

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

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 1449 of 2016

Most. Salina Akter Banu
Plaintiff-Appellant-Petitioner

Versus

Md. Abdul Malek
Defendant-Respondent-Opposite Party
No. 1

Most. Rohmotun Nesa and others
Proforma Defendants-Respondents-
Opposite Parties

Mr. Md. Gias Uddin, Advocate with
Mr. Mohiuddin M. A. Kader, Advocate
for the plaintiff-appellant-petitioner

Mr. Md. Abdullah al-Mahmud
Chowdhury, Advocate
for the defendant-respondent-opposite
party No. 1

Judgment on: 17.12.2023

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Decree dated 18.4.2016 passed by the learned District Judge, Dinajpur in Other Class Appeal No. 287 of 2011 disallowing the appeal and thereby affirming the Judgment and Decree dated 11.9.2011 passed by the learned Assistant Judge, Birgonj, Dinajpur in Other Class Suit No. 11 of 2008 dismissing the suit 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 a suit being Other Class Suit No. 11 of 2008 in the Court of learned Assistant Judge, Birgonj, Dinajpur against the defendant-respondent-opposite party No. 1 for declaration of title in the suit land and also for declaration that the Judgment and Order dated 28.4.1994 passed by the learned Assistant Judge, Birgonj, Dinajpur in Pre-emption Miscellaneous Case No. 14 of 1993 is illegal, void and not binding upon the plaintiff.

The plaintiff's Case, in short, is that the original owner of the suit property was Mohsin Ali Sarker brother of the defendant No. 1 who proposed to sell the suit property to the defendant No. 1 and when the defendant No. 1 refused to purchase the same then Mohsin Ali sold the suit property to Mozahidul Islam Biplob on 09.8.1993 vide Kabala deed No. 4680 and 4681. Thereafter Biplob sold the suit property to his sister plaintiff Most. Selina Akter on 14.12.1993 vide deed No. 6915 and handed over the possession of the suit property in favour of the plaintiff on the same day and thereafter the plaintiff had been possessing the suit property by mutating her name and paying rents and taxes in respect of the said property. The defendant No. 1 is a full brother of Mohsin Ali

Sarker, he filed the Pre-emption Case being Pre-emption Miscellaneous Case No. 14 of 1993 under Section 96 of the State Acquisition and Tenancy Act 1950, before the Assistant Judge, Birgonj and obtained Order on 28.4.1994 and the plaintiff filed Miscellaneous Case No. 11 of 2008 challenging the said Order when the defendant No. 1 filed an application on 16.10.2007 for getting possession of the suit land under Pre-emption Miscellaneous Case No. 14 of 1993 and that application was filed 14 (fourteen) years later which would not be accepted as per law as such the Order passed in Miscellaneous Case No. 14 of 1993 is illegal, void and the plaintiff-petitioner has a lawful title upon the disputed property.

The defendant No. 1 contested the suit by filing a written statement denying all material allegations stating, inter alia, that the plaintiff's suit is not maintainable in its present form and it is barred by limitation. The Case of the defendant No. 1 is that the original owner of the suit property was Baker Uddin Mondal who had been enjoying and possessing the suit property. Baker Uddin died living behind one son and one unmarried daughter, their names were duly mutated in Khatian No. 444. The daughter of Baker Uddin died living behind her only brother Helal Uddin, Helal Uddin died living behind one wife, three sons and four

daughters, Mohsin Sarker is the first son of Helal Uddin; he became the sole owner of the whole suit property is disputed Plot No. 1268 vide a mutual partition within the family. Mohsin Ali sold suit property to Mohammad Mozahidul Islam vide two sale deeds. Md. Abdul Malek full brother of Mohsin Ali filed a Pre-emption Miscellaneous Case No. 14 of 1993 challenging the said sale and Order was passed in that Pre-emption Case on 28.4.1994. Defendant No. 1 Abdul Malek had been enjoying and possessing the suit property since long before but erroneously he did not take possession through the Court and as such he took step to take possession through the Court in 2007. The plaintiff purchased the suit property from the defendant No. 2 when the Pre-emption Case was under trial which is barred by lis pendens. The plaintiff has no cause of action and she has filed the case to harass the defendants.

The learned Assistant Judge, Birgonj, Dinajpur dismissed the aforesaid suit vide Judgment and Decree dated 11.9.2011. Against the said Judgment and Decree the plaintiff as appellant filed Other Class Appeal No. 287 of 2011 before the learned District Judge who disallowed the appeal on 18.4.2016 and thereby affirming the Judgment and Decree dated 11.9.2011 passed by the learned Assistant Judge, Birgonj, Dinajpur in Other Class Suit No.

