

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 1032 of 2002

Meher Ali Sk. being dead his legal heirs Abdul
Hoque Shaikh and others

... Petitioners

-Versus-

Md. Abdul Majid Sk. and others

... Opposite parties

Mr. Sherder Abul Hossain with Ms. Taslima
Zaman Happy, Advocates

... for the petitioners

Mr. Mohammad Eunos with Mr. Tapan Kumar
Bepary, and Mr. Bulbul Das Advocates

... for opposite party number 1

Hearing concluded on 24.10.2024

Judgment delivered on 03.11.2024

This rule was issued on an application under Section 115 (1) of the Code of Civil Procedure challenging judgment and decree dated 05.11.2001 (decree signed on 12.11.2001) passed by the Joint District Judge, Court Number 2, Khulna in Title Appeal Number 259 of 1999 allowing the same on reversing those dated 19.08.1999 passed by the Senior Assistant Judge, Dakope, Khulna in Title Suit Number 30 of 1998 decreeing the suit.

The petitioner instituted Title Suit Number 30 of 1998 in the Court of Assistant Judge, Dakope, Khulna praying for cancellation of

sale deed number 1870 dated 17.03.1977 on the grounds that the deed was without consideration, ineffective, and not acted upon. The plaintiff's case, in brief, was that he was the owner of 9.50 acres of land by way of inheritance. He executed and registered the above mentioned sale deed for transfer of 1.50 acres of land therefrom to defendant number 1 Nilima Rani Goldar. At the time of registration, the defendant assured him that after coming back from the sub-registry office, she would pay the consideration money and take back the receipt of the original deed (টিকেট). As the defendant number 1 had not paid the consideration money, the plaintiff did not give her the receipt and also did not hand over the possession of the land in her favour. The defendant had got no title and possession over the land by virtue of the sale deed in question. Still, she claimed title over the same on 07.02.1998, when the cause of action for institution of the suit arose.

During pendency of the suit, opposite party number 1 was added as defendant number 3. Although he was having a power of attorney from defendant number 1, he himself contested the suit without having any right, title and interest of his own in the subject matter. He filed written statement supporting the right, title and possession of defendant number 1 and claiming himself as her Manager-cum-Sharecropper. He also claimed himself to be an attesting witness to the sale deed in question and also claimed that on receipt of full consideration money, the plaintiff executed and

registered the sale deed, and handed over the possession of the suit land in her favour. Defendant number 1 mutated the record and paid rent against the suit land.

On the aforesaid pleadings, the trial court framed the issues, namely, (i) whether the suit was maintainable in its present form, (ii) whether the suit was barred by limitation, (iii) whether the suit was bad for defect of parties, (iv) whether the sale deed number 1870 dated 17.03.1977 was without consideration, inoperative and not binding upon the plaintiff, (v) whether the plaintiff had title and possession over the suit land, (vi) whether the valuation of the suit and court fees paid thereon were correct, and (vii) whether the plaintiff was entitled to the relief as prayed for.

On the above issues, both the parties went on trial, where the plaintiff himself deposed as PW 1 and examined two more witnesses as PWs 2 and 3, while defendant 3 Abdul Majid Sheikh himself deposed as DW 1 and examined two more witnesses as DWs 2 and 3. The plaintiff adduced in evidence the mutated khatian number 1028 and some other documents that were marked as Exhibits:1-5 while the defendant exhibited three sets of documents including the same mutated khatian (vide Exhibits: Ka-Ga).

After conclusion of trial, learned Judge of the trial court decreed the suit by judgment and decree dated 19.08.1999 (decree signed on 26.08.1999). In so doing, the trial court found that the plaintiff was holding the receipt of the original sale deed and as such

it was presumed that no consideration money was paid for the suit land and that the suit was not barred by limitation as the cause of action for filing the suit arose on 07.02.1998. The trial court also observed that the defendant could not prove her possession over the land. Challenging the judgment and decree of the trial court, defendant number 3 preferred Title Appeal Number 259 of 1999 in the Court of District Judge, Khulna in his own name. Learned Joint District Judge, Court Number 2, Khulna ultimately heard the appeal and allowed the same reversing the judgment and decree of the trial court and thereby dismissed the suit. Being aggrieved, the plaintiff-respondent moved in this court with the present revisional application and obtained the rule.

