

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1262 of 2021

With

Civil Revision No. 1263 of 2021

Md. Mizanur Rahman and others

..... For the petitioners.

-Versus-

Kazi Kamrul Bari and others

..... For the opposite parties in
C.R. No. 1262 of 2021.

Mst. Farida Begum and others

..... For the opposite parties in
C.R. No. 1263 of 2021.

Mr. Bibek Chandra, Advocate

.....For the petitioners.

None appears.

.....For the Opposite parties.

Heard and judgment on 9th May, 2024.

A.K.M.Asaduzzaman,J.

These two rules arising out of the same judgment and
decree dated 13.01.2021 passed by the Additional District Judge,

2nd Court, Jhenaidah in Title Appeal No. 102 and 104 of 2014 reversing those dated 14.09.2014 passed by the Senior Assistant Judge, Jhenaidah Sadar, Jhenaidah in Title Suit No. 169 of 1996 decreeing the suit.

Petitioner predecessor, the predecessor of the opposite party Nos. 28 to 44 as plaintiffs filed Title Suit No. 169 of 1996 for declaration of title before the Court of Senior Assistant Judge, Jhenaidah Sadar, Jhenaidah.

Plaint case in short, inter alia, is that the land of C.S. Khatian No. 70 belonged to Vazon Mondal and the land of C.S. Khatian Nos. 108 and 149 belonged to Tapati Bibi and the C.S. record was correct. Tapati Bibi failed to pay tax and handed over the land of C.S. Khatian No. 108 and 149 to Vazon Mondal and since then Vazon Mondal was the owner of the whole land. Vazon Mondal died leaving his only daughter as heir namely Vogiron Nessa. She died leaving her legal heirs husband namely Khelafat Lashker, 3 sons namely Ismail Hossain (plaintiff No.1), Hanef Ali Lashker and Sabder Lashker and 2 daughters namely Sayera and Rabyea Khatun (plaintiff No.2). Khelafat died leaving the aforesaid heirs. Sayera Khatun died leaving her legal heirs,

plaintiff Nos. 12-18. Sabder Lashker died leaving his heirs, plaintiff Nos. 10-11. Hanef Lashker died leaving his heirs as the plaintiff Nos. 3-9. The plaintiffs are possessing their land through plaintiff No.1. On 15.11.1995 the defendant Nos.1 and 2 denied the title of the suit land and showed their name in the S.A. record. By searching the plaintiff No.1 came to know that the suit land is recorded in the S.A. Khatian in the name of the defendant Nos. 3-5 and hence the suit of the Plaintiffs.

The father of the opposite party Nos. 5-9 Khorshed Ali Sheikh being the defendant No.1 contested the suit by filing written statement denying the plaint case alleging, inter alia, that the land of C.S. Khatian No. 70 belonged to Vazon Mondal and the land of C.S. Khatian Nos. 108 and 149 belonged to Tapati Bibi and the C.S. record was correct. Tapati Bibi failed to pay tax and handed over the land of C.S. Khatian No. 108 and 149 to Vazon Mondal and since then Vazon Mondal became the owner of the whole land. Vazon Mondal died leaving his only daughter as his heir namely Vogiran Nessa. Vogiran Nessa transferred the half portion of the suit land to Saberan Begum. When she was possessing the suit land, on 03.08.1956 Vagiron Nessa and

Saberan Begum transferred the suit land to the defendant No.1 namely Md. Khorshed Ali Sheikh, Md. Makbul Hossain and Md. Fakir Mohammad. They were in possession on the suit land and their names were recorded in the S.A. Khatian No. 157. On 21.02.1966 Makbul Hossain transferred 92 decimals of land to the defendant Nos. 1 and 2 i.e. the predecessors of the contested defendant respondent-opposite party Nos. 5-15 and on 28.07.1961 Fakir Mohammad transferred 92 decimals of land to the defendant No. 1 (to the defendant No. 2 byname) vide two separate Kabla Deeds in this way the defendant Nos.1 and 2 are in possession on the suit land. The plaintiffs have no right in the suit land and hence the suit is liable to be dismissed.

