

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 3684 OF 2011

Abul Kalam
Plaintiff-Appellant-Petitioner

Versus

Mahfuzur Rahman and others
Defendants-Respondents-Opposite Parties

Ms. Amatul Karim, Advocate
for the plaintiff-appellant-petitioner

Mr. Md. Saifur Rahman, Advocate
for the defendant-respondent-opposite
parties

Judgment on 26.5.2022

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 30.1.2011 passed by the learned Joint District Judge, 3rd Court, Noakhali in Title Appeal No. 21 of 2008 disallowing the appeal and thereby affirming the Judgment and Decree dated 31.7.2007 passed by the learned Assistant Judge, Companiganj, Noakhali in Title Suit No. 302 of 2004 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 the instant suit being Title Suit No.163 of 1999 in the Court of learned Senior Assistant

Judge, Companiganj for declaration to the effect that the ex-parte decree of Title Suit No.143 of 1976 passed by the learned Munsif, Sadar 1st Court, Noakhali on 2.7.1976 is illegal, inoperative and without any force. This suit has been transferred to the Court of learned Senior Assistant Judge, Begumganj and was renumbered as Title Suit No.55 of 2002. Thereafter the suit was transferred to the learned Assistant Judge, Companiganj, Noakhali and was renumbered as Title Suit No.302 of 2004.

The plaintiff's Case, in short, is that the suit land originated from 2.21 acres of land appertaining to Plot No.312, Khatian No. 108, Char Mandalia Mouza No.225, Shudharam Police Station of Noakhali District described in "Ka" schedule to the plaint; it belonged to equal shares of Fazler Rahman and Golam Rahman. Fazler Rahman had 04 (four) sons namely Rustam Ali, Yousuf Ali, Aiyub Ali and Abdul Ali and two daughters Zahura Khatun and Rahima Khatun. Fazler Rahman sold his $01.10\frac{1}{2}$ acres of land to one Chan Mia during his life time and after death of Chan Mia this property was recorded in the name of Chan Mia's son Habibur Rahman and others. On the other hand, Golam Rahman was Childless and he died leaving behind aforesaid Fazler Rahman's four sons and two daughters as his successors. Accordingly, Golam Rahman's $01.10\frac{1}{2}$ acres of land was later on recorded in the names

of Fazaler Rahman's four sons and two daughters in the Diara khatian No. 238 under the same mauza. Besides, Fazler Rahman's daughter Zahura Khatun died leaving behind a son namely Abdul Barik, Abdul Barik inherited his mother's $0.11\frac{1}{2}$ acres of land.

Thus being owner of $1.10\frac{1}{2}$ acres of land, Golam Rahman's above stated successors sold the same to Abdul Matin through two sale deeds i.e. Kabala Nos. 4956 of 1986 and 4957 of 1986 on 7.9.1986. Subsequently, on 2.2.1998 Abdul Matin sold the same to the plaintiff vide Kabala No. 663. The defendants do not have any right, title and possession in the suit land. Nevertheless the defendants claimed the same relying on the ex-parte judgment and decree passed dated 02.7.1976 in Title Suit No. 143 of 1976. The summons of Title Suit No.143 of 1976 was not served upon this predecessor of the plaintiff and thus the impugned ex-parte decree was obtained by the father of defendant Nos. 1 and 2 by practicing fraud upon the Court. The plaintiff further alleged that he came to know about the ex-parte decree on 26.5.1999 and thus he was constrained to file the instant suit challenging the impugned judgment and decree of Title Suit No.143 of 1976.

