

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 32 OF 2011

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

Versus

Md. Ashiqur Rahman and another
Defendant Nos. 1-2-Appellants-Opposite Party
Nos. 1-2

Arifur Rahman and others
Proforma-Opposite Parties

Mr. Md. Zafar Sadek, Advocate
for the Plaintiffs-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 29.07.2010 passed by the learned Joint District Judge, 1st Court, Lalmonirhat (In Charge) in other Class Appeal No. 21 of 2007 allowing the appeal and thereby reversing Judgment and Decree dated 15.01.2007 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat in Other Class Suit No. 6 of 2003 decreeing 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 present petitioner as plaintiff instituted Other Class Suit No. 6 of 2003 before the learned Assistant Judge, Aditmari Court, Lalmonirhat against the present opposite party Nos. 1-4 for permanent Injunction.

The plaintiffs Case, in short, is 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 Khan, Advocate, the Manager of Secretary of State for India in Council purchased in auction the suit land and took possession. Thereafter, the father of the plaintiff late Safar Uddin took settlement of land measuring 3.35 acres and during S.A Khatian No. 42 the land measuring 3.26 acres were recorded in the name of Shamsudin and the rest .27 acres of land were wrongly recorded in the Bottrish Hazari Primary School though subsequently the said wrong record was corrected in R.S record. Thereafter, the said Safar Uddin while in possession of the suit land on 07.03.1983 by dint of Heba Bil Ewaj deed No. 4917 transferred .90 acres of land from Dag No. 313 and totalling $1.96 \frac{1}{2}$ acres in favour of his two sons Jamal Uddin and Hafij Uddin. Thereafter, Safar Uddin died leaving his wife, 03 sons and 04 daughters and on 06.11.1996 vide Heba Bil Ewaz Deed No. 5717 transferred .53 acres of land from Dag No. 313 in favour of the plaintiffs and handed over the possession 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 Dag No. 324 and also planted different types of trees and they have been possessing therein and they also constructed a pucca structure in the disputed Dag No. 324 on the land measuring .18 decimals and also constructed a 5 inches wall on the East-Southern side and accordingly they constructed boundary on the land measuring 02 decimals and the rest of the .8 decimals for want of money they could not construct any boundary wall and as a result the land .8 decimals has become abandoned without any boundary but he duly paid rents. On the Western side of disputed Dag No. 324 one Anisuzzaman is possessing .10 decimals of land and one Mohammad Ali is also possessing .12 decimals of land on the Eastern side of the disputed Dag. It is the further Case of the plaintiffs that the proforma respondent No. 8 for the purpose of construction of his house exchanged his share along with the said Mohammad Ali Munshi of the disputed Dag No. 324 but due to inadvertence in the said exchange deed instead of writing Dag No. 302, Dag No. 324 was written though latterly on 05.3.2003 the said wrong writing was corrected by the defendant Nos. 5 and 6. Thereafter on 21 February, 2003 the defendants in order to grab the property of the plaintiffs jointly threatened them to dispossess and

wanted to erect a boundary wall in the suit land but due to the objection raised by the plaintiffs they failed to do the same and left the place by showing photocopies of 03 (three) deeds though they are not at all the owner of disputed Dag No. 324 rather the R.S. Dag No. 302 belongs to the defendants. Thereafter, due to the repeated threat of the defendants, the plaintiffs instituted the present suit for permanent injunction against the defendants.

The defendant Nos. 1 and 2 contested the suit by filing a joint written statement denying the plaint case contending, inter alia, that the suit land belongs to S.A. recorded tenant Safar Uddin and due to want of money the said Safar Uddin 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 and thus she acquired .54 decimals and while possessing the same on 09.5.1991 she transferred .6 decimals in favour of her son-in-law Mostafa Rahman. Thereafter on 14.9.1992 by dint of a 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 28.3.1993 and accordingly Mostofa Rahman for want of money sold out .06 decimals of land in favour of the defendants on 19.2.1998 and thus the defendants

acquired and possessed .20 decimals of land of R.S. Dag No. 302. The plaintiffs have lost their interest by selling out their all properties and the present suit is liable to be dismissed with cost.

The defendant No. 8 also contested the suit by filing a separate written statement denying the plaint case and also adopted the written statement of defendant Nos. 1 and 2 and also prayed for dismissal of the suit of the plaintiffs with cost.

The learned Assistant Judge, Aditmari Court, Lalmonirhat decreed the suit in part vide judgment and decree dated 15.1.2007 in Other Class Suit No. 6 of 2003.

Against the aforesaid judgment and decree the defendant Nos. 1-2 as appellants preferred Appeal being Other Class Appeal No. 21 of 2007 before the learned District Judge, Lalmonirhat and thereafter this was transferred to the learned Joint District Judge, 1st Court, Lalmonirhat who allowed the Appeal vide Judgment and Decree dated 29.7.2010 and thereby reversing the Judgment and Decree dated 15.1.2007 in Other Class Suit No. 6 of 2003 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat.

Being aggrieved by and dissatisfied with the impugned judgment and decree the plaintiffs-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 the plaintiff petitioner No. 1 died and his legal heirs were substituted.

Mr. Md. Zafar Sadek, learned Advocate for the plaintiffs-respondents petitioners, submits that inspite of clear findings of facts in respect of their title and exclusive possession over the suit land and the attempt of the defendants in order to evict them which are also supported by the evidence of P.W.s even though the learned Appellate Court without considering the above oral and documentary evidence of the plaintiffs 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 which were marked as Exhibit-1 to Exhibit-4 as well as the oral evidence of other P.W.s in respect of title and possession over the suit land but the Appellate Court below without believing and considering those evidence of the plaintiffs petitioners allowed the appeal. He lastly submits that this is the settled principle of law in a case for permanent injunction that the exclusive possession of the plaintiff is the deciding factor and in the instant case whereas the present plaintiffs-petitioners by adducing oral and documentary evidence proved their exclusive possession and the threat of the present defendants-opposite parties as an initiative to evict them and the Trial Court by considering the above evidence rightly decreed the suit in favour of the plaintiffs

finding his exclusive possession over the suit land but the Appellate Court below without believing the same reversed the judgment of the Trial Court and thus committed an error of law resulting in error in the decision occasioning failure of justice

Mr. Abdur Razaque Khan, learned Senior Advocate with Mr. Hasan Rajib Prodhan learned Advocate for the opposite party No. 1 and 2, submits that the plaintiffs-respondents-petitioners admittedly on evidence had no specific identifiable exclusive possession in the suit land claimed by them and no title in their 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 the facts and issues against said Jamaluddin. Learned Advocates of the opposite party Nos. 1-2 have drawn attention of the Court to the case of the plaintiffs to the effect that the plaintiffs filed the instant Other Class Suit No. 6 of 2003 on 23.02.2003 with a schedule of the suit property in S.A Dag No. 313, R.S No. 324 land measuring .28 acres out of .50 acres and the plaintiffs have made definite assertion in the plaint that he sold out .10 decimals of land to one Anisuzzaman and .12 decimals of land to one Mohammad Ali Munshi and thus he has .28 decimals of land in the said Dag No. 324 which is the subject

matter of the suit. In evidence PW-1 Md. Jamaluddin has made a statement that he had earlier sold out .40 acres of land to defendant Nos. 5-7 in Dag No. 324 which was a mistake and actually he sold out .40 acres of land from Dag No. 302. The learned Advocates of the opposite parties submit that after filing of the suit the plaintiffs have shifted their schedule of land by amending their plaint on 05.03.2003 although the vendees got actual title and possession in plot No. 324 and the plaintiffs had no subsisting title and possession in said plot No. 324. The learned Advocate further submits that the plaintiffs have registered a Saf Kabala deed to the above effect in favour of the vendees contrary to sections 31 of the Specific Relief Act in lispendente matter and relied on said rectified deed for amending their plaint taking advantage of new revisional record. The learned Advocates have referred to pleadings for amendment of plaint to the effect:-

“আরজীর ৪র্থ পাতায় ২য় লাইনের শেষে “ইহা উল্লেখ করা আবশ্যিক যে, বাদী ৩০২ দাগের .৪০ একর জমি ২৪/৯/৯৬ ইং তারিখে ৫০১৯ নং দলিল মূলে ৫-৭ নং মোকাবেলা বিবাদী শঙ্কর চন্দ্র কর মোঃ মানিক হোসেন ও মনোজ চন্দ্র বর্মনের নিকট বিক্রয় করেন এবং তদানুযায়ী দখলাদি বুঝাইয়া দেন কিন্তু উক্ত দলিল খানিতে ৩০২ নং দাগ এর স্থলে দলিল লেখকের ভুলে ৩২৪ দাগ লেখা হয়। উক্ত ভুল সম্বন্ধে দাতা গ্রহিতা জ্ঞাত হওয়ার পর গত ০৫/৩/০৩ ইং তারিখে ১০৫৮ নং ভুল সংশোধন দলিল মূলে উক্ত ভুল দাগ সংশোধন করিয়াছেন। উক্ত ভুল সংশোধন দলিলখানি ৫/৬ নং মোকাবেলা বিবাদী গত ০৯/৩/০৩ ইং তারিখের এফিডেভিট মূলে স্বীকার উক্তি দেন এবং গ্রহণ করেন বটে। ”

The learned Advocates submit that according to the oral and documentary evidence the plaintiffs have no identifiable exclusive possession in respect of their claim of .28 acres of land and they have taken recourse to sifting their suit land by affidavit, rectification of Saf Kabala deed contrary to section 31 of the Specific Relief Act during pendency of the suit for establishing their claim to possession affecting legal right of the defendants-opposite parties holding title and possession by 3 registered Saf Kabala deeds and the plaintiffs have failed to prove exclusive possession in the suit property.

In support of submissions, the learned Advocate have referred to the cases reported in the lawyer and jurists Vol-5 (2016) page 1 (paras 11, 12, 17), 11 MLR (AD) (paras 13, 14), 13 ADC 126 (para 18) 3 BLC 161 (Para 17) and 4 BLD 71 (Paras 5,6)

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. 21 of 2007 allowing the appeal and thereby reversing Judgment and Decree dated 15.1.2007 passed by the learned Assistant Judge, Aditmari Court,

Lalmonirhat in Other Class Suit No. 6 of 2003 decreeing the suit is hereby affirmed.

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.