

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 3043 of 2018

Muslim Peoples of the village Chhatarvag
represented by 1. Md. Munsur Rahman and
others

.....petitioners

-Versus-

Md. Altab Hossain Sarker and others

..... Opposite parties

Mr. Md. Aminul Ehsan, Advocate

..... For the petitioners

Mr. Md. Aminul Hoque Helal, Advocate

..... For the Opposite Parties

Heard on: 05.02.2024, 11.02.02024 and

Judgment on 18.02.2024

Rule was issued calling upon the opposite parties No. 1 to 8 to show cause as to why the impugned Judgment and decree dated 01.04.2018 (decree signed on 09.04.2018) passed by the learned Additional District Judge, Natore in Title Appeal No. 88 of 2011 affirming the judgment and decree dated 21.04.2011 passed by the learned Senior Assistant Judge, Sadar Court, Natore in Title Suit No. 39 of 1992 dismissing 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.

The instant petitioner as plaintiff filed Title Suit No. 39 of 1992 in the court of Senior Assistant Judge, Sadar Court, Natore praying for inter alia for declaration of title in the suit land impleading the instant opposite parties as defendants in the suit.

The trial court after hearing the parties, adducing evidences pursuant to trial dismissed the suit by its judgment and decree dated 21.04.2011. Being aggrieved by the judgment and decree of the trial court the plaintiff in the suit as appellant filed Title Appeal No. 88 of 2011 which was heard by the learned Additional District Judge, Natore. The appellate court upon hearing the parties however dismissed the appeal by its judgment and decree dated 01.04.2018 and thereby affirmed the judgment of the trial court passed earlier. Being aggrieved by the judgment and decree of the court below the plaintiff filed a civil revisional application which is presently before this bench for disposal.

The plaintiff's case inter alia is that the suit land originally belonged to landlord Bibi Toibun Nessa Chowdhury and others and the land was settled for peerpal for a peer. But as subsequently there was no peer or his astana so the land due to arrear of rent vested in the khas of the landlord. Subsequently the landlord settled the land to the plaintiff mosque in the year 1352 B.S. vide an amolnama and accordingly transferred possession to the Jumma Mosque. One Ashraf Ali on behalf of the mosque paid rent to the landlord and the duty was cast upon his elder brother Arbullah to record the land in the name of the Jumma Mosque. But Arbullah in connivance with survey employees recorded the suit land in his name without recording the same in the name of Chhatarvag Jumma Mosque. The suit land is in

absolute possession of the mosque. Earlier the defendant No. 1 filed Title Suit No. 252 of 1989 against third party for suit land. Knowing this fact the mosque was added in the suit as defendant. That suit was dismissed on contest and against that judgment and decree the present defendants filed Title Appeal No. 189 of 1992 which also was dismissed on contest and the said judgment and decree is on effect till today. But the wrong record is in the name of defendants. Hence the present suit.

That the defendant Nos. 1-9 contested the suit by filing a written statement contending inter alia that the suit is not maintainable, barred by limitation and bad for defect of parties.

That the short case of the defendants is that suit land was land of Peerpal. One Ban Sarder was the 1st Jimmadar of the Peerpal. C.S. Khatian was prepared in the name of the Jimmadar Ban Sarder. After death of Ban Sarder his son Babu Lal Sarder being the Jimmadar and after his death his son Arbullah being the next Jimmadar and the suit land was recorded in his name. After death of Arbullah his son Aftab Hossain the defendant No. 1 being the Jimmadar, a part of the suit land was recorded in the name of Ashraf Ali Sarder which is wrong. So this defendant No. 1 earlier filed Title Suit No. 252 of 1989. But the suit and subsequent appeal was dismissed on contest as the defendant in that suit failed to prove title. The suit land is in possession of Altab Hossain. Hence the suit is liable to be dismissed with cost.

The trial court framed issues, witnesses were examined by both sides and both parties produced documents marked as exhibits.

Learned Advocate Mr. Md. Aminul Ehsan appeared for the petitioner while Mr. Md. Aminul Hoque Helal represented the opposite parties.

Learned Advocate Mr. Md. Aminul Ehsan for the petitioner submits that both courts below upon misappraisal of facts came upon wrong finding and therefore those judgments are not sustainable and ought to be set aside. In his submissions he primarily supports the plaintiff's case and submits that although admittedly the land was given in pattan to the Peerpal originally by Zaminder Toibun Nessa and others for benefit of the Peerpal but however due to arrears of rent the Jaminder took the land back to its own khatian. He next submits that subsequently after reverting the land to the Zaminder, at one stage in B.S. 1352 the Zaminder granted the suit land including other lands in the name of the local Juma Mosque who the plaintiffs represent. He submits that in pursuance the Jaminder granted a pattan through an amolnama to Ashraf Ali Sarder who was the Motowally. He agitates that the mosque is in possession of the plaintiffs through borgaders and Ashraf Ali Sarder Motowally has been paying rents against the suit land.