The defendant Nos.6-10 and 11-20 contested the suit by filing two separate written statement denying the material allegations of the plaint. The brief facts of the written statement of

defendant Nos. 6-10 are that Fazler Rahman and his brother Hariser Rahman were owners of 2.21 acres of land in equal shares, appertaining to the D.S. khatian No. 108 in question through settlement from the superior landlord Kumar Arun Chandra Singha vide a registered Kabuliyat dated 29.06.1905. But the name of Golam Rahman was wrongly inserted in the D.S. khatian instead of Hariser Rahman. Even so, Fazler Rahman and Hariser Rahman were owners of the said land and they sold the entire land of D.S. khatian No.108 to Chan Miah. Chan Miah died leaving behind a son named Habiber Rahman and a daughter namely Maleka Khatun. Later on the land was recorded in the Diara khatian as 1.01 acres and 1.11 acres appertaining to Plot No. 328 under khatian Nos. 229 and 228 respectively of the same mouza. But the land was wrongly recorded in the names, inter alia of the heirs of Fazler Rahman alongside the names of true owners Habiber Rahman and Maleka Khatun. However being aware of the wrong record, Habiber Rahman and Maleka Khatun filed a Title suit before the Court of learned Munsif, 1st Court, Noakhali in 1976 bearing Title Suit No. 143 in which the defendants did not appear notwithstanding due service of summons and as such the suit was decreed ex-parte on 2.7.1976. Later on Habibur Rahman gifted 1.47 acres of land to his wife Sufia Khatun vide gift-deed No.150 of 1980. Sufia Khatun sold $17\frac{1}{4}$ decimals of land to Ali Azam

Miah vide kabala No.2850 of 1991. Ali Azam Miah sold this land to defendant No.6. Futher Sufia Khatun sold another $4\frac{1}{2}$ decimals of land appertaining to the suit plot to the defendant Nos.8, 9 and Abul Bashar. Thereafter Abul Bashar sold his share to the defendant No.6. In addition, Sufia Khatun sold $95\frac{1}{2}$ decimals of land to defendant Nos. 6 and 7 vide kabala No. 2849 of 2011. On the other hand, the decree-holder of Title Suit No.143 of 1976 Maleka Khatun sold 73 decimals of land out of the suit plot to Mahfuzul Huq and Afzal Huq vide kabala Nos. 805 of 1981 who subsequently sold $35\frac{1}{5}$ decimals of land to the defendant No. 10 vide kabala No. 2769 of 1989. Thus, the defendant Nos. 6-10 stated that they are in possession of the suit land since 1989 whereas the plaintiffs do not have any right, title and possession therein and consequently they prayed for dismissal of this suit with cost.

The written statement of defendant Nos.11-20 are fully similar with that of the defendant No.6-10 as regards chain of title. In addition to that, the defendant Nos. 11-20 stated that the decree holder of Title Suit No.143 of 1976 sold her entire land to Nurul Huda, Nurun Nabi, Mahfuzul Huq and Afzal Huq. Nurul Huda and Nurun Nabi sold $36\frac{1}{2}$ decimal of land on 19.3.1984 appertaining

to plot No. 328 to the predecessor of the defendant Nos.11-20 Alam Miah. On the contrary Mahfuzul Huq and Afzal Huq sold 11 decimals of land appertaining to the suit plot to Alam Miah. Thus being owner of $47\frac{1}{2}$ decimals of land, Alam Miah died leaving behind the defendant Nos.11-20 as his heirs. Thus the defendant Nos.11-20 stated that the plaintiff does not have any right, title and possession in the suit land and as such they prayed for dismissal of this suit with cost.

The learned Assistant Judge, Companygonj, Noakhali dismissed the Suit by his Judgment and Decree dated 31.7.2007 and thus the plaintiffs as appellants preferred Appeal being Title Appeal No. 21 of 2008 before the learned District Judge, Noakhali which was transferred to the Court of learned Joint District Judge, 3rd Court, Noakhali who dismissed the Appeal by its Judgment and Decree dated 30.1.2011 and thereby affirming the Judgment and Decree dated 31.7.2007 passed by the learned Assistant Judge, Companygonj, Noakhali and hence the plaintiff-appellant as petitioner moved this application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Ms. Amatul Karim, the learned Advocate for the plaintiff-appellant-petitioner, submits that the learned Assistant Judge, Companygonj committed an error of law in dismissing the suit without considering that the suit property rightly belongs to the

