

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4929 OF 2015

In the matter of:

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

And

Md. Khoka Sheikh and others

.... Petitioners

-Versus-

Md. Bodia Sheikh and others

.... Opposite parties

Mr. Zahedul Bari, Advocate

.... For the petitioner.

Mr. Rezaul Karim, Advocate

.... For the opposite parties.

Heard and Judgment on 18.07.2023.

On an application under Section 115(1) of the Code of Criminal Procedure this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and decree dated 29.10.2015 passed by the learned District Judge, Gaibandha in Other Appeal No.111 of 2014 allowing the appeal and reversing those dated 22.07.2014 passed by the learned Senior Assistant Judge, Sadullahpur, Gaibandha, in Other Suit No.86 of 2001 decreeing the suit.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 2.70 acres land as described in schedule to the plaint.

It was alleged that above property belonged to Basir Uddin Kabiraj who fail to pay rents of above property and orally surrendered the same to the superior landlord Abir Uddin who gave settlement of the same to Saka Sheikh by accepting a registered kabuliyat on 12.09.1947. Saka Sheikh was in possession in above land by paying rent to the zaminders but in the relevant S.A. khatian above land was erroneously recorded jointly in the name of Saka Sheikh and his brothers namely Golla Sheikh, Nojor Sheikh and mother Ula Bewa. On the basis of erroneous record defendants denied title of the plaintiffs in the above property.

Defendant No.1 and 2 contested above suit by submitting a joint written statement wherein they have denied all material claims and allegation made in the plaint and stated that Basir Uddin Kabiraj never surrendered above property to the previous landlord Abir Uddin nor above Abir Uddin accepted any kabuliyat from Saka Sheikh and gave settlement of the disputed property to him. Basir Uddin Kabiraj was the owner and possessor of above property who died leaving three sons predecessor of plaintiffs namely Saka Sheikh and now deceased defendant Nos.1 and 2 and one wife Ula Bewa. Above Ula Bewa died leaving three sons Saka Sheikh and defendant Nos.1 and 2 as her heirs. Accordingly, above three sons of Bashir Uddin Kabiraj each inherited

90 decimals land of Bashir Uddin Kabiraj. Plaintiff No.1 transferred 17 decimals land to the defendants by registered kabala deed dated 16.01.1968. Defendant No.1 further sold 20 decimals land from the wife of Saka Sheikh namely Rupjan Bibi by a registered kabala deed. Defendant No.2 transferred 13 decimals land to Saka Shiekh by registered kabala deed. Thus the plaintiffs purchased 50 decimals land from the defendant Nos.1 and 2. Plaintiffs inherited 90 decimals land as heir of Saka Sheikh. So, plaintiffs are owning and possessing 1.40 acres land out of the disputed 2.70 acres.

At trial plaintiffs examined two witnesses and defendant examined 4. Documents produced and proved by the plaintiffs were marked as Exhibit No.1-3 and those of the defendants were marked as Exhibit Nos.'K'-'Neo'.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge decreed.

Being aggrieved by above judgment and decree defendants preferred Other Appeal No.111 of 2014 to the District Judge, Gaibandha who allowed the appeal set aside the judgment and decree of Trial Court and dismissed the suit.

Being aggrieved by above judgment and decree of the learned District Judge plaintiffs as petitioners moved to this Court and obtained the Rule.

Mr. Zahidul Bari, learned Advocate for the petitioners submits that the defendants had admitted both in their written statements and the evidence in Court that by inheritance as a heir of Basir Uddin Kabiraj and subsequent purchase by registered kabala deeds from defendant Nos.1 and 2 plaintiffs are in peaceful possession in 1.40 acres land. the plaintiffs claim of whole 2.7 acres land on the basis of fresh settlement from landlord Abir Uddin on the basis of registered kabuliyat (Exhibit No.3) was found to be not proved. As such the learned District Judge should have decreed the suit in part and declare plaintiffs title in 1.40 acres land on the basis of admission. But the learned District Judge committed serious illegality and allowed the appeal as a whole and dismissed the suit which is not tenable in law.