There was a query from this bench upon the learned advocate for the petitioner as to why the record of rights were not published in the name of the mosque till date. The learned advocate for the petitioner replies that the wrong recording occurred since the Motowally upon trust and good faith delegated the duty to record the land in the name of the mosque to Ashraf Ali's older brother Arbullah. He submits that however Arbullah collusarily and upon breach of trust recorded the property in his own name and hence the wrong recording in S.A. and R.S. He asserts that Arbullah was never in possession in the suit land and the suit land does not belong to the Peerpal anymore rather the suit land is in possession of the mosque through borgader. He next draws upon the Lower Court Records and points out that it is seen that the instant defendants filed a suit being Title Suit No. 252 of 1989 for declaration of title against the suit land but which was dismissed. He points out that against judgment of dismissal appeal was filed by the instant defendants appellants but however appeal was dismissed. He argues that the mosque was added in the suit as defendants in the suit and such suit ultimately failed. He reiterates that therefore the S.A. and R.S. was wrongly recorded and the amolnama is evidence that pattan was granted to the Juma Mosque in B.S. 1352 by the Jaminder. He submits that although the PWs could also prove their evidence on possession but however the courts below ignored all these factors including the fact of amolnama

and wrongly and erroneously dismissed the suit and wrongly dismissed the appeal. He concludes his submissions upon assertion that both the judgments need interference and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Aminul Hoque Helal for the opposite parties vehemently opposes the Rule. He argues that significantly enough the original pattan granted to the Peerpal by the then jaminder Toibun Nessa Chowdhury and other jaminders who were admitted C.S owner such of pattan to the Peerpal by the C.S. owner is an admitted fact. He submits that the plaintiffs created a concocted and false story upon claiming that the suit land was taken away from the Peerpal by the then Jaminder due to arrears of rents. He asserts that to establish the instant case it is necessary to examine as to whether the plaintiffs could prove that the suit land reverted back to the Jaminders due to arrears of rent. He argues that although the plaintiffs claim their original source of title due to cancellation of the admitted original pattan to the Peerpal and subsequent arrears of rent but however the plaintiffs could not at any stage show any cogent evidence to prove their claim. He argues that it goes without saying that whenever a pattan grantee or tenant falls in arrears of rent such default in paying rent must be followed by a rent case. In support of his submissions he points out to Section 65 of the Bengal Tenancy Act, 1885. He

submits that Section 65 of the Bengal Tenancy Act, 1885 contemplate rent case followed by arrears of rent. He submits that in this case it is clear from the records that the plaintiffs could not at any stage show any documentary evidences that a rent case was ever filed against the Peerpal who were admittedly granted pattan by the C.S. owner. He contends that it was the plaintiff's duty under Section 101 of the Evidence Act to prove their case but they miserably failed to prove the veracity of their claims. He argues that it is clear that to establish the plaintiff's title the cancellation of Peerpal's pattan who was admittedly the original pattan grantee such cancellation must be established. He submits that however the plaintiffs could not establish by any evidence nor show any rent case on the records to establish their claims.

He next points out to the amolnama which is an unregistered amolnama. He asserts that the unregistered amolnama which is the pattan amolnama which the instant plaintiffs relies upon however the plaintiffs could not even produce the original amolnama and only produced a photocopy. He agitates that however it is also apparent from the records that the unregistered amolnama was not produced as an exhibit. He continues that therefore also under the provisions of the Evidence Act, 1872 the photocopy of an unregistered document

not even produced as an exhibit does not carry any evidential value.

He next argues that the PWs in their examination and cross examination gave inconsistent oral evidences. He also points out that the plaintiff's claim of being in possession of the land through bargaders could not be proved since the so called bargaders were not produced as witness. He next points out to the oral evidences of PW-3 who is the brother of PW-1. He persuades that the courts correctly found that the PW-3 is not an independent witness since he is a brother of PW-1. He next points out to the oral evidences of the DW-2, DW-3 and DW-4 and submits that the DWs gave corroborative evidence on the claim of possession of the suit land by the defendants. He next contends that upon evaluating of the oral evidence of the PWs and DWs it is clear that the plaintiffs could not prove any possession in the suit land. He further submits that it is also evident that none of the names of the plaintiff petitioners were ever published neither in R.S. nor S.A. He submits that if the plaintiffs have valid title then R.S. and S.A. at such a later stage would not have remained in the name of the defendants. In support of his contention he cites a decision in the case of Golzar Ali Vs Saburjan Bewa reported in 6BLC (AD) 2001 page-41. He concludes his submissions upon assertion that therefore the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials. It is an admitted fact that the admitted C.S owner the Jaminder granted pattan to the Peerpal and which is not denied by any parties.

It is the plaintiff's claim in this case that subsequently to the pattan granted to the Peerpal however due to arrear of rents the said pattan was cancelled and the land reverted back to the Jaminder. It is the plaintiff's further claim that an one stage after the land reverted back to the Jaminder, the Jaminders granted pattan to the local mosque who the plaintiff represented in this suit. The plaintiff in support of their claim basically rely on an unregistered amolnama. Other than that the plaintiffs could not show any other documents in support of their case. I am inclined to hold a consistent view taken by this Bench that to prove title the plaintiff must show the validity of the source of original title. In this case since it is an admitted fact and not denied by the plaintiff that the land was originally granted in pattan by the admitted C.S owner but however the instant plaintiffs could not show any documents to establish their claim that the Peer pal ever defaulted by way of arrear of rents not could they show that the pattan was ever cancelled. I have also perused and examined Section 65 of the Bangal Tenancy Act, 1885 including other laws. Section 65 of the Bangal Tenancy Act is reproduced below:

“Where a tenant is a permanent tenure holder, raiyat holding at fixed rates, an occupancy raiyat, a non occupancy raiyat or an under raiyat he shall not be liable to ejection for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.”

The language of Section 65 clearly contemplate that if in the event the tenant (within the meaning of this section) falls under arrears of rent a rent, case must be filed followed by auction and execution of decree. Such being the position of the law it is necessary to examine as to whether the plaintiffs could show that the admitted pattan land to the Peerpal was ever subject to a rent case followed by execution of a decree under the relevant procedures and laws.

Regrettably enough there is nothing of record to show that the plaintiffs produced any documentary evidence against their claim that the Peerpal failed to pay rent followed by rent case and execution of decree whatsoever. Therefore it is clear that the plaintiffs could not establish their claim that the admitted pattan to the Peer pal was ever cancelled by the C.S. owner due to arrears of rent.

It is also evident from the records that the pattan amolnama upon which the plaintiff relies upon to establish their claim of tile however only a photocopy of the amolnama was shown and not the original pattan. Moreover the amolnama was not even produced as an exhibit. Under the provisions of Evidence Act, 1872 such unregistered document does not have any evidential value. Moreover following the provisions of Section 17A of the Registration Act, 1908 read with Section 49 all documents relating to immovable property must be registered. Therefore since these documents date back to the year B.S 1352 corresponding to 1941 after Registration Act, 1908 came into force therefore the document being an unregistered document does not carry evidentiary value and cannot be considered as a valid document under any circumstances.

The plaintiffs argued that they could not produce the original copy of the pattan amolnama since it was in the custody of Ashraf Ali's son Asad Ali. Since under the provisions of law the unregistered photocopy of an unregistered document which was not produced even an exhibit cannot have any evidentiary value therefore as such I am not inclined to dwell over such factual issues.

Moreover I have examined the oral evidences of the PWs and DWs. Although the PW-1 claims that they are in possession of the suit land through bargaders such so called bargader were

not produced as witness. I am of the considered view that the courts correctly found that the PW-3's oral evidences are uncertain and vague. Moreover he is a brother of PW-1 and not an independent witness and there remains a doubt.

Side by side upon comparison with the oral evidences of the DWs, it appears that there are no marked inconsistency between the oral evidences of the PWs and those appear to be more or less corroborative of each other.

I am also of the considered view that the courts correctly found that the S.A and R.S were correctly recorded in the defendant's name. Since Peerpal is in possession of the suit land and which could be proved by evidences including oral evidences. Moreover I have also examined exhibit-Ka which is the C.S Khatian No. 148. Upon examination of the C.S Khatian No. 148 it appears that 'Peerpal Allah' is clearly written against "সত্য স্বত্ত্বের বিবরণ।"

Such C.S. Khatian exhibit-Ka is admitted. It is reiterated that the plaintiffs could not prove that the স্বত্ত্ব title by way of pattan was taken away due to any arrears of rent whatsoever. Therefore since the original title obtained by the Peerpal through pattan is admitted and therefore in the absence of cogent evidences to the contrary the subsequent S.A. and R. S. Khatian and subsequent continuation of Peerpal as shown chronologically by the defendants is also established to be correctly recorded.

Under the facts and circumstances, I am of the considered view that the courts below correctly gave the judgment and those need no interference and I do not find any merits in the Rule.

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

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

Communicate the order at once.

Shokat (B.O)