

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 927 of 2018

Md. Fazlul Haq and another

... Petitioners

-Versus-

Md. Abdur Rashid and others

...Opposite-parties

Mr. Bon-e-Amin, Advocate for

Mr. Md. Tajul Islam, Advocate

...For the petitioners

Mr. Sheikh Habib-ul-Alam, Advocate

...For the opposite-party Nos. 2-18.

Judgment on 14th January, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite party No. 1-20 to show cause as to why the impugned judgment and decree dated 23.10.2017 passed by the learned Joint District Judge, 1st Court, Gaibandha in Other Appeal No. 19 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 25.11.2014 passed by the learned Assistant Judge, Fulchari in Other Suit No. 64 of 2012 decreeing 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The opposite-parties, as plaintiff, filed Other Class Suit No. 64 of 2012 in the Court of Assistant Judge, Fulchari, Gaibandha against the petitioner, as defendants, for a decree of permanent injunction. The case of the plaintiff in short is that the predecessors of the plaintiffs got the suit land from the government by way of permanent settlement vide 2(two) registered deeds of kabuliyat both dated 10.09.1988 and have been possessing the land measuring 6.66 acres since 1962. Diara Khatian Nos.1282, 108 and 96 were wrongly prepared in the names of Ismail, Taher and Jahor Uddin, consequently they instituted Other Suit No. 38 of 2006 against them along with others in which summons were duly served upon all the defendants. Predecessor of the present defendants and others contested the suit by filing written statement. After hearing the trial court decreed the suit by its judgment and decree dated 17.11.2008. Against the said judgment and decree, defendants Azam Ali and others preferred Other Appeal No. 36 of 2009 before the learned District Judge. The appeal was rejected being time barred. One of the defendants named Altaf Hossain and defendant Moynal

Haque filed Other Suit No. 80 of 2010 challenging the decree which was also dismissed on 12.07.2012. The defendants have had no title and possession in the suit property, but threatened the plaintiffs with dispossession from the suit land on 18.08.2012, consequently, the plaintiffs filed the present suit praying for permanent injunction.

The defendant Nos. 1 to 11 contested the suit by filing written statement contending inter alia that Ismail, Taher and Jahor Ali obtained settlement of the scheduled land from the then zaminder measuring an area of 13.36 acres covered by Plot Nos. 1501, 1591, 1663, 1825 and 1669 by way of dakhila. S.A. khatian was wrongly prepared in the name of Government. The defendants filed Other Suit No. 112 of 1977 in the Court of 2nd Munsif, Gaibandha which was decreed in their favour. Present Diyara khatian prepared correctly in the name of defendant Nos. 1 to 8. Diayara Khatian No. 606 also prepared in the name of defendant Nos. 1-8. S.A. Khatian No. 500 Plot No. 1663 measuring 2.15 acres stands recorded in the name of Ismail. Finally the Khatian No. 1282 correctly prepared in the name of defendants and their predecessors. The predecessors of defendant Nos. 9 to 11 Rahmatullah got 11.66 acres of land by way

of Dakhila in the year 1359 B.S. S.A. record was wrongly recorded in the name of government. The predecessor of defendant Nos. 9-11 Rahmatullah filed Title Suit No. 63 of 1977 in the Court of 2nd Munsif, Gaibandha against the said S.A. khatian. The said suit was decreed on 11.08.1987 and accordingly predecessors of the defendant Nos. 9-11 Rahmatullah and others possessed the same by paying rents and subsequent Diyara khatian was prepared in their names. Rahmatullah and others transferred 151 decimals of land by Deed No. 805 dated 20.01.1979 to Joynal Haque. Fazlul Haque and others transferred 1.00 acre of land by Deed No. 8320 dated 09.04.1979 to Moynal Haque. Ansar Ali purchased 66 decimals of land in 1981 from Rahmatullah. Present Diyara Khatian No. 963 prepared in the names of defendant Nos. 9-11 and their predecessors along with others. The defendants have been possessing the suit land for long time without any disturbance from any quarter. The plaintiffs by obtaining so called settlement from titleless government and creating collusive documents filed Other Suit No. 38 of 2006 and got decree. The defendants filed Other Suit No. 67 of 2012 for declaration that the decree in Other Suit No. 38 of 2006 obtained

fraudulently, illegally and the same is not binding upon them. The plaintiffs have no title and possession in the suit land. The judgment and decree passed in Other Suit No. 38 of 2006 is false, fraudulent and not binding upon the present defendants.

