

Bench:  
Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 2945 of 2010

Amalendu alias Khokan Chandra Pal and others  
..... petitioners

-Versus-

Parimal Kumar Pal and others  
..... opposite parties

Mr. Sabyaschi Mondal with  
Mr. Raju Sen, Advocates  
..... for the petitioners

No one appears for the opposite parties

Judgment on 30.04.2024

This rule at the instance of contesting defendants was issued calling upon plaintiff-opposite parties 1 and 2 to show cause as to why the judgment and decree of the Additional District Judge, Court No. 4, Khulna passed on 29.04.2010 in Title Appeal No. 82 of 2007 allowing the appeal decreeing the suit in full by modifying the judgment and decree of the Senior Assistant Judge, Dakop, Khulna passed on 27.02.2007 in Title Suit No. 78 of 2004 decreeing the suit in part should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper .

Facts relevant for disposal of the rule, in brief, are that opposite parties 1 and 2 herein as plaintiffs instituted the suit stating that suit land measuring .0725 acres out of 1.65 acres appertains to CS khatian 194, SA khatian 175. Kanailal Pal purchased .65 acres of land from the suit khatian through a *kabala* dated 12.06.1961 and died in 1971

during liberation war leaving behind his 2 sons Niranjan Kumar Pal and minor Parimal Kumar Pal. But practically Niranjan and others did never possess the suit land. After the deaths of CS recorded tenants Swarnamoyee Daishya and Yogandra Nath Pal their grandson Shital Pal the son of Gobinda Chandra Pal got the suit land as reversioner and started possessing the same by erecting houses thereon. After attaining the age of majority Parimal executed a power of attorney in favour of the plaintiffs on 12.07.2004. The *kabala* dated 01.09.1976 executed and registered by Niranjan and Parimal showing sale of .1450 acres of land to defendants 1-5 is collusive and fraudulent. Since Parimal was then minor and he had no legal necessity, his brother Niranjan had no right to transfer the land. The defendants firstly disclosed the transfer on 30.05.2004. The plaintiffs by way of amendment further claimed that defendant 10 also created a forged document in the name of plaintiff 1 because he did never execute and register the aforesaid deed. The defendants have no title and possession in the suit land. Hence, the suit for declaration that the *kabala* dated 01.09.1976 described in schedule 'kha' in respect of 'ka' schedule land and the *kabala* dated 27.04.2000 of 'ga' schedule to the plaint are collusive, fraudulent and not binding upon the plaintiffs.

Defendants 1(ka)-1(ga), 2, 3 and 5 contested the suit by filing written statement. In the written statement they denied the statements made in the plaint and further contended that Kanailal Pal got .65

acres of land by purchase deed dated 22.09.1961. He died leaving behind 2 sons Niranjan and minor Parimal. In need of money for the welfare of the minor, Niranjan himself and on behalf of the minor sold out .145 acres of land to defendants 1-4 and 5 and handed over possession thereof. They sold the land for the education of the minor, to pay of the debts of his father and for his eternal peace. Jatindra Pal died leaving behind defendants 1ka-1ga as heirs. After purchase, the defendants mutated their names through Mutation Case No. 28/2000-2001, separated the *zama* and paid rent to the concerned. On the same day the plaintiff sold out other lands to Manju Rani Pal through another *kabala*. After attaining the age of majority plaintiff 1 amended the aforesaid deed but did not take any step in respect of the *kabala* in the name of these defendants. Plaintiff 1 in collusion with defendant 10 created a deed as described in schedule 'ga' to the plaint. Plaintiff 1 is now at 45 years but he did not institute the suit within 12 years of his attaining the age of majority. Therefore, the suit is hopelessly barred by limitation. They further contended that the power of attorney allegedly executed by Parimal is illegal, collusive and without jurisdiction. The recent record of rights in respect of the suit land has been prepared in the names of the defendants. The plaintiffs have no title and possession over the suit land and as such the suit would be dismissed.

Defendant 10 filed written statement admitting the fact that he has collusively created *kabala* dated 27.04.2000 described in schedule 'ga' to the plaint.

The trial Court framed as many as six issues to adjudicate the matter in dispute. During trial, the plaintiffs examined 3 witnesses while the defendants examined 2. The documents produced by the plaintiffs were exhibits 1-4 and the documents of the defendants were exhibits ka-gha series. However, the trial Court decreed the suit in part, so far it was related to the *kabala* dated 27.04.2000 described in schedule 'ga' but dismissed it, so far it was related to *kabala* dated 01.09.1976 described in schedule 'kha' to the plaint. Being aggrieved by the plaintiffs preferred appeal before the District Judge, Khulna. The Additional District Judge, Court No. 4, Khulna heard the appeal on transfer and allowed the same and decreed the suit in full which has been challenged by the defendants in this revision.