By the judgment and decree dated 23.02.2000 the Assistant Judge, Jhenaidah dismissed the suit on contest.

Challenging the said judgment and decree plaintiff preferred Title Appeal No. 52 of 2000 before the Court of District Judge, Jhenaidah, which was heard on transfer by the Additional District Judge, 2nd Court, Jhenaidah, who by the judgment and decree dated 18.05.2003 allowed the appeal and decreed the suit.

Challenging the said judgment and decree, defendant No.1 Md. Khorshed Ali Sheikh preferred C.R. No. 4376 of 2003 before the Hon'ble High Court Division and obtained rule.

The said rule was made absolute and the suit was sent back on remand to the trial court by the judgment and order dated 08.04.2009. During pendency of the suit on remand, the present petitioner added in the suit as plaintiff No. 26 to 31 on 16.08.2010 and filed fresh plaint with further assertion that:

The land of C.S. khatian No.70 belonged to Vazon Mondal and the land of C.S. khatian Nos. 108 and 149 belonged to Tapati Bibi and the C.S. record was correct. Tapati Bibi failed to pay tax and handed over the land of C.S. khatian No. 108 and 149 to Vazon Mondal and since then Vazon Mondal was the owner of the whole land. Vazon Mondal died leaving his only daughter as heir namely Vogiron Nessa. She died leaving her legal heirs husband namely Khelafat Lashker, 3 sons namely Ismail Hossain (plaintiff No.1), Hanef Ali Lashker and Sabder Lashker and 2 daughters namely Sayera and Rabyea Khatun (plaintiff No.2) i.e. the plaintiff-respondent-opposite party No. 28 hereinafter. Khelafat died leaving the aforesaid heirs. Sayera Khatan died leaving her

legal heirs as Plaintiff Nos.12-18 i.e. the plaintiff respondent-opposite party Nos. 38-44 hereinafter. Sabder Lashker died leaving his heirs as plaintiff Nos. 10-11 i.e. the plaintiff-respondent-opposite party Nos. 36-37 hereinafter. Hanef Lashker died leaving his heirs as the plaintiff Nos.3-9 i.e. the plaintiff-respondent-opposite party Nos. 29-35 hereinafter and thus the plaintiff Nos. 1-18 were possessing the suit land as the successors by positions and 50 decimals out of 2.75 acres land described in the schedule was transferred to the plaintiff No. 26 (the plaintiff-respondent-petitioner No.1 hereinafter) by Mst. Rabeya Khatun, Mst. Sorina Khatun and Md. Suruz Miah (who was minor represented by his mother Sorina Khatun) vide a registered Kabla deed being No. 9437 dated 08.11.2001 and the same date i.e. on 08.11.2001 the same persons transferred 53.12 decimals of land to the plaintiff No. 27 (the plaintiff-respondent-petitioner No.2 hereinafter). On 08.11.2001 the plaintiffs namely Rezaul Haque, Shafiqul Islam, Shariful Islam and Mst. Noor Jahan Begum transferred 68.75 decimals of land and on 02.12.2001 Ismail Hossain Lasker transferred 02.75 decimals of land by a khosh kabala deed out of 2.75 acres of land in four dags to the plaintiff

