

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2207 of 2018

Kajem Ali died being his legal heirs:

1. Most. Zahanara Begum

..... Petitioner

with

Civil Revision No. 1962 of 2018

Md. Ramijul Karim

..... Petitioner

-Versus-

Chairman, Dokkhin Domdoma Jame Masjid

Committee, representing the Muslim community.

..... Opposite-Parties

Mr. M.M. Shafiullah, Advocate

... For the Petitioner in C. R. No. 2207 of 2018

Mr. Md. Momin Uddin, Advocate

... For the Petitioner in C. R. No. 1962 of 2018

Mr. Md. Abdullahel Baki, Advocate

... For the Opposite Party No. 1

Judgment on 05.02.2024.

Mahmudul Hoque, J:

Since both the revisions preferred against the same judgment relating to same property are taken together for consideration and disposal by the single judgment. In both the Civil Revisions Rules were issued in the following terms:

Let a Rule be issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 08.04.2018 passed by the learned District Judge, Natore in Title Appeal No. 101 of 2017 allowing the appeal and thereby reversing the judgment and decree dated 25.05.2017 passed by the learned Senior Assistant Judge, Shingra, Natore in Other Suit No. 313 of 2005 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 relevant for disposal of these Rules, in short are that, the opposite party No. 1, as plaintiff, filed Other Suit No. 313 of 2005 in the Court of Senior Assistant Judge, Singra, Natore, against the present petitioners in both the revisions along with others, as defendants, for declaration of title in the suit property claiming that the property measuring 1.75 acres under C.S. Khatian Nos. 232, 233, 234 and 235 covering C.S. Plot Nos. 531, 567, 414 and 693 was permanently settled by zaminder “ভাতুরিয়া তপসে কুমুস্থি দক্ষিণ ক্ষিতিশ ভূষণ রায় গং” in favour of one Pirpal Burapir for welfare of the local mulsim. For its management, one Madari Mridha son of Kubir Mridha was appointed as shebayet. Said Madari Mridha used to cultivate the land under C.S. Plot Nos. 531 and 567 and C.S. Plot No. 414 was cultivated through Kamaruddin Pramanik and C.S. Plot No. 693 through Janoki Pramanik and Hari Pramanik and also C.S. Plot No. 415 through other cultivators. Accordingly, C.S. Khatian No. 232 stands recorded in the name of Pirpal Burapir and as shebayet Madari Mridha. C.S. Khatian Nos. 233-235 under C.S. Khatian No. 232 recorded in the names of Kamaruddin Pramanik, Janoki Pramanik and Hari Pramanik and others.

Immediate after the end of C.S. operation all the possessors surrendered their possession in the suit property in favour of Pirpal Burapir through shebayet Madari Mridha. Consequently, Madari Mridha

used to manage and possess the suit property and applied the income of the property for his own benefit instead of using the same for benefit of the local muslims. Consequently, people of the area jointly took possession of the property and placed the same under management and control of plaintiff Masjid. After taking over possession and control of the suit property by Masjid committee they used to cultivate the same through different cultivators for 60 years. Plaintiff Masjid being run by a committee constituted by local muslims, predecessors of present defendants were members of the committee. They used to cultivate the land for and on behalf of Mosque.

Subsequently, it has become inconvenient for the Masjid to maintain and manage the property through cultivators, resultantly, the committee leased out the same to different persons. Consequently, predecessor of defendants automatically dispossessed from the suit land. The plaintiff as President of Dokkhin Domdoma Paschimpara Jame Masjid, collected the documents in respect of the suit property and came to know on 22.05.2003 that P.R.R, S.A. and R.S. khatians stand recorded in the names of predecessor of defendant Nos. 1-7 Kajem Ali Mridha and predecessor of defendant Nos. 8-17 Mansur Ali, predecessor of defendant Nos. 18-25 Josmat Ullah, predecessor of defendant Nos. 26-47 Poran Pramanik as their own land. Said S.A. and R.S. khatian wrongly recorded in their names instead of recording the same in the name of Mosque. The predecessor of defendants had no right, title and possession in the suit property. They only used to cultivate the land for time being on behalf of

Mosque. The property in question was dedicated for the benefit of muslims and subsequently for benefit and welfare of plaintiff Masjid. Because of recording S.A. and R.S. khatians in the names of predecessor of the defendants, the right, title of Masjid in the property has become clouded, hence the present suit for declaration of title.

Defendant Nos. 7 and 21 contested the suit by filing separate written statements. The defendant No. 7 stated that the property originally belonged to zaminder Khitish Bhuson Roy and others. Said zaminder settled the property in favour of Pirpal Burapir as prayed for by Madari Mridha as tenure holder. The property was managed and controlled by Madari Mridha as sebayet for muslim community under C.S. Khatian No. 232. Plot Nos. 414, 415 and 693 measuring .98 sataks was settled in favour of Komaruddin Promanik, Janoki Promanik and Hari Pramanik and others as raiyat, accordingly, C.S. khatian stand recorded in their names. Kamaruddin Pramanik and others were raiyat under Pirpal Burapir. When Madari Mridha failed to pay rents to the zaminder, surrendered possession of the property in favour of zaminder. Kamaruddin Pramanik and others continued in possession as raiyat under zaminder who used to collect rents from them. Subsequently, zaminder settled the land under Plot Nos. 531 and 567 measuring 77 sataks in favour of grandfather of defendant No. 7 named Kajem Ali Mridia in the year 1346 B.S. After abolition of zamindary during S.A. operation the government recognized Kajem Ali Mridha as owner and possessor of the land by recording his name in S.A. khatian. Kajem Ali Mridha used to

live on the Plot No. 567 by erecting house and possessing other lands by cultivation. Kajem Ali was illiterate, he could not get his name recorded alone in khatian properly but R.S. recorded along with others and S.A. record stand recorded equally along with other tenants without mentioning share. While he was in possession in Plot Nos. 567, 531 corresponding to R.S. Plot Nos. 813 and 814 transferred 22 sataks of land in favour of his daughter, the defendant No. 7 by a deed of gift No. 1221 dated 29.01.1986 and delivered possession of the same. Since then the defendant No. 7 has been possessing the same for more than 20 years. There is no existence of plaintiff Masjid in the area and the claim of the plaintiff is baseless and fictitious.

Defendant No. 21 stated that C.S. Khatian No. 234, Plot No. 693 originally belonged to Janoki Pramanik and Hari Pramanik as raiyat under zaminder. Accordingly, their names appeared in C.S. Khatian No. 234, Janoki Pramanik died leaving his brother Hari Pramanik who inherited entire quantum of land in Plot No. 693 measuring 28 sataks. Thereafter, Hari Pramanik died leaving three sons Jashmatullah Pramanik, Rahamat Ullah Pramanik, Kamaruddin Pramanik, wife Mukul Jan Bewa and daughter Fazilatun Nessa, accordingly, S.A. Khatian No. 295 stands recorded in their names.

The predecessor of defendant No. 21 were never tenants under Pirpal Burapir or Madari Mridha, but they were permanent raiyat as record in C.S. khatian. Though C.S. Khatian No. 232 recorded in the

name of Pirpal Burapir, but subsequently, the property was settled in favour of predecessor of the defendants as raiyat under zaminder. The defendants from the period of their predecessor successively owning and possessing the suit property with the knowledge of all for more than century and no point of time Pirpal Burapir or Madari Mridha or any other person claimed right, title in the property, but all of a sudden present plaintiff styling himself as President of Masjid Committee filed the suit for declaration of title who has no locus standi or status to file the present suit. It is also stated that the heirs of Hari Pramanik possessing the suit property, got the same partitioned among them by a registered partition deed No. 1292 dated 17.02.1982. After death of Jashmot his heirs filed Other Class Suit No. 173 of 2003 for a decree of partition of the property among them which was finally decreed on compromise and after such decree all the heirs of Jashmatullah got their names mutated in khatian. The case of the plaintiff is false and fabricated one.

The trial court framed three issues for determination of the dispute between the parties. In course of hearing the plaintiff examined three witnesses as P.Ws and the defendant Nos. 7 and 21 examined five witnesses as D.Ws. Both the parties submitted some documents in support of their claim which were duly marked as exhibits. The trial court after hearing dismissed the suit by its judgment and decree dated 25.05.2017.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff preferred Title Appeal No. 101 of 2017 in

the court of District Judge, Natore, who after hearing by the impugned judgment and decree dated 08.04.2018 allowed the appeal and decreed the suit by setting aside the judgment and decree of the trial court. At this juncture, the defendant No. 7 preferred Civil Revision No. 2207 of 2018, the defendant No. 21 preferred Civil Revision No. 1962 of 2018 and obtained the present Rules and order of status quo.

Mr. M.M. Shafiullah, learned Advocate appearing for the Petitioner in Civil Revision No. 2207 of 2018 and Mr. Md. Momin Uddin, learned Advocate appearing for the petitioner in Civil Revision No. 1962 of 2018 submit that admittedly the suit property was settled by zaminder in favour of one Pirpal Burapir as tenure holder (মধ্যস্থত্বাধিকারী). Accordingly, C.S. Khatian No. 232 stands recorded in his name representing him by one Madari Mridha as sebayet on behalf of muslim community. Under C.S. Khatian No. 232, Khatian Nos. 233-235 stand recorded in the names of Kamaruddin Pramanik, Janoki Promanik and Hari Promanik alias Hurmat Ullah as raiyat.

The plaintiff claims that the property was settled in favour of Pirpal Burapir as rent free land for welfare and benefit of local muslim community and one Madari Mridha was appointed as sebayet for management and control of the property on behalf of local muslims. Madari Mridha used to enjoy the property for his own benefit, consequently, the muslim community of the locality dragged him out from possession and took the control and management of the property by placing the same in the management of plaintiff Masjid. At the first

instance the Masjid committee used to manage and possess the suit property through different cultivators, subsequently, leased out the same to different person on yearly basis and the income whatever received was used for the benefit of the Mosque, but the plaintiff in support of such contention could not adduce any evidence either oral or documentary.

They submit that predecessor of defendant, Kamaruddin and others were permanent raiyat as recorded in C.S. khatians. After C.S. operation since the predecessor of the defendants were raiyat under the zaminder as recorded in C.S. khatian, the tenure holder Pirpal Burapir lost his right of tenure in respect of C.S. Plot Nos. 531 and 567 and those were settled by zaminder in favour of predecessor of the defendants. After S.A.T. Act came into force and wholesale acquisition of rent receiving interest by the government, recognized the predecessor of the defendant as tenants under the government by recording their names in S.A. khatian. Present R.S. khatian also stand recorded in the name of the defendants and some of their predecessor. None of the muslim community or any disciple of Pirpal Burapir, even the masjid committee did not challenge the right, title and interest of the defendants in the suit property before filing of the instant case.

Mr. Shafiullah submits that to file a suit under section 42 of the Specific Relief Act, the plaintiff must assert his legal status, right to property and character to have such declaration, but in the instant case the plaintiff has come before the court with a prayer for declaration of title in the suit property without any legal status. They argued that the right title

whatever had in C.S. Khatian No. 232 in favour of Pirpal Burapir was limited to tenure holder only. Pirpal Burapir had right to collect rent from predecessor of the present defendants as raiyat. After abolition of zamindari system the right of collection of rents from raiyat has become extinguish. Because of such situation predecessor of the defendants as owners and possessors of the suit property recognized by the government as direct tenant under it by recording their names in S.A. khatian. As such, Pirpal Burapir or shebayet Madari Mridha or present plaintiff acquired no title in the suit property by any means.

Mr. Md. Abdullahel Baki, learned Advocate appearing for the opposite party No. 1 in both the rules submits that there is no dispute that the property under C.S. Khatian No. 232 along with the property under C.S. Khatian Nos. 233-235 were settled by zaminder in favour of Pirpal Burapir as rent free land for benefit and welfare of muslims of the locality and for its management and control one Madari Mridha was appointed as sebayet. Madari Mridha at a point of time enjoyed the property treating the same of his own instead of applying the income for the benefit of the local muslims. Consequently, the muslim community took over possession and control of the property and placed him under the management of plaintiff Masjid. Since then the plaintiff Masjid possessing the same at the first instance by cultivating through different cultivators and then by leasing out the same to different persons including the predecessor of defendants.

He submits that, admitting the claim of the plaintiff to be true except defendant Nos. 7 and 21 all other defendants in suit relinquished their claim in the property by filing a solenama in favour of plaintiff clearly stating that the property in question belong to the plaintiff Mosque and their predecessors names appearing in S.A. and R.S. khatians has no basis, which means that admission of other defendants is binding upon defendant Nos. 7 and 21, but the trial court failed to appreciate the fact and the provisions of Section 18 of the Evidence Act. In support of his such submissions he has referred the case of *Maharaja Bhupendra Chandra Singha Sarma and others vs. Sudhindra Chandra Singha and others* reported in *5 DLR page 251* and *Dileshwar Ram Brahman vs. Nohar Singh and others* reported *Indian cases Vol. XLVIII page 193*.

He submits that the defendants could not substantiate their claim how they acquired the property from zaminder where all the C.S. khatians in respect of the suit property stand recorded in the name of Pirpal Burapir showing shebayet Madari Mridha. He argued that in the event of claiming any settlement from zaminder the defendants must show rent receipts showing payment of rents to the zaminder, but they could not file a single paper in this regard.

He submits that the trial court in dismissing the suit, has put stress on the facts and evidences of the parties instead of giving importance to the provisions of law, but the appellate court while allowing the appeal and decreeing the suit rightly held that the defendant Nos. 8, 10-17 and 28 admitting title of the plaintiff Mosque in the property and also on oath, the

defendant, Jalal Uddin and Abdus Sobhan stated that the property belongs to Mosque and S.A and R.S. khatians wrongly prepared in the name of their predecessors and their such admission is binding upon defendant Nos. 7 and 21 under section 18 of the Evidence Act, as such, the appellate court committed no illegality in decreeing the suit by setting aside the judgment and decree of the trial court.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, written statement, solenama filed by the parties, evidences both oral and documentary and the impugned judgment and decree of both the courts below.

To appreciate the claim and counter claim of the parties, I have gone through the basis of claim of the plaintiff only C.S. Khatian Nos. 232-235. C.S. Khatian No. 232 stands recorded in the name of Pirpal Burapir as tenure holder (মধ্যস্থত্বধিকারী) who obtained the settlement from zaminder for the welfare and benefit of local muslims represented by one Madari Mridha as sebayet. C.S. khatian No. 233 stands recorded in the name of Kamaruddin Pramanik son of Nasiruddin Pramanik as raiyat under Pirpal Burapir. C.S. Khatian No. 234 stands recorded in the name of Janoki Pramanik and Hari Pramanik alias Hurmat Pramanik equally as raiyat under Pirpal Burapir. Legal basis of aforesaid Khatian No. 232 in the name of Pirpal Burapir Shaheb is that he was a tenure holder having rent receiving interest through Madari Mridha to be applied for benefit of local muslims. Under C.S. Khatian No. 232 there are other Khatians being Nos. 233-235. Those khatians show that Pirpal Burapir as tenure holder

created raiyat under him, it means that, he had right to receive rents from the raiyat. According to C.S. khatian Pirpal Burapir had no other right in the property except collection of rents from them. To be more sure, meaning of “tenure holder” may be looked into which run thus;

“A person who has acquired from an intermediary the right to hold the lands for the purpose of collecting rents for bringing them under cultivation by establishing tenants thereon and includes also the successor in interest of person who have acquired such right.”

After S.A.T. Act came into force rent receiving interest was acquired by the government and with the acquisition of rent receiving interest the right, title whatever Pirpal Burapir has had in respect of the suit property become extinguished as tenure holder. Consequently, the persons who were in possession of the suit property as owners and possessors have become direct tenants under the government. Accordingly, S.A. khatian stands recorded in their names, meaning thereby, the government recognized the persons who are owners and possessors of the suit property as direct tenant under the government.

Had the property in question belonged to Pirpal Burapir represented by Madari Mridha, S.A. khatian would not have recorded in the names of predecessor of the present defendants, Right from C.S. upto SAT Act came into force Pirpal Burapir represented by Madari Mridha had right to collect rents from the raiyat as recorded in C.S. Khatian Nos. 233-235. When the government acquired rent receiving interest from owners and

possessors of the land. Pirpal Burapir or Madari Mridha had no right to claim the property any more.

