

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 34 OF 2011

Md. Jamal Uddin being dead his legal heirs:
1(a) Jobena Khatun and others
Defendant-Respondent-Petitioners

Versus

Md. Ashiqur Rahman and another
Plaintiff Nos. 1-2-Appellant Nos. 1-2-Opposite
Party Nos. 1-2

Arifur Rahman and others
Proforma-Opposite Parties

Mr. Md. Zafar Sadek, Advocate
for the Defendants-Respondents-Petitioners

Mr. Abdur Razaque Khan, Senior Advocate
with
Mr. Hasan Rajib Prodhan, Advocate
for the Opposite Party Nos. 1-2

Judgment on: 12.7.2023

This Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned Judgment and Decree dated 29.7.2010 passed by the learned Joint District Judge, 1st Court, Lalmonirhat (In Charge) in Other Class Appeal No. 20 of 2007 reversing those dated 24.1.2007 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat in Other Class Suit No. 7 of 2003 dismissing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party Nos. 1 and 2 as plaintiffs instituted Other Class Suit No. 7 of 2003 before the learned Assistant Judge, Aditmari Court, Lalmonirhat against the defendant-petitioner for permanent injunction.

The plaint Case in short, is that, the suit land belongs to S.A. recorded tenant Safar Uddin and due to want of money the said Safar Uddin by a Saf Kabala Deed on 23.4.1968 transferred .27 decimals of land in favour of Jobeda Khatun and thereafter on 02.12.1980 the said Jobeda Khatun by dint of Heba Bil Ewaj Deed also got .27 decimals land and thus she acquired .54 decimals land and while possessing the same on 09.5.1991 she transferred .06 decimals land in favour of her son-in-law Mostafa Rahman. Thereafter on 14.9.1992 by dint of Heba Bil Ewaj Deed the said Jobeda Khatun also transferred .48 decimals of land in favour of her two sons Eunos and Ayub Ali. Thereafter Eunos Ali also transferred .2 decimals of land in favour of his two nephews by dint of Heba Bil Ewaj deed on 8.3.1993 and accordingly Mostofa Rahman for want of money sold out .06 decimals of land in favour of the plaintiffs on 19.2.1998. Thereafter Ayub Ali transferred .12 decimals of land out of his .27 decimals of land to the plaintiffs on 20.11.1999 and thus the plaintiffs acquired .20 decimals of land by way of purchase which is adjacent to the road and planted different types of trees and the said land is also surrounded by bamboo

fence. Thereafter on 22.3.2003 i.e. 10th Falgoun B.S. at about 9 a.m. the defendant No. 1 threatened and initiated to construct a boundary wall around the suit land of the plaintiffs and thereafter during pendency of the instant suit on 20.8.2003 the defendant at about 9 p.m. forcefully erected a house of tin shed over .07 decimals out of .20 decimals of land. Thereafter the plaintiffs on hearing the news of dispossession came to the house and requested the defendant to remove the occupied structure in favour of the plaintiffs but they denied to do that and as such the plaintiffs instituted the present suit for permanent injunction and subsequently by amending the plaint they sought for eviction of the defendant.

The defendant contested the suit by filing a separate written statement denying the plaint case contending, inter alia, that the suit land belongs to C.S. recorded tenant Jan Mamud, Bibi Jan Nessa and others and due to their dues of rent in the year of 1935 to 1936 as per Certificate Case No. 393 on 28.6.1937 one Nurul Huda Kha, Advocate, the Manager of Secretary of State for India in Council purchased by auction the suit land and took possession. Thereafter the father of the plaintiff late Safar Uddin took settlement of land measuring 3.53 acres and during S.A. Khatian No. 42 the land 3.26 acres were recorded in the name of Safar Uddin and the rest of the .27 acres of land were wrongly recorded

