

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Civil Revision No. 829 of 2010**

**IN THE MATTER OF**

Keshob Lal Dutta

.....Plaintiff-Appellant-Petitioner

-Versus-

1. Sumonta Patikor being dead his legal heirs-

1(a). Sanjib Chandra Dutta and others

Defendants-Respondents-Opposite parties

Mr. Md. Taha Molla, Advocate

.....For the petitioner

Mr. Khondoker Shahriar Shakir, Advocate

.....For the opposite parties

**Heard on 23.07.23, 7.08.23, 22.08.23, 27.08.23**

**and judgment passed on 30.08.2023**

*Present:*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

*“Let the records be called for and a Rule be issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.11.2008 passed by the learned District Judge, Barishal in Title Appeal No. 104 of*

*2002 disallowing the appeal by affirming the judgment and decree dated 28.04.2002 passed by the learned Assistant Judge, Bakhergonj, Barishal in Title Suit No. 134 of 1987 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.”*

At the time of issuance of the Rule, the parties were directed to maintain a status-quo in respect of possession and position of the suit land for 6(six) months from the date and lastly, it was extended on 17.09.2014 till disposal of the Rule.

The present petitioner as the plaintiff filed Title Suit No.134 of 1987 in the Court of Learned Assistant Judge, Bakerganj, Barishal impleading the present opposite parties as the defendants for a decree of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit land.

The case of the plaintiff, in short, is that the suit land originally belonged to one Surendra Patikar. The plaintiff purchased the same on auction on 02.01.1959 in connection with Money Execution Case No. 22/1958 arose out of a decree of Money Suit No. 234/1958, which was confirmed on 05.02.1959. The

plaintiff got boinama and delivery of possession of the suit land through the Court. He mutated his name on 30.11.1984 and enjoying the property since the auction purchase. The defendants threatened the plaintiff to dispossess, and hence the suit.

The defendants contested the suit by filing a written statement denying the averments made in the plaint contending, inter alia, that the suit is not maintainable in its present form. The age of the plaintiff shall not be more than 27/28 years as he was not born before 1958 and as such paying of auction money by him does not arise. There was no existence of the 5<sup>th</sup> Court of Munsif, Barishal in 1958 to entertain any case. The predecessor of defendant Surendra Nath or his brother did not get any summons of Money Suit No. 237/1958 or Money Execution Case No. 22/1958. No notice for attachment of the suit land or auction proclamation was issued. Auction is false, and mutation papers are collusive. The defendants own and possess the suit land so no question of threat of dispossession arises, and as such the suit is liable to be dismissed.

During the trial, the plaintiff examined 04 witnesses and produced documentary evidence, and on the other hand, the

defendants adduced 03 witnesses and produced documentary evidence to prove their respective cases.

After the conclusion of the trial the learned Assistant Judge, Bakergonj, Barishal by judgment and decree dated 28.04.2002 dismissed the suit on contest.

Being aggrieved by the said judgment and decree dated 28.04.2002 the plaintiff as the appellant preferred an appeal before the learned District Judge, Barishal, and the same was numbered as Title Appeal No. 104 of 2002 and after hearing the same the learned Judge of the Appellate Court below by his judgment and decree dated 27.11.2008 disallowed the appeal by affirming those of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 27.11.2008 the plaintiff as the petitioner had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, Mr. Md. Taha Molla, the learned Advocate appearing for the petitioner submits that both the Courts below dismissed the suit of the plaintiff holding that though the plaintiff could able to prove his possession in the suit land, he failed to prove his prima facie title in the suit land that requires in a suit for permanent

injunction, which is contrary to the established principle of the law, for the paramount consideration in a suit for a permanent injunction is whether the plaintiff has been successful in proving his exclusive possession, the question of title may be gone incidentally but the decision on the title is not a guiding principle.

