IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique

Chief Justice

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CIVIL APPEAL NO.96 OF 2012.

(From the judgment and decree dated 01.08.2010 passed by the High Court Division in Civil Revision No.3082 of 2008)

Ahmed Ali Noor and others	:	Appellants.
=Versus=		
Nigar Hossain and others	:	Respondents.
For the appellants	:	Mr. S.M. Munir, Senior Advocate, instructed by Mr. Sufia Ahammad , Advocate-on-Record.
For the Respondents	:	Mr. Garib Newaz, Advocate, instructed by Mr. M. Ashrafuzzaman Khan, Advocate -on-Record.

Date of hearing : 12.01.2022 & 18.01.2022

Date of judgment : 01-02-2022

J U D G M E N T

Hasan Foez Siddique, C.J: This civil appeal is directed against the judgment and order dated 01.08.2010 passed by the High Court Division in Civil Revision No.3082 of 2008 making the Rule absolute upon reversing the judgment and decree dated 10.04.2008 passed by the Joint District Judge, 7th Court, Dhaka in Title Suit No.162 of 2005.

The plaintiffs' case, in short, was that they instituted instant suit under section 9 of the Specific Relief Act for recovery of possession in respect of the land described in the schedule "Kha" to the plaint against the respondents stating, inter alia, that the suit land originally belonged to Nezabot Ali Khan, Abdul Hakim and others. Said land was recorded in their names in C.S. Khatian No.174, Mouza-Dhanmondi. Mirza Abdul Kadir, one of the co-sharers of the Jamindari Estate, settled five bighas of land to Sree Aboni Mohon Dey who executed and registered a kabuliyat on 18.12.1940 in favour of the landlord. Aboni Mohon then settled three bighas of land, out of 5 bighas, to one Abdul Barek by a registered "Aaddi Barga Kabuliyat". Thereafter, Aboni Mohon entered into an agreement for sale in respect of one acre of land from the south western portion of C.S. plot No.67 with Abdul Mazid Howlader and Begum Ayesha Noor on 29.07.1947 at a consideration of tk.3,000/-. Out of which, they paid tk.750/- as earnest money. Possession of the said land was delivered to them. Because of partition of the country, the executant left for India upon

making arrangement to execute and register a deed of sale through a power of attorney. Meanwhile, the Government started the process of acquisition in L.A. Case No.06 of 1948-49 in respect of the part of plot No.67. Then one Sufia Khatun filed Writ Petition No.145 of 1965 challenging the notice issued in the said L.A. Case and obtained Rule which was finally discharged on 19.08.1966. Sufia Khatun preferred appeal which was allowed on 01.12.1967 declaring the notice of acquisition defective and inoperative. The then C & B department, by its letter No.104 TP dated 15.01.1953, allowed to make construction in the suit property upon receiving the Government plan. The "Ka" scheduled property, along with some other properties, was released from the process of acquisition. On 26.10.1956, one Asutosh Dey Sarker, appointed Attorney of Aboni Mohon Dey, executed and registered a deed of sale in favour of Abdul Mojid Howlader and Begum Ayesha Nur. Thereafter, Abdul Mojid Howlader transferred 8 kathas of land from the suit plot to one M.A. Gani and Afaiuddin Khan by a deed of sale dated 31.07.1957. Mojid Howlader again transferred his remaining 22

kathas of land by oral gift to the predecessor-in-interest of the plaintiffs. Begum Ayesha Noor died leaving the plaintiffs as her legal heirs. The plaintiffs and their predecessors had been in possession of the suit property by constructing shop rooms, which were 16 in number. They let out those shops to different persons who had been running their business in their respective shops. While the plaintiffs had been in possession of the suit land, the defendant No.1 filed application before the RAJUK bringing some false allegations, and, thus, the defendants, taking help of RAJUK and Abdul Awal Mintu, husband of defendant No.6, demolished the structures constructed by the plaintiffs in the suit land by bulldozer. The Police did not take action against the influential invaders. Lastly, on 20.04.2001, the plaintiffs lodged a G.D. with local Police Station mentioning the fact of their dispossession on 30.03.2001. The defendants are strangers who dispossessed the plaintiffs from the suit land using RAJUK as a tool for their mischief.