Present plaintiff claiming to be President of Masjid Committee filed the present suit for declaration of title that the property is belonging to Mosque, but the plaintiff could not substantiate their claim how and when the property was placed under the management and control of the Masjid committee and how they used to enjoy the property and where is the account in respect of income and expenditures of the property and what is the legal basis of that committee. Without legal frame work or basis of any committee of any Mosque or society, a person claiming to be President of Masjid Committee acquired no legal status or character to sue against any other persons as defendants. From C.S. Khatian Nos. 233 and 234, it is established that Kamaruddin Pramanik, Janoki Pramanik and Hari Pramanik alias Hurmat Pramanik were permanent raiyat under Pirpal Burapir. Raiyati right is a strong right in favour of a raiyat in question. The plaintiff could not prove that said raiyat Kamaruddin and others were evicted by Pirpal Burapir or upper zaminder from the suit property. Rather the defendants could able to prove that after SAT Act came into force the government recognized them tenants as owners and possessors of the property by recording their names in S.A. khatian and subsequently, R.S. khatian also stand recorded in their names.

It is now established that latest record of right shall prevail over earlier one in the absence of any basis of claim. In the present suit though the plaintiff claims that during C.S. operation the property was settled as

(নিষ্কর) in favour of one Pirpal Burapir, but they could not substantiate that the said Pirpal Burapir was a permanent raiyat under the zaminder, but the khatian shows that he was a tenure holder having rent receiving interest as middle man from the raiyat under him. Therefore, the story of dedication of the property for benefit of the local muslims by Pirpal Burapir and subsequent placement of the property under the management and control of the Mosque in question and possession of the Masjid committee right from Pirpal Burapir is absolutely baseless. The plaintiff in suit could file only khatian showing the name of Pirpal Burapir in C.S. Khatian No. 232 as tenure holder and C.S. Khatian Nos. 233-235 as superior right holder having rent receiving interest only from permanent raiyat Kamaruddin and others. It does not mean that Pirpal Burapir was a permanent raiyat under zaminder and owner and possessor of the suit property. There was no question at all to drag out Madari Mridha from the suit land and taking over possession of the suit land and replacement of the same in favour of plaintiff Masjid where Kamaruddin Pramanik, Janoki Pramanik and Hari Pramanik were permanent raiyat under Pirpal Burapir. Therefore, the predecessor of the defendants acquired title in the property as permanent raiyat during C.S. operation and after S.A.T. Act came into force direct tenants under the government as recorded in S.A. khatian.

Now, the question has come, because of execution and filing of solenama by other defendants admitting claim of the plaintiff whether the right, title whatever the present petitioners have had in the property become extinguished. When one or more defendants in suit compromised

the claim with the plaintiff by filing solenama giving up his claim in the property, under no circumstances such compromise binds other defendants in suit who claim the property independent of other defendants. Here the defendant Nos. 7 and 21 are successive heirs of Hari Pramanik and Kamaruddin Pramanik. Other defendants are not heirs of Hari Pramanik. Because of this situation filing of solenama by other defendants cannot bind defendant Nos. 7 and 21 treating admission that the property belongs to Mosque. Filing of compromise application by other defendants giving up their claim of title in favour of plaintiff is an attempt "To cut one's nose to spite one's face." Apart from this, where the plaintiff itself could not substantiate its claim in respect of suit property by any evidence that Pirpal Burapir as owner and possessor of the suit property, continued in possession and enjoyment till SAT Act came into force and placement of the property by any of the person in favour of plaintiff Mosque there cannot be question of acquisition of title by the plaintiff at all.

Both the courts below failed to give legal interpretation of C.S. khatian, S.A. khatian. The trial court only on the basis of some evidences dismissed the suit and the appellate court most unfortunately did not say even a single word what is the legal basis of C.S. Khatian Nos. 232-235 and the status of raiyat and status of tenure holder and misdirected himself in allowing the appeal decreeing the suit without appreciating the provisions of law that a person cannot come before the court with a prayer for declaration who has no legal status or character for such declaration.

In the present suit, I find that the plaintiff itself has no legal character and right to file a suit under section 42 of the S.R. Act.

Taking into consideration the above, I find merit in these Rules and in the submissions of the learned Advocates for the petitioners.

In the result, both the Rules are made absolute, however, without any order as to costs.

The judgment and decree passed by the appellate court is hereby set aside and the judgment and decree of the trial court is restored.

The order of status quo granted at the time of issuance of the Rule stands vacated.

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