

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4043 of 2009

With

Civil Revision No. 4045 of 2009

Sree Rabindra Lal Bhuiyan and others

..... Petitioners in C.R.  
No. 4043 of 2009.

Sree Gobinda Lal Bhuiyan being dead  
his heirs Taposh Bhuiyan alias Bhola  
Bhuiyan

..... Petitioner in C.R. No.  
4045 of 2009.

-Versus-

Marani Chandra Rudra Paul being dead  
his heirs 1(a) Sree Biswanath Rudra Paul  
and others

.....Opposite parties.

Mr. Najmul Karim, Advocate

.....For the petitioners.

Mr. Kazi Aktar Hamid, Advocate

.....For the opposite parties.

Heard and judgment on 9<sup>th</sup> July, 2024.

A.K.M.Asaduzzaman,J.

These two rules since arisen out of the same judgment and decree are heard together and disposed of by this single judgment.

Opposite party Nos. 1-3 as plaintiff filed Title Suit No. 105 of 1985 against the present petitioner for declaration of title over the suit land.

Plaint case in short, inter alia, is that 4 acres 31 decimals of land of Khatian No. 1330 of Mouza Lakshmipur, Police Station Lakshmipur, District formerly Noakhali now Lakshmipur were belonged to Purana Chandra Paul, who was the tenant under the Landlords Rajani Kanta Bhuiyan, Ramesh Chandra Bhuiyan, Haralal Bhuiyan and Kunju Lal Bhuiyan. Due to nonpayment of rents, the suit lands were put to an auction sale by the landlords under section 48 of the East Bengal Tenancy Act, in Rent Suit No. 203 of 1931 and the same Rent suit was decreed. In that rent suit other owners of lands were not made party and decree of the rent suit was confirmed against the portion of the shares of Rajani Kanta Bhuiyan. Purna Chandra Paul was the owner and possessor of the area of 3.36<sup>3</sup>/<sub>4</sub> decimals of lands of the District Record

Khatian No. 1330. After the death of Purna Chandra, the plaintiffs became owners and possessor of 3.36¾ acres of lands along with the lands of 431 acres of land through Solenama, will and lease. M.R.R. Records the lands of Khatian No. 1240 the names of the predecessor of defendants No. 1-3 and Rasharaj Paul were wrongly recorded with the name of the plaintiffs for which to remove the cloud fallen upon the title of the plaintiffs, these plaintiffs filed this Title Suit for declaration of their title to the suit lands.

Defendant contested the suit by filing written statement denying the plaint case, alleging, inter alia, that Purna Chandra Ray was the owner in possession as Oshat Rayat of the lands of Khatian No. 1330 of Mouza 64 Lakshmipur, Police Station-Lakshmipur and now the District of Lakshmipur in the District Settlement records. The superior Landlords of that Oshat Rayati title was Rajani Kanta Bhuiyan and others. Due to non payment rents of that Oshat Rayati lands, the Superior Landlords Rajani Kanta Bhuiyan and others as plaintiff filed Rent Suit No. 203 of 1931 in this court against the predecessors of the plaintiffs Purna Chandra Paul and obtained decree. Then taking possession

became owner and possessor of the lands. Purna Chandra Rudra Paul filed Miscellaneous Case being No. 44 of 1932 against that decree, which after contesting by both parties dismissed on 24.9.1932. Then Purna Chandra Rudra Paul against that dismissal order preferred appeal and that appeal was also dismissed on 30.5.1932. Purna Chandra Rudra Paul for setting aside that decree filed Title Suit No. 910 of 1934 and Title Suit No. 2179 of 1935 and that suit for cancellation of that decree also dismissed on contest on 30.5.1935. Against that dismissal order, Purna Chandra Rudra Paul preferred Appeal and that Appeal was also dismissed on 09.9.1935. By this way having decree in different suits, the superior landlords Rajani Kanta Bhuiyan and others became the owners in possession of those Oshat Rayati lands having decrees in Rent suits by filing Title Execution suits for having khas possession and became owners in possession of these lands. Purna Chandra Rudra Paul became title and possession less in the lands of that District Khatian No. 1330. In that lands Purna Chandra Rudra Paul became total title less and possession less in those lands. By this way the superior landlords were the owners in possessions of all the lands of the Khatian No. 1330. The Superior

