

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No.1542 of 2009

Paritosh Kumar Daspetitioner

-Versus-

Md. Azad Sheikh and another

.....opposite parties

Mr. Biswojit Roy, Advocate

..... for the petitioner

No one appears for opposite party 1

Ms. Anjuman Ara Lima, Assistant Attorney
General for opposite party 2

Judgment on 01.07.2025

In this Rule, issued at the instance of the plaintiff, the opposite parties were called upon to show cause as to why the judgment and decree of the Additional District Judge, Rajbari passed on 18.11.2008 in Title Appeal 53 of 2008 allowing the appeal affirming the judgment and decree of the Assistant Judge, Baliakandi, Rajbari passed on 06.05.2008 in Title Suit 05 of 2003 dismissing the suit should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

The plaint case, in brief, is that the suit land with other lands appertaining to RS plot 863 of RS *khatian* 573 and SA *khatian* 681 of mouja Khalkhula within police station Baliakandi originally belonged to Jyotish Chandra. He died leaving behind only his wife Ashalata. During possession and enjoyment, Ashalata in order to meet the expenses of religious rituals of her

deceased husband sold out .21 acres of suit land to Mohammad Ali through a registered *kabala* dated 24.09.1989 and handed over possession thereof. Mohammad Ali enjoyed the suit land years together and thereafter sold it to the plaintiff through a registered *kabala* dated 11.01.1995 and delivered possession. The plaintiff had been owning and possessing the suit land with the knowledge of all including defendant 1. But defendant 1 forcefully took possession of .04 acres of land out of .21 acres on 10.03.2004 from the eastern corner. The suit land described in the SA *khatian* as homestead but practically the predecessors of the petitioner used to enjoy it through cultivation and at present the plaintiff is doing so. Defendant 1 claimed title in suit land on 07.01.2003, hence the suit for declaration of title in schedule-‘Ka’ to the plaintiff and recovery of possession for schedule ‘Kha’.

Defendant 1 contested the suit by filing written statement denying the statements made in the plaintiff. He further contended that 35 years ago Mansur Molla, his father-in-law, took *pattan* of the suit land from RS recorded tenant and he had been enjoying it by cultivation. He died leaving behind 3 sons and 5 daughters. The sons of Mansur Molla permitted their sister Popy Akter to construct a house in suit land to reside therein and accordingly she did it and has been enjoying the same through defendant 1. Since RS recorded tenant Jyotish Chandra settled the suit land to Mansur

Molla, therefore, Ashalata had no title in it to sell it to Mohammad Ali and consequently the plaintiff accrued no title over the same by way of purchase from Mohammad Ali. The SA *khatian* was prepared mistakenly in the name of Jyotish Chandra who had no title in the suit land. The wife and father-in-law of defendant 1 have been possessing the suit land for more than 52 years. The plaintiff has no possession over the same and as such the suit would be dismissed.

Defendant 2, the government also contested the suit by filing separate set of written statement. They contended that SA recorded tenant Jyotish Chandra left for India before 1965 and the property has been enlisted in the census list as vested property. The government decided to settle the land among the landless farmers and at that time the plaintiff by creating the forged deeds dated 24.09.1989 and 11.01.1995 claimed title in the suit land. Those deeds are mere paper transactions and as such the suit would be dismissed.

On pleadings the trial Court framed 4 issues. In the first trial, the plaintiff examined 3 witnesses and their documents were exhibits-1-5Ka. Defendant 2 examined 1 witness DW 1 and submitted an attested photostat copy of census list exhibit-Ka/1. On the other hand defendant 1 examined 4 witnesses DWs 2-5 and produced documents exhibit-Ka series. However, the Assistant

Judge dismissed the suit by the judgment and decree dated 26.06.2005 whereupon the plaintiff preferred Title Appeal 62 of 2005 before the District Judge, Rajbari. The Joint District Judge, Court 2, Rajbari heard the said appeal on transfer and allowed it sending the suit on remand to the trial Court for trial afresh. After remand the plaintiff examined two witnesses PWs 4 and 5 and some witnesses were re-examined. But after remand the trial Court again dismissed the suit and being aggrieved by the plaintiff again preferred appeal before the District Judge which was heard on transfer by the Additional District Judge, Rajbari. The appellate Court after hearing both the parties dismissed the appeal which prompted the plaintiff to approach this Court upon which this Rule was issued.

Mr. Biswojit Roy, learned Advocate for the petitioner taking me through the judgments of the Courts below and other materials on record submits that both the Courts below misdirected and misconstrued in their approach the matter and thereby committed error of law in dismissing the suit. He then submits that the plaintiff by examining 5 witnesses proved his title and possession in the suit land by way of gradual purchase. Moreover by evidence of PWs 1, 2 and 3 he successfully proved dispossession by defendant 1 from .04 acres of suit land described in the schedule to the plaint. He then refers to exhibit-Ka/1, the

census list and submits that there was no scope of enlisting the property as vested property in the census list after 23.03.1974. He produced a copy of gazette published on 26.06.2012 under Arpita Sampatti Prattarpan Ain, 2001 and submits that the property was enlisted in the 'Kha' list of Arpita Sampatti but the list was subsequently cancelled by the government. Therefore, government cannot claim any right, title and interest in the suit land. Both the Courts below failed to appreciate above legal position and mainly dismissed the suit on the ground of enlistment of the suit land in the census as vested property. Moreover, defendant 1 failed to prove his claim of taking *pattan* from the RS recorded tenant. Despite the above position, the trial Court dismissed the suit. The Court of appeal below in dismissing the appeal did not at all comply with the mandatory provisions of law of Order 41 Rule 31 of the Code and thereby committed error of law resulting in an error in such decision occasioning failure of justice. The Rule, therefore, would be made absolute and the judgments passed by the Courts below be set aside.

