IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)
Present
Madam Justice Kashefa Hussain

**Civil Revision No. 1647 of 2020**

Abu Taher being dead his heirs (a) Monwara Begum and others
.....petitioners
-Versus-
Sayed Ali being dead his heirs (a) Abdul Rezzak and others
…… Opposite parties

Mr. Md. Ashraful Alam, Advocate
…… For the petitioners
Mr. Mohammad Khorshed Alom, Advocates
…… For the Opposite Parties

Heard on: 14.11.2023, 14.01.2024, 15.01.2024, 21.01.2024 and
Judgment on 22.01.2024

Rule was issued calling upon the opposite party Nos. 1(a) to 1(d) to show cause as to why the impugned Judgment and decree dated 12.03.2020 (decree signed on 12.03.2020) passed by the learned Additional District Judge, 1st Court, Cumilla in Title Appeal No. 254 of 2002 affirming the judgment and decree dated 22.09.2002 passed by the learned Senior Assistant Judge, Chandina Court, Cumilla in Title Suit No. 78 of 2000 decreeing the suit should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite party as plaintiff filed Title Suit No. 78 of 2000 in the court of Senior Assistant Judge, Chandina Court, Cumilla praying for declaration of title and recovery of

Khas possession of the suit property impleading the instant petitioners as defendants in the suit. The trial court upon framing issues, adducing evidences and taking depositions etc. allowed and decreed the suit by its judgment and decree dated 22.09.2002. Being aggrieved by the judgment and decree of the trial court the defendant in the suit as appellant in the appeal filed Title Appeal No. 254 of 2002 which was heard by the Additional District Judge, 1st Court, Cumilla. The appellate court upon hearing the parties dismissed the appeal by its judgment and decree dated 12.03.2020 and thereby upheld the earlier judgment of the trial court. Being aggrieved by the judgment and decree of the courts below the defendants in the suit being appellant in the appeal as petitioner filed a civil revisional application which is presently before this court for disposal.

The Plaintiff's case inter alia is that 0.24 acres of land of suit plot No. 112 along with other non suited land admittedly belonged to Hason Ali. During C.S. operation by purchase from previous owner Khatun Bibi and Mariam Bibi and were owning and in possession Hason Ali died leaving behind sons plaintiff's predecessor Sayed Ali and defendants' predecessor Sujat Ali as heirs and they used to possess their respective share by way of amicable family partition. Accordingly the plaintiffs were possessing 12 decimals in eastern side of the suit plot as garden.

But the defendants dispossessed the plaintiffs from the suit land on 30.05.1999. On 16th Jaistha, 1405 B.S, claiming their fake title in the suit land. Hence the suit.

It is further stated by the plaintiff that .21 acre land of plot No. 94 in S.A. Khatian No. 66 was prepared in the name of Nesa Bibi wife of Hason Ali and she transferred it in the name of Abdul Rezzak and Korban on 26.01.1966 by way of registered deed of gift and accordingly they are owning and possessing it but inadvertently it was written 95 instead of 94 in the Gift (দানপত্র) which is a genuine mistake.

That the defendants appeared in the suit and filed written statement denying all the claims of the plaintiffs stating inter alia that the plaintiffs or their predecessor Sayed Ali never possessed the suit land. Suit plot is always possessed by the defendants from their predecessor Sujat Ali as homestead and the land of non suit plot No. 94 is possessed by the plaintiffs from their predecessor Sayed Ali as homestead by way of amicable and family partition. More so, Nessa Bibi mother of Sayed Ali transferred her share of 0.03 acre of land in non suit plot No. 112 on 27.12.1967 vide RK no. 7966 in the name of Sujat Ali. Thereafter Sujat Ali mutated his name in govt. sheresta vide Misc Case No. 417/76-77 in Mutation Khatian No. 151. After death of Sujat Ali those defendants are owning and possessing

entire land of plot no. 112 and as such the suit is liable to be dismissed.

The trial court framed 5 issues, witnesses were examined by both sides and both parties produced documents marked as exhibits.

Learned Advocate Mr. Md. Ashraful Alam appeared for the petitioner while learned Advocates Mr. Mohammad Khorshed Alom represented the opposite parties.

