

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1089 of 2020

With

Civil Rule No. 7(Vio)(R) of 2021

Md. Harun Biswas

.....Petitioner.

-Versus-

Mosammat Joyful Bibi and others

.....Opposite parties.

Mr. Zulfiqur Bulbul Chowdhury, Adv. with

Mr. Md. Golam Nabi, Advocate

.....For the petitioner.

Mr. Sherder Abul Hossain, Adv. with

Mr. Sheik Sharif Uddin, Advocate

.....For the opposite parties.

Heard and judgment on 10th December, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 21.01.2020 passed by the Joint District Judge, 2nd Court, Barguna in Title Appeal No. 04 of 2012 reversing those dated 30.11.2011

passed by the Assistant Judge, Amtali, Barguna in Title Suit No. 127 of 2007 dismissing the suit should not be set aside.

Fact relevant for disposal of this rule are that opposite parties as plaintiff filed Title Suit No. 127 of 2007 before the Court of Assistant Judge, Amtali, Barguna against the petitioner for declaration that mutation proceedings regarding 'Kha' schedule land is collusive and not acted upon and further declaration that decree obtained and the execution proceedings thereon as mentioned 'Ka' 1 schedule is collusive and plaintiff has got title as the legal heirs in 'Ka' schedule and the documents as mentioned in 'Ka' 2 schedule are collusive and inactive.

Plaint case, in short, inter alia, is that the land measuring 6.53 acres in C.S. khatian No.51 under plot No. 34/36/330/388/396/407/418/444/518 originally belongs to Rahimjan and subsequently S.A. khatian No.12 and R.S. khatian No.14 was rightly prepared in the name of the heirs of Rahimjan. Money Suit and the auction, which was mentioned by the defendant is totally false and fabricated. The defendant never took possession of the suit land by auction. Sfurjan Bibi transferred his total land to Abul Hasem, Khoteja Bibi, Ayful Bibi and Joyful

Bibi by oral gift. Jamiljan Bibi transferred his land to his two daughters. Plaintiff No.9 and 10. Khotejan Bibi died leaving behind his heirs Abul Hashem, Joyful and Aiful. Aiful Bibi died leaving behind sons plaintiff No.3 and 4 and Aruna Begum, Aruna Begum died leaving his husband plaintiff No.6, husband two son plaintiff No.7 and 8 but the defendant No. 1-3 and 4-13 by practicing fraud illegally mutated the suit land in their name by the defendant No.19 and after knowing the same the plaintiffs filed an application before the office of defendant No. 19 for cancellation the mutation as per section 150 of the S.A.T. Act but the defendant No.19 kept the application of the plaintiff is in record and being aggrieved by the said order the plaintiff filed the instant case.

Petitioner contested the suit as defendant No.17 by filing written statement denying the plaint case, alleging, inter alia, that the land measuring 6.53 acres under C.S. khatian No. 51 in plot No. 304/306/330/388/396/407/418/444/518 originally belongs to Rahimjan Bibi. Rahimjan died leaving behind his legal heirs husband Moheruddin and two daughters Golapjan and Borujan. Golapjan died leaving behind his legal heirs Hashem and

Ponchomjan Bibi. Subsequently Ponchomjan transferred his 68 decimals of land to Barek, Khaleque and Sattar by registered kabala deed No. 2784 dated 04.07.1956. Barujan died leaving behind only one son Soyjuddin Akon and he transferred his 2.71 acres of land to Barek, Khaleque and Sattar by registered kabala dated 21.12.1955. Moheruddin died leaving behind his heirs. Foyjar transferred his 1.12 acres of land to Barek, Khaleque and Sattar. Nabi Nawaj died leaving behind legal his 5 sons namely Barek, Khaleque, Sattar, Jabbar and Wadud and 2 daughters Saleha and Aleya but S.A. khatian was not prepared in the name of the predecessor of the defendant but they were in possession. Subsequently Islam Miridha filed Title Suit No. 308 of 1961 against the predecessor of defendant namely Nabi Newaj Kha and subsequently a solenama was executed between the parties and title of the defendant was established and since then they are in possession. Abdul Sattar and defendant Nos. 1-3 on 10.06.2000 transferred his 0.50 acres of land to defendant No.17, Anisur Rahman and Saiful Islam, they also transferred another 0.13½ decimals of land to defendant No.7 by registered deed No. 2548 dated 21.07.1996. Defendant No.2 transferred his 0.59 acres of

land to defendant No.14 and transferred his 0.60 acres of land to defendant No. 15. Abdul Barek and Sattar transferred 1 acres of land to defendant No.16 and transferred 0.53 acres of the land to defendant No.16 by registered deed dated 02.06.72 and 25.03.1991. Defendant No.3 transferred his 0.43 acres of land to defendant No. 16 by deed dated 22.07.1992 and delivered possession. Defendant No. 17 is acquiring $.16\frac{2}{3}$ decimals of land and possessing the same. The suit of the plaintiff will be dismissed with cost.

