

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.1143 of 2019

Shamsun Nahar and others.

.....*Petitioners.*

-Versus-

Lil Chand and others.

.....*Opposite parties.*

Mr.Mohammad Aminul Islam, Adv.

.....*For the petitioners.*

Mr. Md. Shariful Islam, Adv.

.....*For the Opposite parties.*

Heard and Judgment on 28.02.2024.

A.K.M.Asaduzzaman,J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 13.03.2019 passed by the District Judge, Rajshahi in Title Appeal No. 231 of 2011 reversing those dated 16.05.2011 passed by the Assistant Judge, Puthia, Rajshahi in Other Class Suit No. 16 of 1996 dismissing the suit should not be set aside.

Opposite party as plaintiff filed Other Class Suit No. 16 of 1996 before the Court of Assistant Judge, Puthia, Rajshahi against the petitioners for declaration of title in the suit land in respect of 0.48 acres of land in schedule no. 1 and 0.98 acres of land in schedule no. 2.

Plaint case in short inter alia is that suit land was belonged to Govor Sardar, the grandfather of the plaintiff in respect of 2.56 acres, recorded in C.S. khatian no. 203 at Jama Rs. 8 anna 5 under the Superior Land Lord Naresh Narayan Roy as Sthitiban Rayati title and possessed the same and died leaving behind two sons and one daughter namely, Goni Sarder, Shukur Sardar and Rupjan Bibi and they possessed the same in ejmali by paying rents. Shukur Sardar and Rupjan transferred their shares vide kabala No. 1170 dated 31.06.1955 to the plaintiff Naimuddin Sardar, who possessed the 16 annas share as owner by cultivation and has been possessing the same till now. Defendants are uterian brothers and they collusively recorded the suit land during S.A. and R.S. operations in their names erroneously and the said records were not acted upon and they never got possession of the said land. Defendant No. 2 misused the power to record the suit land. S.A. and R.S. operation the land of lot no. 1 was recorded in the name of the defendant no. 1 and lot of No. 2 was recorded in the name of defendant no. 2, although the land being possessed by the plaintiff for more than 12 years and obtained title by adverse possession. Defendant No. 1 and his brother were inhabitants of village Jagirpara and the defendant no. 2 Kaifat Mondal was a village matbar and a clever man and a man of good communication with the official, the plaintiff used to pay the rents

through him. During S.A. operation, the plaintiff entrusted Kaifat Mondal to record his name in S.A and R.S. operations and for the purpose he handed over the original registered deed to kaifat Mondal. Thereafter on demand, the said Kaifat Mondal on various pleas did not hand over the documents to the plaintiff and at one stage kaifat Mondal informed that he handed over all papers of the suit land to the defendant No. 1 and the plaintiff demanded to return those documents and approached to the defendant no. 1 but he did not hand over those documents on various pleas and lastly on 13.12.1995 refused to hand over those documents and disclosed that the suit land was recorded in the names of the defendants and claimed their title in the suit land. Plaintiff after collecting the copies of the C.S, S.A and R.S. khatians came to know for the first time that the suit land was recorded in S.A. and R.S. khatian in the name of the defendants. By those wrong record a cloud was cast in the title of the plaintiff of the suit land. As such he was constrained to file the suit.

Petitioner as defendant contested the suit by filing joint written statement denying the plaint case alleging, inter alia, that the suit land belonged to Govor Sardar as reyati tenant and was in possession in respect of 2.56 acres and CS. Khatian No. 203 was finally published in the name of Govor Sardar and during his possession the rent fell due and became incapable to pay the rent

and returned to the office of the superior land lord. The superior land lord possessed the land for more than 2 years in his khas possession and declared to settle the land and in response of the said proposal Ago Mondal, the father of the defendant no. 1 and 2 took settlement in 1350 B.S. in respect of the plot no. 1 and 2 of the plaint. By paying rent to the office of the superior land lord Ago Mondal possessed the land. Ago Mondal died leaving behind the defendant no. 1 and 2 along with Marbor Mondal and Aifot Mondal as his legal heirs, During such possession S.A. operation was started and the land of lot No. 1 was recorded in S.A. Khatian No. 159 correctly and thereafter the heirs of Ago Mondal amicably partitioned the land. Accordingly lot No. 1 fell in the share of the defendant no. 1 and during R.S. operation, R.S. Khatian No. 74 was recorded in the name of the defendant no. 1, who possessed the land openly and within the knowledge of all.

