

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 1706 OF 1998

Arab Ali being dead his legal heirs:
1 (ka). Gafor Prodana and others
Plaintiff-Appellant-Petitioners

Versus

Abdur Rab Chokder being dead his legal heirs:-
1(ka). Md. Joynal Chokdar and others
Contesting Defendants-Respondents-Opposite
Parties

Assistant Commissioner (Land),
Chandpur Sadar and others
Proforma-Defendants-Respondents-Opposite
Parties

The Government of Bangladesh, represented by
the Deputy Commissioner, Chandpur and
another
Defendants-Respondents-Opposite Parties

Mr. A. K. M. Badrudduza, Advocate
for the petitioners

Mr. Md. Rahmat Ali, Advocate
for the opposite party No. 2 Abdul Wahed Gain
being dead his legal heirs 2(a) Syedul Haque
Gain and others

Judgment on: 29.8.2023

This Rule was issued calling upon the opposite parties to
show cause as to why the impugned Judgment and Decree dated
12.11.1997 passed by the learned Subordinate Judge, now Joint
District Judge, 2nd Court, Chandpur in Title Appeal No. 47 of 1995

dismissing the appeal and thereby affirming the Judgment and Decree dated 18.2.1995 passed by the learned Assistant Judge, Shaharasti, Chandpur in Title Suit No. 63 of 1994 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner as plaintiff instituted Title Suit No. 63 of 1994 before the Court of learned Assistant Judge, Shaharsti, Chandpur for declaration of title with correction of S.A record.

The plaintiffs Case, in short, is that 10.52 decimals of land of C.S. Khatian No. 250 of Balasia Mouja No. 116 belonged to Abdul Karim Sarker, Abdur Rab Sarker and Abdul Awal Sarkar. The land was sold in auction for arrears of rent in Rent Suit No. 1603 of 1963. The land was purchased in auction by proforma-defendant Khalilur Rahman. Some portion of the land was purchased in auction by Abdul Jabbar. After the death of Abdul Jabbar his brother Ali Mia inherited his land. Ali Mia sold his 2.40 acres of land to the plaintiff vide registered Kabala dated 18.4.1974. Khalilur Rahman sold 5.28 acres of land to the plaintiff vide registered kabala dated 7.5.1978. The land purchased from Ali Mia has been described as 'Ka' schedule and the land purchased from Khalilur Rahman has been described in 'Kha' schedule. Thus the plaintiff became the owner of total 7.68 acres of land. The plaintiff stated that the defendant No.1 has no interest in the suit land. The

S.A. record was wrongly recorded in the names of the defendant No.1 and Abdul Jabbar. On 20.6.1979 the plaintiff-petitioner went to the Office of the proforma defendant No. 6 for mutation of the land and to pay rents. Then he came to know about the wrong S.A. record and obtained the certified copy of the wrong S.A. record and thus instituted the instant suit.

The defendant No. 2 contested the suit by filing a written statement. His case is that in Khatian No. 250 Abdul Karim and others were owners in equal share under Maharaja Sashikanta. The plaintiff's Case of recording the land in R.S. 250 Khatian is not correct. In that Khatian the names of defendant No.1 and proforma-defendant Nos. 7 and 8 were not recorded. Abdul Karim and others were owners of that land. Ayub Ali Zamader on 12.10.1946 purchased 1.99 acres of land by registered kabala and Habibullah Chokdor and his father late Hazimuddin Chokdar purchased 1.69 decimals of land by the same dated Kabala. The defendant No. 2 Wahid Ali Gain purchased 6.77 acres of land. In S.A. record the land has been increased from 10.15 acres to 10.52 acres. The S.A. record being prepared in the names of Abdul Jabbar and Abdur Rob. The defendant Nos. 3-5 in Benami of their brother Azizul Haq purchased 8.52 acres of land from Abdur Rab and Abdul Jabbar on 9.5.1975 ,2.6.1975 and 10.7.1975. The rest 1.59 acres of land has been purchased by Ayub Ali Jamader

and Azizul Haq who has not been made parties in the suit. Thus the defendant No. 2 and Ayub Ali Jamader are the owners of the jama. The plaintiff has no right, title and possession in the suit land.

