

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 2087 of 2014

Mosammat Chanmoni Bibi and others

..... petitioners

-Versus-

Md. Abu Baker Sana being dead his legal heirs
1(a) Mst. Obirannesa alias Oviron Bibi and
others

..... opposite parties

Mr. SM Obaidul Haque, Advocate

..... for the petitioners

Mr. Sabyasachi Mondal with

Mr. Raju Sen, Advocates

..... for the opposite parties

Judgment on 10.06.2024

This rule was issued calling upon opposite parties 1-6 to show cause as to why the judgment and decree of the Additional District Judge, Court No. 2, Khulna passed on 08.01.2014 in Title Appeal No. 14 of 2009 dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Koyra, Khulna passed on 24.11.2008 in Title Suit No. 21 of 2007 dismissing the suit should not set aside and and/or such other or further order or orders passed to this Court may seem fit and proper.

The petitioners as plaintiffs instituted the suit alleging that the predecessor of the defendants Matubbar Sana was the recorded owner of his share in the land of SA khatian 124 as described in the schedule to the pliant. During his possession and enjoyment he transferred his

share of 1.32 acres to Kosimuddin Sana, the predecessor of the plaintiffs through a registered *kabala* dated 24.04.1965 and handed over possession thereof. Matubbar Sana wanted to take back the land repaying the consideration money and accordingly Kosimuddin executed and registered an agreement to Matubbar Sana. It was stipulated in the agreement that if Matubbar Sana repay the full amount of consideration money within 4 years to Kosimuddin the latter would return the land to him. But Matubbar Sana did not return the amount as per the terms of the contract and accordingly Kosimuddin became the owner of the land. In order to get the land returned Matubbar Sana filed Miscellaneous Case No. 361 of 73-74 in the Revenue Office, Chatkhali under the provisions of section 95A of State Acquisition of Tenancy Act, 1950 and under the President's Order 88 of 1972. Kosimuddin Sana was contesting the case. But Matubbar Sana having been understood the fate of the miscellaneous case received Taka 1000.00 from Kosimuddin and gave up his right over the suit land. He endorsed the amount in the backleaf of agreement by putting his signatures thereon and returned the agreement to Kosimuddin. The miscellaneous case was ultimately disposed of on 28.05.1974 in favour of Kosimuddin. He possessed the land by paying rents to the concerned without any interruption from any quarter. Subsequently he gifted the aforesaid land with other lands totally measuring 2.64 acres to plaintiffs 1-3 by a deed dated

29.11.1991 and handed over possession thereof. Plaintiffs 1-3 sold out .8250 acres on 23.06.1996 to plaintiff 6 and plaintiffs 2 and 3 further sold .8250 acres to plaintiffs 4 and 5 through another *kabala* dated 13.04.2003 and the purchasers are in possession of the suit land. The recent record of right has been prepared in the name of plaintiffs 1-3. Although the defendants have no right, title and possession over the suit land but on the strength of the agreement dated 24.04.1965 they claimed the suit property on 12.02.2007 and tried to take over its possession and hence the suit for declaration that the agreement dated 24.04.1965 do not come within the ambit of section 95A of the SAT Act and as per the provision of President's Orders 88, 136 of 1972 and 24 of 1973.

Defendants 1-6 contested the suit by filing written statement. In the statement they denied the facts asserted in the plaint and contended that Matubbar Sana being the owner in possession of the suit land offered to sell 1.32 acres to Kosimuddin, the predecessor of the plaintiffs at Taka 1800.00. The latter accepted the proposal and as consideration paid Taka 1800.00 to the former who executed and registered a sale deed on 24.04.1965. On the same transaction Kosimuddin executed the deed of reconveyance. In the agreement it was stipulated that Matubbar Sana would return the amount of consideration to Kosimuddin within 4 years and the latter would return the land to the former. As per the agreement Matubbar Sana