Defendant Nos.1-6 filed written statement contending that Gopeshor Paul was the tenant of

C.S. khatian No.174. He died leaving two sons Nil Kanta and Hore Krishna Paul. Hore Krishna died leaving only son Debraj Paul. Nilkanta and Debraj Paul together sold 1.33 acres of land including the structures thereon to Kiron Chandra Banerjee on 17.07.1933. On 18.8.1948, Kiron Chandra transferred the said land to the Shahjahan Bhuiyan, predecessor-in-interest of the defendants. Soon after his purchase, 16.78 acres of plot No.67 was acquired by the Government in L.A. Case No.06 of 1948-1949. Compensation was assessed of a sum of tk.3976.11 in the name of Shahjahan Bhuiyan but he did not withdraw that compensation money, consequently, said amount was deposited with the Government Revenue Account. Said 1.33 acres of land of C.S. plot No.67 remain in possession of the answering defendants since no formal possession was taken over by the L.A. Department. Taking such advantage, the plaintiffs had illegally trespassed into a portion of the land and made some unauthorized construction which was demolished by the RAJUK. The answering defendants have 14 semi pucca rooms in their portion of the land and those rooms were let out to different tenants. These

defendants are now in actual physical possession of 37 khathas surrounded by C.I. sheet fencing and the remaining 43 khathas of land are in illegal possession of some unauthorized persons including the plaintiffs. These defendants were compelled to file a suit for recovery of khas possession. The plaintiffs made serious allegations against the RAJUK and its officers but the RAJUK Chairman and other concerned officers have not been impleaded in the suit. No relief whatsoever has been sought against the RAJUK. The RAJUK has its authority and statutory power to demolish unauthorized construction and in exercise of such power the RAJUK with its Magistrate demolished the unauthorized structures. The suit filed by the plaintiffs, on the basis of their so-called claim, was not entertainable in law. Therefore, defendants prayed for dismissal of the suit.

The trial Court decreed the suit. The defendants preferred Civil Revision No. 3082 of 2008 in the High Court Division and obtained Rule. The High Court Division, by the impugned judgment and order dated 01.08.2010, made the said Rule absolute. Thus, the plaintiffs have preferred this appeal upon getting leave.

Mr. S.M. Munir, learned Senior Counsel appearing for the appellants, submits that the trial Court, having clearly found that the defendants entered into the possession of the suit land on 30.03.2001 evicting the plaintiffs forcibly without due course of law and before that the plaintiffs were in possession in the suit land, the High Court Division erred in law in holding that the case under the provision under section 9 of the Specific Relief Act was not maintainable in view of the facts and circumstances.

Mr. Garib Newaz, learned Advocate appearing for the respondents, submits that the High Court Division upon proper appreciation of materials on record, made the Rule absolute holding that the simple suit under the provision of section 9 of Specific Relief Act was not maintainable.

It appears from the judgment and order of the High Court Division that it reversed the findings of the trial Court holding that the simple suit under section 9 of the Specific Relief Act was not at all maintainable since the plaintiffs failed to implead the RAJUK in the suit though the plaintiffs admitted that

the RAJUK initially demolished the structures situated in the suit land.

The uniform view of this court is that if section 9 of the Specific Relief Act is utilised the plaintiff need not prove title and title of the defendant does not avail him. Section 9 gives a speedy remedy to a person who has without his consent been dispossessed of immovable property, otherwise, in due course of law, for recovery of possession without establishing title provided that his suit is brought within six months of the date of dispossession. A proceeding under section 9 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. In our jurisprudence governed by rule of law even an unautahorised occupant can be ejected only in the manner provided by law. The object is to check the tendency of recovery of possession of property by taking law in hand. Even a trespasser in settled possession cannot be dispossessed without recourse to law. It is required to consider as to whether defendants have

dispossessed the plaintiffs from the suit land on a particular day without taking course of law.

It is definite case of the plaintiffs that on 30.03.2001, the defendants dispossessed the plaintiffs from the suit land and, before, that they were in possession in the same. All the P.Ws. in their evidence stated that the defendants dispossessed the plaintiffs from the suit land on 30.03.2001. The plaintiffs filed the instant suit on 21.05.2001. D.W.1 Imtiaz Faruque (defendant No.3) in his cross examination admitted that the plaintiffs were dispossessed in the last part of March, 2001.

The defendants in written statement admitted that the defendants have posted 10 ansars for protection of their interest and possession which clearly shows that the defendants have been possessing the suit land after the dispossession of the plaintiffs therefrom taking aid from the RAJUK. It appears from the judgment and decree of the trial Court that it has considered the documentary and oral evidence adduced by the parties and came to the conclusion that the defendants dispossessed the plaintiffs from the suit land on 30.03.2001. It

further held that it was not RAJUK who dispossessed the plaintiffs rather it was the defendants who did it with the aid of RAJUK. That finding is the finding of fact. The trial Court upon proper consideration of the evidence on record, held that the plaintiffs were in possession in the suit and till the date of dispossession on 30.03.2001. The trial Court, as first and last Court of facts, upon proper appreciation of materials on record arrived at the aforesaid conclusion. In such view of the matter, no interference was called for in revision, the High Court Division erred in law in setting aside the finding of fact.

Considering the facts, circumstances and evidence adduced by the parties, we are of the view that the High Court Division erroneously set aside the judgment and decree of the trial Court. Accordingly, we find substance in the instant appeal.

Thus, the appeal is allowed.

The judgment and order dated 01.08.2010 passed by the High Court Division in Civil Revision No.3082 of 2008 is hereby set aside.

C.J.

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The 1st February, 2022
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