

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 144 of 2018

Ajit Abdul Hekim and others

.....Petitioners.

-Versus-

Md. Chanfor Ali and others

.....Opposite parties.

Mr. Zafar Sadeque, Advocate

.....For the petitioners.

None appears.

..... For the opposite parties.

Heard and judgment on 12th March, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party Nos.1-16 to show cause as to why the impugned judgment and decree dated 19.11.2017 passed by the District Judge, Netrokona in Other Class Appeal No. 121 of 2017 affirming those dated 21.06.2017 passed by the Senior Assistant Judge, Kamakanda Court,

Netrokona in Other Class Suit No.52 of 2015 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for permanent injunction against the opposite parties.

Plaint case in short, inter alia, is that Nazimuddin alias Azimuddin Saker, the predecessor of the plaintiffs got the suit land by way of settlement from the Government vide Settlement Case No. 956 (XII) 1967-68. Thereafter he possessed the same extending his residence therein and using other part for agricultural purpose and BRS khatian was duly recorded in his name. After his death, plaintiffs succeed the same and are possessing the suit lands by raising huts and creating fishery in 1 acre of land out of suit lands. Thereafter defendants threatened plaintiff No.4 to dispossess from the suit land and hence plaintiffs instituted the present suit for permanent injunction against the defendants.

Opposite party contested the suit by filing a written statement denying the plaint case alleging, inter alia, that 1.97 acres of land of the suit khatian is a channel and the same is not settleable with people. Plaintiffs collusively got the BRS khatian

recorded in their names, against which defendants as well as government filed cases before the Land Survey Tribunal. Local people use to rear fish in the said channel and using its water for irrigation purpose and to wash households. Defendants never threatened plaintiffs to disposes from the suit land and plaintiff with a false pretext instituted the present suit which is liable to be dismissed with cost.

By the judgment and decree dated 21.05.2017 the trial court dismissed the suit on contest.

Being aggrieved thereby petitioner preferred Other Class Appeal No. 121 of 2017 before the Court of District Judge, Netrokona, who by the impugned judgment and decree dated 19.11.2017 dismissing the appeal and affirmed the judgment of the trial court.

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

Although the matter is posted in the list along with the name of the opposite party but none appears to present them before this court.

Mr. Zafar Sadeque, the learned advocate appearing for the petitioner by filing a supplementary affidavit annexing the documents of the plaint of the Land Survey Case No. 2252 of 2015 filed by the Government of Bangladesh against the defendants including the present petitioner together with the judgment dated 24.06.2018 passed by the Joint District Judge of Land Survey Case No. 2252 of 2015, and submits that although the petitioner filed number of witnesses in support of his title and possession of taking the property through Settlement Case No. 956(XII) 1967-68 and recording of BRS khatian into their name and to prove the possession of the suit land by the plaintiffs adduced a number of witnesses but the court below without discussing evidences adduced by the plaintiffs most arbitrarily held that since regarding the recording of BRS khatian government has challenged in a land survey suit and accordingly plaintiff title over the suit land has yet been decided and the suit land is unspecified and plaintiff is not in exclusive possession of the suit land and thereby most arbitrarily dismissed the suit by way of concurrent judgment of the court below illegally. He further submits that from the plaint of the land survey case

together with the judgment passed by the Land Survey Tribunal in the suit which has annexed here by way of supplementary affidavit, it will appear that although the government has challenged, the recording of the BRS khatian in two plots namely Plot No. 1452 land measuring 1.50 acres of land (schedule-1) and BRS khatian Plot No. 1546 land measuring 1.97 acres of land (schedule-2) are erroneous but the Tribunal while deciding suit found that plaintiff could not prove his title and possession of second schedule land measuring 1.97 acres of land in BRS khatian in plot No. 1546 rather the defendant, the present petitioner has got valid title over the said land and accordingly he decreed the suit in part leaving behind the second schedule land of the plaintiff. In the premises the title of the plaintiffs has been ascertained by the Land Survey Tribunal in favour of the plaintiffs of the suit and accordingly decree passed by the trial court is nothing but non applying their judicial mind, which is liable to be set aside.

Heard the learned Advocate and perused the Lower Court Record including the impugned judgment together with the judgment of the Land Survey Tribunal as has been annexed by way of supplementary affidavit.

Going through the record together with the judgment passed in this suit, I like to have look on the schedule of the plaint in the Land Survey Case No. 2252 of 2015. In the said suit schedule has been mentioned in the following manner:

দাবীর ১নং তপছিল ভূমি

উপজেলা-কলমাকান্দা, মৌজা-পোগলা

<u>দাগ নং</u>	<u>খতিয়ান নং</u>	<u>শ্রেণী</u>	<u>পরিমাণ</u>
এস, এ-৪০৮৭	এস, এ -১	খাল	৩.৯৪ একর
বি আর এস -৫৬৫৯	বিআরএস-১৪৫২	বোর	১.৫০ একর
			মোট - ১.৫০ একর

যাহার খতিয়ান, নাম, শ্রেণী সাফ কর্তন ক্রমে খাল শ্রেণীতে ১নং খতিয়ানে অন্তর্ভুক্তির সংশোধন হইবে।