plaintiff-appellant-petitioner by operation of law but the defendants- opposite parties by manufacturing some documents and by practicing fraud upon the Court obtained the ex-parte decree without having no title over the suit land. On the other hand, the Court of Appeal below manifestly committed an error in affirming the judgment and decree passed by the Trial Court by giving totally wrong findings occasioning failure of justice. She further submits that having regard to the fact that the plaintiff-appellant-petitioner purchased the suit property from the person who had Khas possession over the suit land and enjoyed the same by cultivating crops and paying rents to the Government as the owner. On the face of the record having found his vendor as genuine owner and possessor of the suit land he purchased the suit land and became owner, title-holder and possessor of the same but the Court below made gross error of law in disbelieving the evidences of the plaintiff witnesses and in wrong presumption about the service of notice of ex-parte decree thus both the Courts below committed an error of law. She lastly submits that the Court of Appeal below fell into grave error of law in not allowing the appeal taking into consideration that the summons of Title Suit No. 143 of 1976 was duly served despite no existence of any service of notice with the case record and further failed to consider the

defendants case is not based on evidence on record and as the impugned judgments are liable to be set aside.

Mr. Md. Saifur Rahman, the learned Advocate for the defendants-respondents-opposite parties, submits that the learned Assistant Judge categorically stated that the plaintiff's predecessor Golam Rahman did not have any right, title in the suit land as because he did not challenge the Exhibit-2(Ga) and D.S. Khatian No. 108 was sold in 1919 by two brothers and the plaintiff admitted that the purchased land from Abdul Matin by Kabala Deed No. 663 of 1998 and in that time his vendor was in title less and admittedly defendant's predecessor in interest Chand Mia became owner of schedule land D.S. Khatian No. 108 proved the chain of defendants title and the plaintiff (P.W. 1) admitted the defendant's possession "৩২৮নং দাগে ২টি বাড়ি আছে। নালিশী দাগে ১১ নং বিবাদীর বাড়ি আছে" and the learned Court of Appeal below also opined that the defendants title and possession has been admitted and summons was duly served upon the defendants of Title Suit No. 143 of 1976 and as such the instant Civil Revision is liable to be dismissed.

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

The plaintiff's main grounds of the suit that the ex-parte decree dated 02.7.1976 in Title Suit No. 143 of 1976 was obtained

without issuing summons upon the predecessor in interest of the plaintiff but the Trial Court upon calling the record of Title Suit No. 143 of 1976 found that summons was duly served upon the defendants which is evidently from Order No. 4 on 26.5.1976 and fixed the next date on 02.7.1976 for ex-parte order and rightly corrected the Diara Khatian No. 108 in favour of the 02 (two) owners, Habibar Rahman and Maleka Khatun and the Court of Appeal below after examination of all materials of record in Title Suit No. 143 of 1976 found that the plaintiff's allegation is completely baseless and he is unable to show any evidence in support of his claim and burden of proof according to the Section 102 of the Evidence Act lies upon the plaintiff and therefore both the Courts below dismissed the same for the ends of justice.

There is no misreading or non-consideration of evidence by both the Courts below. The petitioner could not point out any misreading and non-consideration of evidence on record. This Court cannot interfere with the concurrent findings of facts. I find no substance in this Rule, rather I find substance in the submissions of the learned Advocate for the defendants-opposite parties.

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

The impugned Judgment and Decree dated 30.1.2011 passed by the learned Joint District Judge, 3rd Court, Noakhali in Title Appeal No. 21 of 2008 disallowing the appeal and thereby affirming the Judgment and Decree dated 31.7.2007 passed by the learned Assistant Judge, Companiganj, Noakhali in Title Suit No. 302 of 2004 dismissing the suit is hereby up-held.

The order of 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.