

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2008 of 1996

Md. Mojnur Rahman

..... Petitioner

-Versus-

Munshi Abu Bakkar and others

..... Opposite-Parties

Mr. Md. Badruddoja Babu, Advocate with

Mrs. Sharmin Rahman, Advocate

... For the Petitioner

No one appears

... For the Opposite Parties

Judgment on 10.01.2024

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 15.10.1995 passed by the learned Subordinate Judge (now Joint District Judge, Court No. 1, Magura) in Title Appeal No. 124 of 1993 reversing the judgment and decree dated 30.09.1993 passed by the learned Assistant Judge, Sadar, Magura in Title Suit No. 143 of 1992 shall not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party No. 1, as plaintiff, instituted Title Suit No. 143 of 1992 in the court of Assistant Judge, Sadar, Magura, against the present petitioner and opposite party Nos. 2-4 as defendants, for a decree of declaration of title, confirmation of possession and for permanent injunction contending

inter alia, that the suit land comprising Plot No. 1996 measuring 15 sataks originally belonged to Joynal, Mokbul and Imarat who sold the same to the plaintiff on 15.02.1968. Plot Nos. 1998 and 1999 measuring 12 sataks belonged to Munshi Golam Rasul predecessor of plaintiff and defendants. Golam Rasul died leaving sons plaintiff and defendant No. 1, daughter Rizia Khatun, defendant No. 4 and wife Mariam Bibi, Defendant No. 3. Mariam Bibi and Rizia Khatun amicably surrendered their share to the plaintiff. Accordingly, the plaintiff acquired title in 15 sataks of land under Plot No. 1996 by purchase and 8 sataks of land under Plot Nos. 1998 and 1999 totalling 23 sataks. The defendant No.1 amicably got 4 sataks of land on the north-east portion of Plot Nos.1998 and 1999 and he was possessing the same. Three plots situated side by side and formed a compact block. Out of 27 sataks the plaintiff has been possessing 23 sataks of land by erecting homestead thereon and planting various types of trees with the knowledge of defendant No. 1 and all other co-sharers including defendant No. 2. When the plaintiff went to the local tahshil for payment of rent, he came to know that Plot No. 1996 stand recorded jointly in the names of plaintiff and the defendant No. 1 showing equal share in the property. Because of his mental illness, he could not follow up survey and the Plot No. 1996 wrongly recorded in the name of two brothers instead of recording the same in his name alone. When the plaintiff recovered, he came to know that the defendant No. 1 in connivance with defendant No. 2 and other evil persons of the locality

created a sale deed in favour of defendant No. 2 transferring $13\frac{1}{2}$ sataks of land from Plot Nos. 1996, 1998 and 1999, whereas, the defendant No. 1 had no right, title and possession in $13\frac{1}{2}$ sataks of land, but he had right, title and possession in 4 sataks of land on the north-east portion of the compact block. He purposely transferred the property in favour of defendant No. 2 in excess of his title and entitlement.

The defendant No. 2 after purchase half portion of the property from defendant No. 1 threatened the plaintiff with dispossession claiming title in the property by purchase from defendant No. 1. The defendant No. 1 had no possession beyond 4 sataks of land and no right to transfer any property under Plot No. 1996 which was purchased by the plaintiff alone in the year 1968. Being threatened by the defendant No. 2 with dispossession the plaintiff has constrained to file the present suit for declaration of title, confirmation of possession and for permanent injunction.

Defendant No. 2 contested the suit by filing written statement denying all the material allegations made in the plaint contending *inter alia*, that Plot No. 1996 measuring 15 sataks originally belonged to Joynal, Mokbul and Imarat Biswas. From them father of the plaintiff and defendant Nos. 1, 3 and 4 named Munshi Golam Rasul purchased the property with his own money and got delivery of possession of the same, but before obtaining sale deed executed and registered from Joynal

Biswas and others he died. After his death the sale deed in respect of property under Plot No. 1996 ought to have been executed and registered in the name of all the heirs of Golam Rasul, but the cunning plaintiff without letting the matter know to the defendant Nos. 1, 3 and 4 got the sale deed executed and registered in his name leaving the name of Defendant Nos. 1, 3 and 4. However, the defendant Nos. 1, 3 and 4 did not face any difficulty in enjoying the property in ejmali with the plaintiff, accordingly, D.P. khatian correctly recorded in the name of plaintiff and defendant No. 1 equally. It is further stated that at the time of execution and registration of sale deed in the year 1968, the plaintiff had no means to purchase the property with his own money and he was living in the joint family left by Golam Rasul.

It is also claimed that though there was no written partition deed, the heirs of Golam Rasul amicably partitioned the property, accordingly, defendant No. 3 in her share got 52 sataks of land from Mouza Alaipur and defendant No. 4 got 45 sataks of land from Mouza Mirzapur. Accordingly, Khatian No. 523, D.P. Khatian No. 558 stands recorded in the name of Mariam Bibi and Khatian No. 168 stands recorded in the name of Rizia Khatun. Plot Nos. 1996, 1998 and 1999 fell in the share of plaintiff and defendant No. 1 equally. Accordingly, the defendant No. 1 acquired title and possession in $13\frac{1}{2}$ sataks land under aforesaid three plots. While defendant No. 1 in possession and enjoyment of the same, he transferred his $13\frac{1}{2}$ sataks land to defendant No. 2 by a registered deed

dated 18.06.1992. Since then the defendant No. 2 has been possessing the same by giving bamboo boundary and constructing homestead with the knowledge of the plaintiff and others. The deed dated 15.02.1968 created in the name of the plaintiff is fraudulent and to grab the just share of the defendant No. 1 in the suit property. The plaintiff also did not claim the property under Plot No. 1996 to be his own property until filing of the suit, as such, the suit is liable to be dismissed.

The trial court framed six issues for determination of the dispute. In course of hearing, both the plaintiff and the defendant examined four witnesses each as P.Ws. and D.Ws respectively. Both the parties submitted some documents in respect of their claim which were duly marked as exhibits. The trial court after hearing dismissed the suit by the impugned judgment and decree dated 30.09.1993.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff in suit preferred Title Appeal No. 124 of 1993 before District Judge, Magura. Eventually, the appeal was heard and disposed of by the Subordinate Judge (now Joint District Judge) Court No. 1, Magura on transfer who after hearing allowed the appeal and set aside the judgment and decree of the trial court. At this juncture, the defendant No. 2 respondent moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Badruddoja Babu, learned Advocate appearing for the petitioner submits that admittedly the plaintiff and defendant Nos. 1, 3 and 4 are heirs of one Munshi Golam Rasul. It is also admitted that Plot No. 1998 measuring 8 sataks, Plot No. 1999 measuring 4 sataks belonged to Munshi Golam Rasul. Accordingly, the plaintiff and defendant Nos. 1, 3 and 4 inherited the same along with other properties left by Munshi Golam Rasul. Only dispute in respect of Plot No. 1996 measuring 15 sataks.

He submits that plaintiff had no means to purchase the property from Joynal Biswas and others in the year 1968. The property was purchased by their father Munshi Golam Rasul with his own money, but unfortunately, he died before execution and registration of sale deed in his favour. The plaintiff as eldest son of the family was entrusted with the task of having registration of sale deed in the name of all the heirs of Golam Rasul, but he with ill motive and to deprive other heirs of Golam Rasul got the sale deed executed and registered in his own name and concealed the fact till transfer of the property by defendant No. 1 to defendant No. 2, but the record of right stand jointly in the name of defendant No. 1 and the plaintiff equally which proves that the property in Plot No. 1996 was joint property acquired by their father Munshi Golam Rasul. Admittedly, there has been an amicable arrangement among the heirs of Golam Rasul and by amicable arrangement the property under Plot Nos. 1996, 1998 and 1999 measuring 27 sataks fell in the share of plaintiff and defendant No. 1 equally and both the plaintiff and defendant

No. 1 jointly possessed the suit land as their homestead. The plaintiff never raised any objection in respect of possession of defendant No. 1 equally before transfer of the same. When the defendant No. 1 transferred his share to the defendant No. 2, the plaintiff disclosed that he purchased Plot No. 1996 in the year 1968 and also claimed that the share of his sister defendant No. 3 and mother defendant No. 4 amicably relinquished in his favour, but no evidence either documentary or oral has been adduced before the trial court, meaning thereby, share of defendant Nos. 3 and 4 amicably relinquished in favour of plaintiff and defendant No. 1, as such, in the suit plots both the brothers were entitled to get equal share.

He submits that the trial court while dismissing the suit rightly held that the plaintiff could not prove his title in Plot No. 1996 by purchase as he could not substantiate his claim how and from which source he paid the consideration to Joynal Biswas and others and he could not say what was the consideration and source of his income at that time. He argued that the trial court also found that the plaintiff failed to substantiate his claim that defendant Nos. 3 and 4 relinquished their share in his favour by any evidence. But the appellate court while allowing the appeal failed to controvert the observation and findings made by the trial court and by making a third case allowed the appeal and decreed the suit.

No one appears for the opposite parties to oppose the Rule.

I have heard the learned Advocate for the petitioner, have gone through the revisional application, plaint, written statement, evidences

both oral and documentary available in lower court records and impugned judgment and decree of both the courts below.

The plaintiff in his plaint simply stated that he acquired title in 15 sataks of land under Plot No. 1996 by purchase vide deed dated 15.06.1968 from Joynal Biswas, Makbul Biswas and Imarat Biswas and in support of his such contention he filed deed No. 1188 dated 15.02.1968 ('exhibit-1'). Plot Nos. 1998 and 1999 admittedly belonged to their predecessor Golam Rasul. Accordingly, S.A. Khatian No. 73 stands record in his name, the plaintiff simply claimed that Plot No. 1996 measuring 15 sataks is his self acquired land by 'exhibit-1' and Plot Nos. 1998 and 1999 measuring 12 sataks belonged to his father and he by way of inheritance and by relinquishment of the share of defendant Nos. 3 and 4, acquired 8 sataks of land in Plot Nos. 1998 and 1999 totalling $15 + 8 = 23$ sataks of land, but the defendant No. 2 after purchase the property under 3 plots from defendant No. 1 in excess of his entitlement threatened the plaintiff with dispossession claiming title in $13\frac{1}{2}$ sataks of land.

On the other hand, defendant Nos. 1, 3 and 4 did not come forward and contest the suit by filing written statement. In their absence nothing in respect of Plot No. 1996 has forthcoming whether the property under Plot No. 1996 is self acquired property of plaintiff or the property was purchased by their predecessor Golam Rasul with his own money.

Apart from this none of the defendants except defendant No. 2 by appearing in suit claimed that they also inherited the property under Plot

No. 1996 as purchased land of Golam Rasul. Since 1968 till today nobody challenged the deed by filing any legal proceeding or no question raised regarding title of the plaintiff in 15 sataks of land under Plot No. 1996 or claimed that the property was purchased by their father in the benami of plaintiff. Therefore, the purchaser defendant No. 2 cannot raise any objection regarding the sale deed dated 15.02.1968. Therefore, the question of payment of consideration, source of money cannot be raised at all. None of the P.Ws. or D.Ws except D.W. 2 claimed that the property in Plot No. 1996 was purchased with the money of their predecessor Golam Rasul. The appellate court rightly held that in the absence of any claim from heirs of Golam Rasul or any objection raised before any court earlier than the instant suit, the plaintiff could able to prove that he purchased the property under Plot No. 1996 measuring 15 sataks by registered deed dated 15.02.1968. Question left for the remaining quantum of land covered by Plot Nos. 1998 and 1999. The plaintiff though claimed in his plaint that defendant Nos. 3 and 4 relinquished their share in his favour, but could not substantiate such claim either by filing written statement through defendant Nos. 3 and 4 or by any evidence through P.W. 2- P.W. 4 that amicably share of defendant Nos. 3 and 4 measuring 3.60 sataks relinquished in his favour. In the absence of any positive evidence on the part of the plaintiff it cannot be said that the plaintiff acquired the share of defendant Nos. 3 and 4 by amicable arrangement.

If we calculate the share of heirs of Golam Rasul out of 12 sataks of land under Plot Nos. 1998 and 1996, the plaintiff is entitled to get 4.20

sataks, defendant No. 1 measuring 4.20 sataks and defendant No. 3 measuring 2.10 sataks and defendant No. 4 measuring 1.50 sataks. The plaintiff is only entitled to get 4.20 sataks in addition to his purchased land. If we consider that share of defendant Nos. 3 and 4 measuring 3.60 sataks equally fell in the share of 2 brothers, in that event, the plaintiff is entitled to get 6 sataks land under Plot Nos. 1998 and 1999 and he is entitled to get $15 + 6 = 21$ sataks of land under 3 plots, but the appellate court decreed the suit for 23 sataks giving the share of defendant Nos. 3 and 4 to the plaintiff. I find that the defendant No. 1 was not entitled to transfer $13\frac{1}{2}$ sataks of land out of Plot Nos. 1996, 1998 and 1999 as per Mohammadan Law of inheritance, but he transferred $13\frac{1}{2}$ sataks land beyond his entitlement. On the other hand, the plaintiff also entitled to get 15 sataks of land by purchase vide registered deed dated 15.02.1968 and 4.20 sataks of land by inheritance totalling 19.20 sataks.

In the absence of any objection of the defendant Nos. 3 and 4, the plaintiff at best can claim 21 sataks of land under three plots. If the defendant Nos. 3 and 4 claim their shares in future, the defendant No. 1 will get only 4.20 sataks land in accordance with law. However, since both the defendant Nos. 3 and 4 are not coming to substantiate the claim of the plaintiff by filing written statement or deposed before the court, the justice will be met if we consider the share of defendant Nos. 3 and 4 fell in the share of both the brothers, plaintiff and defendant No. 1 equally, the plaintiff is entitled to get a decree in respect of 21 sataks of land.

Accordingly, the judgment and decree of the appellate court is liable to be modified to that extent.

In view of the above, the Rule is made absolute in part. The judgment and decree of the appellate court is hereby modified to the extent that the plaintiff is entitled to get 15 sataks of land from Plot No. 1996 by purchase, 4.20 sataks of land from Plot Nos. 1998 and 1999 by inheritance and 1.80 sataks land as per amicable arrangement from his sister and mother totalling 21 sataks in place of 23 sataks.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.