

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4555 OF 2017

In the matter of:

An application under Section 25 of the Small Cause Courts Act.

And

Dr. Khan Mostafa Kamal

... Petitioner

-Versus-

Md. Awal Sheikh and others

... Opposite parties

Mr. Surojit Bhattacharjee, Advocate

.... For the petitioner.

Mr. Chanchal Kumar Biswas, Advocate

.... For the opposite party No.1.

Heard and Judgment on 02.09.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.08.2017 passed by the learned Senior Assistant Judge, Sadar, Bagerhat exercising jurisdiction under Small Cause Courts Act in Small Cause Court Suit No.2 of 2012 dismissing 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.

Facts in short are that petitioner as plaintiff instituted above Small Cause Court Suit No.2 of 2012 for eviction of the monthly tenant

defendants from the disputed premises as described in the schedule to the plaint.

It has been alleged that 4 decimals land appertaining to S.A. Khatian Nos.472, 42 and 59 and plot Nos.10, 12 and 13 were acquired by the plaintiff and his brothers and they were in possession in above land by constructing semi pacca three huts. Above huts were rented to defendant No.1 by the father of the plaintiff on 02.02.2003 at a monthly rental of Tk.200/-. Above defendant paid rent regularly for a few days and thereafter stopped paying rent. The plaintiff has served a notice under Section 106 of the Transfer of Property Act terminating above tenancy and filed this suit for eviction.

Defendant No.1 contested the suit by filing a written statement wherein he has denied all material claims and allegations made in the plain and stated that the father of the plaintiff namely Md. Saidur Rahman Khan was a man of good heart who gave permission to the plaintiff who is a landless peasant to erect his dwelling huts in the disputed land and subsequently he gifted above land to the defendant. The defendant is living in the above huts alongwith the members of the his family and running a tea stall in another ghar. Plaintiff was not his landlord nor he was a tenant for the disputed premises.

At trial plaintiff examined 4 witnesses and defendants examined two. Documents produced and proved by the plaintiff were marked as Exhibit Nos.1-5 but did not produce any documents.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Small Cause Court dismissed the suit.

Being aggrieved by above judgment and decree plaintiff as petitioner moved to this Court and obtained this Rule.

Mr. Surojit Bhattacharjee, learned Advocate for the petitioner submits that the plaintiff and his brothers acquired disputed 4 decimal land by registered kabala deed and deed of exchange. But the defendants did not have any rightful claim over above land. The disputed premise was rented to the defendant by the father of the plaintiff and above rental agreement was produced and proved at trial. The defendant could not produce and iota of evidence in support of his so-called oral gift from the father of the plaintiff. The learned Judge of the Small Cause Court miserably failed to appreciate the evidence on record properly and most illegally dismissed the suit which is not maintainable.

On the other hand Mr. Chanchal Kumar Biswas, learned Advocate for the opposite party No.1 submits that the plaintiff has

claimed title in disputed 4 decimals land by a deed of exchange dated 24.06.2007 but claimed that above premises was rented to the defendant on 02.02.2003. Admittedly the disputed premises was not rented to the defendant by the plaintiff. Plaintiff claims that the same was rented out by his father Md. Saidur Rahman Khan. As such admittedly defendant was not a tenant of the plaintiff or his brothers. But he was a tenant of his father Saidur Rahman Khan. The plaintiff claims that above Saidur Rahman Khan had no title and possession in the disputed land. On the other hand notice under Section 106 of the Transfer of Property Act was issued by the plaintiff upon the defendant. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Small Cause Court rightly held that the plaintiff could not prove the relationship of tenant and landlord by legal evidence and accordingly, dismissed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

The plaintiff claims that he is the landlord and defendant was his tenant for the disputed premise who had defaulted in paying rent. In support of above claim the plaintiff has produced and proved a deed of contract dated 02.02.2003 which has been marked as Exhibit No.1. It turns out from above document that the same was allegedly executed

by Md. Saidur Rahman Khan and defendant No.1 not by the plaintiff. In above document no house or structure was rented out.

A viti land was allegedly rented out but in above agreement there is no mention of the Khatian number or Plot number or boundaries of above viti land. As such above deed of contract dated 02.02.2003 (Exhibit No.4) cannot be designated as a rental agreement of the disputed premises between the plaintiff and defendant. The plaintiff has miserably failed to prove by legal evidence that he was the landlord and plaintiff was a tenant under him for the disputed premises.

It turns out from the plaint that at Paragraph No.3 the plaintiff has clearly stated that he and his brothers acquired 3 decimal land appertaining to S.A. Khatian No.42 and Plot No.10 from Pachgaon High School by a deed of exchange dated 24.06.2007. It is not understandable as to how before acquisition of title in the land of S.A. Khatian No.42 on 24.06.2007 the plaintiff could rent out the on 02.03.2003.

The plaintiff has admitted both in the plaint and in his evidence as PW1 that in the disputed land there is a dwelling house a kitchen and a shop and all those premises are in possession of the defendants. As mentioned above in the rental agreement there is no mention of above structures. As such it is clear that above ghars were erected in the

disputed land by defendant No.1 not by the plaintiff or his brother or father.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned Judge of the Small Cause Courts on correct appreciation of the evidence on record rightly held that the plaintiff could not prove by legal evidence that he was the landlord or rightful owner of the disputed land or premises and the defendants were monthly tenant under him and accordingly dismissed the suit which calls for no interference.

In above view of the materials on record I am unable to find any substance in this application under Section 25 of the Small Cause Courts Act and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to cost.

Send down the lower Court's record immediately.