in the Bottrish Hazari Primary School though subsequently the said wrong recording was corrected in R.S. record. Thereafter the said Safar Uddin while possessing the suit land on 07.3.1983 by dint of Heba Bil Ewaj deed No. 4917 transferred .90 acres of Dag No. 313 and totally 1.962 acres in favour of his two sons Jamal Uddin and Hafij Uddin. Thereafter Safar Uddin died leaving behind his wife 03 (three) sons and 4(four) daughters and thereafter 04 (four) daughters on 06.11.1996 vide Heba Bil Ewaz Deed No. 5717 gifted the land measuring .53 acres of Dag No. 313 and handed over the possession in favour of the plaintiffs and accordingly in R.S. Khatian No. 206, Dag No. 302 the total land of 2.20 acres were rightly recorded in the name of the plaintiffs. Thereafter the plaintiffs erected a house in the Dag No. 324 and also planted different types of trees and they have been possessing therein and he also constructed a pucca structure in the disputed Dag No. 324 on the land measuring .18 decimals and also constructed a 5 (five inches) wall on the East Southern side and accordingly he constructed boundary on the land measuring .2 decimals and the rest of the .8 decimals for want of money he could not construct any boundary wall. In the southern side of Dag No. 324 over .28 decimals of land the defendant is possessing and on 21.2.2003 the plaintiffs of the instant case attempted to dispossess the present defendant as a result the present defendant instituted Other Class

Suit No. 6 of 2003 for permanent injunction against the present plaintiffs. The plaintiffs of the instant case instituted the present suit as a counter case with a malafide intention and the suit of the present plaintiffs is false and is liable to be dismissed with cost.

The learned Assistant Judge, Aditmari Court, Lalmonirhat dismissed the suit vide judgment and decree dated 24.1.2007 in Other Class Suit No. 7 of 2003.

Against the aforesaid judgment and decree the plaintiff No.1 as appellant preferred Appeal being Other Class Appeal No. 20 of 2007 before the Court of learned District Judge, Lalmonirhat and thereafter the said Appeal was transferred to the Court of learned Joint District Judge, 1st Court, Lalmonirhat who allowed the Appeal vide Judgment and Decree dated 29.7.2010 and thereby reversing Judgment and Decree dated 24.1.2007 passed in Other Class Suit No. 7 of 2003 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat.

Being aggrieved by and dissatisfied with the impugned judgment and decree the defendants-respondents as petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

During pendency of the Rule petitioner Jamaluddin died and his legal heirs were substituted.

Mr. Md. Zafar Sadek, learned Advocate for the defendant-

respondent-petitioners, submits that inspite of clear findings of facts of the present plaintiffs petitioners in respect of their title and exclusive possession over the suit land and the plea of plaintiffs the attempt of the defendant in order to evict them has not at all been proved even though the Appellate Court below without considering the above oral and documentary evidence of the defendant reversed the judgment of the Trial Court. He next submits that the Trial Court upon clear consideration and assessment of evidence of the documentary evidence of the plaintiffs and the defendant rightly found that the plaintiffs failed to prove their attempt for dispossession by the defendant and he filed the instant suit as a counter case since the defendant earlier instituted Other Suit No. 6 of 2003 against the present plaintiffs which was decreed but the Appellate Court below in his judgment most erroneously found no possession of the present defendant-petitioners and opined that without any possession in the suit land the defendant petitioner was not entitled to get a decree in Other Class suit No. 6 of 2003 and thus reversed the judgment of the Trial Court and thus committed an error of law resulting an error in the decision occasioning failure of justice.

Mr. Abdur Razaque Khan, the learned Advocate for the plaintiffs-opposite parties, have drawn attention of the Court through pleadings of the parties and both oral and documentary

evidence and claim that the plaintiffs have acquired right, title, interest and possessing of 20 decimals of land by virtue of Saf-Kabala deeds. The vendees are heirs of transferor Safar Uddin father of defendant Jamal Uddin and the defendant dispossession in part of the land during pendency of the present suit for permanent injunction. The plaintiffs submitted an application for temporary injunction which was rejected. The learned Advocates submit that the defendant Jamal Uddin had no subsisting right, title interest and possession in the suit land. The defendant Jamal Uddin has sold out by various Saf Kabala deeds .87 areas of land and had title over 7 ½ decimals of land in Dag No.324 and not in Dag No. 302, Dag No. 313 had been shown in Jarip Dag No. 302 and 324. The defendant in his written statement made various assertions to the effect that :-