No one appears for opposite party 1 although the record shows that the notices have duly been served upon him.

Ms. Anjuman Ara Lima, learned Assistant Attorney General for opposite party 2 on the other hand opposes the Rule and supports the judgments passed by the Courts below. She

submits that since the property has been listed in the census list as vested property it is the property of government. But she finds it difficult to make any submission about enlistment of the property in the 'Kha' list of Arpita Sampatti gazette published in 2012.

I have considered the submission of both the sides and gone through the materials on record. The petitioner instituted the suit for declaration of title in the suit land measuring .21 acres as described in schedule 'Ka' to the plaint and recovery of possession of 'Kha' schedule measuring .04 acres (as per subsequent amendment). The plaintiff claimed that Jyotish Chandra was the RS and SA recorded tenant. In support of such claim the plaintiff produced exhibits-1 and 2, the *khatians* which proves the plaintiff's claim. The plaintiff further claimed that on the death of Jyotish Chandra Das his wife Asahlata sold out the property to Mohammad Ali to meet the expenses for performing the religious rituals of her dead husband. The aforesaid deed dated 24.09.1989 was produced as exhibit-4. After remand PW 4 Samar Kumar Datta, a witness to the deed was examined in the lock who proved his signature on the deed. The aforesaid deed shows that Asahlata on legal necessity sold the land measuring .21 acres to Mohammad Ali. The plaintiff further claimed that subsequently Mohammad Ali through a registered *kabala* dated 11.01.1995 transferred the same land to the plaintiff. The aforesaid original

deed was produced as exhibit-3. After remand PW 5 Nimai Chandra, the deed writer proved the deed and his signature thereon. The aforesaid 2 deeds (exhibits 3 and 4) are registered *kabalas* and produced in original and duly marked as exhibits without any objection. The plaintiff by oral evidence of 5 witnesses and documents proved that Jyotish Chandra was the original owner of the suit land in whose name RS and SA records were prepared and subsequently the heirs of Jyotish sold the suit land to Mohammad Ali and the latter sold the same to the plaintiff. The plaintiff's witnesses led corroborative evidence as to his possession in the suit land since his purchase till his dispossession from a part. The corroborative evidence of PWs 1, 2 and 3 further proves that the plaintiff was in possession of the whole land measuring .21 acres but dispossessed from .04 acres described in schedule 'Kha' to the plaint in the year 2004. The evidence of DWs and the receipts of electricity bills filed by defendant 1 further prove that he forcefully took possession in a part of the suit land in 2004.

The case of defendant 1 was that his father-in-law Mansur Molla took *pattan* from RS recorded tenant and his sons and daughters as heirs inherited the property. Defendant 1 and other sons of Mansur Molla permitted their sister Popy Akhter to reside in the suit land and accordingly she erected a house therein.

Defendant 1 in evidence did not produce a single scrap of paper to show that his father in law took *pattan* from RS recorded tenant. The oral evidence of DWs 2-5 is found not satisfactory to believe the fact of taking *pattan* of the suit land. Both the Courts disbelieved the case of defendant 1. But believed the case of defendant 2 the government that RS recorded tenant Jyotish Chandra left for India in 1965 and accordingly the property was enlisted as vested property. In support of their claim the government submitted a census list exhibit-Ka/1. There the property (suit property) of Jyotish Chandra has been listed at serial 29. But it is found that the census list was prepared on 17.08.1989. In the case of Saju Hossain and other vs. Bangladesh and another, 58 DLR (AD) 177 our apex Court held that there is no scope to enlist any property as vested property after 23.03.1974. Moreover, in the gazette published on 26.06.2012 under Arpita Sampatti Prattarpan Ain, 2001 it is found that the suit property was gazetted in the 'Kha' list. But the fact remains that the government subsequently cancelled 'Kha' list of Arpita Sampatti on 20.11.2013. So in the past and in present the government had/has no right, title and interest in the suit land.

I find that the plaintiff by evidence both oral and documentary successfully proved his title and possession in respect of .21 acres and subsequent dispossession from .04 acres

of schedule 'Kha'. Defendant 1 is found illegal possessor of 'Ka' schedule land. I failed to understand how both the Courts below disbelieved RS and SA *khatians* recorded in the name of the original owner and the registered *kabalas* of the plaintiff exhibits- 3 and 4 which were duly proved and exhibited. The *kabalas* were produced in original and PWs 4 and 5 witness to the deed and the deed writer respectively proved those.

Therefore, I find that the findings of both the Courts are perverse. Both the Courts of the subordinate Judiciary committed error of law resulting in an error in such decision occasioning failure of justice in dismissing the suit for declaration of title and recovery of possession. The judgments passed by the Courts below suffers from gross nonreading of evidence, mis consideration of the documents and patent illegality. I hold that this is a fit case to interfere with the judgments under revisional jurisdiction.

Therefore, I find merit in this Rule. Accordingly, the Rule is made absolute. No order as to costs. The judgments passed by both the Courts below are hereby set aside and the suit is decreed as prayed for by the plaintiff.

Communicate this judgment and send down the lower Court records.