During trial following issues were framed:

- i) Whether the suit is maintainable to its present form or not?
- ii) Whether the suit is barred by limitation?
- iii) Whether the suit is bad for defect of parties?
- iv) Whether the impugned order is collusive and ineffective?
- v) Whether the plaintiff is entitled to get the relief as prayed for?

During trial plaintiff examined 6 witnesses and exhibited number of documents, which are exhibited as Ext. 1-8 and the

defendant examined 3 witnesses and also examined some documents, which are marked exhibited as Ext. Ka-Uma.

By the judgment and decree dated 30.11.2011, the Assistant Judge dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 04 of 2012 before the Court District Judge, Barguna, which was heard on transfer by the Joint District Judge, 2nd Court, Barguna, who by the impugned judgment and decree allowed the appeal and decreed the suit in favour of the plaintiff after reversing the judgment of the trial court.

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

Mr. Zulfiqur Bulbul Chowdhury, the learned advocate appearing for the petitioner drawing my attention to the findings of the court below submits that when trial court after assessing the evidence on record found plaintiff could not prove their contention as narrated in the plaint and dismissed the suit rightly but the appellate court decreed the suit without proper reversing the

findings as well as observing some facts beyond the pleadings. The impugned judgment is not sustainable in law.

Mr. Sherder Abul Hossain, the learned advocate on the other hand, appearing for the plaintiff opposite party opposes the rule and submits that although the plaintiff could not narrate the facts of their chronology of holding the title and obtained the suit property by way of heba but the appellate court being the last court of fact decreed the suit upon considering that the defendants contention was not been proved properly and thereby committed no illegality in the impugned judgment.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

This is a suit for declaration that the mutation khatian as been obtained by the defendants pursuant to their deed obtained from some persons are illegal and collusive and also claimed that the deed of plaintiffs are title less deeds, which are not acted upon and the plaintiffs got the property from the C.S. recorded tenant as well as through a oral gift obtained from some of the heirs and accordingly they got their title in the suit property.

On the other hand defendants denied the plaintiffs contention and submit that they purchased the suit property long before in the year 1956 through registered sale deed, obtained from Abul Hashem, the heirs of C.S. recorded tenant and pursuant to that they are in possession in the suit property. Trial court dismissed the suit on consideration that plaintiff could not prove their claim of obtaining the suit property by way of oral gift as well as could not prove by adducing any evidence, the defendants all contentions are not been acted upon or collusive. The appellate court mainly shifting the onus of proving the case upon the shoulder of the defendants and allowed the appeal.

Upon going through the plaint of the suit it is very difficult to find out a chronology of the C.S. recorded tenant from whom plaintiffs claimed them as successive heirs of the C.S. recorded tenant. In the similar way upon going through the written statements as has been submitted by the defendant No.17 it is very surprising to notice that how the Hashem Ali, from whom defendants acquired the property through registered sale deed, became the owner in the suit jotes. Since, either his name or the name of his predecessors were not been recorded in the R.S. and

S.A. khatians. Moreover the assertion of plaintiffs to the effect that they obtained the suit property by way of oral gift, this contention was also not been proved by adducing any evidence. The appellate court found that in the absence of a proper record, placed before the court of execution proceedings, existence of the Execution case is not been proved but the defendants has exhibited this document in court. May be the record of the case was not been called for by the plaintiffs but a certified copy of the order of the court has been placed before the court. If any confusion on this document is arisen, it may be cured by bringing that record. So without having considered the record of the civil proceedings it is unwise to say any comments about the genuinity of the civil proceedings.

From the record, it is apparent that both parties have got some latches on their part in proving their respective cases. The judgment passed by the court below appears to be a presumptive in natures. A civil court is a court of records. What findings it arrived, it must be derived from consideration of the record of the case. Both parties are apparent to be very reluctant to perform

their duties in proving their case. Both parties claim their title in the suit property from the heirs of the C.S. recorded tenants.

In the scenario, I am of the opinion that both party ought to have given a chance to prove their cases properly by adducing evidences. The judgment and decree passed by the court below appears to be to brief and presumptive in nature, accordingly these are not sustainable in law, which are liable to be set aside.

I thus find merits in the rule.

In the result, the rule is made absolute and the connected rule is disposed of and the suit is sent back on remand to the trial court to adjudicate the matter afresh. In the case both parties are at liberty to amend their respective pleadings as well as adduce their further evidences if so advised.

Trial Court is hereby directed to dispose of the case expeditiously as early as possible.

The order of status-quo granted earlier is hereby recalled and vacated.

Send down the Lower Court Records and the judgment to the courts below at once.