The trial court framed 03(three) issues for determination of the dispute. In course of hearing both the parties examined witnesses and submitted documents in support of their respective claim and got the documents marked as exhibits. The trial court after hearing decreed the suit by its judgment and decree dated 25.11.2014.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendants preferred Other Appeal No. 19 of 2015 before the Court of learned District Judge, Gaibandha. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Gaibandha for hearing and disposal who after hearing by the impugned judgment and decree dated 23.10.2017 disallowed the appeal affirming the judgment and decree passed by the trial court. At this juncture, the defendant-petitioners, moved this Court by filing this application under Section 115(1) of

the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Bon-e-Amin, learned Advocate appearing for Mr. Md. Tajul Islam, learned Advocate for the petitioners submits that predecessor of the petitioners before S.A. operation continued in possession of the suit property under the then zaminder , but S.A. khatian wrongly recorded in the name of the government. Consequently, predecessor of present petitioner named Rahmatullah Pramanik filed Other Suit No. 63 of 1977 in the Court of 2nd Munsif, Gaibandha for declaration of title in the suit property. Similarly, another possessor Ismail Hossain also filed Other Suit No. 112 of 1977 in the same court against the government. Both the suits were decreed ex parte declaring title of the petitioners predecessor and said Ismail Hossain in the suit property. Pursuant to decree passed in both the aforesaid suits, Diyara khatian recorded in the name of predecessor of petitioners and R.S. and B.R.S. khatians also correctly recorded in the name of the predecessor of petitioners as per their possession. He submits that opposite-parties claimed settlement of the property from government in the year 1988 by

2(two) kabuliyats and on the basis of settlement filed Other Suit No. 38 of 2006 against the predecessor of the present petitioner along with others which was decreed. But in that suit predecessor of the petitioners did not appear, no notice was served, but the plaintiffs in suit collusively filed Wakalatnama in the name of the predecessor of petitioners, written statement and got the decree showing the predecessor of the petitioners and others as contesting defendants.

He submits that predecessor of the petitioners in 2(two) earlier suits in the year 1977 got decree against the government declaring title in the property. The government did not contest the aforesaid suits and also preferred no appeal against the judgment and decree before the higher court. Consequently, admitted the predecessors of the present petitioners as direct tenant under the government and accepted rents from them recognizing owner of the property. Once the government recognized the predecessor of the petitioners as tenant under them they cannot claim the property as khas land and settled the same to the opposite-parties by way of permanent settlement in the year 1988. He submits that on the basis of

settlement the opposite-parties also cannot file a suit for declaration of title where the government had no title to settle the suit property.

He finally submits that the opposite-parties are not in possession of the suit property, as such, not entitled to get decree of injunction against the present petitioners. But the trial court decreed the suit holding that the plaintiffs earlier filed Other Suit No. 38 of 2006 for declaration of title which was decreed. Both the courts below failed to find that the defendants, as plaintiff, filed Other Suit No. 67 of 2012 for declaring the decree passed in Other Suit No. 38 of 2006 to be illegal, void, collusive and not binding upon the plaintiffs. The trial court unfortunately dismissed the petitioners Other Suit No. 67 of 2012 and decreed the present suit for injunction against the petitioners. He argued that in a suit for injunction the plaintiff is to prove exclusive possession in the suit property, but the trial court as well as the appellate court in their judgments did not utter a single line and word regarding possession of both the parties in the suit property, manner of possession and enjoyment and as such, both the judgments are liable to be set aside.

Mr. Sheikh Habib-ul-Alam, learned Advocate appearing for the opposite-party Nos. 2-18 submits that in earlier Other Suit No. 38 of 2006 title of the opposite-party was declared by the court and in the said suit possession of the opposite-parties established by evidences. Thereafter, predecessor of present petitioners Rahmatullah Pramanik along with others preferred Other Appeal No. 36 of 2009 before the learned District Judge at a delay of 58 days. The appellate court after hearing rejected the appeal summarily being barred by limitation. Thereafter, Rahmatullah Pramanik and others did not move before higher court against the judgment and order of the appellate court. Resultantly, judgment and decree passed in Other Suit No. 38 of 2006 sustained against the present petitioners. He submits that one of the defendants in Other Suit No. 38 of 2006 named Altab Hossain and others filed Other Suit No. 80 of 2010 challenging the decree passed in Other Suit No. 38 of 2006 which was subsequently, dismissed for default. They did not take any further step against the order of dismissal. Decree passed in Other Suit No. 38 of 2006 was challenged by filing Other Appeal No. 36 of 2009 and by filing Other Suit No. 80 of 2010. Present

petitioners filed Other Suit No. 67 of 2012 after about 3(three) years of rejection of Other Appeal No. 36 of 2009 on 07.09.2009 challenging the decree passed in Other Suit No. 38 of 2006 on contest against the predecessor of the petitioners. He submits that both the courts below in their judgments categorically stated and observed that the plaintiff in this suit could able to prove that they obtained settlement of the property from government and have been possessing the same since 1962 till today and decreed the suit. He submits that from the facts and circumstances and evidences both oral and documentary the trial court as well as the appellate court rightly decreed the suit and disallowed the appeal finding title and possessing of the plaintiffs in suit and committed no illegality or error in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

The plaintiffs in Other Suit No. 64 of 2012 claimed that they obtained year to year lease of the property from the government at the first instance in 1962 and have been in continuous possession on payment of salami to the government. The process of leasing out the property ended in the year 1988 when the plaintiffs executed 2(two) kabuliyats in favour of the government excepting lease for 99 years. Diyara khatian, R.S. and B.R.S khatians wrongly recorded in the name of the predecessor of present petitioners, consequently, they filed Other Suit No. 38 of 2006 for declaration of title in the property and the record of right to be declared wrongly prepared in the name of the defendants.

From record, it appears that predecessor of the present petitioners named Rahmatullah Pramanik was defendant No. 20 and one Altab Hossain was defendant No. 24 who contested the suit by filing written statement and after hearing the trial court decreed the suit. Thereafter, defendant No. 20, Rahmatullah Pramanik and others preferred Other Appeal No. 36 of 2009 before the learned District Judge, Gaibandha at a delay of 58 days. When the appellate court took up the matter for condonation of delay observed that the

appellant could not satisfy the court for cause of such delay giving sufficient cause. Consequently, the appeal was summarily rejected being barred by limitation by its judgment and order dated 07.05.2009. Thereafter, none of the appellants moved before higher court against the judgment and decree of the appellate court, meaning thereby, the defendants in Other Suit No. 38 of 2006 and appellant in Other Appeal No. 36 of 2009 have abandoned their claim in the suit property.

It is also found that defendant No. 24 in Other Suit No. 38 of 2006 named Altab Hossain and others subsequently, filed Other Suit No. 80 of 2010 challenging the decree passed in Other Suit No. 38 of 2006, but at a point of time on 12.07.2012 the suit was dismissed for default. Thereafter, plaintiffs in suit also abandoned their claim admitting dismissal of the same. After termination of aforesaid proceeding, plaintiff in Other Suit No. 64 of 2012 while in possession and enjoyment of the property, the heirs of Rahmatullah Pramanik threatened them with dispossession consequently, they filed the instant suit for a decree of permanent injunction. The trial court after hearing decreed the suit.

From perusal of written statement filed by the defendants they claimed that their predecessor as raiyat under Zaminder continued in possession of the suit property and after State Acquisition and Tenancy Act came into force, when found that S.A. khatian wrongly recorded in the name of the government treating the property as khas land then predecessor of the present petitioner Rahmatullah Pramanik filed Other Suit No. 63 of 1977 and possessor Ismail Hossain and others also filed Other Suit No. 112 of 1977 in the court of Munsif against the government challenging the record of right which were decreed ex parte. Against the decree the government did not move before the higher court, meaning thereby, the government also admitted the predecessor of the present petitioners as tenant and received rents from them. It is true that when the government admitting some persons as tenant under them, accepted rents and allowed them to get their names mutated in the khatian and published diyara khatian in their names cannot take different stand subsequently, claiming the property as khas land. The present petitioners predecessor by decree passed in Other Suit No. 63 of 1977 and Other Suit No. 112 of 1977 acquired title by declaration

through court and subsequent, R.S. and B.R.S. khatians also recorded in their names admitting them tenant under the government. But the government without seeking any relief against the decree passed in Other Suit Nos. 63 and 112 of 1977 and cancelling or rectifying the record of right prepared in the name of the predecessor of the present petitioners all of a sudden settled the property permanently in favour of the present opposite-parties in the year 1988. Challenging those records of right present opposite-parties, as plaintiff, filed Other Suit No. 38 of 2006 against the predecessor of present petitioner along with others which was decreed on contest. Therefore, though predecessor of the present petitioners got a decree of title in the suit property in Other Suit Nos. 63 and 112 of 1977, by the subsequent decree in Other Suit No. 38 of 2006 against them title of the petitioners has been interrupted. However, predecessor of the present petitioners preferred Other Appeal No. 36 of 2009 before the learned District Judge against the judgment and decree passed in Other Suit No. 38 of 2006 rightly. That was rejected on the ground of limitation. Thereafter, the predecessor of the present petitioners ought to have moved before this Court by filing revision, but they

refrained from moving before the higher court to establish their claim in the suit property.

Moreover, keeping the decree intact, after 3(three) years of rejection of appeal came with another independent suit being Other Suit No. 67 of 2012 challenging the decree passed in Other Suit No. 38 of 2006 to be illegal, collusive and not binding upon the plaintiffs. As such, both the courts below rightly observed that right, title and interest whatever, the petitioners or their predecessor have had in the suit property has been interrupted and intervened by the decree in Other Suit No. 38 of 2006 consequently, decreed the suit for permanent injunction against the present petitioners.

In view of the observations made hereinabove, I find that both the courts below though unhappily written both the judgments without discussing evidences both oral and documentary in its true perspective have not committed any illegality in decreeing the suit calling for interference.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

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

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.