

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 1783 of 1994

Mst. Hosna Ara

...Petitioner

-Versus-

Syed Abdus Sharif (now dead) and others

... Opposite parties

Mr. Manabendra Roy, Advocate on behalf Mr.
Gautam Kumar Roy, Advocate

... for the petitioner

No one appears for the opposite parties

Hearing concluded on 05.12.2024

Judgment delivered on 11.12.2024

This rule was issued to examine the legality of judgment and decree dated 20.02.1994 (decree signed on 28.02.1994) passed by the Subordinate Judge (now Joint District Judge) and Artha Rin Adalat, Jamalpur in Other Class Appeal Number 29 of 1989 allowing the same on reversing those dated 31.01.1989 passed by the Senior Assistant Judge, Jamalpur Sadar in Other Class Suit Number 102 of 1985 decreeing the suit.

Facts for disposal of the rule, in brief, are that the petitioner being plaintiff instituted the suit for declaration of *ejmali* title over 147 decimals of land as described in the schedule to the plaint. Her case was that the land originally belonged to her ancestor Syed

Abdul Latif and CS Khatian Number 65 was correctly published in his name. In course of time, she and proforma defendants number 25-26 inherited the land and were in lawful possession of the suit land. During SA operation, the land was wrongly recorded in the names of the defendants and their predecessor, which clouded her title. She came to know about the wrong recording through her husband for the first time on 30.06.1985 and thereafter, instituted the suit.

Defendants number 1-8 contested the suit by filing a joint written statement denying the material allegations of the plaint contending, *inter alia*, that the suit land belonged to its landlord Kulsumunnessa and she herself was in possession of the same through sharecropper. The CS record was wrongly recorded in the name of Syed Abdul Latif, but he did not own and possess the land. Kulsumunnessa died leaving behind five sons and three daughters amongst whom, Syed Abdul Gani got the suit land in his share through an amicable partition. These defendants being his legal heirs and successors, inherited the suit land and were in physical possession thereof. The plaintiff herself with her mother and sister executed and registered an agreement dated 13.07.1955 in favour of Syed Abdul Gani and others disclaiming any right and title over the suit land.

On the aforesaid pleadings, the trial court framed the issues, namely, (i) was the suit maintainable in its present form? (ii) was the

suit land indefinite and unspecified? (iii) was the suit barred by limitation? (iv) was the suit bad for defect of party? (v) had the plaintiff title and possession over the suit land? (vi) was the plaintiff entitled to the relief as prayed for? (vii) to what other relief, if any, the plaintiff was entitled?

In order to prove their respective cases, both the parties recorded oral evidences and produced documents. The plaintiff side examined four witnesses, and adduced in evidence the CS Khatian Number 65 and SA Khatian Number 66 (Exhibits-1 and 2 respectively), while the defendants examined three witnesses and adduced in evidence, CS Khatian Number 64, the registered agreement dated 13.07.1955, one rent receipt and a registered *kabuliyat* dated 22.08.2058 (Exhibits-A to D respectively).

Mr. Manobendra Roy, learned Advocate appearing for the petitioner submits that in proving title and possession over land, CS Khatian is the most credible evidence. Admittedly, the CS Khatian was prepared and published in the name of Syed Abdul Latif, predecessor of the plaintiff and the SA Khatian was also published in his name. Besides, the contradictory oral evidence of the DWs itself disproved their claim, upon which the learned trial Judge rightly decreed the suit, but the appellate court without any independent assessment of evidence and reversing the findings of the trial court, allowed the appeal only on one evidence, namely, Exhibit-B and thereby committed error of law.

I have considered the submission of the learned advocate and gone through the record. It appears that the plaintiff deposed as PW 1 and exhibited the CS and SA Khatian of the suit land. On the other hand, the defendants number 1-8 examined 3 witnesses including defendant number 1 and exhibited the CS Khatian, the registered deed of disclaim dated 13.07.1955, a rent receipt showing payment of rent against the suit land by the defendants, and registered *kabuliyat* dated 22.08.1958 showing settlement of the land by the defendant in favour of some other tenants. The trial court decreed the suit mainly on the basis of discrepancies in the oral evidences of the defendants' witnesses (DWs 2 and 3), but did not make any assessment on their documentary evidences. On the other hand, the appellate court in allowing the appeal mainly based on the deed of disclaim (Exhibit-B). It is a settled principle of the law of evidence that the contents of a registered agreement cannot be disproved by oral evidence. Exhibit-B shows that the plaintiff and two others had entered into an agreement with the predecessor of the defendants disclaiming/relinquishing their claim over the suit land admitting that the CS Khatian in the name Syed Abdul Latif was wrong and Kulsumunnessa, the predecessor of the defendants was the lawful owner-in-possession of the suit land. The rent receipt (Exhibit-C) shows payment of rent by the defendants, which is a document of possession. Exhibit-D, the registered *kabuliyat* shows that in 1958, the suit land was given in settlement to some tenants. But the plaintiff had failed to produce any documentary evidence like rent

receipt, or agreement of sharecropping in support of her claim except the CS and SA Khatians. In such a case, I am of the view that although the appellate court did not discuss the oral evidences and other documentary evidences of the parties, the ultimate decision of the appellate court was correct. There having been no failure of justice, I do not find any merit in the rule.

Accordingly, the rule is discharged.

Send down the records.