11 of 2008 and hence the plaintiff as petitioner moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Md. Gias Uddin, the learned Advocate appearing with Mr. Mohiuddin M. A. Kader learned Advocate for the plaintiff-appellant-petitioner, submits that both the Courts below failed to consider that the P.W. 2 namely Md. Akter Hossain stated in his chief that “আমি মোকদ্দমার বাদী-বিবাদী ও নালিশী জমি চিনি। নালিশী জমি আমার বাড়ীর পশ্চিম উত্তর দিকেবর্তমানে জমিটা সেলিনা ও তার স্বামী আবুল প্রিন্সিপাল দখল করছে। নালিশী জমি মালেক মহসিন দখল করে না।” and P.W. 3 Md. Abdullah Al Habib stated that ...নালিশী জমির উত্তর পার্শ্বে জমি আছে। মালেকের লাগা জমির পরে আমার জমি। নালিশী জমি মহসিনের ছিল। মহসিন তাহা বিপ্লবকে বিএনী করে। বিপ্লব তা দখল অবস্থায় সেলিনাকে দেয়। সেলিনা সে জমি চাষাবাদ করে স্বামী প্রিন্সিপাল আবুলের মাধ্যমে।” and P.W. 4 Md. Sajjad Hossain also stated that “.....নালিশী জমি দক্ষিণ পশ্চিমে কিছুটা সংলগ্ন আমার জমি আছে। নালিশী জমি বর্তমানে প্রিন্সিপাল সাহেব দখল করে। নালিশী জমি মালেক ও মহসিন দখল করে না। তবে পার্শ্বেই তাদের জমি আছে।” and as such both the Courts below committed an error of law resulting in an erroneous decision occasioning failure of justice. He further submits that the defendant No. 1 filed a Pre-emption Case being No. 14 of 1993 under Section 96 of the State Acquisition and Tenancy Act before the Assistant Judge, Birgonj, Dinajpur and Order dated 28.4.1994 was passed in

that case but the defendant No. 1 filed an application on 16.10.2007 for getting possession of the case property under Pre-emption Miscellaneous Case No. 14 of 1993 that the application was filed 14 years after and that would not be accepted under law and as such the Order passed in Miscellaneous Case No. 14 of 1993 is illegal and void but both the Courts below without considering the same passed the impugned order. He further submits that the Order of pre-emption has been made under Section 96 of the State Acquisition and Tenancy Act. Section 96(6) C of the Act provides that an Order of pre-emption is executable for the purpose of placing the pre-emptor in possession of the pre-emptable land but in the instant case the defendant No. 1 did not file any application for executing the order of pre-emption in time. Both the Courts below without considering the same passed the impugned order. He next submits that the petitioner purchased the suit land on 14.12.1993 being Registered Deed No. 6915 and since then she has been enjoying the possession with pay all rents and mutated her name and the math porcha published in the name of the petitioner and she did not know about the proceeding of the pre-emption case in Miscellaneous Case No. 14 of 1993. Moreover, she was not made any party to earlier suit and the pre-emptee received notice on 04.1.1994 but the Trial Court as well as

the Appellate Court below without considering the same passed the impugned Judgment and Order. He lastly submits that Article 182 of the Limitation Act prescribes 3 years for execution of Order passed in pre-emption case under Section 96 of the State Acquisition and Tenancy Act. So, the application for execution of Decree after 13 years 6 months 12 days from the date of obtaining decree on 28.4.1994 is barred by law and the proceeding out of this Case is void and illegal and cannot run in the eye of law as this Case itself infructuous. In support of his submissions he has referred the case of Md. Shariatullah-Vs-Ashrafunnesa reported in 28 DLR(AD)64 and the case of Mohammad Ali Bepary and others-Vs-Garupranjan Chakrobotty and others reported in 2XP(AD)72.

Mr. Md. Abdullah al-Mahmud Chowdhury, the learned Advocate for the defendant-respondent-opposite party No. 1, submits that the suit land was the ancestral property of the defendant-respondent-opposite party who regained the same through the pre-emption Order dated 28.4.1994 in Pre-emption Case No. 14 of 1993 upon filing the same against his full brother, the predecessor of the plaintiff-petitioner. He further submits that the suit land was in possession of the defendant-respondent-opposite party which has been noticed by both the Court below

who concurrently gave finding that obtaining possession through Court was not necessary for the defendant-respondent-opposite party in as much as he had been in possession and therefore, delay in filing application for execution of the preemption order dated 28.4.1994 does not affect him.

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

Admittedly, the defendant-respondent-opposite party No. 1 who is pre-emptor in the aforesaid pre-emption case filed an application on 16.10.2007 for getting possession of the suit property under Pre-emption Miscellaneous Case No. 14 of 1993 which proves that the defendant-respondent opposite party No. 1 pre-emptor had not been enjoying and possessing the suit property and for getting possession of the suit property the application was filed more than 13 years later from the date of obtaining decree on 28.4.1994 is barred by law and the proceeding out of this case is infructuous as Article 182 of the Limitation Act, 1908 prescribes 3 years for execution of Order passed in Pre-emption Case under Section 96 of State Acquisition and Tenancy Act, 1950.

Considering the facts and circumstances of the Case, I find substance in this Rule.

Accordingly, the Rule is made absolute.

The impugned Judgment and Decree dated 18.4.2016 passed by the learned District Judge, Dinajpur in Other Appeal No. 287 of 2011 disallowing the appeal and thereby affirming the Judgment and Decree dated 11.9.2011 passed by the learned Assistant Judge, Birgonj, Dinajpur in Other Class Suit No. 11 of 2008 dismissing the suit is hereby set-aside.

The order of stay and status-quo granted earlier by this Court is hereby vacated.

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