The learned Assistant Judge, Shaharasti, Chandpur dismissed the suit by his judgment and decree dated 18.2.1995. Against the aforesaid judgment and decree the plaintiff as appellant preferred Title Appeal No. 47 of 1995 before the Court of learned District Judge, Chandpur which was transferred before the Subordinate Judge now Joint District Judge, 2nd Court, Chandpur who dismissed the appeal on 12.11.1997 and hence the plaintiffs-appellants as petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

During pendency of the Rule plaintiff-petitioner Arab Ali and defendant-opposite party No. 2 Abdul Wahed Gain died and their legal heirs were substituted.

Mr. A. K. M. Badrudduza, the learned Advocate for the plaintiff-appellant-petitioners, submits that the Trial Court upon perusal of the materials on record by his judgment and Decree dated 18.02.1995 dismissed the Suit contending that the plaintiff failed to prove his Case, on the other hand the defendants though demanded acquisition of some land in their names and Benami by purchase but their purchase has not been proved. However, the

Trial Court came to the erroneous conclusion that the plaintiff miserably failed to prove his case and he is not entitled to get any relief. He further submits that in deciding the case the Trial Court was guided by misconceived ideas and views in as much as at the outset he found that as per the statement of the plaintiff it is false that Khatian No.250 is R.S. Khatian though the Exhibit-1 is the Khatian No.250 issued by the concerned Revenue Office with the word R.S. beside Khatian No.250 which could not be controverted by the defendants. Even if Khatian No.250 is CS Khatian that does not in any manner affect the merit or fate of this case. So the finding of the Trial Court in respect of Khatian No.250 that the same is C.S. Khatian and not R.S. Khatian is irrelevant for adjudication of the case in hand before the Trial Court. He next submits that Boinama/Certificate of handover of possession being Exhibit 2 and 2(ka) have been claimed false and fake by the defendants which was believed by the Trial Court contending that at the time of hearing of the Application for temporary injunction on 19.08.1981 those two documents have not been submitted for which the injunction petition has been rejected. Referring to the statement of P.W.1 at the time of cross-examination where he demanded that he obtained order of injunction the Trial Court gave the finding that by Order No. 4 such statement proved false and further mentioned that the submission of Boinama and instrument

of hand-over of possession at the fag-end of the case created doubt to the Court. The plaintiff has submitted those two documents before the Trial Court at the time of his deposition which was the right type to place the document and got it marked as exhibit for which question of creating doubt to the mind of the Trial Court is not rational. Such view of the Trial Court is cruel to the plaintiff. The Trial Court went far of stating that in the cross-examination P.W.1 mentioned that the Boinama which was submitted has been collected from Chandpur Court and jumped to the conclusion that such statements means P.W.1 could not speak anything clearly about the documents Exhibit 2 and 2/Ka which is a hopeless and erroneous finding in as much as those exhibits in itself were the testimony of the fact that those were issued by the General Certificate Officer and Magistrate, Chandpur which is invariably a Court. Mr. Badrudduza then submits that it is painful as to how an Assistant Judge failed to understand the status of General Certificate Officer who has issued those certificates being Exhibit 2 and 2(Ka). He next submits that referring to the reply of P.W.1 at the time of cross-examination that "Khalil is now aboard. His age is 30/40 years" and to the statement of P.W.2 during cross-examination that "Khalil is aged about 30/32 years". The Trial Court found that Khalilur Rahman was minor at the time of auction purchase in 1968, hence auction purchase was not found proper. If

for argument sake it is assumed that at the time of deposition of P.W.1 and P.W.2 on 04.02.1995 the age of Khalil was 30/40 years as he was born in 1955 in that case in 1968 his age was 13/14 years. He might be minor then but not incompetent to be the owner of a property by way of auction. In case of minor only limitation is that he or she could not transfer any property owned by him or her except by the legal guardian. P.W.3 in his deposition stated that Khalil obtained the land from his father which might be out of this personal experience that Khalil father's auction purchased the land in the name of his son and that the statement in no manner is contradictory with the auction purchase of the property in the name of Khalil. He then submits that the plaintiff could not produce and exhibit any document supporting auction purchase by Abdul Jabbar and thus forgo the claim of acquisition of 2.40 acres of land from Ali Mia by Kobala dated 18.04.1974 and only persuaded the claim of acquisition of 5.28 acres of land from Khalilur Rahman vide registered Kabala dated 07.04.1978. The said Kobala has been filed before the Trial Court on perusal of which Trial Court found that there was no mention of the age of Khalilur Rahman therein and the value of TK.2000/- for 5.28 acres of land is not believable. Furthermore, the Trial Court pointed out that P.W.1 could not state the names of the writers and witnesses of those two kobala deeds which are testimony of creation of those Kabalas collusively. He