দাবীর ২নং তপছিল ভূমি

উপজেলা-কলমাকান্দা, মৌজা-পোগলা

<u>দাগ নং</u>	<u>খতিয়ান নং</u>	<u>শ্রেণী</u>	<u>পরিমাণ</u>
এস, এ-৪১৮৭	এস, এ -১	খাল	৩.৯৪ একর
বি আর এস -৫৬৫৯	বিআরএস-১৫৪৬	বোর	১.৯৭ একর
			মোট - ১.৯৭ একর

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In the said suit it was prayed that:

"বাদীপক্ষের এস,এ ১নং খাস খতিয়ান ভুক্ত নিম্ন তপছিল ভুক্ত দাবীর ভূমি পোগলা মৌজার ১৪৫২ ও ১৫৪৬ বিআরএস খতিয়ানে ব্যক্তি মালিকানায় সংশোধিত হইয়া নালিশী উভয় খতিয়ান সাফ কর্তন ক্রমে সরকারের ১নং খাস খতিয়ানে খাল শ্রেণী উল্লেখে অন্তর্ভুক্তির জন্য ১-৫নং বিবাদীর বিরুদ্ধে নালিশী ১৪৫২ নং খতিয়ান সংশোধনের দাবীকৃত ১নং তপছিল ও ৬-১৪ নং বিবাদীর বিরুদ্ধে নালিশী ১৫৪৬ নং খতিয়ান সংশোধনে দাবীকৃত ২নং তপছিল বর্ণিত ভূমি বাদীর নামে ১নং খাস খতিয়ানে সংশোধন পূর্বক খাল শ্রেণী উল্লেখে অন্তর্ভুক্তির আদেশের ডিক্রী দিতে; ও"

In the premises, challenging the record of BRS khatian in plot No. 1546 and 1542 government filed the above suit. While passing the judgment of the Land Survey Tribunal in that suit, the learned Judge observed and held that:

“The Ext.No.A/1(N) {i.e. original copy of BRS khatian No. 1546} shows that the land measuring 1.97 decimals appertaining to BRS plot No. 5659 stands recorded in the name of Abdul Hekim, Abdul Halim and Abdur Rashid Meah s/o Azim Uddin. The Ext. No.B (i.e. original copy of DCR No. 6669) shows that

DCR as regards the land measuring 302 decimals including land measuring 197 decimals appertaining to RS plot No. 4087 was issued in favour of Md. Nazim Uddin and Abdul Gafur Talukder s/o Sabu Sheikh as mutation fee of LS case No. 956 (XII) 67-68. The Ext. No.B(I) {i.e. original copy of rent receipt} shows that Abdul Hekim paid rent to the government as regards the land measuring 197 decimals appertaining to RS plot No. 4087 corresponding to BRS plot No. 5659. The Ext. No.C (i.e. original copy of information slip No. 2151 dated 20.10.15) shows that account No. 481 is opened in the name of Nazim Uddin in respect of the land measuring 197 decimals appertaining to RS plot No. 4087 under LS case No. 956 (XII) 67-68 and rent for the said land is paid up to 2011 A.D. and the same is recorded in the Register No.2 of Pogla Union Land Office.

It is evident from my above discussion based on evidences oral and documentary on record and in consideration of the facts and the circumstances of the case that the plaintiff side has right, title and interest over the land measuring 150 decimals appertaining to the suit plot as described in the schedule No.1 to the plaint but the case of the plaintiff side with respect to the land measuring 197 decimals as detailed in the schedule No.2 to the plaint is not proved. So, it appears from the evidence made hereinbefore that the disputed BRS khatian as described in the schedule No.1 to the plaint stands wrongly recorded in the name of the defendant side and so the same is liable to be corrected to secure the ends of justice.”

In view of the above legal aspect of this case, it appears that the Land Survey Tribunal being the proper court of correcting the records as per provision under section 145B of the State Acquisition and Tenancy Act has found the plaintiffs got title and

possession over the land measuring 1.97 acres of land in BRS khatian plot No. 1546.

Upon perusal of the evidences adduced in this case, it appears also that regarding the title plaintiffs have annexed all documents in the suit and the plaintiffs witnesses by corroborating each other in a voice admitted his possession of the suit land, which was also found by the Tribunal and thus plaintiff has successfully able to prove his title and possession over the suit land, but the court below upon misguided himself dismissed the suit upon wrong holding that the plaintiffs could not prove his title and did not have exclusive possession of the suit land most arbitrarily. The impugned judgment thus suffers from non-reading of the evidences. When the plaintiff title has been ascertained by the Land Survey Tribunal and their possession also been affirmed therein and the plaintiff witnesses corroborated his possession the judgment of the court below in a suit for permanent injunction appears to be passed illegally and the impugned judgment is not sustainable in law, which is liable to be set aside.

I thus find merit in this rule.

In the result, the rule is made absolute and the impugned judgment and decree passed by the court below is hereby set aside and the suit is decreed in favour of the plaintiff.

The order of status-quo granted earlier is hereby recalled and vacated.

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