Learned Advocate Mr. Md. Ashraful Alam for the petitioner submits that both courts upon misappraisal of the material facts and non consideration of evidences gave wrong findings and therefore those judgments are not sustainable and ought to be set aside. He submits that although the property was never divided by metes and bound by the parties and S.A. record was prepared in the name of Hason Ali (predecessor of the plaintiffs and the defendants) but however the courts upon misinterpretation of facts came upon wrong finding.

He contends that the plaintiff's claim that 24 decimals of total land in Dag No. 112 was divided into equal shares between the parties is untrue. He continues that the plaintiff's further claims that the defendants were granted land in the western side of the property is also untrue and not based on evidences.

There was a query from this bench regarding the B.R.S. record which was corrected and recorded in the name of the plaintiffs pursuant to an objection case filed under section 30 and 31 of the SAT Rules pursuant to which the B.R.S. record was prepared in the name of the plaintiffs. Replying to this query, the learned advocate for the petitioners consistently argues that the B.R.S. record is wrong and wrongly corrected in the name of the plaintiffs. Against this reply there was further query from this bench upon the learned advocate for the petitioners as to why the defendants did not resort to the proper and higher forum when the objection case was allowed. The learned advocate could not give any satisfactorily reply as to why the defendants did not resort to the proper forum after the objection case was filed by the plaintiffs and allowed by the authorities.

He next argues on the issue of 21 decimals of land in Dag No. 94. He submits that Nessa Bibi another predecessor and mother of both the plaintiffs and the defendants did not grant by way of any Heba deed the 21 decimals of land to the plaintiffs. He submits that the Danpatro exhibit-5 dated 26.01.1966 is an invalid Danpatro given that even if Nesa Bibi granted any land the same Nesa Bibi did not have the right to grant any land since she did not have any valid title in the suit land. He points out to exhibit-5 dated 26.1.1966 and shows that in the Danpatro dated

26.01.1966 even the dag of the suit land is not the dag number through which the plaintiffs claim in the Heba Deed. He points out that it is the plaintiff's claim that Dag No. 95 was mistakenly inserted and written instead of Dag No. 94 which is the actual dag number. He argues that even though the plaintiffs claim that the Dag No. 94 is the actual dag and not the dag No. 95 which was wrongly inserted in the Heba deed, but however the plaintiffs did not take any steps to correct the mistake in the Heba deed as per their claim. He submits that their passive conduct and apathy in not taking any initiative to correct the mistake in the dag number as per their claim is clear proof that the total claim is false since the Danpatro (দানপত্র) is itself a forged document and such Danpatro (দানপত্র) cannot confer any valid title to any person. He reiterates that Nesa Bibi herself did not have any title to the land in Dag No. 94 and therefore even if there was any দানপত্র executed by her such Danpatro is an invalid and unlawful piece of document.

He next argues on the plaintiff's claim of dispossession. He submits that though the plaintiffs never were in possession in the Dag No. 112 but however the courts below upon total disregard of the material evidences came upon wrong finding. He submits that the plaintiffs could not prove by oral evidences the actual date and manner of dispossession from the suit land.

Relying on his arguments, he submits that therefore the plaintiffs do not have any exclusive title on either of the lands neither the suit land of 12 decimals in dag No. 112 nor in the non suited dag No. 94 comprising of 21 decimals. Regarding the land in dag No. 112 on 21 decimals of land he found that since the property is an undivided property both plaintiffs and defendants shall be considered to be in joint possession. He concludes his submissions upon assertion that however both courts upon misappraisal of facts and evidences came upon wrong findings and both the judgments of the courts ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Mohammad Khorshed Alom for the opposite parties opposes the Rule. Firstly he argues on the issue raised by the petitioner on 12 decimals of the suit land in Dag No. 112. He submits that it is on record that B.R.S is in the name of the plaintiff. He argues that it is a settled principle settled by several decisions of this court and our Apex Court that latter record of rights shall prevail over earlier record of rights. He argues that the defendants cannot deny that the B.R.S. is in the name of the plaintiffs. He further argues that the defendants were fully aware of the orders in the objection case passed by the plaintiff under Section 30-31 of the SAT Rules

