

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 189 of 2022

With

Civil Revision No. 2926 of 2021

Md. Nurul Huda Khokhon

... Petitioner in C.R. No. 189 of 2022.

Md. Al-Mahmud (Mohon)

...Petitioner in C.R. No. 2926 of 2021

-Versus-

Md. Khorshed Alam and others

.....Opposite parties.

Mr. Mohammad Eunos, Advocate with

Mr. Ruhul Amin, Advocate

.....For the petitioner in C.R.  
No. 189 of 2022.

Mr. Md. Ismail Hossain Bhuiyan, Adv.

.... For the petitioner in C.R. No.  
2926 of 2021

Mr. Manzur-al-Matin, Advocate with

Ms. Sonia Parvin, Advocate with

Mr. Snehadri Chakraborty, Advocate and

Mr. Nabil Ahmed Khan, Advocate

..... For the opposite parties.

Heard and judgment on 13<sup>th</sup> December, 2023.

A.K.M.Asaduzzaman,J.

These rules were issued calling upon the opposite parties to show cause as to why the judgment and decree dated 28.09.2021 passed by the Senior Assistant Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 54 of 2021 decreeing the suit should not be set aside.

Since these two rules are arising out of the same judgment and decree are heard together and disposed of by this single judgment.

Fact relevant for disposal of these rules are that opposite parties of both the rules as plaintiff instituted Title Suit No. 160 of 2013 before the Court of Joint District Judge, 5<sup>th</sup> Court, Dhaka against the petitioner along with opposite party Nos. 4-5 for recovery of khas possession under section 9 of the Specific Relief Act. The said suit thereafter renumbered as Title Suit No. 54 of 2021 after being transferred to the Court of Senior Assistant Judge, 3<sup>rd</sup> Court, Dhaka.

Plaint case in short, inter alia, is that the suit property was belonged to Ibrahim Bepari, Abdul Motaleb Bepari, Soleman

Bepari and Osman, all sons of Rajjab Ali and Jobeda Bewa. Jobeda Bewa thereafter died while owning and possessing 70.20 decimals of land, leaving behind two daughters Lal Banu and Mariam Bibi. S.A. khatian No. 6 and 7 in plot No. 13 was correctly recorded into their names. Lal Banu while owning and possessing 3510 ojutangsha property, transferred .20 decimals of land to Fazlu Mia and thereafter died leaving behind 5 sons and 3 daughters on rest 1510 ojutangsha of land. R.S. khatian No. 81 was correctly recorded on 3510 ojutangsha land in the name of Moriom Bibi, the daughter of said Jobeda Bewa. Moriom Bibi thereafter died leaving behind one Siddik Mia and two daughters Asia Khatun and Ator Banu, who thereafter transferred .20 decimals of land to one Md. Muslim Mia through registered sale deed dated 04.04.1985. Muslim Mia thereafter transferred .12 decimals of land through 2 registered sale deeds to one Md. Hafiz Ullah on 20.06.1986 and .8 decimals of land to Shahnaj Akter. Said .20 decimals of land while owning and possessing by said Hafiz Ullah and Shahnaj Akter transferred to Abul Hashem through registered sale deed dated 05.10.1998, who mutated his name and thereafter transferred 1340 ojutangsha land to plaintiff

No.1 through registered sale deed dated 23.09.1999 and also sold 660 ojutangsha of land to the plaintiff No.2 through registered sale deed dated 06.09.1999. Before selling the said property by Hafizullah and Sahnaj they obtained loan from Sonali Bank by mortgaging the said property. But failed to pay the loans and thus Title Suit No. 212 of 1993 for recovery of that loan was filed by the bank before the Court of 1<sup>st</sup> Artha Rin Adalat and got a decree, which was put to execution in Execution Case No. 141 of 1995 and was auctioned on 03.05.2006 and plaintiff No.1 purchased the same in auction and got a biananama/certificate on 12.07.2006 on the said .20 decimals of land and got a possession from the court through that execution suit on 06.08.2006. Thereafter the plaintiff No.1 sold 660 ojutangsha of land to plaintiff Nos. 2 and 3 through registered sale deed dated 08.07.2010 and remaining in possession on 0540 ojutangsha of land. on 14.02.2013 while defendant Nos. 1-3 filled up the plaintiff land by mud, plaintiff try to resist them and thereafter intimate the police station but failing to get any relief therefrom instituted the suit.

Thereafter although petitioner as defendant appeared in court by filing written statement denying the plaint case and cross

examined the witness of the plaintiffs but finally did not contest the suit and it was decreed on 26.09.2021.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Mr. Mohammad Eunos, the learned advocate appearing for the petitioner submits that this is a suit for recovery of khas possession under section 9 of the Specific Relief Act and the petitioner although filed a written statement and on 01.12.2022 filed an application for adjournment and it was allowed with cost but subsequently on 11.02.2021 the case record was transmitted to the Court of Senior Assistant Judge, 3<sup>rd</sup> Court, Dhaka due to the Civil Courts (Amendment Act) has been amended in respect of pecuniary jurisdiction and the case was renumbered as Title Suit No. 54 of 2021. Trial court after receiving the file fixed up the next date on 24.03.2021 for further hearing and depositing the cost. But thereafter it was finally disposed of by the impugned judgment on 26.09.2021. Although the defendant was not aware of the date fixed on the transfer court and due to corona pandemic, defendant could not get opportunity to contest the suit finally and it was allowed to go on for delivery of judgment in the absence of

the petitioner. Since the petitioner could not get an opportunity to contest the suit, it may be sent back on remand for providing them an opportunity to contest the suit. The learned Advocate further submits that although plaintiff could not prove by adducing proper evidence that he was in possession into the suit land before the alleged date of dispossession and as well as he was at all been dispossessed from the suit premises on the date as alleged rather P.W.2 in his cross-examination when admits that defendants are in possession, from the date of their purchase of the suit land, the suit for recovery of khas possession under section 9 of the Specific Relief Act is not maintainable. The trial court totally failed to appreciate the evidence and decreed the suit most illegally.

Mr. Manzur-al-Matin, the learned advocate, on the other hand, appearing for the opposite party submits that this is a suit for recovery of khas possession under section 9 of the Specific Relief Act, wherein a plea of title is no difference in the suit and a decision that may be made in the suit will be subject to a title suit, which may be eventually filed and the person who has title or even a better right shall be competent to ask for recovery of the

property on establishment of such right. Under section 9 of the Specific Relief Act clearly laid down that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit. Trial court thus committed no error of law in decreeing the suit when it is apparent that plaintiffs were illegally been dispossessed by the defendants as alleged. He finally prays that since the rule contains no merits it may be discharged.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

This is a suit for recovery of khas possession under section 9 of the Specific Relief Act.

Section 9 of the Specific Relief Act provides that:

“If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession

thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

In a suit under section 9 of the Specific Relief Act, the court will only consider that if the plaintiff was found to be in possession in the suit and the defendant had dispossessed therefrom and that suit was brought within six months from the date of dispossession, accordingly he decreed the suit on contest directing for recovery of possession of the suit land by evicting the defendants therefrom.

In the plaint of the suit, it has been alleged in paragraph 9 that:



" ৯। নালিশি তফছিল বর্ণিত সম্পত্তিতে ১নং বাদী বিজ্ঞ আদালত কর্তৃক এবং ২-৩নং বাদী ১নং বাদী কর্তৃক দখল প্রাপ্ত হইয়া সরকারী ঘরে নিজ নামজারী করিয়া তথায় মাটি ভরাট করিয়া সকলের জ্ঞাতসারে ভোগদখল করিতে থাবাবস্থায় বিগত ১৪/০২/২০১৩ইং তারিখে ১-৩নং বিবাদীগণ জোর পূর্বক বাদীগণের দখলীয় নালিশী .১২ শতাংশ সম্পত্তি দখল করিয়া তথায় আরো মাটি ভরাট করিয়া ঘরদোর উত্তোলন করিতে শুরু করিলে বাদীগণ তাহাদের বাঁধা প্রদান করেন। কিন্তু বিবাদীগণ বাদীগণের বাধায় কর্ণপাত না করিয়া তাহাদের মত জোরপূর্বক অবৈধ ও অন্যায়ভাবে বাদীগণের নালিশী ভূমি দখল করিয়া ঘরদোর উত্তোলন করিতে থাকে।"

Now let us see from the evidence how this contention has been proved.

Plaintiff adduced 3 witnesses.

P.W.1. Khorshed Alom, stated in his deposition that:

"বক্রীয় ৬৬০ অজুতাংশে ১৪/০২/২০১৩ইং তারিখে ১নং বিবাদীরা জোর পূর্বক বেদখল করে আমাকে। ১৪/০২/১৩ইং তারিখে আমি থানায় জিডি করি। থানা কোন পদক্ষেপ না নেওয়ায় আমি কোর্টে মামলা করি। সেখানে ও কোন সহায়তা না পেয়ে আমি এই মামলা করি। প্রার্থমতে ডিক্রি চাই।"

In his deposition he did not mention when on 14.02.2013, how defendant Nos.1-3 dispossessed the plaintiffs.