No. 28 (the plaintiff-respondent-petitioner No. 3 hereinafter) and thus he (the plaintiff-respondent-petitioner No. 3) took possession of the land in the previous dag No. 216 and the present dag No. 240. On 08.11.2001 Ismail Lasker handed over 22 decimals of land to the plaintiff No. 29 (the plaintiff-respondent-petitioner No.4 hereinafter) vide a Kabala deed and on 03.12.2001 Moksed Ali, Abdul Aziz, Jahangir Hossain, Mohammad Mondal, Shaharan Nessa and Baharan Nessa handed over 19 decimals of land to A. Mannan, son of Rustom Ali, of village- Baniabahu, Police Station and District- Jhenaidah, who was made the defendant No.7 in the plaint afresh. On 08.11.2001 Ismail Hossain Lashker handed over 44 decimals of land to the plaintiff Nos. 30 and 31 (the plaintiff-respondent-petitioner Nos. 5 and 6 hereinafter) vide a kabala deed and they took possession on the same land at previous dag No. 98 and present dag No. 82. On 03.12.2001 Moksed Ali, A. Aziz, Jahangir Hossain, Mohammad Ali and Baharan Nessa transferred 15 decimals of land to Md. Waliar Rahman, son of late Amir Ali Khan, who is the defendant No.6 in the plaint afresh and thus the plaintiff-respondent-petitioners including the defendant Nos. 6 and 7 purchased total 274.62 decimals of land described in the

schedule of the plaint afresh. The plaintiff-respondent- petitioners purchased the suit land on bonafide being convinced with the actual possessions of the transferors and the judgment pronounced by the competent court in their (transferors) favour and thus the plaintiff-respondent-petitioners and the defendant Nos. 6 and 7 are in the possessions on the suit land.

Opposite party No.1 thereafter added in the suit as defendant No.18 and contested the suit by filing a fresh written statement alleging, inter alia, that the title and possession of the C.S. tenant namely Vogiran Nessa is admitted and she gave a verbal settlement of the half portion of the suit land to Sabera Begum. Due to economical necessity Vagiron Nessa and Sabera Begum on 03.08.1953 gave a settlement to the Defendant No. 1 i.e. the father of the contested defendant-respondent-opposite party Nos. 5-9, Makbul and Fakir Mohammad vide a registered kabuliat deed and S.A. record was prepared in favour of their name being khatian No. 157. On 21.02.1966 Makbul Hossain transferred 92 decimals of land to the defendant Nos. 1 and 2 vide a kabala and on 28.07.1969 Fakir Mohammad transferred 92 decimals of land to the defendant No. 2 i.e. the predecessor of the

contested defendant-respondent- opposite party Nos. 12-15 vide a kabala and thus the defendant Nos. 1 and 2 got the total share of the land. After demise of the defendant Nos. 1 and 2 their successors i.e. the contested defendant-respondent-opposite party Nos. 5-15 transferred the suit land to Waliar Rahman i.e. the non contested defendant- respondent-opposite party No. 19 on 06.03.2007 vide a kabala deed being No. 1447 and after purchasing the same Waliar Rahman mutated his name and paid rent and on 20.07.2008 he transferred 15 decimals of land to the defendant- appellant-opposite party No. 1 and his wife and sister vide a registered kabala deed being No. 6518 and the they possesses the same by planting Mehegani trees. On 18.01.2009 the contested defendant-respondent-opposite party Nos. 5-8, 10-15 and the non contested defendant-respondent-opposite party Nos. 16-20 transferred 27 decimals of land out of total suit land to the non contested defendant-respondent-opposite party No. 22, Abu Bakar Bacchu, Bokul Hossain and Bolaki Khatun and they appointed the defendant-respondent-opposite party No. 1 as their Attorney vide a Power of Attorney and thus the defendant appellant opposite party No. 1 possesses 27+10 decimals of land by way of Power of

Attorney and the rest 15 decimals of land by way of purchase and he possesses total 52 decimals of land and the present R.S. D.P khatian was prepared in the name of Khorshed and the suit is liable to be dismissed as prayed by him.

Opposite party Nos. 2-4 added in the suit and contested the suit as defendant Nos. 15-17 and filed separate written statement but finally opposite party No.1 contested the suit on their behalf vide a power of attorney.

Thereafter during pendency of the suit defendant opposite party Nos. 5-8, 10-15, 21 and 27, 24 and 25 made solenama with the added plaintiff petitioner and admits their title in the suit.

In support of the claim of the added plaintiffs 4 witnesses were examined and some documents were exhibited in court, which were marked as Ext. 3-3Uma and the contesting defendants adduced 10 witnesses and adduced a number of documentary evidence.

