Present:-
Mr. Justice Mahmudul Hoque

Civil Revision No. 4517 of 2018

Boidyonath Saha
... Petitioner
-Versus-
Kiron Chandra Shikdar and others
...Opposite-parties
Mr. Muhammad Salahuddin, Advocate
...For the petitioner
No one appeared.
...For the opposite-party No. 1.
Mr. M. M. Shafiullah, Advocate
...For the added opposite-party Nos. 11 and 12.

Judgment on 23rd January, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 16.07.2018 passed by the learned District Judge, Gopalgonj in Title Appeal No. 69 of 2016 allowing the appeal and thereby reversing the judgment and decree dated 27.06.2016 passed by the learned Joint District Judge, 1st Court, Gopalgonj in Title Suit No. 22 of 2013 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.

Facts relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, instituted Title Suit No. 22 of 2013 in the Court of Joint District Judge, 1st Court, Gopalgonj against the opposite-party No. 1 and others, as defendants, for declaration of title by adverse possession and confirmation of possession, claiming that the defendant No. 1 acquired 16 sataks of land in S. A. Plot No. 319 by purchase vide Registered Deed No. 11430 dated 26.12.1983 and Deed No. 9783 dated 19.10.1983 and also acquired 6·66 sataks of land in S. A. Plot No. 330 by purchase vide Registered Deed No. 8540 dated 10.10.1979. While the defendant No. 1 in possession and enjoyment of the property he proposed to sell the property to the plaintiff, accordingly, the plaintiff agreed to purchase the land at a consideration of Tk. 10,50,000/- out of which he paid Tk. 5,50,000/- to the defendant No. 1 on 20.01.1997 in presence of witnesses and the defendant No. 1 on receipt of part payment delivered possession of the suit property to the plaintiff.

Thereafter, the plaintiff on 20.05.1997 paid balance amount of Tk. 5,00,000/- to the defendant No. 1, but at that time, because of shortage of money, the plaintiff could not get the sale deed executed

and registered. Consequently, it was agreed by the parties that the defendant No. 1 will execute and register the deed later, after collecting money by the plaintiff. Subsequently, the plaintiff after collecting money requested the defendant No. 1 to execute and register the sale deed in his favour but the defendant No. 1 on 16.12.1997 denied receipt of money from the plaintiff and claimed that the plaintiff is a tenant under him.

Thereafter, a salish was held on 26.11.2011 in presence of local Purashava Mayor and in that salish it was decided that the defendant No. 1 shall execute and register the deed in favour of the plaintiff. But the defendant No. 1 disobeying the decision of salish refused to execute the sale deed in favour of the plaintiff. Consequently, the plaintiff served a legal notice dated 23.04.2013 upon the defendant demanding registration of the sale deed, but he did not come forward. It is also claimed that though the defendant No. 1 refused to execute sale deed in favour of the plaintiff on demand but the plaintiff since 20.01.1997 till filing of the suit has been continuous possession of the suit property ousting the

defendant No. 1, as such, he acquired title in the property by adverse possession.

The defendant No. 1 contested the suit by filing written statement denying all the material allegations made in the plaint contending inter alia, that the suit is not maintainable in its present form; suit is barred by limitation. The defendant No. 1 never proposed to sell the property to the plaintiff and received no consideration as alleged in the plaint. He is in continuous possession of the property and he never delivered possession of any part to the plaintiff. The plaintiff is a tenant under him. There was no salish in presence of Purashava Mayor at any time and no legal notice was served upon him. The plaintiff has no right, title and possession in the suit property. All the utility connections in the suit premises obtained by the defendant No. 1 in his name and the plaintiff is merely a tenant. The plaintiff with ill advice of the people filed the present suit only to harass the defendant, as such, the suit is liable to be dismissed.

The trial court framed 5(five) issues for determination of the dispute. In course of hearing, the plaintiff examined 4(four)

witnesses as P.Ws and the defendants examined 3(three) witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by the judgment and decree dated 27.06.2016 decreed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the defendant No. 1 preferred Title Appeal No. 69 of 2016 before the Court of learned District Judge, Gopalgonj who after hearing by the impugned judgment and decree dated 16.07.2018 allowed the appeal and dismissed the suit setting aside the judgment and decree passed by the trial court. At this juncture, the plaintiff-respondent-petitioner, moved this Court by filing this revisional application and obtained the present Rule and order of *stay*.

Mr. Muhammad Salahuddin, learned Advocate appearing for the petitioner submits that admittedly the plaintiff is in possession of the suit land, however, the defendant No. 1 claimed that he is a tenant under him. But the defendant No. 1 could not substantiate his such claim by any evidence before the trial court showing any

agreement of tenancy, payment of monthly rent to him as well as by taking any recourse against the plaintiff for evection from the suit land. He further submits that the defendant No. 1 after receipt of entire consideration money amounting to Tk. 10,50,000/- from the plaintiff delivered possession of the property and as per decision of the salish executed a sale deed on stamp papers. But at the time of filing of the suit inadvertently learned Advocate for the petitioner did not state the facts of execution of deed as well as filed the minutes of salish before the trial court. He submits that the trial court rightly found that the plaintiff has been possessing the suit land from 20.01.1997 till filing of the suit for more than 12 years, resultantly, he acquired title in the property by adverse possession. He finally submits that when a person without any document of title entered into possession of any property by ousting the owner and continued uninterrupted possession for more than 12 years acquired title by adverse possession and the title of the true owner whatever he has had become extinguished under Section 28 of the Limitation Act and as such, the trial court rightly decreed the suit, but the appellate court

while allowing the appeal failed to appreciate the fact that the plaintiff acquired title by adverse possession in the suit property.

None appeared for the opposite-party No. 1, but the opposite-party Nos. 11 and 12 added as opposite-party by filing an application who claimed that after disposal of appeal by the appellate court, defendant No. 1 appellant transferred the suit property to them.

Mr. M. M. Shafiullah, learned Advocate appearing on behalf of added opposite-party Nos. 11 and 12 submits that admittedly the property in question belongs to defendant No. 1 and the plaintiff admitted that the defendant No. 1 was in possession in a portion of the suit land wherein his residential house situates. He submits that the plaintiff in his plaint as well as on oath claimed that the defendant No. 1 entered into an agreement for sale of the property orally and received part payment from the plaintiff on 20.01.1997 amounting to Tk. 5,50,000/- and thereafter, on 20.05.1997 received the rest amount of Tk. 5,00,000/- totaling Tk. 10,50,000/- from the plaintiff, but could not substantiate his claim by any evidence before the trial court. He further submits that a person entered into possession of any property on the basis of any agreement for sale and

on payment of consideration for entire property with hope to have a registered deed from the owner and in the event of refusal by the owner of the property is to file a suit for Specific Performance of Contract subject to limitation, but cannot claim title over the property by way of adverse possession.

It is also argued that if the plaintiff made full payment of consideration to the defendant No. 1 on 20.05.1997 why the plaintiff awaited for 14 years to get the kabala executed and registered without resorting any relief before the court of law. He submits that the plaintiff claimed that there was a salish on 26.11.2011 in presence of Purashava Mayor wherein the defendant No. 1 was present and at the salish the defendant promised to execute the sale deed but no such minutes was filed by the plaintiff before the trial court. Moreover, the defendant No. 1 by filing written statement as well as on oath denied existence of such salishi decision as well as service of any legal notice upon him on 23.04.2013, but the plaintiff could not show any contrary evidence. He submits that the plaintiff was a tenant under defendant No. 1 and he on oath stated that he was living in another place named South Moulavipara on khas land of the

government. In the year 2007 illegal house was dismantled by law enforcing agency, then he shifted to the suit property in the year 2007. The suit was filed by the plaintiff in 2013, as such, as admitted by the plaintiff at the time of filing of the suit he was in possession of the suit property for five to six years which constitute no title by adverse possession. Moreover, when a plaintiff claimed possession by virtue of a deed or agreement he cannot claim adverse possession as per provisions of law. But he had other alternative relief by way of filing suit for Specific Performance of Contract or by initiating a proceeding before the Registrar under the Registration Act. As such, the appellate court rightly allowed the appeal and set aside the impugned judgment and decree of the trial court.

Heard the learned Advocates of both the parties, have gone through the revisional application, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

Admittedly, the suit property belongs to defendant No. 1 Kiron Chandra Shikder who had dwelling house on a part of the suit

property wherein he used to live with his family. Admittedly, the plaintiff is in possession of a part of the suit land as tenant under defendant No. 1 as claimed by him. The plaintiff claimed that he entered into an oral agreement for sale with defendant No. 1 at a consideration of Tk. 10,50,000/- out of which at the first instance on 20.01.1997 he paid Tk. 5,50,000/- to the defendant No. 1 in presence of witnesses and the balance amount of Tk. 5,00,000/- paid on 20.05.1997, but for want of fund he could not get the sale deed executed and registered from the defendant No. 1. Subsequently, after collecting fund when he demanded execution and registration of the sale deed from defendant No. 1 on 16.12.1997 he denied receipt of money from plaintiff saying that the plaintiff is a tenant under him.

If it is so, the question now arises where in the year 1997 the plaintiff entered into an agreement for purchase of the suit property at a consideration of Tk. 10,50,000/- from defendant No. 1 why an agreement in writing was not executed after payment of advance amounting to Tk. 5,50,000/-. And why the plaintiff did not take any recourse under the law by initiating any legal proceedings seeking

relief against the defendant No. 1 when he denied receipt of consideration money on 16.12.1997. Not only that the plaintiff after payment of a considerable amount to the plaintiff as consideration of the suit property remained silent till 2011 for 14 years and then filed an application before the Mayor Purashava and claimed that there was a salish held on 26.11.2011 in presence of Mayor Purashava and defendant No. 1 who signed the minute wherein he admitted receipt of Tk. 10,50,000/- from the plaintiff and promised to execute and register the sale deed in favour of the plaintiff.

It is claimed by the plaintiff that the defendant No. 1 refused to comply with the decision of the salish, consequently, he served a legal notice on 23.04.2013 demanding execution and registration of the deed from defendant No. 1, but when the defendant refused to execute the sale deed the plaintiff ought to have filed a suit for Specific Performance of Contract, but the plaintiff for the reason best known to him giving a complete go bye to all the actions whatever took place i.e, earlier payment of consideration money to the plaintiff, decision of salish and service of legal notice demanding registration of the deed filed the instant suit for declaration of title by

way of adverse possession. A person in possession on the basis of an agreement for sale is to file a suit for Specific Performance of Contract not a suit for title by adverse possession. On going through the evidences led by the plaintiff as P.Ws, I find that the plaintiff admitted that after eviction of the plaintiff from his earlier house constructed on khas land in the year 2007 he came into possession of the suit land in the year 2007. The question has come, if he entered into possession of the suit land in the year 2007 how he entered into possession in the year 1997 on the basis of oral contract with the defendant No. 1. If we consider the evidence of P.W.1, find that at the time of filing of the suit his possession was for 5 to 6 years.

Apart from this person claiming possession on the basis of some document is not entitled to claim adverse possession giving a go bye to the basis of his entering into possession of the suit land. In the absence of any written document of contract for sale as well as in the absence of sufficient evidence in respect of acquiring adverse possession, the trial court only upon a presumption decreed the suit in favour of the plaintiff. For easy understanding relevant portion of the judgment passed by the trial court is quoted below;

"সুতরাং অত্র মোকদ্দমার সামগ্রিক Facts and Circumstances বিবেচনায় বাদী পক্ষের প্রভাবিলিটি বেশী হওয়ায় নালিশী ভূমিতে বাদীর দীর্ঘকাল অর্থাৎ বার বৎসর যাবত ভোগ দখল করার বিষয়টি তাহার বিরুদ্ধ দখল জনিত স্বত্বের উদ্ভব হইয়াছে বলিয়া প্রতীয়মান হয়। এমতাবস্থায় সার্বিক বিবেচনায় বলা যায়, নালিশী ভূমিতে বাদী তাহার বিরুদ্ধ দখল জনিত স্বত্ব এবং দখল প্রমান করিতে সক্ষম হওয়ায় বাদী প্রার্থীতমতে প্রতিকার পাইতে পারে।ফলে সকল বিচার্য বিষয়গুলির সিদ্ধান্ত বাদীপক্ষের অনুকূলে নিস্পত্তি করা হইল।"

Findings of the trial court quoted above is mere speculation and in deciding a crucial point of adverse possession there is no scope left for the trial court to guide himself on speculation avoiding the provisions of law.

The appellate court while allowing the appeal and setting aside the judgment and decree of the trial court discussed all the evidences of P.Ws and found that the plaintiff entered into possession in the year 2007 and the suit was filed in the year 2013 which cannot come within the purview of adverse possession. Relevant portion of the judgment is quoted below;

"বাদীপক্ষের ৩ ও ৪ নং সাক্ষী যথাক্রমে মোঃ রমজান মোল্লা ও আসলাম মোল্লা। পি. ডব্লিউ-৩ নালিশী বাড়ীতে পায়খানা ও গোসলখানা নির্মান করার এবং পি. ডব্লিউ-৪ নালিশী বাড়ীতে মাটি কাটার সাক্ষী। কিন্তু তারা সাক্ষ্য দেওয়ার সময় বাড়ীর দাগ খতিয়ান কিছু বলতে পারেননি। পক্ষান্তরে ১ নং বিবাদীর কেইস সমর্থনে সাক্ষ্য

প্রদান করে উল্লেখ করেন যে, যৌথ বাহিনী বাদীর ঘর ২০০৭ সালে ভেঙ্গে দিবার পর বাদী গোপালগঞ্জ শহরে সহদেব হীরার বাড়ীতে আশ্রয় লয়। পরে গণতান্ত্রিক সরকার ক্ষমতায় আসলে বাদী পুনরায় মৌলভীপাড়ার সেই স্থানে পুনরায় ঘর তুলে বসবাস শুরু করলে জেলা প্রশাসক পুনরায় ২০০৯ সালে ঘর ভেঙ্গে দেয়।ফলে প্রতীয়মান হয় যে, নালিশী জমিতে বাদী ৫/৬ বৎসর বসবাস করছেন। ইহা সুস্পষ্ট ও সুনির্দিষ্ট যে, তফসিল জমির সমস্ত টাকা পরিশোধ করা ও বাদীকে জমির দখল বুঝিয়ে দিয়েছে এবং তিনি ১২ বৎসরের অধিক সময় তফসিল বর্ণিত ভূমিতে বিরুদ্ধ দখল জনিত স্বত্বে ভোগ দখলে থাকার বিষয় প্রমান করতে সক্ষম হননি।''

The appellate court rightly held that the plaintiff could not prove his case both by oral and documentary evidences and also failed to prove that he was delivered possession on the basis of any contract for sale, as such, I find no illegality in the impugned judgment and decree passed by the appellate court 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 petitioner.

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.

Helal-ABO