Mr. Sabyasachi Mondal, learned Advocate for the petitioners has taken me through the judgment and decrees passed by the Courts below and submitted that Niranjana Pal and Parimal Pal validly transferred the suit land to these petitioners. The attorney of Parimal has filed this case as a test to grab the property sold out to these petitioners. He then submits that the suit is barred by limitation under Article 44 of the Limitation Act because Parimal had attained the age of majority long years ago. He had to institute the suit challenging the

deed of transfer within 3 years from the date of his attaining majority. The trial Court on correct assessment of fact and law held that the suit is barred by limitation but the Court of appeal below without adverting the findings of the trial Court allowed the appeal and decreed the suit. He further submits that the plaintiffs by oral and documentary evidence failed to prove that they are in possession of the suit land, on the other hand, the evidence of defendants' witnesses on possession are corroborative. On the basis of the *kabala* under challenge the land has already been mutated in the defendants' name and *zama* has been separated. The Court of appeal below misdirected and misconstrued in its approach of the matter and thereby committed error of law resulting in an error in such decision occasion in failure of justice which is required to be interfered with by this Court in revision.

No one appears for the opposite parties although it appears that the notices have duly been served upon them.

I have considered the submissions of the learned Advocate for the petitioners and gone through the materials on record.

It is admitted that Kanailal purchased the suit land on 12.06.1961. It is further admitted that during his possession and enjoyment he died in 1971 leaving behind his 2 sons Niranjan and minor Parimal. The plaintiffs tried to make out a case that Niranjan and Parimal although inherited the suit land from his father but they

had never possessed it. But Shital Pal son of Gobinda Pal who was the son of CS recorded tenants Swarnamoyee Daishya and Yogendra Nath got the land as revisioner and he is in possession of it by erecting houses therein. Mysteriously, the plaintiffs did not lead any evidence either oral or documentary that Shital Pal inheritance the suit land as claimed. The case of the plaintiffs is self contradictory because firstly they claimed that Shital Pal became owner of the land and secondly they admitted Parimals ownership and filed the suit on that strength. It further appears that by the impugned deed dated 01.09.1976 Niranjana and minor Parimal sold out .145 acres land to the defendants but in the schedule of the plaint the land has been described measuring .0725 acres, i.e., the share of Parimal. Although, the plaintiffs prayed for a declaration that the suit land described in schedule 'ka' in respect of 'kha' schedule *kabala* dated 01.09.1976 is fraudulent, collusive, illegal, inoperative and not binding upon the plaintiffs but the quantum of land as described in schedule 'ka' do not tally with the deed described in schedule 'kha'.

In the written statement, evidence of the defendants and recital of the *kabala* exhibit-1 it is found that the share of Parimal was sold by his elder brother Niranjana on his behalf him for legal necessity. The statements made in the written statement to that effect is corroborated by DW 1 in evidence. It is found that the suit had been filed by the constituted attorney of Parimal but Parimal did not come

forward to depose and support the case which was required considering the facts of the case. Therefore, I find force in the submissions of Mr. Mondal that Parimal's attorney has filed this test case to grab the property transferred to the defendants. By documentary evidence and oral evidence of PWs 1 and 2 the plaintiffs failed to prove their title and possession in the suit land. On the other hand the defendants led corroborative evidence and proved their title and possession over in suit land. They have mutated their names and separated the *zama* through exhibits 'gha' and 'gha(1)' respectively.

It appears that the *kabala* was executed and registered on 01.09.1976 and instant suit has been filed on 22.07.2004, i.e., after 28 years of its registration. A suit for declaration that a deed is not binding upon the plaintiffs is to be instituted within 3 years from minor's attaining the age of majority under Article 44 of the Limitation Act. It appears that although Parimal attained majority long years ago but did not institute the suit within the period of limitation and as such it is hopelessly barred by limitation. The point of limitation was addressed by the trial Court correctly but the Court of appeal below without adverting the findings decreed the suit and, thereby, committed error of law resulting in an error in such decision occasioning failure of justice, which is required to be interfered with by me. The trial Court correctly considered the written statement filed by defendant 10 and decreed the suit in part, so far it was related to

schedule 'ga' *kabala* dated 27.04.2000 holding that the deed was created by him in the name of Parimal. I find no error in the decision of the trial Court decreeing the suit in part declaring the aforesaid deed not binding upon the plaintiffs as described in schedule 'ga' to the plaint.

In view of the discussion made hereinabove, I find merit in this rule. Accordingly, the rule is made absolute. No order as to costs. The judgment and decree passed by the lower appellate Court is hereby set aside and those of the trial Court are restored.

Communicate this judgment and send down the lower Court records.

*Rajib*