

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4528 of 2009

Mosammat Rahima Khatun

.....Petitioner.

-Versus-

Md. Sirajullah and others

.....Opposite parties.

Mr.M.A. Quayyum Chowdhury, Advocate

.....For the petitioner.

Mr. Md. Iqbal Hossain, Advocate

.....For the opposite parties.

Heard and judgment on 22<sup>nd</sup> April, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 24.05.2009 passed by the Additional District Judge, 1<sup>st</sup> Court, Dhaka in Title Appeal No. 317 of 2002 affirming those dated 20.05.2002 passed by the Assistant Judge, 2<sup>nd</sup> Court, Dhaka in

Title Suit No. 22 of 1997 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for declaration of title and recovery of khas possession.

Plaint case in short, inter alia, that the scheduled land appertains to C.S. khatian No. 39 of plot No. 192 and 123 of Mouza Ibrahimpur under P.S. Tejgaon recently Cantonment, Dhaka originally belonged to Rajab Ali and others and the C.S. record was prepared correctly in their names. The C.S. recorded tenant Sadob Ali died leaving two sons Enayet Ali and Alim Mia who got the suit land in their share and held possession and the S.A. record duly was prepared with others in their names. A suit for partition being Title Suit No. 108/1960 was filed by Sukur Bibi and others but during pendency of which A. Karim died leaving a wife Saleha Khatun, three sons Ramizuddin, Tamizuddin & Habibullah and three daughters Abdea, Jobeda and Amirun Nessa. Those heirs of A. Karim were substituted and final decree of the suit was made in 1968. The plaintiffs and some defendants of that suit got their respective saham separately but the remaining portion was for other non-contesting defendants.

The heirs of A. Karim, Enayet Ali himself got the suit land measuring  $.03\frac{1}{2}$  acre who held due possession but the Government of the then Pakistan acquisitioned portion of land of plot No. 123 and the remaining land of the plot along with the land of plot No. 192 was possessed by them. Enayet Ali died leaving a wife Most. Amina Begum, five sons and two daughters Osman Ali and others, who transferred  $.02\frac{1}{2}$  acre of land to the plaintiff Rahima Khatun by a Saf kabala dated 10.01.1983. The heirs of A. Karim sold  $.01$  acre of land to the plaintiff by saf kabala dated 20.11.1985 and thus the plaintiff got  $.3\frac{1}{2}$  acre land and mutated her name in revenue department and held possession by paying rents to the government. Earlier, she possessed by cultivation but subsequently filed up it by ground. The defendant Nos. 1 and 2 with malafide intention to grab the suit land forcibly dispossessed the plaintiff on 31.05.1996 from the 'Kha' schedule land and erected a boundary wall enclosing more or less  $.03$  acre land. The plaintiff asked them to return back the possession but they denied claiming its ownership of their own. Thus cloud casts upon the plaintiffs title and she was constrained to file the suit of present instance.

Opposite party as defendant contested the suit by filing written statement denying the plaint case, alleging, inter alia, that Rajab Ali and 16 others originally were owners of the land measuring 46.69 acres of suit khatian and the C.S. record was correctly prepared in their names. Thereafter the S.A. record was duly prepared. A partition suit was brought and some other defendants got separate saham. The share of the non-contesting defendants also remained separated. Nazomuddin and others sold .09½ acre land of plot No. 123, 192 and 193 to Mossarraff Hossain, the predecessor of defendant No.2 to 12 and Ershad Ali and others transferred  $\frac{3}{8}$  acre land to Hazera Khatun on 05.01.1978. They also transferred same area by another deed to said Hazera Khatun. Shamela Bibi sold .01 acre land to said Hazera Khatun and thus Mossarraff Hossain and his wife Hazera got 11½ acre land and possessed the same by erecting homestead. Mossarraff Hossain took premature death and the defendant Nos. 3-10 constructed pucca building in the suit land. The plaintiff proposed them to sale the land in a nominal price but the defendants were not agreed and for reason of which plaintiff's husband A. Razzak by dint of so-called power of attorney filed a

petition case under section 145 of the Code of Criminal Procedure which subsequently was stayed due to there remained no reason to draw any proceeding. Thereafter the defendant Nos. 3-10 transferred the suit land to the defendant Nos. 1-2 on 28.07.1996 through their power of Attorney and delivered possession. The plaintiff filed the suit on a false story which is liable to be dismissed with costs.

Trial court framed the following issues.

- i) Whether the suit is maintainable to its present form or not?
- ii) Whether there is any cogent ground to institute the suit?
- iii) Whether the plaintiff has got title and possession over the suit land?
- iv) Whether the plaintiff is entitled to get decree as prayed for?

