

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4201 OF 2017

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Menaz Howlader and others
... Petitioners

-Versus-

Md. Fazlul Khan and others
... Opposite parties

Mr. Mohammad Eunus, Advocate
.... For the petitioners.

None appears
.... For the opposite parties.

Heard and Judgment on 25.08.2024.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 21.11.2017 passed by the Joint District Judge, 1st Court, Patuakhali in Title Appeal No.102 of 2015 and reversing those dated 28.05.2015 passed by the Senior Assistant Judge, Sadar, Patuakhali in Title Suit No.406 of 2008 decreed 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 in short are that 3.38 acres land appertaining to S.A. Khatian No.105 belonged to Asman Khan who transferred 1.71 acres land to Abdur Rashid and Abdul Wahab by a two registered kabala deed. Asman Khan died leaving behind one son Kashem Ali Khan and two

daughters Hayatonnessa and Jobentonnessa. The plaintiffs purchased 2.43 acres land by 6 registered kabala deed dated 08.03.1978, 09.04.1980, 09.04.1980, 09.04.1980, 31.03.1992 and 04.10.2006 from the heirs and successive heirs of Hayatonnessa and Jobentonnessa and from the purchasers who purchased land from Asman Khan. The plaintiffs are in possession in above land by constructing a dwelling house, yard and garden. Above property has not been partitioned by meets and bounds and the defendants denied to effect an amicable partitioned on 30.05.2008.

The suit was contested by defendant Nos.1-3 who are the male heirs of Abul Kashem now deceased only son of Asman Khan. It has been stated that above property was put to auction sale for realization of outstanding rent pursuant to Certificate Case No.85 of 61B and defendant Nos.1-3 purchased the same and obtained sale certificate and certificate of possession on 25.06.1961 and 28.01.1962 respectively. The defendants got their names mutated in above land and possessing the same by constructing dwelling house, garden and pond.

At trial plaintiffs and defendant No.1-3 examined two witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-8 and those of the defendants were marked as Exhibit Nos.ka-gha.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court defendants Nos.1-3 preferred Title Appeal No.102 of 2015 to the District Judge, Patuakhali which was heard by the learned Joint District Judge, 1st Court, Patuakhali who allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by above judgment and decree of the Court of appeal below plaintiffs as petitioners moved to this Court and obtained this Rule.

Mr. Mohammad Eunos, learned Advocate for the petitioners submits that DW1 Md. Monju Khan has admitted in cross examination that he as complainant filed a Criminal case and the learned Magistrate initiated a proceeding under Section 211 of the Penal Code, 1860 against them for giving false evidence in above case. The documents of the defendants relating to above auction sale of the disputed land were proved to be forged. Asman Khan sold 1.3 acres land out of the disputed khatian to Md. Shamsul Hoq by a registered kabala deed No.2296 dated 04.03.1968 which was subsequently purchased from above Shamsul Hoq by defendant Nos.1-3 on 08.03.1978. Above documents further prove that the alleged claim of auction purchase of the disputed land by the defendant is false and fabricated. The learned Judge of the trial Court on examination of the sale certificate and certificate of delivery of possession produced by the defendants rightly held that above documents were forged and created for the purpose of

the this suit. On consideration of above facts and circumstances of the case and materials on record the learned Assistant Judge rightly decreed the suit. But the learned Joint District Judge without reversing any material findings of the trial Court most illegally allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit by a non speaking judgment which is not tenable in law.

No one appears for the opposite parties when the Rule was taken up for hearing.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record.

It is not disputed that 3.38 acres land appertaining to S.A. Khatian No.105 belonged to Asman Khan who died leaving one son Abul Kashem and two daughters, namely Hayatunnessa and Sobentunnessa. The plaintiffs are purchasers of land from the above two daughters of above Asman Khan and from the purchasers who purchased land from above Aslam Khan. On the other hand defendants are grandson of above Asman Khan by his only son now deceased Abul Kashem.

Plaintiffs have claimed to have purchased the disputed land by six registered kabala deed dated 08.03.1978, 09.04.1980, 09.04.1980, 09.04.1980, 31.03.1992 and 04.10.2006 and they have produced and proved above documents at trial which were marked as Exhibit No.1-6.

The plaintiffs have claimed to be in possession of above land by constructing their dwelling house, courtyard and garden.

Defendants claimed to have purchased the suit land in auction pursuant to Certificate Case No.85 of 61B. The defendants have produced and proved a sale certificate and certificate of delivery of possession of the disputed land pursuant to above auction sale. But those documents remained not proved by legal evidence. In his evidence as DW1 Md. Monju Khan stated that he did not have any personal knowledge about above documents nor he know who obtained above documents from which office. He did not make any endeavor to prove the genuinity and effectiveness of those documents. He further stated that their mutation of names for the disputed property has been cancelled vide another Miscellaneous Case filed by the plaintiffs. But against above order of cancellation of their mutation they did not prefer any appeal. He lastly admitted that he as complainant filed a Criminal Case in which the learned Judicial Magistrate directed for production of their documents relating to above auction purchase but they could not produce any document.

It is true that at trial the defendants produced a sale certificate and a certificate of delivery of possession of the disputed land. But on a careful examination of those document the learned Judge of the trial Court found that above documents were prepared by interpolation and overwriting and above documents were forged. As far as the impugned

judgment and decree passed by the learned Joint District Judge in appeal is concerned the same cannot be designated as a proper judgment of reversal of a Court of Appeal. The learned Joint District Judge did not discuss the evidence on record and did not reverse any material findings of the trial Court. He did not assign any reason for setting aside the judgment and decree of the trial Court which was based on the evidence on record.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Joint Session Judge committed serious illegality in setting aside the well reasoned and evidence based judgment and decree of the trial Court by a non speaking judgment which is not tenable in law.

Accordingly, I find substance in this application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 21.11.2017 passed by the Joint District Judge, 1st Court, Patuakhali in Title Appeal No.102 of 2015 is set aside and those dated 28.05.2015 passed by the Senior Assistant Judge, Sadar, Patuakhali in Title Suit No.406 of 2008 is restored.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER