

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4378 OF 2018

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Babu Sheikh and others

... Petitioners

-Versus-

Md. Ramjan Kha and others

... Opposite parties

Md. Ekramul Islam, Advocate

.... For the petitioners.

Mr. Md. Sanower Hossain, Advocate

.... For the opposite party Nos.1-5.

Heard on 27.08.2024 and Judgment on 29.08.2024.

This Rule was issued calling upon the opposite party Nos.1-5 to show cause as to why the judgment and decree dated 04.10.2018 passed by the learned Joint District Judge, 2nd Court, Rajbari in Title Appeal No.103 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 31.08.2015 passed by the learned Assistant Judge, Baliakandi, Rajbari, in Title Suit No.25 of 2015 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 in short are that the opposite parties as plaintiffs instituted above suit for declaration of title and recovery of possession in disputed 90 link land by eviction of ghar of the defendants.

It was alleged that 4 decimal land appertaining to plot No.3081 of S.A. Khatian No.1 belonged to the Government of Bangladesh. Plaintiff No.1 and now deceased Sakina Bibi as landless peasants obtained perpetual lease for 90 years of above land by a registered kabulated dated 25.09.2005 from the Government and they mutated their names paid rent to the Government. On 7th Falgun 1413 B.S. defendants forcibly erected a corroborated tin Ghar in the disputed land. On 10th Magh 1415 B.S. defendants denied to remove above Ghar and hand over vacant possession to the plaintiffs.

Defendant Nos.1-5 contested the suit by filing a joint written statement wherein they have stated that defendant No.1 purchased the land of undisputed R.S. plot No.2847 in 1983 and constructed his dwelling house in above land and also erected a shop. He transferred above land to his wife Sakina Begum by deed of Heba-bil-awas dated 17.04.2000 and after the demise of Sakina Bibi defendant No.2-5 are in possession in above dwelling house as her heirs.

The disputed land claimed by the plaintiffs are vague and indefinite and the same cannot be determined without survey by an

Advocate Commissioner. The plaintiffs did not get physical possession in the land they obtained by settlement from the Government. Defendants are in possession in the disputed land long before taking of settlement of the plaintiffs.

At trial plaintiffs and defendants examined 3 witnesses each. Document produced and proved by the plaintiffs were marked as Exhibit No.1-6 and those of the defendants were marked as Exhibit Nos.Ka - Kha.

Defendant No.7, Government of Bangladesh represented by the Deputy Commissioner contested filed a separate written statement wherein they have supported the case of the plaintiff and stated that 4 decimals land of disputed plot No.3081 belonged to the government and the same was given settlement to landless peasant plaintiff No.1 and his wife Sakina Khatun. They have mutated their names in respect of above land and paid rent until 1415 B.S. Above leases were given formal possession of the above land. Defendant Nos.1-5 are unlawfully occupying $1\frac{1}{2}$ decimal land and they have no lawful title and possession in the above land.

Defendant Nos.7 examined 1 witness and document produced and proved documents which were marked as Exhibit Nos.Ka - Kha.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial Court defendants preferred Other Class Appeal No.503 of 2009 to the District Judge, Rajbari which was heard by the learned Joint District Judge, Rajbari who on consideration of the submissions of the learned Advocates for the respective parties and evidence on record dismissed the appeal and upheld the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below the appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Ekramul Islam, learned Advocate for the petitioners submits that the plaintiffs have instituted this suit for a declaration of title and recovery of khas possession by evicting a Ghar of the defendants from the disputed 90 link land. But above land has not been sufficiently specified in the scheduled to the plaint. The learned Advocate further submits that DW1 Md. Ayub Ali Sheikh who gave evidence of defendant No.7 has admitted in cross examination that the plaintiffs were not given possession of the disputed land. Plaintiff No.2 while giving evidence as PW1 has stated in cross examination that the

Government did not give him possession in the disputed land. On the contrary above DW1 has admitted in cross examination that the defendants are in possession in the disputed land for more than 15 years. Above evidence clearly show that the plaintiff did not get any possession in the disputed land and the question of his dispossession by the defendants does not arise at all. The learned Advocate further submits that since the government did not deliver possession of the disputed land to the plaintiff the Plaintiffs should have approached the Government of Bangladesh for delivery of possession and a Civil Court has no jurisdiction to deliver possession to the plaintiffs. Since the plaintiffs could not prove their previous possession and subsequent dispossession by the defendant from the disputed land this suit was liable to be dismissed out right. But the learned Judges of the Courts below failed to appreciate above facts of the case and evidence on record and most illegally decreed the suit and dismissed the appeal which is not tenable in law.