It is further stated that during the war of liberation, the document relating to the suit land was lost and further denied that plaintiff never handed over the documents relating to the suit land to defendants for recording the suit land in the name of plaintiff. Plaintiff suit is false and is liable to be dismissed with cost.

By the judgment and decree dated 29.07.1998 trial court decreed the suit.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 184 of 1998 before the Court of District Judge, Rajshahi, which was heard on transfer by the Additional District Judge, 4th Court, Rajshahi, who allowed the appeal and after reversing the judgment of the trial court sent back the suit on remand to the trial court for proper adjudication.

Challenging the said judgment and order plaintiff preferred Civil Revision No. 557 of 2000 before the High Court Division and obtained a rule. The said rule was finally been discharged and the order of remand passed by the Appellate Court was affirmed and the suit was sent to the trial court for adjudication.

Trial Court again framed the following issues—

1. Whether the plaintiffs have right, title, interest and possession over the suit land?
2. Whether the Plaintiffs are entitled to get relief as prayed for?

During trial plaintiffs examined 7 witnesses and documents filed by them were exhibited in court as Exhibit no. 1-7 and defendants examined 07 witnesses and their documents were marked exhibited as Exhibit Ka to Da(2).

By the judgment and decreed dated 16.05.2011 trial court dismissed the suit on contest.

Challenging the said judgment and decree plaintiff preferred Title Appeal No. 231 of 2011 before the Court of District Judge, Rajshahi, who by the impugned judgment and decree dated 13.03.2019 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiff.

Challenging the said judgment and decree defendant-petitioner obtained the instant rule.

Mr. Md. Aminul Islam, the learned advocate appearing for the petitioners drawing my attention to the fact of this case submits that in a suit for declaration of title, trial court has rightly found that plaintiff could not prove his title and exclusive possession over the suit land in as much as save and accept the C.S. khatian, which was produced in court, neither S.A. and R.S khatian were shown to have recorded in the name of either plaintiff's predecessor or his successor nor they could show their possession in the suit land on paying rents ever into the suit land and as such trial court has rightly dismissed the suit. On the other hand, the Appellate Court without believing the defendant's witnesses on possession as well as reversing the above findings of

the trial court most arbitrarily held that the document dated 31.01.1955 through which Shukur Sardar and Rupjan Bibi transferred their share in favour of Naimuddin Sardar (Plaintiff) is a valid document of title of the plaintiffs and as such he decreed the suit in favour of the plaintiff although he found there is nothing to show by the plaintiff that they have got possession over the suit land. The above findings of the Appellate Court is apparently an arbitrary one and against the ethics enunciated under Order 41 Rule 31 of the Code of Civil Procedure. The impugned judgment is thus not sustainable in law, which is liable to be set aside. He thus prays for making the rule absolute.

On the other hand, Mr. Md. Shariful Islam, the learned advocate appearing for the plaintiff-opposite parties submits that Appellate Court being the last court of fact has rightly found plaintiff has got valid title over the suit land and all the P.Ws in a voice have supported the possession of the plaintiffs and accordingly the decree passed by the Appellate Court need not be interfered with. He finally prays that rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the impugned judgment and the L.C. Records.