He next submits that the plaintiff purchased the suit land on auction on 02.01.1959 which was confirmed on 05.09.1959, and got delivery of possession of the land through Court, and mutated his name and paying rent since then, and thus the auction purchase has been acted upon which fortifies the right and title of the petitioner in the suit land that speaks volume towards a suit for a permanent injunction.

Per contra, Mr. Khondoker Shahriar Shakir, the learned Advocate appearing for opposite party Nos. 1-2, and 3 submits that the learned Courts below rightly decided that the only record of rights does not create any title unless it is supported by the documents conferring the transfer of title, and rightly dismissed the suit for lack of prima-facie title of the plaintiff in the suit land. He further submits that the Courts below observed the possession of the petitioner in the suit land based on the deposition of a

defendant witness although two other defendant witnesses deposed that the defendants were in possession.

He lastly submits that the plaintiff-petitioner filed the instant suit based on a boinama of an auction, which has not been proved by the petitioner, rather the petitioner played fraud upon the Court by submitting a false boinama apparent on the face of it, and hence the Courts below did not commit any error of law occasioning failure of justice in dismissing the suit.

Heard the learned Advocates of the contending parties and perused the materials on record. It appears that the plaintiff instituted the instant suit for a decree of permanent injunction alleging that he purchased the suit land on auction on 02.01.1959 in connection with Money Execution Case No. 22/1958 arose out of a decree of Money Suit No. 234/1958, and the auction was confirmed on 05.02.1959. He got boinama and delivery of possession of the suit land through the Court. He mutated his name on 30.11.1984. He owned the suit land since the auction purchase. The defendants threatened the plaintiff to dispossess giving rise to the suit. On the other hand, the defendants claimed that the age of the plaintiff should not be more than 27/28 years as he was not born before 1958 as such paying of auction money by him does not

arise. There was no existence of the 5<sup>th</sup> Court of Munsif in Barishal in 1958 to entertain any case. No summons of Money Suit No. 237/1958 or Money Execution Case No. 22/1958 was served upon the predecessor of the defendants or his brother. There was no notice concerning the attachment of the auctioned land or auction proclamation. The fact of the auction is false. The mutation is collusive. The defendants possess the suit land as such there is no question of threat of dispossession.

On scrutiny, it appears that the plaintiff indisputably filed the instant suit in time impleading the necessary party. On perusal of the evidence on record, it appears that during trial the plaintiff examined 04 witnesses to prove his case out of which P.W.1 is the plaintiff himself who gave evidence supporting his case to the effect that he got the suit land through auction, mutated his name, and possessing the land by paying rent. P.W.2 tried to give evidence to the effect that at the time of delivery of possession of the suit land to the plaintiff he was there though at that time his age was about 3 to 4 years as such, his evidence concerning possession is not trustworthy. P.W.3 states that he is a bargader of the suit land of dawkathi mouja under the plaintiff, and P.W.4 gives evidence that the plaintiff possesses the suit land and P.W.3 is his bargader. On

the other hand, the defendants examined 03 witnesses in support of their case out of which P.W.2 gave evidence that the plaintiff possesses the land of suit plot No.874 of dawkathi mouja. But D.W.1 who is one of the defendants adduced in support of their case, and D.W.3 gave evidence supporting D.W.1 in respect of possession, from which it appears that the plaintiff is in a better position in proving his possession over the suit land than that of the defendants. However, in a suit for permanent injunction, the plaintiff is to prove his exclusive possession over the suit land and prima facie title therein along with the threat of dispossession. It appears from the record that the plaintiff could not prove his case of auction purchase by producing relevant papers of the auction. Admittedly the plaintiff only produced documents relating to mutation, which does not confer title, and thereby the plaintiff failed to prove his prima facie title over the suit land. It is also apparent on the face of the evidence on record that the plaintiff miserably failed to prove his alleged threat of dispossession from the suit land.