On the other hand Mr. Md. Sanower Hossain, learned Advocate for the opposite parties submits that undisputedly 4 decimal land of plot No.3081 belonged to the Government of Bangladesh which was given settlement to two landless peasants namely plaintiff No.1 and Sakina Bibi and after demise of Sakina Bibi plaintiffs are her heirs. The

plaintiffs got their names mutated on the basis of above kabuliyat deed dated 30.09.2005 and paid rent to the Government until 1415 B.S. All above documentary evidence have been admitted by DW1 who gave evidence on behalf of the Government of Bangladesh. On the other hand the defendant does not have any claim of title or lawful possession in the disputed land. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of the Courts below have rightly and concurrently found that the plaintiffs are lawful owners and possessors of the disputed land and the defendants forcibly erected a tin Ghar in the same and accordingly decreed the suit and dismissed the appeal lawfully. Above concurrent findings of the Courts below as to the possession and dispossession being based on evidence on record in the absence of any allegation of misreading or non consideration of any legal evidence on record this Court should not in its revisional jurisdiction interfere with above findings of fact.

I have considered the submissions of the learned Advocates for the opposite parties and carefully examined all materials on record.

It is admitted that 4 decimal land appertaining to plot No.3081 belonged to the Government of Bangladesh which was given settlement

by the Deputy Commissioner to two landless peasants plaintiff No.1 and Sakina Khatun, predecessor of the plaintiffs.

It is also admitted that defendant No.1-5 have their dwelling house in the land of undisputed plot No.2847 which is contiguous to the disputed plot No.3081 and the defendants do not have any claim or title or lawful possession in the land of the disputed plot.

In this case Deputy Commissioner on behalf of the Government of Bangladesh was made defendant No.7 who filed a written statement and DW1 for above defendant has fully corroborated the claims of the plaintiffs. He stated that disputed 4 decimal land was given settlement to the plaintiffs by registered kabuliyat deed dated 30.09.2005 and they mutated their name for above land pursuant to Mutation Case No. $\frac{\text{XII-3/2005-2006}}{\text{XII-29/2003-2004}}$ and paid rent until 1415 B.S.

Defendant No.7 has further stated in written statement that the plaintiffs were given formal possession in the disputed 4 decimal land and defendant No.1-5 do not have any rightful title or possession in the disputed land.

It is well settled that documentary evidence always prevails over the oral evidence when there is a contradiction between the two and the mutation of names in the khatian and rent receipts give evidence in support of possession. In view of the fact that the defendants do not

have any claim of title or lawful possession there is no reason to disbelieve above documents.

As such the learned Judges of the Courts below relying on above documentary evidence rightly held that the plaintiffs got rightful ownership and formal possession in the disputed land.

It is true that in his evidence PW1 has stated that the Government did not deliver possession of the disputed land to them. DW1 has stated in this cross examination that defendants are in possession in the disputed land for 15 years but in the next breath DW1 stated that he did not have any personal knowledge about the possession of the disputed land. Above discrepancies in the oral evidence shall not prevail over above admitted documentary evidences as to title and possession.

As far as the submission of the learned Advocate for the petitioner that since the lessor of the plaintiffs namely Government of Bangladesh did not deliver possession of the disputed land to them the plaintiffs should have approached Deputy Commissioner for getting possession.

In his written statement D.W.1 Deputy Commissioner has stated that formal possession was delivered to the plaintiffs.

As far as specification of the disputed land is concerned, this is a question of fact and there is no specific allegation regarding

specification of the disputed land in the written statement of the defendants nor any evidence was adduced at trial. Above point was not raised before the Trial Court or the Court of Appeal below. Now for the first time this factual question has been raised before this Court of revisional jurisdiction which is not entertainable at all.

The learned Advocate for the petitioners lastly submits that there is no claim in the plaint or in the evidence of PW1 that the defendants forcibly dispossessed the plaintiffs from the disputed land, as such, he cannot get a decree for recovery of possession.

In both the plaint and his evidence as PW1 plaintiff No.2 has stated that the defendants erected a corroborated tin Ghar in the disputed and on 7th Falgun 1413 B.S. notwithstanding the resistance and objection raised by the plaintiffs. Above statement clearly show that the disputed land which was a vacant piece of land was occupied by the defendants without any lawful basis and consent of the plaintiffs for the first time on 7th Falgun 1413 B.S.

On consideration of above facts and circumstance of the case and materials on record I am of the view that the concurrent findings of fact arrived by the Courts below that the plaintiffs are rightful owners and possessors in the disputed land and they were dispossessed forcibly by the defendant by erecting a corroborated tin shed ghar on 7th Falgun

1413 B.S. who had no claim of title and possession at all are based on evidence on record. In the absence of any claim of misreading or non consideration of any valid piece of evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

In above view of the materials on record I am unable to find any substance in this application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby made discharged. The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

However, there is no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER