

Present:

Mr. Justice Mohammad Ullah

Civil Revision No. 666 of 2022

Sultan Mahmud and others

Defendant-appellant-petitioners.

-Vs.-

Md. Shahidur Rahman and another

Plaintiff-respondent-opposite-parties.

Mr. Mohammad Jahangir Alam, Advocate

....For the petitioners

Mr. Md. Zahedul Bari, with

Mrs. Nazmun Nahar, and

Md. Rajab Ali, Advocates

.....For the opposite party nos.1-2

Heard on 05.04.2023, 30.04.2023,
08.05.2023 and 12.06.2023.

Judgment on 13.06.2023.

On an application under section 115(1) of the Code of Civil Procedure, this Court, by order dated 07: 03:2022 at the instance of the defendant-appellant-petitioners, issued a Rule calling upon the plaintiff opposite party nos. 1-2 to show cause as to why the impugned judgment and decree dated 03.11.2021 passed by the learned District Judge, Jamalpur in Title Appeal No. 68 of 2020 dismissing the

appeal affirming the judgment and decree dated 25.08.2020 passed by the learned Assistant Judge, Islampur, Jamalpur in Other Class Suit No. 159 of 2009 decreeing the suit should not be set aside and/or why such other or further order or orders as to this Court may seem fit and proper shall not be passed.

At the time of issuance of the Rule, all further proceedings of Execution Case No. 1 of 2022 pending in the Court of learned Assistant Judge, Islampur, Jamalpur, have stayed till disposal of the Rule.

Shortly stated, the facts relevant to the disposal of the Rule are as follows:

On 27.07.2009, the opposite party nos. 1-2 as plaintiffs instituted Title Suit No. 159 of 2009 in the Court of Assistant Judge, Islampur, Jamalpur, against the defendant-petitioners seeking a decree for declaration of title and recovery of khas possession in respect of 22 decimals of land as described in the schedule to the plaint. The plaintiffs alleged that the land measuring 3.80 acres, appertaining to C.S. Plot No. 1010 under C.S. Khatian No.

258, belonged to one Asmat Ullah Sardar and others. Before the C.S. operation, Tori Mahmud Akand obtained 3.80 acres of land through Korfa Pattan from Asmat Ullah Sardar for 15 years as a Chukani Settlement Right. During the C.S. operation, the name of Tori Mahmud Akand was recorded in C.S. Khatian No. 258 concerning 3.80 decimals of land at Plot No. 1010 as a Chukani possessor. After the expiry of 15 years of tenure of the Chukani Right, Tori Mahmud Akand did not extend the period of pattan for further tenure and declined to accept dakhila from said Asmat Ullah Sardar. Accordingly, after the expiry of the tenure, Tori Mahmud Akand surrendered the said land and handed over possession to Asmat Ullah Sardar. In such a way, Tori Mahmud Akand's Korfa tenancy right became ineffective. After that, Asmat Ullah Sardar died, leaving behind a wife, Most. Chhobron Bibi, two sons, Aizuddin Sarkar, Roiz Uddin Sarkar, and Nasimuddin Sarkar, and two daughters, Aymun Nessa Khatun and Asadun Nessa Khatun. Asiran Nessa Bibi, Bazlul Haque Sardar, Hasen Banu Bibi, Tamiron Nessa Bibi, Saiman Nessa Bibi, Abul