landlord Haralal Bhuiyan being the owner in possession of the eight annas shares in the lands of that Khatian No. 1330 died leaving behind his two sons Nipendra Lal Bhuiyan and Upendra Lal Bhuiyan and then these two sons became the owners in possession of their lands of Khatian No. 1330 as heirs land successors. After death of Upendra Lal Bhuiyan these defendants became the owners and possessor of these lands. When three annas ten gondas share of Rajani Kanta Bhuiyan declared vested and Non Residential Property by the Government, the plaintiff No. 1 took lease settlement of some lands as vested property. The superior landlords Romesh Chandra sold out his 3 three annas and 10 gondas of lands to Rashed Raj Paul. Subsequently by the plaintiff No. 1 and constructed dwelling house there and was living there. Plaintiff No.1 took lease of some lands from the 3 annas share of the superior landlord Kunja Lal Bhuiyan. Plaintiffs filed Title Suit No. 105 of 1985 claiming title of 5 annas 10 gondas shares on false and baseless claim in the lands of the Khatian No. 1330. Plaintiffs admitting the right, title, interest and possession of Romesh Paul and Kunju Paul Purchased some lands and took lease of some lands. Except the 3 annas 10 gondas share

of Rajani Kanta Bhuiyan, the plaintiffs have got no right, title, interest and possession over the rest 12 annas 10 gondas share of the lands of the Khatian No. 1330 and that the plaintiffs cannot get declaration of their title to that lands of the rest 12 annas 10 gondas of land. These defendants are the owners in possession of the 8 annas share of Haralal Bhuiyan as his heirs and successors.

The last M.R.R records of rights were prepared rightly and correctly in the name of the defendants in the M.R.R Khatian No. 1240. Purna Chanda Rudra Paul the predecessor of the plaintiffs is evicted from the Khatian No. 1330 of the operation of the District records. Subsequently through lease, purchase and will etc., the plaintiffs became the owner of some lands of Khatian No. 1330 for which in the M.R.R records were prepared in the name of the plaintiffs along with these defendants. Moreover the plaintiffs are never above the only possessors of the house, pond and garden on the plots No. 3239, 3249 and 3250 and as such there is no cause of getting declaration of title over the suit land.

The opposite party as plaintiff filed two suits one being Title Suit No. 105 of 1985 for declaration of title and another being Title Suit No. 174 of 1983 (subsequently renumbered as

Title Suit No. 25 of 1995) for permanent injunction. Both the suits were heard analogously and by the judgment and decree dated 28.02.2000, the Joint District Judge, 1<sup>st</sup> Court, Lakshmipur dismissed both the suits on contest.

Being aggrieved there against plaintiff preferred Title Appeal No. 45 of 2000 and Title Appeal No. 46 of 2000 and both the appeals were heard analogously by the Additional District Judge on being transferred from the District Judge Court, Lakshmipur, who by the impugned judgment and decree dated 03.08.2009 allowed both the appeals and after reversing the judgment of the trial court decreed the suit.

Challenging the said judgment and decree, defendant petitioner obtained these two rules.

Mr. Najmul Karim, the learned advocate appearing for the petitioner drawing my attention to the judgment of the appellate court submits that judgment of the appellate court is not sustainable in law in as much as the court violates the mandatory provision of Order 41 Rule 31 of the Code of Civil Procedure. The Additional District Judge without reversing the judgment of the

trial court as well as without considering the evidences on records and without having his own findings and decision allowed the appeal most arbitrarily. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Kazi Aktar Hamid, the learned advocate appearing for the opposite party although try to opposes the rule but noticing the judgment of the appellate court found it difficult to support the judgment.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

It appears from the judgment of the appellate court that the Additional District Judge mainly considering upon the submission as been made by the appellant allowed the appeal. He did neither reverse the findings of the trial court nor made his observations and decisions of his own on any findings thereon and thereby the Additional District Judge being the last court of fact in appeal allowed the appeal and decreed the suit on violating the mandatory provision as laid down under Order 41 Rule 31 of the Code of Civil Procedure. The Additional District Judge while



holding an appeal ought to have discussed the cases and made his independent decision either on reversing the judgment of the trial court or affirming the judgment passed by the court below. In the instant case, the Additional District Judge did neither have discussed the case of the respective parties nor discussed any evidences adduced by the parties or have formed his independent decision in the case thereby the judgment is not a proper judgment of reversal or a proper judgment in appeal, accordingly I find substances in the submission of the learned advocate for the petitioner. The impugned judgment is not sustainable in law, which is liable to be set aside.

However I am of the opinion that this is a fit case to send back on remand to the appellate court for deciding the appeal as per Order 41 Rule 31 of the Code of Civil Procedure.

I find merits in these rules.

In the result, these Rules are made absolute and the judgment and decree passed by the appellate court is hereby set aside and the case is sent back on remand to the appellate court for deciding the appeal on merits in light of the above observations.

The District Judge is hereby directed to allow both the parties to prove their respective cases either on the evidences already on record or giving them an opportunity to adduce further evidences if they so desire. The District Judge however further directed to decide the appeal expeditiously as early as possible preferably within 6(six) months after receiving of the judgment.

Send down the L.C.R along with the

judgment at once.