further submits that failure to tell the names of the writers and witnesses of those two deeds should not be the basis of harsh finding that the plaintiff failed to prove his title and those Kabalas have been collusively created. He next submits that the Trial Court stated that P.W.1 deposed that Khalil was in possession of suit property for 20/25 years. Trial Court contended that by dint of Exhibit of 2 and 2(ka) if Khalilur Rahman took possession in 1973 and sold the same to the plaintiff in 1978 how can he possessed for 20/25 years? The Trial Court quoted P.W.1 saying that "I possessed the Suit property for 20/30 years" Since the Kabala of the plaintiff was of 1974 and 1978 the Trial Court found it impractical that the plaintiff possessed the suit property for 20/30years. The Trail Court further contended that as per the deposition of P.W's the plaintiff stepped into the possession after the independence which is contrary to the Kabala but miserably failed to understand that 1973 and 1974 both are after the independence and statement of P.W.2 that they have possessed the Suit property after the Independence of Pakistan was merely slip of tongue. He next submits that the Trial Court expressed wonders that if the plaintiff is in possession of 7.68 acres, the area of his home stide comprising 5/6 Kora is not rational. He further found that the plaintiff did not pay land revenue nor has Khatian in his favour even in the running survey while the defendants claim

publication of Diara Khatian in their names and submitted its draft and came to the conclusion that the absolute possession of the plaintiff has not been proved. Though in the case the defendants did not produce any documents marked as exhibits evidencing Kobalas and Khatians in their favour and the Trial Court clearly mentioned that the defendants failed to prove their case and it is interesting to note that Diara Khatian was submitted by the defendants was not marked as exhibits and not admissible as evidence as per law. He then submits that in the facts and circumstances of the case the Trial Court ought to have decreed the suit in favour of the plaintiff considering the fact that the Boianama and the instrument of handover of possession Exhibit-2 and 2(ka) were proved and could not be controverted by the defendants as false and fake and furthermore the defendants were hopelessly failed to produce the documents of acquiring the land making those as exhibits. He next submits that being aggrieved by the dismissal of the suit by the Trial Court the plaintiff as appellant filed Title Appeal No.47 of 1995 which was heard and disposed of by the learned Subordinate Judge now Joint District Judge, Second Court, Chandpur in Title Appeal No. 47 of 1995 in dismissing the Appeal and affirming the Judgment and decree dated 18.02.1995 passed by the learned Assistant Judge, Saharasti, Chandpur in Title Suit No.63 of 1994. The Appellate Court below without

appreciating the facts and circumstances and upon misreading and non-reading of the materials on record dismissed the Appeal mechanically agreeing to the findings of the Trial Court in as much as he wrongly held that at the time of auction purchase in 1973 Khalilur Rahman's age would be two years prior to birth or nil although he stated that during cross-examination on 04.02.1995 the plaintiff stated that Khalilur Rahman was then 30/32 years old meaning that at the time of auction purchase in 1968 his age would be minimum 5/7 years and on such erroneous finding the Trial Court held that auction purchase being not proved the plaintiff could not claim title by dint of auction purchase. The Appellate Court below also held that the two Kobalas of the plaintiff have not been proved. The Appellate Court below also raised the objection that though the plaintiff claimed possession for 20/25 years by Khalilur Rahman but Khalilur Rahman took over possession in 1973 and sold in 1978 as such the claim is not acceptable without regard to the fact that the plaintiff stepped into the shoe of Khalilur Rahman and by way of title acquired by him enjoyed the possession from 1973 up to 1995, thus as per P.W.1's deposition his possession was about 17 years as such Appellate Court below failed to appreciate the fact of title and possession in favour of the plaintiff and committed an error of law by dismissing the Appeal. He next submits that upon careful perusal of the record it is crystal

clear that the title of the plaintiffs was well founded by the documents Exhibit 2 and 2(ka) in favour of Khalilur Rahman who transferred 5.28 acres by registered kabala dated 07.04.1974 in favour of the plaintiff considering that the Boinama and instrument of the handover Exhibit 2 and 2(ka) could not be controverted or reverted by the defendants nor proved to be false or fake. Thus the plaintiff is entitled to decree for 5.28 acres of land.