through which order the concerned authorities corrected the record in the B.R.S in the name of the plaintiff, however the defendants even after having full knowledge did not take any steps to the higher forum to oppose such correction of BRS record. He submits that therefore the defendant petitioners are now barred by the doctrine of estoppel, waiver and acquiescence and cannot raise any further question on the B.R.S being in the name of the plaintiffs. There was a query from this bench upon the learned advocate for the opposite parties on the general principle that record of rights is evidence of possession and not evidence of title. The learned advocate for the opposite parties submits that although it is a general principle that record of rights is an evidence of possession and not evidence of title, however in this case since the defendant petitioners themselves remained passive and did not take resort to the higher forum against the record of rights. He continues that therefore the doctrine of estoppel shall be applicable to the defendants. He submits that the defendants not taking any initiative to correct the record is adequate evidence to prove that B.R.S was correctly recorded and the plaintiffs have valid title in 21 decimals of land in dag No. 112 in the suit land.

He points out that although the defendant's claim মৌখিক settlement between the parties, but however they could not show any cogent evidence of any মৌখিক settlement of the suit land.

On the issue of 21 decimals of non suited land in dag No. 94 he submits that the 21 decimals land in Dag No. 94 ought not to be a case for adjudication here since it is not part of the suit land. He however submits that the 24 decimals of land in dag No. 94 were validly granted by Nesa Bibi to the plaintiff. He argues that the defendants could not prove by any cogent evidences that the Heba deed is a forged and fraudulent deed. Upon a query from this bench as to why the plaintiffs never took any steps to correct the number in the Danpatro from dag No. 95 to Dag No. 94 the learned advocate however could not give any satisfactory reply.

On the issue of dispossession, the learned advocate for the opposite party draws upon the oral evidences of the PW-1, PW-2 and PW-3. He particularly draws upon the oral evidences of the PW-2 and PW-3 and points out that both the witnesses gave corroborative evidences in support of dispossession. He submits that from the oral evidences of the two witnesses there appears no marked inconsistency. He points out that the oral evidences corroborate the plaintiff in their claim of possession prior to dispossession. He next points out to the oral evidences of the

DW-1, DW-2 and the DW-3. He asserts that none of the DWs could give any cogent evidence on the manner of possession by the defendants in the suit land. He submits that from the oral evidences of the DWs it is clear that they did not have much knowledge on the manner of possession whatsoever of the defendants. He next points out that the record keeper DW-4 admits to the uncertainty of the deed as is manifested from the registry book. He concludes his submissions upon assertion that therefore those judgments need no interference and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on record. Firstly I am inclined to concentrate and examine the claim on the 12 decimals of land in Dag No. 112 which is actually the suit land. It is the plaintiff's claim that pursuant to settlement between the parties the total of 24 decimals of land in Dag No. 112 was equally divided between the parties. It is the plaintiff's further claim that pursuant to the division the defendants obtained 12 decimals of land in western side dag No. 112 and the plaintiffs obtained 12 decimals of land in the eastern side of dag No. 112. It is also the plaintiff's claim that pursuant to division the plaintiffs were in possession of the property by planting trees etc prior to

dispossession. That the defendants were in possession of their land in the western side.

It is an admitted facts that S.A. was in the name of Hason Ali, predecessor of both the plaintiffs and the defendants. Since B.R.S was wrongly recorded as per the plaintiff's claim, the plaintiff filed objection case under Section 30 and 31 of the SAT Rules. It is on record that pursuant to the objection case under Section 30 and 31 such objection case was allowed by the authorities and the B.R.S record was corrected in the name of the plaintiffs. The defendants although claim that BRS is only evidence of possession but nevertheless the defendants never took any steps to correct such 'wrong' recording of the B.R.S as per their claim. It is true that as a general principle record of rights is an evidence of possession and does not confer title ipso facto. However in this case I am inclined to rely on the B.R.S record since the defendants even after having full knowledge of the B.R.S record in the name of the plaintiffs following the objection case under Section 30 and 31, nevertheless the defendants admittedly never took any steps to correct such 'wrong' recording as per their claims. Therefore they are now barred by the doctrine of estoppel, waiver and acquiescence. The general principle of record of rights being evidence of possession only is not applicable in the instant case. In this particular case

the defendants admittedly having knowledge of the B.R.S being in the plaintiff's names, but not taking any initiative to resort to the higher forum clearly shows that the defendants did not have any title in the 12 decimals of land in dag No. 112.

