

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

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 2193 of 2017

Md. Belal Hossain
Plaintiff-Respondent-Petitioner

-Versus-

Md. Sayejuddin Mondal and others
Defendants-Appellants-Opposite Parties

General Certificate Officer, Parbatipur,
District-Dinajpur and others
Proforma-Defendants-Respondents-Opposite
Parties

Mr. Md. Habibul Islam Bhuiyan, Advocate
with
Mr. Md. Aslam Hossain, Advocate
for the plaintiff-respondent-petitioner

No one appears
for the defendants-appellants-opposite parties

Judgment on: 12.12.2023

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 26.6.2014 passed by the learned Special District Judge, Dinajpur in Other Appeal No. 293 of 2011 allowing the appeal and thereby reversing the Judgment and Decree dated 29.8.2011 passed by the learned Senior Assistant Judge, Parbatipur, Dinajpur in Other Class Suit No. 66 of 2005 decreeing 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 present petitioner as plaintiff instituted Suit being Other Class Suit No. 66 of 2005 before the Court of learned Assistant Judge, Parbatipur, Dinajpur and prayed for declaration to the effect that the proceedings of Certificate Case No. 25 of 2002-2003 are collusive, illegal, inoperative, purposive, mere parper transaction and not binding upon the plaintiff in respect of Ka schedule land.

The plaintiff's Case, in short, is that the suit land measuring an area of 66 decimal appertaining to Plot No. 217, 219, 220, 223 of S.A. Khatian No. 147, 149, 179, 188 under the Mouza of Jhinikury, Police Station Parbatipur, District: Dinajpur. The plaintiff Belal Hossain and his 3 sisters have been holding and possessing the suit lands by paying rents to the Government which are use for their homestead in part and rest are use for the purpose of horticulture. The plaintiff being a farmer took loan from Rajshahi Krishi Unnayan Bank and he became a defaulter as he did not repay the loan money amounting at Taka 24,000/- hence the aforesaid Bank filed Certificate Case being No. 25 of 2002-2003 and the same was purchased in auction by the defendant No. 3 Md. Sayejuddin Mondol on 27.12.2003 and he got certificate and subsequently the Certificate Court handed-over possession of the suit land to the defendant No. 3. The plaintiff did not get notice under Section 7 of the Public Demands

Recovery Act, 1913 from the Certificate Court and the auction was held behind the back of the plaintiff, if he knew that the land was auctioned he would have purchased the same after paying the said money. When the auction came to the knowledge of the plaintiff he procured certified copy from the Certificate Court and instituted the instant suit.

The defendant No. 3 auction purchaser after receiving the summons appeared before the Court and he denied the material allegations made in the plaint and he submitted in his written statement that the suit is not maintainable in the present form, the suit is barred by limitation and the plaintiff did not come to the Court with clean hand. He got notice duly from the Certificate Court, rather he sold the land which was mortgaged earlier to the Bank, as such the suit is liable to be set-aside.

The learned Senior Assistant Judge, Parbatipur, Dinajpur decreed the suit by his Judgment and Decree dated 29.8.2011 and against the aforesaid Judgment and Decree the defendant as appellant preferred appeal being Other Class Appeal No. 293 of 2011 before the learned District Judge, Dinajpur who allowed the appeal on 26.6.2014 and thereby reversing the Judgment and Decree dated 29.8.2011 passed by the learned Senior Assistant Judge, Parbatipur, Dinajpur in Other Class Suit No. 66 of 2005 and thus 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. Habibul Islam Bhuiyan, the learned Senior Advocate for the plaintiff-respondent-petitioner, submits that the notice under Section 7 of the Public Demands Recovery Act, 1913 was not duly served upon the certificate debtor Md. Belal Hossain i.e. plaintiff which is gross violation of law as well as violation of principle of natural justice. Our Apex Court has opined that if notice was not duly served the total proceeding will be vitiated, the process surveyor was examined as P.W.5 who stated in his examination in chief that “ আমি পার্বতীপুর উপজেলা নির্বাহী অফিসের জারিকারক। আমি ১৯৯৫ সাল হতে এই পদে কর্মরত রয়েছি। আমি ২৫/২০০২-২০০৩ নং সার্টিফিকেট কেসের খাতক বেলাল হোসেনের নামীয় নোটিশ জারি করার জন্য দায়িত্বপ্রাপ্ত হই। আমি ২২.০৩.২০০৩ ইং সালে খাতকের বাড়ী যাই। কিন্তু খাতককে না পেয়ে মোকাবিলা স্বাক্ষরী সাক্ষাতে আমি নোটিশ জারি করি। এই মামলার ক্রোকী পরোয়ানা আমার উপর হাওলা হয়। আমি ক্রোকী পরোয়ানা নিয়ে খাতক বেলালের বাড়ী যাই কিন্তু তার মালামাল না পাওয়ায় উক্ত পরোয়ানা সেই মর্মে ফেরত দেই। আমি ৪৬ ধারার নোটিশ জারী করি। ২৪.০৪.২০০৩ তারিখের নোটিশ বেলাল স্বয়ং হাজির থেকে নোটিশ স্বাক্ষর করেন। In this case, summons was served by the process surveyor without mentioning the names and address of Mokabila witnesses and as such the impugned certificate proceedings are illegal, malafide, collusive and liable to be set aside. He further submits that the declaration suit must be filed within 6 years as per provision of the

