest the suit except the petitioner and could not file any piece of paper in support of their such claim and refrained from contesting the suit adducing evidence, as such, in the absence of any document and evidence both oral and documentary, the trial court as well as the appellate court rightly found title of the plaintiff in the suit property and as such, both the courts below committed no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement evidence both oral and documentary available in lower court record.

Case of the plaintiff as reflected in the plaint that the property under S.A. Khatian No. 880, Plot Nos. 4217 and 4228 measuring 1.63 acres belonged to three brothers namely, plaintiff and his two brothers Pachu Sheikh and Najimuddin Sheikh, accordingly, S.A. Khatian No. 880 stands recorded in their names equally (exhibit-1), Pachu Sheikh and Najimuddin sold their share measuring 1.08 acres to their father Faraz Ali by a registered sale deed No. 7071 dated 20.07.1977 (exhibit-5). The plaintiff is entitled to get 54 sataks land in S.A. Khatian No. 880 as per record of right. His father Faraz Ali used to live with him who took care of him. Faraz Ali out of love and affection gifted his purchased land measuring 1.08 acres along with other non-suited property totalling $1.34\frac{1}{2}$ acres by a gift deed No. 8647 dated 01.12.1994 and delivered possession to him. By dint of gift as well as his entitlement in 54 sataks, the plaintiff has become owner of entire quantum of 1.63 acres land under S.A. khatian No. 880, but subsequent R.S. khatian for a portion of land as mentioned in the

schedule wrongly recorded in the name of the defendants which has created cloud in the title of the plaintiff.

The plaintiff in support of his claim submitted S.A. Khatian No. 880 as exhibit-1, present R.S. Khatian wrongly recorded in the name of the defendants (exhibits-2-2Kha) and information slip issued by the record room showing corresponding plot numbers as exhibit-3, rent receipts (exhibit-4 series) showing payment of rent for the property, sale deed No. 7061 dated 08.08.1977 by which his father Faraz Ali purchased the share of Pachu Sheikh and Najimuddin Sheikh in original (exhibit-5), a registered deed of gift No. 8647 dated 01.12.1994 in original (exhibit-6) in support of his claim. Plaintiff examined 5 P.Ws. including himself, all the P.Ws unequivocally stated that plaintiff is owner in possession of the property by way of gift and by record of right. Nothing has forthcoming out of cross on the part of the defendant No. 5. The defendant No. 5 though filed written statement and deposed in part, but did not come forward to complete his deposition and to face cross examination on the part of the plaintiff. He did not file a piece of evidence showing that Golam Mostafa or his father Shamsuzzoha acquired the suit property by any means. In the absence of any evidence both oral and documentary in

support of claim of the defendant, only a written statement cannot support the case of the defendant that the record of right rightly prepared in their names. Had the property actually acquired by Shamsuzzoha all the heirs as recorded in R.S. khatian would have contested the suit by filing written statement filing documents in support of their title. Only defendant No. 5 as son of Shamsuzzoha filed written statement and utterly failed to prove their title in the property by evidence both oral and documentary. On the other hand, from the exhibits filed by the plaintiff, it is crystal clear that plaintiff is owner of the entire property recorded in S.A. khatian No. 880 and there is no earthly reason to record a portion of the property measuring 49 sataks in R.S. khatian against R.S. Plot No. 7040 in the name of the defendants. In the absence of any document on the part of the defendants in respect of acquisition of the property by any means, the trial court had no other alternative but to decree the suit, accordingly, the suit was decreed. Since the plaintiff is owner of the entire property, it was not necessary for him to give boundary of the suit property. He claimed entire quantum of land under S.A. Khatian No. 880, but a portion of the property wrongly recorded in the R.S. Khatian in the name of defendants without title. As such, both the courts below in decreeing the suit and dismissing

the appeal committed no error or illegality in the decision occasioning failure of justice.

In view of the above, I find no merit in the rule as well as in the submissions of the leaned Advocate for the petitioner.

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.

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