This is a suit for simple declaration of title. Plaintiffs claimed that suit property was belonged to C.S. recorded tenant Govor Sardar, who died leaving behind Gani Sardar and Shukur Sardar and a daughter Rupjan Bibi. Plaintiff Naimuddin Sardar is the son of Gani Sardar to whom Shukur Sardar and Rupjan Bibi transferred their share by way of registered sale deed no. 1170 dated 31.01.1955 and thereby plaintiffs became 16 annas share holder of the suit property. He handed over all these title deeds to the defendant Kaifat Mondal for recording S.A. Khatian and after getting the said documents, he recorded S.A.Khatian as well as R.S. Khatian into his name and when he refused to return back all title documents to the plaintiff saying that he became the owner of the suit property on the basis of S.A. and R.S. Khatian, plaintiff's title became clouded and hence he filed this suit. On the other hand according to the defendant admittedly the suit property was belonged to Govor Sardar. Due to inability to pay rent, suit property was returned back to the Ex. Jamindar and after the said surrender while the Ex. Jamindar got the property in his khas possession, settled the said land, which is mentioned in schedule no. 1 and 2 in favour of the Ago Mondal, who is the father of the defendant no. 1 and 2 in the year 1350 B.S. and received rent from him and since then he is possessing the suit land. After his death defendant no. 1 and 2 Marfat Mondal and Saifat Mondal became

the owner and possessor of the suit land and their names have rightly been recorded in the S.A. and R.S. khatian and they are remaining in possession. During liberation war, the documents relating to pattan were lost.

In view of the respective cases, the mood questions to be decided in this suit is that whether the property as being owned and possessed by Govor Sardar, been surrendered to the Ex-Jamindar on his inability to pay the rents and subsequently being settled in favour of the defendant's predecessor or not?

In support of the defendant's contention regarding the taking pattan after surrender, defendant could not adduce any document. According to them, this document was lost during the period of liberation. They could have only placed before the court the R.S. and S.A. khatian and series of documents of paying rents. Fact remains that plaintiff also could not adduce any evidence to show that they have ever tried to either recording their names in the khatians or tried to mutate their names or ever taken any opportunity to pay the rents to anybody. Recording of S.A. and R.S. khatian (exhibit uma and cha) together with series of documents of paying rents (exhibit no. chha-chha (10) and Ja to Ja(11)) are the proof of possession of the defendants in the suit land. If the plaintiff had ever any possession in the suit land as per the oral testimony of P.W.s obviously plaintiff could have tried to

pay rents to the government. By the deed dated 31.01.1955 (exhibit no. 4) plaintiffs tried to say that Shukur Sardar and Rupjan Bibi transferred their share to the plaintiff's predecessor Goni Sardar by way of registered sale deed and thereby Naimuddin Sardar became the owner of the suit property. If the plaintiff, Naimuddin Sardar acquired any title by this document obviously he would try to pay rents to the government, since 1955 from acquiring the property from his brother and sister. Neither Goni Sardar nor his successor Naimuddin Sardar, the plaintiff ever tried to pay rents to the government.

Trial Court thus while discussing the evidence on record has thus rightly found that in the absence of any document of title as well as possession in favour of the plaintiff, plaintiffs acquired no valid papers, to get a decree on title into the suit property rather recording of S.A. and R.S. khatian together with a series of rent receipt of paying rents by the defendants together with oral evidence of the defendants proved the exclusive possession over the suit land by the defendant, which carries valid title of the defendants. Accordingly, he dismissed the suit for title only, rightly. But the Appellate Court without at all reversing the said findings most arbitrarily held that document of the year 1955 through which Shukur Sardar and Rupjan Bibi transferred their share in favour of Goni Sardar, the predecessor of the plaintiffs is

an ancient document and through which plaintiffs acquired valid title into the suit land. The said findings since did not corroborate with any other valid documents or evidence and thus can not be sole basis of title of the plaintiff into the suit land. Moreover whether plaintiffs are found not in the exclusive possession into the suit land, this suit for simple declaration of title is not maintainable under section 42 of the Specific Relief Act. Accordingly the findings of the Appellate Court appear to be arbitrary and not sustainable in law, which is liable to be set aside.

In that view of the matter, I find merits in this rule. Accordingly the rule is made absolute without any order as to costs. The judgment and decree passed by the Appellate Court is hereby set aside and the judgment of the Trial Court is upheld.

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

Send down the L.C.Records and communicate the judgment to the court below at once.