I am of the considered view that the plaintiffs claims that the total of 24 decimals of land in dag No. 112 was equally divided between the parties in the western and eastern side respectively is correct. Such opinion of this Bench arises from the clear passivity of the defendants in not attempting to take any steps to correct the B.R.S. Therefore the plaintiffs have valid title in the 12 decimals of land in dag No. 112.

Some documents were produced by the plaintiffs in support of their claim of 12 decimals of land in dag No. 112 by way of exhibit-1 C.S. Khatian, exhibit-2 S.A. record, exhibit-3 is the order under Section 30 and 31 of the SAT Rules, exhibit-4 is S.A and exhibit-6 the order under section 31 of the SAT Rules.

Next I am inclined to discuss the plaintiff's claim of dispossession by the defendants. Even though the parties could not produce any rent receipts in support of possession but however I have examined the oral evidences of the PWs. Particularly from the oral evidence of the PW-2 and PW-3 it is revealed that those are more or less corroborative oral evidence in support of the plaintiffs possession in 12 decimals of land

prior to dispossession. The defendants could not effectively show that the PW-2 and PW-3 are not reliable witness. Moreover I have also examined the oral evidences in support of possession of the defendants by the DW-1, DW-2 and DW-3. From the oral evidences of the DW-1 and DW-2 it appears that they made inconsistent statements on the issue of the manner of possession in the suit land. From the oral evidences of the DW-2 it is revealed that the DW-2 is not a resident in the village where in the suit land is situated. Further I have examined the oral evidences of the DW-3 wherefrom it appears that his statement is vague and he does not have much knowledge about the suit khatian. Therefore in absence of adverse evidence I am inclined to rely on the oral evidence of the PW-2 and PW-3 particularly on the claim of possession of the plaintiffs. The record keeper who was produced as DW-4 admits to the inconsistency which appears from the register book (বালাম বই).

I am of the considered view that the plaintiff's claim of possession in the suit land prior to dispossession and their claim of recovery of khash possession is lawful.

I have also examined the exhibit-5 দানপত্র dated 26.1.1966 as per the plaintiff's claim of 21 decimals of land in Dag No. 94 being granted to them by their predecessor Nesa Bibi. Although the 21 decimals of land in dag No. 94 does not comprise the suit

land, but however it appears from exhibit-5 that the dag number is written 95 while the plaintiff's claim is that the Dag No. is 94. It is on record that even though it is the plaintiff's claim that the Dag No. 94 was wrongly inserted as Dag No. 95 but however the plaintiffs never took any steps to correct such দানপত্র। The defendant petitioners claim that even if the দানপত্র was executed by Nesa Bibi, however such দানপত্র could not confer any valid title to Nesa Bibi in 21 decimals of land in Dag No. 94 since Nesa Bibi did not have valid title in the suit land. It appears that the courts below were silent on the issue of the 21 decimals of land in dag No. 94. I am not inclined to give any finding on the validity of the দানপত্র either.

But however for ends of justice since there appears few inconsistency between the claims of the plaintiffs with the দানপত্র and their contradictory claims by the defendants therefore I am inclined to make observation that the defendants if they are so advised may challenge the দানপত্র exhibit-5 dated 26.1.1966. If the defendants petitioners file any appropriate suit if they are so advised the concerned court shall entertain the suit drawing upon the provisions of law of limitation

Under the foregoing discussions and under the facts and circumstances, upon hearing the parties and relying on the materials, I do not find any merits in the Rule.

In the result, the Rule is discharged. However the defendants are at liberty to file an appropriate suit against the দানপত্র dated 26.01.1966 exhibit-5 which comprise of 21 decimals of non suited land in Dag No. 94 before the appropriate forum.

The order of stay granted earlier by this court is hereby vacated.

Send down the lower court records at once.

Communicate the order at once.

**Shokat (B.O)**