During trial plaintiff adduced 6 witnesses with certain documents and defendants also adduced 5 witnesses with the documents to prove their case.

By the judgment and decree dated 20.05.2002, the Assistant Judge dismissed the suit on contest.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 317 of 2002 before the Court of District Judge, Dhaka, which was heard on transfer by the Additional District Judge, 1<sup>st</sup> Court, Dhaka, who by the impugned judgment and decree dated 24.05.2009 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant rule.

Mr. M.A. Quayyum Chowdhury, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that plaintiff purchase the suit land by way of two registered sale deeds dated 10.01.83 and 20.11.85 and got their title in 3½ decimals of land purchasing from the heirs of Enayet Ali and Abdul Karim, who are defendants and got their

property from a contested decree in a earlier instituted partition suit being No. 108/1960. But subsequently when plaintiffs are dispossessed by the defendants on 31.05.1996, plaintiff instituted the suit for declaration of title, recovery of khas possession. Although defendants did not denied the deed of plaintiffs and the appellate court at one stage found that plaintiff has got title over the suit land but both the courts below without having a proper discussion on the title of the parties most arbitrarily held that plaintiffs got no title over the suit land and suit was filed out of time and it is a bad for defect of parties, dismissed the suit most arbitrarily. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Md. Iqbal Hossain, the learned advocate appearing for the opposite party drawing my attention to the written statements and the report obtained by the Magistrate in a proceeding under section 145 of the Code of Criminal Procedure, wherein defendants possession was been ascertained by the proper authorities and that defendant has got valid title over the suit land as being a purchaser from a party in the earlier instituted partition suit and the said sale deed of the defendants are not been denied

by anybody and the court below although did not find the defendants has got no title over the suit land and both the court below although did not consider the evidences adduced by both the parties even then committed no illegality in dismissing the suit, when plaintiff suit was not properly been made by incorporating the proper parties in a suit and a declaration was not been sought for against the proper persons. He finally prays that since the rule contains no illegality, he thus prays for discharging the rule.

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

This is a suit for simple declaration of title and recovery of khas possession. Plaintiffs claim that they purchased the suit property from the heirs of admitted C.S. recorded tenant Abdul Karim and Enayet Ali, who obtained their share in an earlier instituted partition suit being No. 108/1960 and remaining in possession, till they were dispossessed by the defendants on 31.05.1996. In support of this contention plaintiffs has adduced a number of oral witnesses including their title deeds. One Advocate Commissioner was appointed to ascertain the land. On the claim



of the plaintiff that he was dispossessed from the suit land, advocate Akil Uddin, appointed Advocate Commissioner after having a local inspection on the suit land submitted report and deposed in a court as P.W.1. It is surprising to notice that the trial court decided suit as if he was deciding the suit under section 9 of the Specific Relief Act. In fact this is a suit for declaration of title and recovery of khas possession under section 42 of the Specific Relief Act. Appellate court on the other hand decided the appeal as if he was holding an appeal in a suit filed for partition, where defect of parties were very much essential. Both the court below arbitrarily decided the suit without having any discussion on title of the respective parties. Nowhere in the plaint plaintiffs has challenged the title deed of the defendants. In a written statement filed by the defendants also speak that defendant also did not challenge the title deed of the plaintiffs. Both of them are valid purchaser of the land from the C.S. recorded tenant, who got the respective shares in an earlier instituted partition suit of the year 1960 but the question remains whether they are the purchasers from the respective share as being obtained by the parties in the suit or not. When the title of both the parties were not been denied

by the respective parties unless and until the proper determination is there, if the suit is decided arbitrarily valid purchasers of the property would be denied to get proper justice from the court.

In the premises I am of the view that courts below ought to have discussed the evidences as adduced by the respective parties to prove their respective cases at length before arriving to decide the suit.

Regard being had to the above law, fact and circumstances of the case, I am of the view that this is a fit case to send back on remand to the trial court to decide the suit afresh in order to have a proper adjudication of the matter by giving an opportunity to both the parties upon amendment of their pleadings as well as giving further evidences if so desire.

I find merits in this rule.

In the result, the rule is made absolute. The judgment and decree passed by the court below is hereby set aside and the suit is sent back on remand to the trial court for deciding the suit afresh. Since the suit is very old one, trial court is hereby directed to decide the suit expeditiously as early as possible within 1 (one)

year after receiving of the judgment without adjournment and the parties of the suit are hereby directed not to take any further adjournment in the matter and will assist the court to conclude the suit as been directed by this judgment.

Send down the L.C.R along with the judgment at once.