Wahed Sarkar, Hossen Sarkar, Sufia Khatun, Nader Hossain Asad, Sahed Ali, Shamsul Haque Akand, Samir Uddin Akand, Sakina Khatun are the legal heirs of Asmat Ullah Sardar. As mentioned above, the heirs of Asmat Ullah owned and possessed the suit land along with other lands of said Khaitan by way of inheritance. Thereafter, the heirs of C.S. recorded tenant Soburon Nessa Bibi, and others bit up the drams for the tenant and the predecessor of the plaintiffs Most. Majiran Nessa Bibi and others accepted the settlement offer and on 11.12.1936 vide registered Kabuliyat No. 3595 dated 11.12.1936 got the possession of the suit land along with other land. During ROR operation, S.A. Khatian No. 292, concerning 1.43 decimals of land, was accordingly finally prepared and published in the name of Majiran Nessa Bibi. After that, Majiran Nessa Bibi, while owning and possessing 1.43 acres of settled land along with other land of S.A. Khatian No. 292, transferred total land of Plot No. 1010 and 17 decimals of land out of 43 decimals from Plot No. 1011 in favour of Syeduzzaman Sheikh by registered deed No.4118 dated 26.06.1965 and handed over

possession to him. Then Syeduzzaman Sheikh, by a registered deed bearing No. 5210 dated 03.06.1970, sold ten decimals of land from Plot No. 1010 and another ten decimals of land from Plot No. 1011 to Md. Abdul Gaffur, Most. Jobeda Khatun, Md. Samed Sheikh and Most. Maleka Bibi. Thereafter, Syeduzzaman Sheikh, by a registered deed bearing No. 292 dated 08.01.1973, sold 32 decimals of land to Md. Samed Ali Sheikh from Plot Nos. 1010 and 1011. In this way, Md. Samed Ali Sheikh got the right, title, interest, and possession of over 20 decimals of the suit land and 12 decimals from Plot No. 1011. By virtue of the said kabala deed, Md. Samed Ali alias Samed, along with his brother Md. Abdul Gaffur, sister Jobeda Khatun, and wife Maleka Bibi, got their respective sharers.

Subsequently, BRS Khatian No. 537 was prepared and published in the name of Samed Ali alias Samed, his brother Abdul Gaffur and sister Jobeda Khatun, and wife Maleka Bibi in respect of 333, 167, 166, and 334 shares, respectively. The disputed Plot No.1010 subsequently gave rise to Plot No. 2635 under BRS Khatian No. 537. In this

way, while they owned and possessed 30 decimals of land in Ejmali, the first daughter of Jobeda Khatun, Abul Hossain, sold five decimals of land from plot no. 1010 and 1011 to plaintiff No.2 Jalal Uddin by registered deed No. 287 dated 09.01.1990. However, the possession of 5 decimals of land was handed over to the plaintiff No. 2 Jalal Uddin from Plot No. 1010. Abdus Samad transferred ten decimals of land from Plot No. 1010, 13.50 decimals from Plot 1011, and 6 decimals from Plot No. 1012 to plaintiff No. 1 Md. Sahidur Rahman by registered deed No. 231 dated 09.01.1990. By registered deed No. 612 dated 20.01.1992, Samed Ali transferred nine decimals of land from plot nos. 1010 and 1011 to plaintiff No. 2 Jalal Uddin. Malekun Nessa sold five decimals of land from Plot No. 1010 by another registered deed No. 611 dated 20.01.1992 to plaintiff No.2 Jalal Uddin. Anis, son of Jobeda, sold six decimals of land to plaintiff No. 2 Jalal Uddin by a registered deed No. 743 dated 20.01.1991. Anis again sold two decimals of land to plaintiff No.2 Jalal Uddin by registered deed No. 4222 dated 07.09.1993 and handed

possession to the plaintiffs. In this way, by way of amicable settlement, plaintiff No.1 got possession of over ten decimals of land, and plaintiff No. 2 got possession of 12 decimals of land. Having mutated their names in the record of rights, they obtained DCR and paid rent to the government exchequer with respect to their purchased land.

The defendants, on 04.02.2006, dispossessed the plaintiffs, erected some huts therein, and denied the plaintiffs' title. The defendants have had no right, title, or interest over the suit land and caused irreparable loss of the plaintiffs by dispossessing them forcefully. On several occasions, the plaintiffs tried to settle the dispute amicably, but the defendants did not turn up to such a settlement. In such a situation, the plaintiffs filed the suit against the defendants seeking a decree for declaration of title and recovery of khas possession.

