

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 728 of 2018

Md. Azadur Rahman being dead his
heirs 1(Ka) Sahera Begum and others

..... Petitioners.

-Versus-

Md. Golam Rahman and others

.....Opposite parties.

Mr. Mohammad Bakir Hossain, Adv.

..... For the petitioners.

Mr. Md. Abdul Momin, Advocate

.....For the opposite parties.

Heard and judgment on 14th July, 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 24.09.2017 passed by the Additional District Judge, 3rd Court, Bagura in Other Class Appeal No. 103 of 2014 reversing those dated

29.06.2014 passed by the Assistant Judge, 1st Senior Court, Bagura in Other Class Suit No. 47 of 2010 dismissing the suit should not be set aside.

Opposite party as plaintiff filed Other Class Suit No. 47 of 2010 before the Court of Assistant Judge, Bagura against the petitioner for permanent injunction and for recovery of possession in the suit land and by way of amendment also prayed for recovery of khas possession from 'Ga' schedule land.

Plaint case in short, inter alia, is that one Azizar Rahman was predecessor of the defendant No.1 being the owner and possessor of the suit land transferred 15 decimals of land from plot No. 3353 and 10 decimals of land from plot No. 3356 in total 25 decimals of land from 'Ka' schedule in favour of the plaintiff No.3 vide registered sale deed No. 2714 dated 27.02.89 and also transferred 27 decimals of land from plot No. 3353 and 8 decimals of land from plot No. 3356 in total 35 decimals of land to plaintiff No.2 by registered sale deed No. 7895 dated 02.04.1990 through a deed of gift. Plaintiff No.1 also acquired 29 decimals of land by way of purchase through registered deed No. 3675 dated 18.02.88 from other settlement holder, thereby plaintiffs became owner of

in total 89 decimals of land. Azizar Rahman also transferred 28 decimals of land from plot No. 3048 vide registered sale deed No. 8690 dated 17.05.51 and 15 decimals of land from plot No. 3327 in total 62 decimals of land in favour of the Ayen Box Pramanik and others vide registered sale deed No. 8690 dated 17.5.51. There is a partition deed being No. 19821 dated 25.11.95 amongst the heirs of Azizar Rahman, who is defendant No.1 and Ayen Box. When the plaintiff purchased deed and the land were been confirmed, which is 25 decimals of land from plot No. 3048, 20 decimals of land from plot No. 3088 and 14 decimals of land from plot No. 3327. Defendant No.1 got 03 decimals of land from plot No. 3048 and thereafter transferred to the plaintiff No.1 by way of registered sale deed No. 18454 dated 6.11.97. D.P. khatian was recorded into the name of the plaintiffs on 28 decimals of land from plot No. 3048, 20 decimals of land from plot No. 3088 but which were recorded wrongly 28 decimals instead of 30 decimals and 19 decimals instead of 20 decimals in the D.P. khatian. D.P. khatian No. 1808, 1816 and 1813 were correctly recorded into the name of the plaintiffs. On 31.01.2010 defendant threatened to cultivate the land mentioning in plot on Kha schedule and finally

dispossess the plaintiff from 'Ga' schedule land on 02.09.2010 and as such plaintiff filed the suit for permanent injunction by way of amendment prays for recovery on 'Kha' schedule land and by way of amendment further prays for recovery of khas possession from "Ga" schedule land.

Defendant contested the suit by filing written statement denying the plaint case, alleging, inter alia, that defendant predecessor Azizar Rahman got a decree in a partition suit No. 176/74 and which was executed on partition in Execution Case No. 9/94 and thereby he was owning and possessing northern side on 28 decimals of land from plot No. 3048 and northern side measuring 20 decimals of land on plot No.3088 and western side of land measuring 42 decimals of land from plot No. 3353 and northern side of land measuring 18 decimals of land from plot No. 3356. After death of Azizar Rahman, his widow Anisa Bibi and son Azadur Rahman (defendant No.1) is owning and possessing the suit land. Plaintiff did neither have any title nor possession in the suit land and the suit is false and it liable to be dismissed with cost.