Mr. Sherder Abul Hossain, learned Advocate for the petitioner at the very outset submits that a person aggrieved by any judgment and decree of the trial court has got the right to prefer an appeal against the same. It is apparent on the face of record that the appellant-opposite party number 1 has got no right, title and interest in the subject matter of the suit. He had no reason to be aggrieved by the judgment and decree of the trial court. Therefore, he had no right to bring the appeal in the lower appellate court. Despite the appellant had no locus standi to prefer the appeal, learned Joint District Judge allowed the same and thereby committed error of law resulting in an error in the decision occasioning failure of justice.

Mr. Hossain further submits that although the sale deed in question was registered on 17.03.1977, the title of land was not conveyed in favour of defendant number 1 as no consideration money was paid and no possession was handed over. The plaintiff-petitioner had no reason to institute the suit without having any threat on his title and possession over the land, which he was already enjoying without any interruption from any quarter. When defendant number 1 claimed title for the first time on 07.02.1998, the cause of action for institution of the suit arose. The plaintiff pleaded this fact in the plaint and deposed supporting the pleading as a witness. The trial court rightly held that the suit was not barred by limitation, but the appellate court without proper assessment of evidence reversed the finding and committed error of law. On both grounds, the impugned judgment and decree is liable to be set aside.

Mr. Mohammad Eunus, learned advocate for the defendant-opposite party on the other hand submits that defendant number 3 contested the suit under the notion of representation on behalf of defendant number 1, which would be evident from his deposition. He exhibited the power of attorney given by defendant number 1 in his favour and claimed title and possession over the suit land on her behalf, and further claimed himself as her Manager, Sharecropper and Constituted Attorney. Due to mistake on the part of their learned advocate, his name was described independently. Such mistake would, however, not discharge the plaintiff from the onus to prove his

own case. It appears from the cross-examination of PW 1 (plaintiff) that he admitted the mutation of record in favour of defendant number 1 in 1984-85. He himself exhibited the mutated khatian number 1028 as Exhibit-3, wherefrom it clearly appears that 1.50 acres of land from the said khatian was mutated in the name of Nilima Rani Golder (defendant number 1). He did not claim that no notice was served upon him in the mutation case, or when he learnt first time about the mutation. In such a position, it cannot be held that he was not aware of defendant's claim over the suit land. From the rent receipt, which was exhibited by PW 1, it also does not appear that the plaintiff paid rent against his entire 9.50 acres of land, or that he paid rent against the land in question, i.e. 1.50 acres. Admittedly, the sale deed was registered in 1977 and the mutation was done in 1984-85 and the suit was instituted in 1998, long after registration of the sale deed and mutation of record in 1984-85. The suit is, therefore, barred by limitation and the cause of action as pleaded in the plaint was not proved.

I have considered the submissions of the learned advocates and gone through the record. The plaintiff claimed that the defendant assured him to pay the consideration money after having lunch on the date of registration. It is not clear what prevented the plaintiff from claiming the consideration money immediately thereafter, if she had not paid the consideration money, or from instituting the suit within three years therefrom as prescribed in Article 91 to the First Schedule

of the Limitation Act. Admittedly, the sale deed was executed and registered in 1977 with a clear statement that the executant had received the consideration money. The record of right was mutated in 1984-85 and the plaintiff himself exhibited the mutated khatian (vide Exhibit-3), wherefrom it clearly appears that 1.50 acres of land from the said khatian was mutated in the name of Nilima Rani Golder (defendant number 1). The plaintiff did not claim that no notice was served upon him in the mutation case, or when he learnt about the mutation for the first time and what he did thereafter.

From the rent receipt, which was exhibited by PW 1, it also does not appear that the plaintiff paid rent against his entire 9.50 acres of land, or that he paid rent specifically against the 1.50 acres covered by the sale deed. In that view of the matter, the plaintiff also failed to prove his possession over the land by any documents of possession. Under the circumstances, there is no reason believe that the plaintiff was not aware about the defendant's title/claim of title over the land before 07.02.1998. The suit was, therefore, clearly barred by limitation. Since the suit was barred by limitation, there is no necessity to discuss the other issues involved in the suit.

For the reasons stated above, I do not find any wrong in the ultimate decision of the appellate court and as such there is no reason to interfere with the impugned judgment and decree.

Accordingly, the rule is discharged. Send down the records.