The defendants contested the suit by filing a written statement denying the material averments made in the plaint, contending, *inter alia*, that there is no cause of action for filing the suit. The suit was filed with false, concocted,

baseless, and fabricated assertions. The suit is not maintainable, and the plaintiffs have no locus standi to file the suit against the defendants. The suit is barred by the principle of waiver, estoppels, acquiescence, and law of limitation. Moreover, it is a defect of the parties. The plaintiffs did not come to the Court with clean hands and file the suit to grab the defendants' property.

Their positive case is that Tori Mahmud Akand was the C.S. recorded tenant who died, leaving behind his legal heirs, Amez Uddin Akand, Tamez Uddin Akand, Sobhan Akand, and Garib Ullah. Amez Uddin Akand died, leaving behind Zumor Uddin Akand, Mahmud Ali, Omar Akand, and a daughter, Rahima, to inherit his property. Mahmud Ali died, leaving three sons, namely Lokman Akand, Nazrul Islam, and Mokbul Hossain, and four daughters, Hamida, Saheda, Munni, and Asma. Omar Akand died, leaving two sons, Wahed and Ashraf, and four daughters, Nur Jahan, Chand Banu, Anwara, and Farida. Tamez Uddin died, leaving behind his two daughters, Jahura and Rahima, and four sons, namely Hekim, Mansur, Matiur Rahman, and

Fazlu. Mansur died, leaving two sons, defendant Nos. 1-2, and three daughters, Morseda, Minara, and Monowara, as his legal heirs to inherit his property. In this way, they got 20.5 decimals of land through an amicable partition. The defendants constructed three houses with toilets, installed tubewells, and planted trees. They have been possessing the same and living with their family members uninterruptedly. On the western side of the huts, there is a road and a market. There are twelve shops adjacent to the road. The defendants have been running their raw materials business at certain shops and letting out some shops to different tenants. The plaintiffs filed a false suit against the defendants to grab the suit land. Hence, the suit is liable to be dismissed with cost.

The Trial Court, to determine the suit, framed as many as 5 (five) issues, including whether the plaintiffs have titled over the suit land and have the right to get possession over the suit land.

During the trial, the plaintiffs examined 4(four) witnesses as P.W.s, while the defendants examined 3(three) as D.Ws.

Besides, both parties produced documentary evidence duly marked as exhibits. The plaintiffs' documents were marked Exhibits 1-14, and the defendants' documents were marked as Exhibits Ka-Kha.

The Trial Court, having heard the parties and considered the materials on record, decreed the suit against the defendants. The defendants were directed to hand over the possession of the suit property upon demolishing the strictures constructed by them in favour of the plaintiffs; in default, the plaintiffs would get possession of the suit land through Court.

When the defendants did not comply with the directions of the Trial Court, the plaintiffs filed Execution Case No. 1 of 2022, which is pending for disposal.

Against the judgment and decree of the Trial Court, the defendants preferred Other Appeal No. 68 of 2020 unsuccessfully.

Then, the defendants, as petitioners, moved this Court, challenging the legality and propriety of the impugned judgment and decree of the courts below.

Accordingly, the Rule was issued, and the execution proceeding was stayed as stated above.

Mr. Mohammad Jahangir Alam, learned Advocate for the defendant-petitioners, at the outset, submits that both the courts below, without considering the evidence on record, most illegally decreed the suit in favour of the plaintiffs, which has occasioned a failure of justice.

The learned Advocate submits further that Tori Mahmud Akand obtained a Korfa settlement from the original tenant, Asmat Ullah Sardar and the C.S Khatian No. 258 was rightly prepared in his name as Korfa tenant, but both the courts below, having failed to consider this

facts most illegally and arbitrarily decreed the suit in favour of the plaintiffs which has occasioned a failure of justice.

Mr. Md. Zahedul Bari, learned Advocate for the plaintiff-opposite-party numbers 1-2, on the other hand, submits that the concurrent findings of facts arrived at by the courts below need not be interfered with by the revisional Court as those findings are not perverse and otherwise shaken.

The learned Advocate next submits that both the courts below have considered the series of documents submitted by the parties rightly decreed the suit in favour of the plaintiffs, which should not be interfered with by the revisional Court as those findings are not perverse and nothing is on record about misreading and non-consideration of the material evidence affecting the claim of the defendants.

With these submissions, the learned Advocate prays for discharging the Rule.

Heard the learned Advocate and perused evidence on record, particularly the plaint, written statement, oral evidence of both the parties, exhibited documents, and the judgment and decree of both the courts below.

The admitted fact is that Asmat Ullah Sardar and others were the original tenants. It is the positive case of the plaintiffs that Tori Mahmud Akand, from whom the defendants claimed their right, title, interest, and possession over the suit land, was a Chukani settler to whom 3.80 acres of land, including the suit land, was given Korfa settlement. According to the plaintiffs, Tori Mahmud Akand, through the Korfa settlement, got a limited interest for 15 years over the land in question. Out of 3.80 acres of land of C.S. Khatian No. 258, 22 decimals of Plot No. 1010 are the suit land. The land of said C.S. Plot No. 1010 was subsequently recorded in S.A. Khatian No. 292 in the name of Soburon Nessa Bibi and others. It appears from Exhibit-2 S.A. Khatian No. 292 land measuring 30 decimals at Plot No. 1010 was given Korfa settlement to Maziran Nessa Bibi. Exhibit-12 certified copy of Korfa settlement deed No.

3595 dated 11.12.1936 shows that Maziran Nessa Bibi and others executed Kabuliyat in favour of Soburon Nessa Bibi in respect of 30 decimals of land of suit Plot No. 1010 under C.S. Khatian No. 258 including certain other lands.

I have already found that pursuant to Korfa settlement, S.A. Khatian No. 292 has been prepared in the name of settler Soburon Nessa Bibi regarding 30 decimals of land under suit plot No. 1010 and others. Exhibit-2 S.A. Khatian No. 292 shows that there is as many as five plots, including plot nos. 1010 and 1011, which was prepared in the name of Soburon Nessa Bibi as a Korfa settlement with respect to 1.43 acres of land, including the suit land. Exhibit-13 certified copy of registered deed No. 4118 dated 26.06.1965 shows that Soburon Nessa Bibi transferred the total land of Plot No. 1010 and 70 decimals out of 1.43 acres of Plot No. 1011 to one Syeduzzaman Sheikh, including certain other land. Exhibit-5, original copy of registered deed No. 5210 dated 03.06.1970, shows that Syeduzzaman Sheikh transferred ten decimals of land from Plot No. 1010 and 10 decimals from Plot No. 1011 to Md.

Abdul Gaffur, Most. Jobeda Khatun, Md. Samed and Most. Maleka Bibi. Syeduzzaman again transferred 32 decimals of land out of 73 decimals from plots No. 1010 and 1011 to Samed Ali Sheikh by registered deed No. 292 dated 08.01.1973 (Exhibit-6). But possession of 20 decimals of land from disputed Plot No. 1010 and possession of 12 decimals of land from Plot No. 1011 were handed over to Samed Ali Sheikh. Exhibit 3 shows that the names of the purchasers, Samed Ali, Abdul Gaffur, Jobeda Khatun, and Maleka Bibi, were recorded in BRS Khatian No. 537 at BRS Plot 2635. It means according to register deed No. 5210 dated 03.06.1973 and registered deed No. 292 dated 08.01.1973, the names of Samed Ali, Abdul Gaffur, Jobeda Khatun, and Maleka Bibi were recorded in BRS Khatian No. 537. Accordingly, by Exhibit-4 and 4(ka) (rent receipts), they paid rent to the Government exchequer. Exhibit-7, registered deed No. 287 dated 09.01.1990, shows that the first son of Jobeda, Abul Hossain, transferred five decimals of land from plot Nos. 1010 and 1011 in favour of plaintiff no. 2, Jalal Uddin. According to the plaintiffs,

possession of said five decimals of land was handed over to plaintiff no. 2 Jalal Uddin from Plot No. 1010. Exhibit- 8, a registered heba-bil-was deed No. 231 dated 09.01.1990, shows that Abdus Samad transferred $10+13.50+6= 29.50$ decimals in favour of plaintiff no. 1 Shahidur Rahman. Exhibit-9 series sale deed No. 612 dated 20.01.1992 shows that Samed Ali transferred nine decimals of land out of 73 decimals from Plot Nos. 1010 and 1011 to plaintiff no. 2 Jalal Uddin. Exhibit-14, certified copy of sale deed No. 611 dated 20.01.1992, shows that Malekun Nessa transferred five decimals of land from Plot No. 1010 to plaintiff no. 2, Jalal Uddin. Exhibit-11 sale deed no. 743 dated 20.01.1991 shows that Anis, a son of Jobeda Khatun, sold six decimals of land from Plot No. 1010 to plaintiff no. 2 Jalal Uddin and also sold two decimals of land to plaintiff no. 2 Jalal Uddin by sale deed no. 4222 dated 07.03.1993 (Exhibit-10). Exhibit-4 series shows that the plaintiff paid rent to the Government exchequer in respect of the land in question. In such a way, the plaintiffs became the owner and possessor of the suit land.

Both the courts below, having considered those exhibited documents and oral evidence, decreed the suit in favour of the plaintiffs. The defendants only claimed that Tori Mahmud Akand, a Korfa tenant, got indefinitely right, title, and interest over the suit land. Both the courts below found that Tori Mahmud Akand, by way of said Korfa settlement, got Chukani right for a limited period.

Chukani is a limited terms of settlement. It does not create a title to the settler permanently. By this type of Chukani settlement, the settler cannot claim permanent ownership of the settled land or property. The status of Chukani has been defined in a book, namely- *İçj J içjliSpÅ çhouL nē-Ljo*, written by one Kabeledul Islam. The status of Chukani has been defined in the following manner:

QxLiçecijl:

“-SjaSçj-a üaÅçhqfe HL ®nÐZFI fÐSi hi ljuaz 12 - hRI HL ejNi-s içj cMm LI-mj aj-a H-cl üaÅjçdLil S¼ji-aj ej, g-m ai EşljçdLil hi cju-kjNÉJ q-aj eiz”

So, through the Korfa settlement, Tori Mahmud Akanda, a Chukani settler, cannot claim the settled land permanently. The defendants claimed their right, title, and interest over the suit land from said Tori Mahmud Akand, but both the courts below, having considered the materials on record, notably a series of registered instruments, found right, title, interest, and possession of the plaintiffs over the suit land. Both courts below also found that the defendants dispossessed the plaintiffs from the suit land. In such facts and circumstances, the suit was decreed, the plaintiffs' title was declared, and the defendants were directed to hand over the possession of the plaintiffs within 30 (thirty) days.

It is the settled principle of law that concurrent findings of facts arrived at by both the Courts are binding upon the revisional Court. Unless there is a case of misreading or non-consideration of the material evidence on record, the concurrent findings of facts are binding upon the revisional Court. The High Court Division, as a revisional court, has little jurisdiction to set aside the findings of facts arrived at by the courts below

concurrently. More precisely, interference with the findings of facts arrived at by the courts below on due consideration of the evidence is beyond the scope of revisional Court to interfere with.

In such facts and circumstances, I do not find any compelling reason to interfere with the concurrent findings of facts arrived at by the courts below in favour of the plaintiffs.

As a result, I do not find any merit in the Rule.

Accordingly, the Rule is discharged.

However, there would be no order as to cost.

The order of stay of the proceeding of execution case passed by this Court at the time of issuance of the Rule is hereby recalled and vacated.

Let the lower court records, a copy of this judgment, and order be sent to the Trial Court concerned for necessary information and action.