

District: Jeshore

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

Present

**Mr. Justice Sardar Md. Rashed Jahangir**

**Civil Revision No. 13 of 2021**

In the matter of :

Kamruzzaman Sheikh and others

... Petitioners

-Versus-

Ayub Mollah and others

...Opposite parties

No one appears

...For the petitioners

Mr. A.H.M. Obaydul Kabir, Advocate

...For the opposite parties

Heard on: 22.10.2024 and 10.11.2024

**Judgment on: 18.11.2024**

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the judgment and decree dated 30.11.2020 passed by the Special District Judge, Jeshore in Title Appeal No. 06 of 2004 dismissing the appeal affirming the judgment and decree dated 16.11.2003 passed by the Assistant Judge, Avaynagar, Jashore in Title Suit No. 83 of 1991 decreeing

the suit, should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party Nos. 1 and 2 as plaintiffs instituted Title Suit No. 83 of 1991 in the Court of Assistant Judge, Avaynagar, Jashore impleading the present petitioners and opposite party Nos. 3-31 as defendants for declaration of title and for recovery of khash possession.

The case of the plaintiffs briefly are that the property measuring an area of 82 decimals appertaining to C.S. Khatian No. 449 corresponding to S.A. Khatian No. 441 and 443 of Rajghat mouza under police station Avaynagar was originally belonged to Rupoi Sardar. After death of Rupoi Sardar, 2(two) sons namely, Samutullah Sardar, Jharu Sardar and daughter, Sepera Khatun became the owners of the property. Jharu Sardar gifted his portion of 32.8 decimals to his wife Saburonna on 28.03.1954 in lieu of dower. Samutullah Sardar died intestate leaving behind 3(three) daughters, Ahladi Bibi, Chutu Bibi and Khatezen Bibi and wife, Rahima Bibi as his legal heirs. Saburonna, mother of Fulzan purchased the share of Ahladi Bibi on 01.08.1957 by his own fund and for her own interest in benami of her daughter Fulzan. During S.A. operation, the said land was recorded in the name of Saburonna at the instance and with the consent of her daughter, Fulzan Bibi. Saburonna also purchased

the portion of Rahima Bibi, wife of Samutullah Sarder and Chutu Bibi, the daughter of Samutullah Sarder on 09.06.1962 and 26.04.1964. By way of purchase and gift Saburonnesa became owner of 46 decimals of land out of the scheduled property. While the said Saruronnesa was in peaceful possession and enjoyment of her property, she gifted the same to her 2(two) sons, Ayub Ali and Ruhul Amin Fakir, the plaintiff Nos. 1 and 2 and handed over the possession to them. Kashem Fakir, father of the plaintiffs constructed a house consisting of 5(five) rooms in the said land and rented the same to defendant Nos. 1, 2 and 3 through oral agreement against a monthly rent of Tk.50.00 (fifty). The rent was duly paid by the defendants till 31.12.1990 and thereafter, they stopped payment and denied the title of the plaintiffs and thereby claiming the property as their own. Hence the suit.

On the other hand, defendant Nos. 1 and 2 jointly and defendant No. 3 separately contested the suit but by filing 2(two) sets of written statements. The case of the defendant Nos. 1 and 2 are, Ahladi Bibi, the daughter of Samutullah Sarder transferred her portion of plot No. 673 to Fulzan Bibi through a registered kabala No. 2611 dated 01.08.1957 and while Fulzan Bibi was in peaceful possession and enjoyment of the property died intestate leaving behind his son, Abdul Razzak and daughter Hasina Khatun, who inherited their maternal property. Abdur Razzak on 29.12.1980

transferred 3(three) decimals of land out of his share through registered kabala No. 7878 to defendant No.1. Abdur Razzak also transferred 3.5 decimals of land to Forzan Sikder on 22.12.1980 through registered kabala No. 7765. Thereafter the said Forzan Sikder transferred the said property on 12.01.1981 through deed No. 267 to defendant No. 1. The daughter of Fulzan Bibi named Hasina Khatun also transferred 1.5 decimals of land to defendant No. 1 after receiving proper consideration and in this way, the defendant No. 1 has become the owner of 8 decimals of land and thereby residing on the said property with family after erecting a 4 rooms house thereon.

On the other hand, defendant No. 2 purchased 4 decimals of land from Hasina Khatun, daughter of Fulzan Bibi through registered deed No. 14904 dated 14.09.1981 and in this way defendant Nos. 1 and 2 became owners of 12 decimals of land out of the scheduled property and are enjoying the same peacefully on the strength of their own title. It is specific case of the defendants that Saburonna was not banamder of Fulzan Bibi, rather Fulzan purchased the property by her own fund.

The case of the defendant No. 3 is that Sobunonna, the mother of plaintiffs orally gifted 6 decimals of land of plot No. 673 to defendant No. 3 in the year 1975 and thereby inducted him into the possession. The defendant No. 3 is in possession of the

said property through hotel business. It is further claimed by the defendant No. 3 that Soburonnesa on 15.03.1983 executed an unregistered deed of gift in favour of defendant No. 3, in support of the aforesaid oral gift.

By this way, the defendants are enjoying 18 decimals of land out of the scheduled property at the strength of their own. Plaintiffs have no right, title over the said land and case of the plaintiffs is false and liable to be dismissed.

Initially on 31.01.1994 the suit was decreed by the trial Court after framing 5(five) issues, against which Title Appeal No. 58 of 1994 was filed before the District Judge and the appellate Court upheld the judgment of the trial Court regarding 3(three) issues namely, (1) Whether the suit is maintainable at its present form? (2) Whether the suit is barred under section 42 of the Specific Relief Act? and (3) Whether the suit is barred by law of Limitation? But after allowing the appeal sent back the suit on remand to the trial Court to decide a fresh regarding the rest 2(two) issues, namely issue No. (4) Whether plaintiffs have right and title over the suit land? and No. (5) Whether the plaintiff are entitled to get the relief as sought for? with a further direction to ascertain, whether the suit is bad for defect of party and the suit property? and to facilitate the plaintiff to specify the said 18 decimals of land.

After hearing learned Assistant Judge of the trial Court by his judgment and decree dated 16.11.2003 decreed the suit again. The defendant Nos. 1-3 having been aggrieved by the said judgment and decree filed Title Appeal No. 06 of 2004 before the District Judge, Jeshore, which on transfer heard by the Special District Judge, Jeshore and by his judgment and decree dated 30.11.2020 dismissed the appeal affirming the judgment and decree of the trial Court.

The instant civil revisional application has been posted in the daily cause list as 'heard-in-part' for the last 4(four) weeks with the name of learned Advocate for the petitioner, but neither the petitioners nor their engaged Advocate appeared before this Court to defend the Rule; though it was informed to the learned Advocate for the petitioner by the learned Advocate for the opposite parties that the matter has been fixed for hearing before this Court and a copy of counter affidavit has been served on 24.10.2024. Thereafter, the Assistant Bench Officer of this Court has telephoned to learned Advocate Mr. Md. Mahadi Hassan for the petitioners on 03.11.2024 and thereafter, on 10.11.2024 a text was forwarded to learned Advocate Mr. Md. Mahadi Hassan for the petitioners informing him that the matter has been posted in the list for pronouncement of judgment after conclusion of hearing. Thereafter, Mr. Md. Mahadi Hasan, learned Advocate on

11.11.2024 appeared before this Court and took adjournment and thereafter on today when the matter is taken up for pronouncement of judgment learned Advocate for the petitioners found absent. Accordingly, the matter is taken up for delivery of judgment in the absence of the petitioners or his learned Advocate.

On the other hand, Mr. A.H.M. Obaydul Kabir, learned Advocate for the opposite parties submits that the trial Court justifiably arrived at the findings that the purchase of land by Saburannessa, the predecessor of the plaintiffs from Rahima Khatun by kabala dated 16.06.1962 and from Chutu Bibi by kabala dated 26.04.1964 are valid transfer and having not been challenged and thus, the title of the plaintiffs through those deeds stands and the Court of appeal below being the final Court of facts affirmed the same. He next submits that by the deed dated 01.08.1957, Saburannessa acquired title from Ahladi Bibi in Benami of Fulzan which has been proved by adequate evidences; the Courts below after considering the said evidences justly and legally arrived at the findings that since the original deed dated 01.06.1957 has been produced before the Court from the custody of the plaintiffs and subsequently the S.A. record has been prepared in the name of Saburannessa and the possession of the plaintiffs and their predecessor has been proved and thereby decreed the suit.

He further submits that on the other hand, both the Courts below while considering the deeds, by which defendant Nos.1-2 claiming title, Exhibits 'Ka' 'Kha' and 'Ga' found that the defendant Nos.1-2 purchased 12 decimals of land from the son and daughter of Fulzan, have not been proved considering the fact that the son of Fulzan i.e. Abdur Razzak as D.W.2 deposed before the Court that he has no knowledge about the boundary of the sold land, and he did not know the plot number and area of land and thereby justly disbelieved the case of defendants and decreed the suit. He again submits that both the Courts below after considering the facts and circumstances of the case and evidences on record both oral and documentary rightly arrived at the findings that the plaintiffs have successfully proved their title and possession in the suit land and also found that the defendant Nos.1-3 failed to prove their title and lawful possession over the suit land, and thus no failure of justice has been occasioned.

He further submits that the impugned judgment and decree of the Courts below are based on concurrent findings of fact and it is the long standing settled principle of law that the concurrent findings of fact arrived at by the Courts below is immune from interference in revision, except in certain well defined circumstances, such as non- consideration and misreading of material evidences affecting the merit of the case or



misconception or misapplication of law and in the instant case there is no misreading or non reading of material evidences.

Heard learned Advocate for the opposite parties, perused the revisional application together with the lower Courts record.

It appears that the plaintiffs filed the suit for declaration of title and recovery of khash possession for an area of 18 decimals out of the property appertaining to C.S. Khatian No. 449 corresponding to S.A. Khatian No. 441 and 443, plot No. 673, corresponding to latest khatian Nos. 390, 391 and 389, plot Nos. 434 and 435. The suit was decreed by the trial Court and in appeal the judgment and decree of the trial Court has been affirmed. The appellate Court below in its judgment and decree dated 30.11.2020 categorically found that Jharu Sarder, son of Rupoi Sarder, the original C.S. recorded tenant, transferred his share relates to 32.8 decimals of land to his wife Saburonna by registered heba-bil-awaz deed No. 1094 dated 28.03.1945, which has been exhibited as Exhibit-‘1’, which is admitted by both the parties. Appellate Court below also found that Saburonna also purchased some property from Chutu Bibi and Rahima Khatun, daughters of Samutullah Sarder, the other son of Rupoi Sarder through registered deeds dated 24.04.1964 and 09.06.1962, which were not denied by the defendants. The plaintiffs also contended that Saburonna as benamdar of her daughter, Fulzan Bibi

purchased the property of Ahladi Bibi, daughter of Samutllah Sarder on 01.08.1957 by her own fund and for her own interest. On the other hand, the defendants claimed that Saburonnesa was not benamder of Fulzan Bibi, rather Fulzan purchased the property through her own fund from Ahladi Bibi on 01.08.1957. After consideration of all the documentary and oral evidences available on record, both the Courts below concurrently found that Saburonnesa was the benamder of Fulzan Bibi, who purchased the property by her own fund and for own interest; and both the Courts below also found that the plaintiffs produced the original deed No.2611 dated 01.08.1957 from their custody to the Court and exhibited the same as Exhibit No. '3' and the property was recorded in the name of the predecessor of plaintiffs, which is a proof of constructive possession and all the plaintiffs' witnesses categorically proved that the plaintiffs are in actual possession.

The aforesaid evidences categorically proved that Saburonnesa was the benamder of Fulzan and purchased the property through her own fund and for own interest and was in peaceful possession and enjoyment in the said property till transfer the same to the plaintiffs through deed of gift No. 2137 dated 16.03.84 (Exhibit-'6').

Concurrent findings of fact arrived at by both the Courts below after proper assessment and consideration of the evidences

on record both oral and documentary cannot be interfered in revision by this Court. Moreover both the Courts below concurrently found that plaintiffs are in possession of the suit property through their tenant and the claim of the defendants regarding their possession is contradictory and not proved by any cogent evidence. Both the Courts below concurrently found that since the plaintiffs proved their title and possession over the suit land and the suit land has been specified by preparing sketch map regarding 18 decimals of land, thus, the plaintiffs are entitled to get the decree as prayed for.

This Court does not find any reason to interfere into the concurrent findings of fact.

Accordingly, the Rule is discharged without any order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.