On the other hand Mr. Rezaul Karim, learned Advocate for the opposite parties submits that on consideration of evidence on record the learned District Judge has rightly held that the plaintiffs could not prove that the registered kabuliyat (Exhibit No.3) was in fact acted upon and Saka Sheikh acquired valid tenancy right on the basis of the same. In above view of Exhibit No.3 the learned District Judge has

rightly allowed the appeal and set aside the judgment and decree of the Trial Court. But the opposite parties admit that the plaintiffs as heirs of Saka Sheikh inherited 90 decimals land and by purchase by registered documents from the defendants acquired 50 decimals land. As such the plaintiffs are rightful owner and possessor of 1.4 acres land out of disputed 2.70 acres. As such the learned District Judge should have decreed the suit in part for 1.40 acres land.

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

It is admitted that Basir Uddin Kabiraj was the rightful owner and possessor of 2.70 acres land and he died leaving three sons predecessors of the plaintiffs, namely Saka Sheikh and now deceased defendant Nos.1 and 2 namely Golla Sheikh and Nojor Sheikh and one wife Kula Bewa and above Kula Bewa died leaving three sons Saka Sheikh, Golla Sheikh and Nojor Shiekh as her heirs.

The Defendants have both in their written statement and evidence in Court admitted that plaintiffs acquired 50 decimals land by way of purchase by registered kabala deeds from defendant Nos.1 and 2 on separate dates.

Plaintiffs claimed title in total 2.70 acres land on the basis of fresh settlement from the superior landlord by registered deed of kabuliyat dated 12.09.1947 (Exhibit No.3).

It is admitted that Basir Uddin Kabiraj had a kurfa tenancy in the disputed jama. It has been alleged that he orally surrendered the disputed land due to his inability to pay rents. But there is no evidence oral or documentary to support above oral surrender of the land of the disputed joma. Plaintiffs could not even mention any date or year as to when above oral surrender occurred. As such the claim of the plaintiffs that Basir Uddin surrendered his kurfa tenancy to the superior landlord remains not proved.

As far as registered deed of kabuliyat is concerned it is an unilateral document and the plaintiffs have failed to produce and prove any rent receipt to show that above kabuliyat was in fact accepted by the superior landlord. There is no evidence on record to show that on the basis of above kabuliyat Saka Sheikh got possession of the disputed property. It is admitted that in the relevant S.A. Khatian the suit property has been recorded in the names of the heirs of Basir Uddin Kabiraj and the same was not recorded in the name of Saka Sheikh alone on the basis of above mentioned kabuliyat (Exhibit No.3).

On consideration of above materials on record the learned District Judge has rightly held that above kabuliyat was not at all acted upon and the tenancy right of Basir Uddin Kabiraj continued which was inherited by his heirs as mentioned above.

It is well settled that an admitted fact does not require further prove by legal evidence. In a civil suit admission may be made in two ways either by making a statement in the written statement or at the time of giving of evidence in Court.

The learned Advocate for the opposite parties has conceded that both in the written statement and the evidence in Court defendants admit that the plaintiffs are heirs of Saka Sheikh and the defendants have transferred 50 decimals land by three registered kabala deeds to the plaintiffs. Plaintiff's title and possession in 1.40 acres land out of total 2.70 acres is admitted.

As such the learned District Judge should have allowed the appeal in part and decreed the suit in part for 1.4 acres land as mentioned above. But the learned District Judge failed to appreciate materials record correctly and most illegally allowed the appeal and dismissed above suit which is not tenable in law.

In above view of the materials on record I find substance in the Civil Revision and this Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 29.10.2015 passed by the learned District Judge, Gaibandha in Other Appeal No.111 of 2014 is set aside and Other Suit No.86 of 2001 is decreed in part. Plaintiff's title is declared 1.40 acres of land.

However, there is no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER