

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice S.M. Masud Hossain Dolon

Civil Revision No. 1018 of 2022

Mosammat Shefali Khatun alias Shefali and
others

... Plaintiff-appellants petitioners.

-Versus-

Protima Rani Saha and others.

..... Defendant-opposite parties.

Mr. Sherder Abul Hossain with
Mr. Razu Howlader, Advocate

..... for the petitioners.

Miss. Syeda Nasrin with
Mr. Md Razu Howlader Palash with
Mr. Bibek Chandra with
Mr. Anwar Hossain with
Mr. Md Golam Kibria with
Ms. Jannat Peya, Advocates

..... for the opposite parties.

Heard on: 08.05.24, 09.05.24 & 12.05.2024

Judgment on: 13.05.2024.

On an application under section 115(1) of the Code of Civil Procedure at the instance of the plaintiff-petitioners, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.12.2021 passed by the learned Joint District Judge, 1st Court, Sirajgonj in Other Class Appeal No. 26 of 2016 dismissed the appeal by affirming the judgment and decree dated 16.02.2016 passed by the learned Senior Assistant Judge, Ullapara, Sirajganj in Other Class Suit No. 74 of 2010 should not

be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of the Rule, are that the petitioners as plaintiffs filed Other Class Suit No. 74 of 2010 before the Court of Assistant Judge, Ullapara, Sirajgonj against the defendants for declaration of title stating, inter alia, the suit land appertaining to C.S. Khatian No.26 measuring an area of 6.82 acres originally belonged to Sobur Ali and others who sold out 94 decimals of land in Plot No.343 before publication of District Survey and 49 decimal of land in Plot No.587 to Taraknath Saha and others in whose names it was remarked as purchaser during District Survey operation. Subsequently Tasaknath Saha and Derendranath Saha got the suit land by amicable settlement and while they were possessed the same they sold out 94 decimals of land to Afsar Ali Pramanik on 13.09.1935, who got possession of the same as purchaser. As the value of the suit land was less than 100 taka accordingly the sale deed was not registered. While he was possessing the same Afsar Ali paid various government rent but S.A. record was not prepared in his names erroneously and that land was treated as Chut (ছুট). The chut wrong record did not create any disturbance on peaceful possession of the predecessor of the plaintiffs. Thereafter, on 07.04.1965 Devendranath Saha sold the suit land by executed a deed of agreement in favour of the plaintiffs. Thereafter, plaintiffs developed the suit land by earth filling at about 5 feet high and

constructed dwelling house thereon. The all papers produced before the Court of Second Munsif, Sirajgonj in connection with L.A. (Probate) Case are false, fabricated, forged and baseless and the deed dated 14.06.2010 bearing No.432 is illegal and collusive. During R.S. operation D.P. Khatian No.262 was prepared in the name of the plaintiffs' predecessor but finally it was prepared in the name of the dependant No.1 in collusion with the survey staffs. Thereafter, on 03.03.2010, they came to learn about the said wrong record of R.S. Khatian from the concerned Tahshil Office when they went to pay the rent of the suit land. After, receiving the information slip about the said R.S. wrong record on 08.03.2010, plaintiffs have filed the instant suit for declaration of title and for declaration that the deed in question dated 14.06.2010 is not binding upon them.

The defendant Nos. 3-12 contested the suit by filing a written statement denying the material allegations of the plaint and stating inter alia that as purchaser of the suit land District Survey Khatian was duly prepared in the name of Tarakanath Saha and another. Subsequently Taraknath and Debendranath owned the suit land through amicable settlement. Thereafter heirs of said two persons made partition amongst them by which Gopindranath Saha got 6.46 acres of land including 94 decimals in disputed Plot No.343 and he obtained D.C.R. in his name by filing Mutation Case No.172 of 1960-61. Although S.A. record was not prepared in his name but there was

no problem for enjoying the suit land. Subsequently, he executed an will in the name of his son Apurba Krishna Saha for the suit land who filed Probate Case No.51 of 1961 in the Court of 2nd Munshif, Sirajgonj and subsequently his wife got Letter of Administration on 30.09.1970 and thereafter R.S. Khatian No.262 was prepared in her name. Thereafter she sold out the suit land to the predecessor of defendant Nos.1-10, who have been possessing the same as their homestead and hence the suit be dismissed.

The learned Assistant Judge, Ullapara, Sirajgonj after scrutinized oral and documentary evidences submitted by the parties in support of their respective claims dismissed the suit. Against which plaintiffs as appellants filed Other Class Appeal No. 28 of 2016 before the learned District Judge, Sirajgonj who transferred the same to the court of learned Joint District Judge, 1st Court, Sirajgonj for disposal of the case. The learned Joint District Judge, 1st Court, Sirajgonj after hearing the parties affirmed the judgment and decree passed by the learned Assistant Judge, Ullapara, Sirajgonj against which the plaintiffs as petitioners filed the instant Revisional application and obtained Rule.

Mr. Sherder Abul Hossain the learned Advocate for the petitioners submit that the plaintiffs proved the case by producing all documentary and oral evidences in respect of the suit land. But both the Courts below without discussed any material evidences and considered them passed the judgment and decree and as such both

the courts below committed an error of law resulted in an error in the decision occasioning failure of justice. He further submits that the impugned judgment is totally non consideration of the material evidence on record and misreading of them inasmuch as the predecessor of the plaintiffs owned the suit land on 13.09.1935 by unregistered deed as value of the suit land was below 100/-Tk. for which registration was not required as per law but both the courts below failed to consider this legal aspect of the matter and thereby they have committed an error of law resulting in an error in the decision occasioning failure of justice. Learned Advocate lastly submits that the court of appeal below being last court of fact was under obligation to discuss the material evidence on record and arrived at the decision by giving independent finding and reasoning as per order 41 Rule 31 of the Code of Civil Procedure. But in the instant case, it appears from the judgment of the Court of Appeal below that it has passed the impugned judgment in violation the provision of law and as such it has committed error of law resulting in an error in the decision occasioning failure of justice.

Learned Advocate vehemently argued that Akhil Krishna Saha who is the only successive heirs of Debendranath Saha deposed as P.W.4 and supported the unregistered sale deed dated 13.09.1935 so where the deed is admitted by the executants or his heirs the expert report or any other evidence is irrelevant. Mr. Sherder also submitted

that the defendants failed to produce (1) the alleged amicable partition deed, (II) The so called will dated 26.12.1963 and (III) Orders of Probate Case No. 51 of 68, even the letter of administration before this court and both the courts below failed to consider the same and as such the Judgment and decree passed by the courts may kindly be set-aside.

On the otherhand Miss Syeda Nasrin, the learned Advocate on behalf of the opposite party submits that both the courts below concurrently found that the plaintiffs petitioners failed to prove their title and possession over the suit property in consequence of which the suit was dismissed and as such, the revisional Court may not interfere with that concurrent finding of facts unless the petitioners can show any misreading of evidence, non consideration of material evidence on record and misconception of law. Learned Advocate further submits that both the courts below concurrently found that the suit land has been properly identified. So, the plaintiffs having no exclusive possession over the suit land and cannot get decree of title as per their claim. In such view of the matter, both the courts below relying upon the material evidence on record and rightly observed that the plaintiffs failed to prove their right, title and possession over the suit land. She further submits that after hearing the parties and persuing the documents, the trial court dismissed the suit mainly with the observation that the so called unregistered deed dated 13.09.1935

and deed of agreement dated 07.04.1964 did not match with the signature of Debendranath Saha with his registered deed Nos. 14277 dated 27.11.1969 and 10340 dated 06.06.1972 as per the report of the hand writing expert. The plaintiffs also failed to prove their exclusive possession in the suit land which was affirmed by the learned appellate court. She further submits that the plaintiffs could not provide any SA and RS record in their names. They also failed to prove their uninterpreted possession in the suit land. They could not show any genuine title deed. As such the suit is not tenable and there is no merit in the Rule, which is liable to be discharged for ends of justice.

In view of the rival submissions of the learned Advocate for both the sides, I have perused the lower court records, supplementary affidavit, judgment and decree passed by the learned Trial Court and that of Appellate court. After considering both oral and documentary evidences adduced and produced by both parties to the original suit it appears that both the courts below having given concurrent findings that the plaintiffs have been totally failed to prove their own case. After careful examination of the evidences and other materials on record it appears that R.S. Khatian No. 262 has been prepared in respect of case land in the name of Joshna Rani Saha alias Pratima Rani Saha, predecessor of the defendants-opposite parties. On perusal of the document marked as exhibit-Ga shows that Joshna Rani Saha alias Pratima Rani Saha handed over the suit land by the sub-kabla

deed No. 4325 to defendant Nos. 1-4 and Mosharaf Hossain. The said Mosharaf Hossain died and leaving behind the added defendant Nos. 5-10.

It appears that to prove the signature of the said Debendra Nath Saha the plaintiff petitioners produced P.W. 4, Shree Akhil Krishan Saha, grandson of the Debendra Nath Saha. In his examination in chief, he testified that

“দেবেন্দ্র নাথ সাহা আমার দাদু হয়। দেবেন্দ্র নাথ সাহা কে আমি দেখেছি। দেবেন্দ্র নাথ সাহা হাতের লেখা আমি চিনি। দেবেন্দ্র নাথ সাহা হাতের লেখা বোঝা যায় যায় না। এস পাটে পাঠান। গ্রহিতা আপসার আলি লেখা আছে। দাগ নম্বর ৩৪৩ জমির পরিমাণ .৯৪ একর মৌজা শ্রী লেখা এই দলিলে লেখা আছে। তিন টা স্বাক্ষর আছে। স্বাক্ষর তিনটা। প্রদর্শনী হিসাবে উল্লেখ করা হল।”

The said Shree Akhil Krishan Saha as P.W. 4 in his cross examination also testified that-

“আমার জন্ম ৪১ সনে। আমার জন্মের তারিখ বলতে পারবো না। আকবর আলী কলেজে কে দান করেছে তা আমি বলতে পারবো না। এই দলিলের দেবেন্দ্র নাথ নামীয় স্বাক্ষর দেবেন্দ্র নাথের আমি বুঝতে পারতেছি না। ইহা সত্য নয় যে, এই দলিল টা জাল এবং স্বাক্ষর টা জাল।”

Thereafter the said sale deed was transferred to the handwriting expert for expert opinion and the handwriting expert after compared with other Registered sale deed of Debendra Nath Saha found the signature was not match with other signatures of Debendra Nath Saha and both the courts concurrently supported the opinion of the handwriting expert and rejected the plaintiffs petitioners case. I am also unable to interfere the opinion of the handwriting expert and further I am unable to find any document to corroborate and prove the unregistered sale deed particularly no

record/khatian, rent receipt or any reliable witnesses supported the plaintiffs-petitioners case that the unregistered sale deed is a true and authentic document.

I have carefully considered the submission of learned Advocate Mr. Sherder Abul Hossain that both the courts below failed to consider the documents produced by the defendants as amicable partition deed, so called will dated 26.12.1963, order of probate case and letter of administration before the court. Even if both the courts below failed to consider the documents appended by the defendants it does not mean that the same is occasioning failure of justice as mentioned section 115(1) of the Code of Civil Procedure. Moreover, plaintiffs have not been able to produce any valid documentary material evidence in the court in support of possession of the case land.

After carefully scrutinized of the said documents I also observed with the finding of the appellate Court below that there are three types of signatures of Debendra Nath Saha in the registered documents, agreements and unregistered documents. Further, it is also scrutinized that the unregistered sale deed dated 13.09.1935 claimed by the plaintiffs has been collected and rubbed the old stamp paper and the old writing has been removed and the new writing has been inserted and the writing on the old stamp paper has been rubbed. Moreover, perusal of the agreement dated 07.04.1964, marked as exhibit-2 the plaintiffs claimed that the agreement has

been executed before a Magistrate of Pabna DC office but it is not understood whether it has the signature of the Magistrate. It appears to have the signature of an attesting officer, but no seal has been clearly affixed with his signature along with the designation of the signatory, name of the office. There is no signature with the title and seal of the magistrate in front of which the agreement was executed. Although the said agreement bears the signature of a person named Devendra Nath Saha but no address was contained with the name of the Devendra Nath Saha nor mentioned the name of his father. That is, there is no address or identity of the person executed the said agreement document. Even in the said agreement, no name and address of any person other than Devendra Nath Saha is clearly mentioned. Moreover, in the said agreement, incomplete addresses with signatures of 02 persons are noted in the witness column, but the signatures and writings are seen to be written by the same person in the same hand and in the same pen. Moreover the English date in the sale deed is different from Bangla date which create serious doubt about the genuines of the unregistered sale deed dated 13.09.1935.

However, on perusal of evidence adduced by both sides, I have also found that the plaintiffs could not prove their case by adducing corroborative witnesses in support of their title and possession over the suit land. In a suit for declaration, the plaintiff is under legal obligation to prove the title and exclusive possession over the suit land

by adducing neutral and trustworthy evidence in support of his claim. In such view of the matter, I do not find any illegality in the impugned judgments and decrees passed by both the two courts below.

In view of the discussion made above, I do not find any merit in this Rule.

Accordingly, the Rule is discharged.

The order of status-quo granted earlier by this court is here by vacated.

Send down the L.C.R along with a copy of this judgment to the concerned court for information and necessary action.