By the judgment and decree dated 29.06.2014, the Assistant Judge, Bagura dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Other Class Appeal No. 103 of 2014 before the Court of District Judge, Bagura, which was heard on transfer by the Additional District Judge, 3rd Court, Bagura, who by the impugned judgment and decree dated 24.09.2017 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. Mohammad Bakir Hossain, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that judgment of the appellate court is not sustainable in law in as much as plaintiff claimed a decree for possession on 'Ga' schedule land without paying advalorem court fees and seeking for a declaration of his title thereon and as such decree must be set aside. The learned advocate further submits that admittedly defendant petitioners are in possession in the suit property but the appellate court totally failed to appreciate this

aspect and reversed the judgment of the trial court most illegally. The impugned judgment is not sustainable in law, which is liable to be set aside. He further submits that petitioner claims property from Plot No. 3088 and plot No. 3048 but these two plots are owned and possessed by different persons, who are not a party in the suit and as such without having a party to proper person, the instant suit itself is illegal and not maintainable. He further submits that when the plaintiffs title are not been proved properly, the instant decree passed in a suit for permanent injunction is illegal and not maintainable, which is liable to be set aside. In support of the submission the learned advocate cited a decision in the case of Md. Kamal and others – Vs- A.K.M. Mohsin & others reported in 10 MLR(AD) 100.

Mr. Md. Abdul Momin, the learned advocate appearing for the opposite party, on the other hand opposes the rule and submits that appellate court being the last court of fact has correctly found that defendants has got no title and possession over the suit land and the plaintiff has successfully able to prove his possession of the suit land and accordingly granted injunction in his favour by the impugned judgment. The learned advocate further submits that

since the impugned judgment contains no misreading or non-reading of the evidences and the judgment passed by the appellate court cannot be interfered with and the rule contains no merits, it may be discharged.

Heard the learned Advocate both the sides and perused the lower court record and the impugned judgment.

This is a suit for permanent injunction. Plaintiffs also claimed for recovery of possession on 'Ga' schedule land. Admittedly suit property was belonged to Azizar Rahman, the father of the defendant, from whom by way of different registered sale deed plaintiffs acquired the property and remaining in possession. Plaintiffs further case is that defendant No.1 being the son of said Azizar Rahman inherited a portion of the suit property, which was left after transfer to the plaintiffs by his father. But subsequently defendant No.1 has transferred the same in favour of the plaintiff by way of registered sale deed dated 06.11.1997 thereby defendants acquired no land there. But on 31.01.2010 defendant threat to dispossess the plaintiffs and finally on 02.09.2010 he evicted the plaintiffs from a portion of the land, which is mentioned on 'Ga' schedule land for which plaintiff

instituted this suit. On the other hand, defendants claim that his father Azizar Rahman got the property in an earlier instituted partition suit being No. 176/74 and remaining in possession. Thereafter defendant and his mother as being successor of Azizur Rahman got the property and enjoying the possession thereon. Plaintiffs suit is false and is liable to be dismissed.

In view of the said cases of respective parties both the parties adduced evidences. Plaintiff has exhibited their registered sale deed through which they obtained the suit property from Azizar Rahman, the father of the defendant as well as from defendant No.1. All these are original sale deeds and also marked exhibited in court and proved. Defendants nowhere has challenged the said deeds of the plaintiffs. By dint of this admitted sale deeds plaintiffs acquired valid title over the suit land and has got prima facie title as been found by the appellate court. By the documents, which were placed in court for examination are the rent receipt of paying rent to the government. Regarding the date of threat of dispossession plaintiffs adduced evidences and proved that they were illegally dispossessed by the defendants. The document, which has been exhibited by the defendant are all the documents

of his father Azizar Rahman. Defendants also exhibited in court photostate copy of the certified copy of the earlier instituted Partition Suit No. 176/74 through which Azizar Rahman got the suit property on his share as been declared by the competent civil court in a partition suit. There is no doubt that Azizar Rahman is the owner of the suit property. But in the absence of any case as has been made out by Azizar Rahman or the defendant No.1 himself that they did not transfer the property in favour of the plaintiffs and after transfer all property to the plaintiffs by either defendants father Azizar Rahman or defendant No.1, there is any property left there on which defendant No.1 is in possession. The possession as has been held by the defendant No.1 is nothing but an illegal possessor as a trespasser and on which plaintiff is legally entitled to get a decree for recovery. Appellate court being the last court of fact has rightly found the same and decreed the suit in favour of the plaintiffs. In the impugned judgment I find no illegality is there and accordingly I find no merits in this rule.

In the result, the Rule is discharged and the judgment and decree passed by the appellate court are hereby affirmed and the suit is decreed in favour of the plaintiffs.

The order of stay granted earlier is hereby recalled and vacated.

Send down the Lower Court records and communicate the judgment at once.