Considering the evidences adduced in this case as well as the solenama Assistant Judge, Jhenaidah Sadar, Jhenaidah decreed the suit vide judgment and decree dated 14.09.2014.

Challenging the said judgment and decree, defendant Nos. 15-18 being appellants preferred Title Appeal No. 102 of 2014 and the other defendant preferred another appeal being Title Appeal No. 104 of 2014. Both the appeals were heard together analogously on transfer by the Additional District Judge, 2nd Court, Jhenaidah, who by the impugned judgment and decree dated 13.01.2021 allowed the appeals and after reversing the judgment of the trial court dismissed the suit.

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

Mr. Bibek Chandra, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that trial court after elaborate discussion of the evidence on record found that suit was very much maintainable to its present form and plaintiff has successfully able to prove his title by way of transfer the property in their favour by the admitted owner and they are in the possession of the suit property and thereby decreed the suit as per the solenama. Considering the same as well as considering that a number of defendants have admitted the title and possession of the plaintiffs petitioners in the

suit land and accordingly decreed the suit. On the other hand appellate court without at all reversing the judgment of the trial court most illegally upon a presumptive assertion allowed the appeal and dismissed the suit illegally. The judgment and order is violating the mandatory provision as laid down under Order 41 Rule 31 of the Code of Civil Procedure, the impugned judgment is thus not sustainable in law, which is liable to be set aside.

Although notice was served upon the opposite party but no one appears to oppose the rule.

Heard the learned advocate and perused the Lower Courts Record and the impugned judgment.

This is a suit for declaration of title and that the S.A. khatian was wrongly been recorded in the name of the defendant along with the name of the plaintiffs. Suit was earlier went up to the High Court Division and the Hon'ble High Court Division found that the suit is very much maintainable but some on technical defects it was sent back on remand to the trial court. The present petitioners appears to be added in the suit as a plaintiffs with the assertion that they have purchased the suit property from

the plaintiff, who obtained the decree from the trial court then the suit property was transferred to them and thereby all the interest of the plaintiffs was devoid upon them and they became added in the suit as a legal assignee in the suit. Defendants also held the similar situations that contesting defendants, who filed written statement subsequently also added in the suit as been subsequent purchasers. During pendency of the suit a number of defendants entered into a solenama along with the plaintiffs and admitted the title and possession of the plaintiffs in the suit land.

Upon elaborate discussion of the evidence on record trial court found that plaintiffs predecessors has got valid title over the suit land since they are the successive heirs of the C.S. recorded tenant and the defendant No.1 was could not succeed to prove their story of taking settlement from the Vogiran Nessa, as well as their purchase deed, moreover the other contesting defendants admits the title and possession of the plaintiffs in the suit land by entering into the solenama thereby the title as being claimed by the plaintiffs has been proved and established as well by way of admission by the defendants. On the other hand, the judgment of the appellate court speaks that all these factual and legal aspect of

the judgment of the trial court not been reversed in appeal rather the appellate court on mere presumption held that the alleged solenama was illegal and the trial court committed illegality in decreeing the suit on the basis of solenama. When the defendants admitted title of the plaintiffs it is none of business of the court to refuse the same and make any comment to it on dishonoring the admission of defendants rather to decree the suit. When the Apex Court found the suit was very much maintainable and the defendants potton as well as sale deed was not been proved as been held by the trial court and the defendants predecessor are the successive heirs of the C.S. recorded tenant and have got title over the suit land, which has validly and legally been transferred in favour of the petitioner as been admitted by the defendants, the judgment and decree passed by the trial court contains no illegality but it was wrongly been set aside by the appellate court, the impugned judgment thus contains error of law, it is liable to be set aside.

I thus find merits in these rules.

In the result, these rules are made absolute and the judgment and decree passed by the appellate court are hereby set

aside and decree passed by the trial court is hereby affirmed and the suit is decreed.

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

Send down the L.C.R. and communicate the judgment at once.