Mr. Md. Rahmat Ali, the learned Advocate for the defendant-respondent-opposite party Nos 2(a) and others opposes the Rule and submits that Ayub Ali Jamader purchased 1.69 acres of suit land and defendant No.2 Abdul Wahed Gain purchased suit land 8.52 acres in his name and his son named Azizul Haque as Benami. The plaintiff petitioners did not implead Ayub Ali Jamadar and Azizul Haque in Title Suit No. 63 of 1994 as defendants. Both the Courts below found the suit barred by defect of parties as such the suit is bad for defect of parties and the suit is not maintainable. He then submits that the plaintiff-petitioners suit is under valued in sufficient Court fee and the plaintiff-petitioners have no possession in the suit land and the plaintiff-petitioners have no right, title and interest in suit land. The plaintiff-petitioners did not file the suit in proper Court fee. So the petitioner's suit is not maintainable. He next submits that C.S. Khatian was prepared in the name of (1) Abdul Karim (2) Abdur Rob (3) Abdul Awal

under Moharaza Shasikanta. S.A. Khatian was correctly prepared in the name of (1) Abdur Rob Chockder and (2) Abdul Zabbar. The defendants purchased the suit land from S.A. recorded tenant and the heirs of the defendants purchased the suit land by kabala deeds dated 9.5.1975, 2.6.1975 and 10.07.1975, all the kabala documents kept in L.C.R. Ayub Ali Jamadar purchased the Suit land 1.69 acres by way of registered kabala. Defendant No.2 Wahed Ali Gain purchased the part of the suit land in his name and became Benami of his son. He further submits that the suit land owned by the defendants-opposite party Nos.1-4 have right, title, interest and possession in the suit land. The defendants-opposite parties got mutation, upto date rent receipt and DCR of the suit land in their favour and names. They have been possessing and enjoying the suit land with cultivation, making dwelling house and have been living with their family and producing valuable various crops. He next submits that the Diara Khatian (draft) was prepared in the names of the defendants. The Rent Suit No. 1603 of 1962-63 and auction sale and Boinama and Dhokolnama are false, fabricated and manufactured. Auction purchaser Khalilur Rahman and Abdul Jabbar, rent suit and Boinama, Dhokolnama are not true and correct when auction sale held in the year 1962-1963 at that time Khalilur Rahman was not born. Khalilur Rahman was born after 2(two) years of auction sale. He lastly submits that

the plaintiff-petitioners failed to produce original document before the Trial Court. The plaintiff-petitioners failed to produce auction sale registration before the Trial Court. The plaintiff-petitioners did not come before the Trial Court in clean hand and the petitioner failed to prove their case. The plaintiff- petitioners firstly filed Title Suit No. 202 of 1979 in respect of the suit land before the Court of learned Munsif, 1st Court, Now Assistnat Judge, Chandpur. But he failed to prove that the case and thereafter the predecessor of the present petitioners as plaintiff filed Record Correction Suit No. 266 of 1975 before the learned Munsif Court, Chandpur. But he failed to prove his case. In cross examination the plaintiff claimed that he did not file those cases. The petitioners prayed for injunction of suit land in the Court of learned Munsif, Now Assistant Judge, Chandpur but failed to get injunction. In cross examination the petitioners claimed that they got injunction of the Trial Court. The plaintiff has given false statement in witness again and again and misguided the Court and thus the present Civil Revision is liable to be discharged.

Heard the learned Advocates for the parties and perused the record.

The petitioners as plaintiffs instituted the instant suit for declaration of title with correction of S.A. record. It appears from the record that the plaintiff-petitioners failed to produce or adduce

any oral or documentary evidences before the Courts below to substantiate their own case, even if their so-called ownership along with the possession could not be proved anyway. Both the Courts below upon perusing the material evidence on record came to concurrent finding of fact that the plaintiff-petitioners have not been able to prove their case by adducing evidences. There is no misreading or non-consideration of evidence by the Courts below and the plaintiff-petitioners could not point out any misreading and non-consideration of evidence on record, and thus this Court cannot interfere with the concurrent findings of facts. I find no substance in the Rule, rather I find substance in the submissions of the learned Advocate for the defendants-opposite party No. 2.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 12.11.1997 passed by the learned Subordinate Judge, now Joint District Judge, 2nd Court, Chandpur in Title Appeal No. 47 of 1995 in dismissing the appeal and thereby affirming the Judgment and Decree dated 18.2.1995 passed by the learned Assistant Judge, Shaharasti, Chandpur in Title Suit No. 63 of 1994 is hereby up-held.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.