Limitation Act, 1908. The present suit was filed on 09.08.2005, the Certificate Court issued summons upon the certificate debtor and the same was served by affixing to conspicuous place of the house of the certificate debtor (Md. Belal Mondol) on 22.03.2003 as he was not in house and as such the instant suit was filed by the plaintiff within 6 years and therefore there is no limitation in this case. He next submits that the summons under Section 7 of the Public Demands Recovery Act, 1913 was not duly served upon certificate debtor, so the burden of proof lies upon the judgment creditor as well as auction purchaser that summons was duly served upon the plaintiff Md. Belal Hossain which was not proved by the defendant No. 3 who stepped the shoes of the Bank and as such the auction proceeding is not binding upon the plaintiff petitioner and as such the impugned judgment is not tenable in law. He then submits that the defendant No. 3 is muscle man in his locality after purchased the auction, he arranged muscleman from his locality and he dismantled the house of the plaintiff which was stated in cross by the plaintiff that “নালিশী জমিতে এখন আমার বাড়ী নাই বিবাদীরা ভেঙ্গে দিয়েছে” and as such the impugned judgment is not sustainable in law and liable to be set aside. He further submits that the plaintiff’s 3 full sisters are the owners of the suit land which is not denied by the defendant without impleading them as a party in auction proceeding and as such the auction proceeding is totally illegal and without jurisdiction. Therefore the

impugned judgment and decree are liable to be set aside. He then submits that the plaintiff Md. Belal Hossain on 04.12.1994 took agriculture (Plouring Oxen) loan 6000/- (six thousand) Taka from Rajshahi Krishi Unnayan Bank. The plaintiff as a Monga Striken people some times paid some money to the Bank but at one time the interest increases a lot of money on 28.01.2003 the Bank claim 13,181/- Taka and filed a Certificate Case being No. 25/2003-2004 against the plaintiff Belal Hossain. Later on due to various reasons including the cost of the certificate case, the total amount of debt stand 22,981/- Taka. The auction was sold by the Certificate Officer on 27.12.2003 amounting Taka 24,000/- and the same was purchased by the defendant No. 3 and he paid the said money. Auction Notice under section 7 of Public Demands Recovery Act, 1913 was not tendered to the plaintiff hence he was not aware of the auction. When he came to know in respect of auction, instituted the instant suit before the learned Assistant Judge, Parbatipur, Dinajpur who decreed the suit in favour of the plaintiff along with given a direction to the plaintiff to deposit auction sale amount of Taka 24,000/- with interest 10% Taka per annum from 27.12.2003 till the date when the money will be deposited to the Bank in the name of defendant No. 3. The plaintiff complied with the said Order deposited 42,400/- Taka on 26.09.2011 and as such the impugned judgment and decree are not tenable in law. In support of his submissions he has referred to the

Case of Upendra Chandra Rishi-Vs-Sufia Begum reported in 42DLR(AD)285 and Case of Asgar Ali (Md.)-Vs-Md. Shahidul Islam P.K. and Others reported in 18MLR(AD)39.

No one appears to oppose the Rule.

Heard the learned Advocate for the plaintiff-petitioner and perused the record.

The learned Appellate Court below took decision that the summons under Section 7 of the Public Demands Recovery Act, 1913 was served upon the plaintiff but it transpired from the evidence of P.W. 5 Process Surveyor that he did not serve the summons upon the present plaintiff petitioner which is violation of the principle of natural justice. The Court of Appeal below dismissed the suit on the ground of limitation but the Court of Appeal below did not consider that the suit for declaration of title must be filed within 06 years from the judgment of the certificate case or date of knowledge. The present suit was filed on 09.8.2005, the summons was served upon the Certificate debtor Md. Belal Hossain on 22.3.2003 and the instant suit was filed by the plaintiff within 06 years as per the Limitation Act, and as such there is no limitation in this case. It further appears that the plaintiff Belal Hossain on 04.12.1994 took agriculture loan Taka 6000/- from Rajshahi Krishi Unnayan Bank. Plaintiff as a Monga Striken people some times paid some money to the Bank, but at one time the interest increases a lot of money. On 28.01.2003 the Bank

claimed 13,181/- Taka and filed a Certificate Case being No. 25/2003-2004 against the plaintiff Md. Belal Hossain. Later on due to various reasons including the cost of the certificate case, the total amount of debt stand 22,981/- Taka. The auction was sold by the Certificate Officer on 27.12.2003 amounting Taka 24,000/- and the same was purchased by the defendant No. 3 and he paid the said money. Auction Notice under section 7 of Public Demands Recovery Act, 1913 was not tendered to the plaintiff hence he was not aware in respect of auction. When he came to know in respect of auction, filed the instant suit before the learned Assistant Judge, Parbatipur, Dinajpur who decreed the suit along with a direction upon the plaintiff to deposit auction sale amount of Taka 24,000/- with interest 10% Taka per annum from 27.12.2003. The plaintiff complied with the said order deposited 42,400/- Taka on 26.09.2011. Considering the above facts and circumstances of the case I find substance in this Rule.

In the result, the Rule is made absolute.

The impugned Judgment and Decree dated 26.6.2014 passed by the learned Special District Judge, Dinajpur in Other Appeal No. 293 of 2011 allowing the appeal and thereby reversing the Judgment and Decree dated 29.8.2011 passed by the learned Senior Assistant Judge, Parbatipur, Dinajpur in Other Class Suit No. 66 of 2005 is hereby set aside.

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The order of stay granted earlier by this Court is hereby vacated.

Let the record be sent down to the Courts below with a copy of the judgment at once.