এই উত্তর দায়ীক বিবাদী তাহার ভোগ দখলীয় ১.১৩ একর জমি বাবদ ৩০২ দাগের ১.৭০ একর জমির মধ্যে .৪০ একর জমি জনৈক শংকর কর, মোঃ মানিক হোসেন ও শ্রী মনোজ বর্মনের নিকট ২৪/৯/৯৬ ইং তারিখের ৫০১৯ দলিল মুলে সাবেক ৩১৩ ও হাল ৩০২নং দাগের .৪০ একর জমি বিক্রয় করেন। কিন্তু দলিল লেখক ভুল বশতঃ হাল দাগ ৩০২ স্থলে ৩২৪ দাগ উল্লেখ করেন। কিন্তু ক্রেতা শংকর চন্দ্র কর গং ৩০২ নং দাগের জমিতে দখল প্রাপ্ত হইয়া তাহার কবলা কেনা জমি পাকা দেওয়াল দ্বারা ঘিরিয়া লইয়া তথায় গাছ পালাদি রোপনে ভোগ দখলকার থাকায় এই উত্তর দায়ক বিবাদীকে তাহাদের বরাবর সম্পাদিত ২৪/৯/৯৬ ইং তারিখের ৫০১৯ নম্বর দলিল সংশোধন করিয়া দেওয়ার অনুরোধ করিলে এই উত্তর দায়ক বিবাদী উক্ত দলিল সংশোধন করিয়া দেওয়ার জন্য গত

০৫/০১/০৩ইং তারিখে লিখিত প্রতিশ্রুতি দেন এবং তদনুযায়ী গত ০৫/৩/০৩ইং তারিখে ১০৫৮ নম্বর রেজিস্ট্রী কৃত সম্পাদিত ভ্রম সংশোধন দলিলও রেজিস্ট্রী করিয়া দেন। উক্ত ভূমি সংশোধন দলিল খানি ক্রেতা গণ গ্রহন করতঃ ০৯/৩/০৩ ইং তারিখে ৬০ নম্বরে এক খানি হলফ নামা নোটারী পাবলিক রংপুরের কার্যালয়ে সম্পাদন ও রেজিস্ট্রী করিয়া দেন। কবলা ক্রেতা শংকর কর ৩০২ দাগের .৪০ একর জমিতে ভোগ দখলকার রহিয়াছেন এই উত্তর দায়ক বিবাদী পূর্বাপর নালিশী ৩২৪ .২৮ একর জমিতে বসতবাড়ী নির্মাণে পরিবার পরিজন লইয়া ভোগ দখলদার রহিয়াছেন।

The learned Advocates submit that the defendant had made his claim over the land of plaintiffs by shifting his Saf Kabala deed schedule on assertions that he sold out his property as in Dag No. 324 and during the proceeding of the suit he registered a rectified deed in a lispendente matter contrary to the provision of section 31 of the Specific Relief Act. The plaintiffs by both oral and documentary evidence have established their right, title and possession of 20 decimals of land in Dag No. 302. He next submits that defendant-respondent-petitioner Md. Jamaluddin admittedly on evidence had no specific identifiable exclusive possession in suit land claimed by him and no title in his claimed property and illegally and improperly varied his schedule of land sold by him during pendency of proceedings of suit varying the schedule of his registered Saf Kabala deed contrary to provision of section 31 of the Specific Relief Act. The Appellate Court below has legally and properly decided facts and issues against said Jamal

Uddin.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 29.7.2010 passed by the learned Joint District Judge, 1st Court, Lalmonirhat (In charge) in Other Class Appeal No. 20 of 2007 allowing the appeal and thereby reversing the Judgment and Decree dated 24.1.2007 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat in Other Class Suit No. 7 of 2003 dismissing the suit is hereby up-held.

The order of stay and status-quo granted earlier by this Court is hereby vacated.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.