On perusal of the judgments of the Courts below it appears that the learned Trial Judge though found possession of the plaintiff over the suit land but held that-“বাদীপক্ষ বর্ণিত টাকার মোকদ্দমা, টাকার



ডিক্রিজারী মোকদ্দমার রেজিস্ট্রারের জাবেদা নকলও দাখিল করেননি। সার্বিক অবস্থা বিবেচনায় বাদী কর্তৃক তাহার পিতার মাধ্যমে ইং ০২/০১/১৯৫৯ তারিখে নিলাম সূত্রে বিরোধী সম্পত্তি খরিদের বিষয়টি প্রমান হয় না। যদিও বাদীপক্ষ বর্ণিত নিলামের বুনিয়াদে বিরোধী ভূমিতে নিজ নাম কর্তন করিয়াছেন। তবুও নাম কর্তনের মাধ্যমে কোন ভূমিতে কাহারও কোন প্রকার স্বত্বের উদ্ভব হয় না। বাদী নিলাম সূত্রে বিরোধী ভূমি খরিদের বিষয়টি প্রমান করিতে না পারায় বিরোধী সম্পত্তিতে বাদীর স্বত্ব প্রমান হয় না।” and on appeal, the learned Judge of the Appellate Court below on concurrent findings held that the plaintiff failed to prove his prima facie title over the suit land by producing the auction related papers, and further held that-“দখলের বিষয়ে উভয় পক্ষের সাক্ষীগন সাক্ষ্য প্রদার করিয়াছে। তবে দখলের বিষয়ে বাদী পক্ষের সাক্ষী বেশী শক্তিশালী। চিরস্থায়ী নিষেধাজ্ঞার মোকদ্দমায় কেবলমাত্র দখল দ্বারাই ডিক্রি পাইবার অধিকারী নহে। নালিশী সম্পত্তিতে বাদী পক্ষকে অবশ্যই প্রাথমিক স্বত্ব স্বার্থ প্রমান করিতে হইবে। কিন্তু বাদী আপিলকারী পক্ষ তাহা প্রমান করিতে সম্পূর্ণ ব্যর্থ হইয়াছে।”

At the time of the hearing, Mr. Taha Molla argued that in a suit for a permanent injunction, the Court would only see the factum of possession but not the factum of title, and in support of his submission, he referred to the decision reported in 54 DLR (AD)(2002)73 wherein it was held that in a suit for permanent injunction Court is not required to decide the title of respective parties it only looks into the factum of possession, the factum of title of the respective parties would remain open to be decided in an appropriate forum. We are at par with the said decision. But in

the case at hand, the Courts below did not decide the title of the parties in the suit but tried to see the prima facie title of the plaintiff over the suit land in deciding the suit for permanent injunction as per the mandate of the decisions of our Apex Court reported in 23 BLT(AD)(2015)202. At this stage, Mr. Khondoker Shahriar Shakir by referring to the decisions reported in 43 DLR (AD)215 and 3 XP(AD) (2010) 53 submits that in a suit for permanent injunction exclusive possession over the suit property is a must and at the time of determining the possession the Court will also look into prima facie title of the parties in the disputed land, a simple suit for a permanent injunction should not be allowed to be used as a testing device to ascertain title where the dispute involves the complicated question of title, as in the instant case.

Because of the above, there is no reason and logic to interfere with the impugned judgment and decree.

Given the above, I do not find any substance in the submissions made by the learned Advocate for the petitioner; rather, I find ample substance in the submissions advanced by the learned Advocate for the opposite parties. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Status-quo vacated.

The impugned judgment and decree dated 27.11.2008 passed by the learned District Judge, Barishal in Title Appeal No. 104 of 2002 disallowing the appeal by affirming the judgment and decree dated 28.04.2002 passed by the learned Assistant Judge, Bakhergonj, Barishal in Title Suit No. 134 of 1987 dismissing the suit is hereby upheld.

Send a copy of this judgment along with the Lower Court Records to the Court below at once.

(TUHIN BO)