

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3252 of 2004

Edu Ram Barman and others

.....Petitioners.

-Versus-

Jitendra Nath Roy and others

.....Opposite parties.

Mr. Sherder Abul Hossain, Advocate

.....For the petitioners.

None appears

.....For the opposite parties.

Heard and judgment on 20th March, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 06.07.2004 in Other Appeal No. 104 of 2002 passed by the Additional District Judge, Nilphamari affirming those dated 03.08.2002 in Other Class Suit No.6 of 2000 passed by the Joint

District Judge, 1st Court, Nilphamari dismissing the suit should not be set aside.

Since the S.A. khatian was wrong, petitioner filed the suit for declaration of title with the contention that Dharakanta Barman was the owner on the basis of Korpha right of 4.13 acres of land, of plot No.1 appertaining to C.S. khatian No.14, of 6 mouza Satjan under Police Station Dimla under jotder Avoykant and Bhagaban Chandra. Dharahanta died leaving behind Bichched Barman. Bichched Barman died leaving 3 sons, plaintiff petitioner Nos. 1-3. Garib Barman was the owner on the basis of Korpha right of lot No.2 of the schedule of the plaint appertaining to C.S. khatian No.13 under same Jotedhar. Gorib Barman died leaving behind one son, Domasu Barman. Damosa Barman died leaving behind one son, Nirasha Barman. Narisha Barman died leaving behind one son the present plaintiff No.4. The plaintiffs as heirs of Bichched Barman and Nirasha Barman have become owner and possessor of the suit land. The defendant No.1 or any other person have no right or possession to schedule Ka property of the suit land. In the first part of Baisakh 1407 B.S. defendant No.1 claimed the crops of the suit land disclosing that the S.A. khatian

of the suit land is in his name. Thereafter plaintiffs went to the local office and came to know that S.A. khatian of suit land has been recorded in the name of the defendant. This S.A. khatian is wrong and title of defendant No.1 has not been established to the suit land on the basis of the record of rights.

Opposite party as defendant contested the suit by filing written statement denying the plaint cast, alleging, inter alia, that Abaikatna Roy, father of defendant No.1 was twelve annas owner and Sarnamoyee was 4 annas owner and they were the Jotdar of C.S. Suit khatian No.13 and 14. khatian No.11 was published in the name of the Jotedar. Avaykatna purchased 4 annas Jotdari right of Sarnamoyee in the benami of his son Vagaban Chandra. Garib Barman was the Korfatenent in 4.55 acres of land of C.S. khatian No.13. Dharakanta Barman was Korfatenent in 4.40 acres of land of khatian No.14.

By the judgment and decree dated 03.08.2002, the Joint District Judge, 1st Court, Nilphamari dismissed the suit on contest.

Challenging the said judgment and decree, petitioner preferred Other Appeal No. 104 of 2002 before the Court of

District Judge, Nilphamari, which was heard on transfer by the District Judge, Nilphamari, who by the impugned judgment and decree dated 06.07.2004 dismissed the appeal and affirmed the judgment of the trial court.

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

Mr. Sherder Abul Hossain, the learned advocate appearing for the petitioner submits that court below while dismissing the suit although did not consider the evidences properly but arbitrarily held that plaintiff could not succeed to prove its case by submitting his title deed properly in court. He further drawing my attention to the paragraph No. 4 and 5 of the application for additional evidence, wherein it has been stated as follows:-

" 4. The documents Chit Pattan were not available at the time of trial or appeal as those were not in their hand. That at the time of liberation war, the whole family shifted to India and the old documents of the family property was also taken with them. That during pendency of the present Civil Revision one of

relative of the petitioners residing India came to visit the petitioners and disclosed that some of the papers of the petitioner are found in their house and he brought them if those are necessary to the petitioners then the petitioner No.1 at the time of perusing those papers found that there are the aforesaid documents of Chit Pattan and rent receipts. That upon consultation with the learned Advocate the petitioners decided to produce those documents before the honourable court along with the copy of the present B.R.S. khatian as additional evidence.

5. The petitioners could not produce these documents at the time of proceeding of trial or Appeal due to lack of information and availability of those as such now the petitioners obtained those documents in their hand on 22.11.2023 are submitting before this court by this application."

He lastly submits that the aforesaid document are very much necessary to use as additional evidence in this case for proper adjudication and as such he prays for acceptance of this

documents as additional evidence and prayed that suit may be sent back on remand to the trial court for proper adjudication of the matter.

Although the matter is posted in the list with the name of the learned advocate appearing for the opposite party but no one appears to oppose the rule.

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

This is a suit for simple declaration of title. Since the S.A. khatian, wrongly been recorded, plaintiff filed this suit. Upon perusal of the evidence it has been held by the court below that although plaintiff is in possession but since plaintiff could not produce their proper documents of title in court, suit was dismissed. By filing this application for acceptance of additional evidence, the petitioner urged that the documents of title of the plaintiffs were not in the custody of the plaintiff at the time of hearing of the suit as well as appeal but subsequently plaintiff has succeeded to collect all those documents and inclined to produce in court in order to get a proper adjudication of this matter.

Considering this application as well as the judgment passed by the court below I find that the petitioner has got good arguable case to consider and he is entitled to get an opportunity to prove his case through procured documents, which they like to produce in court right now. Since those documents were not in custody of the plaintiff petitioner and subsequently got to collect those document, he could get an opportunity to prove and produce the same in court. Moreover the Courts below did not consider the evidences adduced in this case properly and dismissed the suit arbitrarily.

Considering all these aspect of this case, I am of the view that this is a fit case to send back the case on remand to the trial court for proper adjudication of the matter.

I find merits in this rule.

In the result, the rule is made absolute. The judgment and decree passed by the court below is hereby set aside and the suit is sent back on remand to the trial court for proper adjudication.

Trial court is hereby directed to allow the plaintiff to prove the documents, which is filed before the court as additional

evidence through an application under Order 41 Rule 27 of the Code of Civil Procedure and disposed of the suit expeditiously as early as possible giving opportunity to them to allow and to produce any evidence upon amendment of their pleadings if so desire.

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