P.W.2 Md. Alom stated in his deposition that:

"নাঃ সম্পত্তি বেড়ীবাধের পশ্চিম পার্শ্বে। বেড়ীবাধের পশ্চিমপার্শ্বের ৮শতক ও পূর্বপার্শ্বে ১২ শতক। পূর্ব পার্শ্বের ১২ শতকে বিবাদীরা আমাদের বেদখল করে। ২০১৩ সালের আনুমানিক ১৬ তারিখ। বিবাদীরা মোহন, খোকন আর বাবু। বেদখল করার সময় এরা অনেক লোক নিয়ে আসছিল। ৬০/৭০ জন লোক নিয়ে আসছিল। আমরা বাধা দিয়েছিলাম, তারা থামেনি। কয়টার সময় বেদখল করে সাক্ষী নিরন্তর।(underline is given) "

In his cross-examination he further asserted that:

"বেদখল করার সময় আমি ঘটনাস্থলে উপস্থিত ছিলাম। "

He further said:

"সকাল ৯টা/সাড়ে ৯টার দিকে বিবাদীরা এসে বেদখল করে। পিটিশন মামলা নং-১৬/১৩তে রাত ১২টার সময় বেদখল করার কথা বলা হয়েছে, সত্য।"

P.W.3 Md. Asad Mia, stated in his deposition that:

"নালিশী সম্পত্তি ২০ শতক। পূর্ব সাইজে ৮শতক, পশ্চিম সাইডে ১২ শতক। ১২ শতক এখন মোহনগং দখল করে। অনেক ঝগড়াঝাটি করে মারপিট করে বিবাদীরা দখল করে নিয়ে গেছে। ২০১৩ সালে দখল করে।

নির্দিষ্ট তারিখ মনে নাই। বেদখলের সময় আমি সেখানে উপস্থিত ছিলাম।

ঐ জায়গাটায় বাঁশের ঘর ছিল সেগুলো ভেঙ্গে দিয়ে বিবাদীরা দখল করে।"

These are the evidences adduced by the plaintiff to prove the cause of action of this case.

Upon perusal of the above stated statements, nowhere it can be found that when and how and what time plaintiff was dispossessed by the defendants. Moreover different statement has come out from the mouth of P.W.2 about the time and manner of dispossession, which is also not been corroborated by P.W.1 or P.W.3. Moreover upon perusal of the statements of the P.Ws. it is difficult to hold the view that before the alleged date of dispossession, plaintiff was at all been there in the suit premises. In this context the deposition of P.W.1 may be noted. In his cross-examination he has admitted by saying that:

"৩নং বিবাদী কার কাছ থেকে ভূমি ক্রয় করেছেন, জানা নেই।

শাহজামালের নামে সিটি জরিপ হয়েছে সঠিক। সিটি জরিপ শুরু হয়

১৯৯৬-৯৭ সালের দিকে। সিটি জরিপ চলাকালীন শাহজামালকে সিটি

৩১০ দাগে দখলকার হিসেবে পেয়ে তার নামে সিটি রেকর্ড হয় কিনা জানা

নেই। ৩নং বিবাদী শাহজামালের নিকট হতে খরিদ করে দখলপ্রাপ্ত হন  
সত্য। ৩নং বিবাদী নিজ নামে নামজারী করেছে কিনা জানা নেই। "

When plaintiff Khurshid Alom while deposing in court as P.W.1 himself admits that defendants predecessor Shahjamal was in possession in the suit premises during city jorip and thereafter defendants are in possession in the suit land after purchasing the same from Shahjamal, the suit for khas possession under section 9 of the Specific Relief Act is apparently not maintainable since it was not filed well within time, after he was at all been dispossessed.

Trial court while decreeing the suit totally failed to appreciate this aspect of the case and decreed the suit most illegally. Accordingly the impugned judgment is not sustainable in law, which is liable to be set aside.

I thus find merit in these rules.

In the result, these Rules are made absolute and the impugned judgment and decree passed by the court below are hereby set aside.

The order of stay granted earlier is hereby recalled and vacated.

Send down the L.C.R along with the judgment to the courts below at once.