went to Kosimuddin in the month of Chaiatra 1375 BS and offered him the total amount of consideration but he refused to accept the amount on various pretexts and did not return the land to him. After expiry of several years Matubbar Sana filed a miscellaneous case in Chatkhali Revenue Office under section 95A of the SAT Act, 1950. Kosimuddin appeared in the miscellaneous case but it was compromised at the instance of respectable men of the locality and accordingly an order of compromise was passed on 25.08.1974. Matubbar Sana thus got the land returned and inducted into the possession. He died leaving behind these defendants as heirs. After his death they have been possessing the same with the full knowledge of the plaintiffs. The original deed of agreement was with the defendants which was lost on 01.09.2006 from the settlement office of Koyra. For it they lodged GDE No. 284 with Koyra police station. The plaintiffs gripped the agreement and showing payment on its backleaf tried to grab the property. Matubbar Sana did never receive Taka 1000.00 from Kosimuddin and give up his right over the suit land by endorsing acceptance of payment. The deed of gift dated 29.11.1991 and the *kabala*s dated 23.06.1996 and 13.04.2003 are without consideration and inoperative. The plaintiffs accrued no title on those basis and they have no possession in the land. Therefore, the suit would be dismissed.

The trial Court framed 6 issues to adjudicate the matter in dispute. Among them the vital issues were whether the plaintiffs have right, title and possession over the suit land and whether the deed of agreement dated 24.04.1965 is beyond the provisions of section 95A of the SAT ACT, 1950 and President's Orders 88, 136 and 1972 and 24 of 1973. In the trial the plaintiffs examined 3 witnesses and their documents were produced as exhibits 1-8. On the other hand defendants examined 1 and their documents were exhibits-'Ka' and 'Kha'. However, the Assistant Judge dismissed the suit deciding the material issues against the plaintiffs. The plaintiffs then challenged the aforesaid judgment and decree before the District Judge, Khulna. The Additional District Judge, Court No. 2, Khulna heard the said appeal on transfer and dismissed it affirming judgment and decree passed by the trial Court which prompted the petitioners to approach this Court upon which the rule was issued and an *interim* order of *status quo* was passed.

Mr. SM Obaidul Haque, learned Advocate for the petitioners taking me through the judgments passed by the Courts below and other materials on record submits that both the Courts below misdirected and misconstrued in their approach of the matter and thereby committed error of law resulting in an error in such decisions occasioning failure of justice in not holding that the aforesaid provisions of law shall not apply in this particular case. Moreover,

Matubbar Sana took money from Kosimuddin Sana the predecessor of the plaintiffs by endorsing the same on the backleaf of the agreement and extinguished his right in the suit property. The petitioners are in possession in the suit land and they have already transferred a part of it to third parties through registered deed of gift and *kabalas*. The evidence of plaintiffs' witnesses in respect of their title and possession is corroborative. In view of the aforesaid position, the rule would be made absolute and the suit be decreed.

Mr. Sabbyasachi Mondal, learned Advocate for the opposite parties on the other hand opposes the rule and submits that both the Courts below concurrently found that Kosimuddin Sana fraudulently wrote on the backleaf of the agreement that Matubbar Sana took money from him and gave up his right over the suit land. Moreover, the certified copy of order of the Revenue Officer, Chatkhali dated 28.05.1974 shown to have been passed in Miscellaneous Case 361 of 1973-1974 do not exist and consequently dismissed the suit finding no title and possession of the plaintiffs in the suit land. The above finding of the Courts below may not be interfered with by this Court in revision. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record.

It is admitted fact that Matubbar Sana was the recorded owner of the suit land. It is also admitted by the parties that during his

possession and enjoyment he transferred 1.32 acres of land to Kosimuddin, the predecessor of the plaintiffs at Taka 1800.00 through a registered *kabala* dated 24.04.1965 exhibit-1. It is also admitted by the parties that Kosimuddin executed and registered an agreement to Matubbar Sana on the same day that if Matubbar Sana returns the amount to him within 4 years he would return the land to him. The case of the plaintiffs is that Matubbar Sana did not return the amount to Kosimuddin to get the land returned and consequently the latter became the owner of the suit land. It was further alleged that the defendants' predecessor filed a miscellaneous case to Chatkhali revenue office under the provisions of section 95A of the SAT Act against Kosimuddin. The case was compromised and on taking Taka 1000.000 from Kosimuddin, Matubbar Sana gave up his right over the property by endorsing receipts on the backleaf of the deed of agreement. The defendants disowned the aforesaid facts and claimed that no such compromise was made in the miscellaneous case and that the *ekrarnama* was lost from the revenue office Chatkhali and they made a GD entry with the concerned police station for it. Kosimuddin grabbed the *ekrarnama* and created a story of compromise that Matubbar Sana took money from him endorsing it on the backleaf of the *ekrarnama*.

The order of the revenue officer passed on 28.05.1974 in the miscellaneous case exhibit-5 shows that no order of compromise was

passed therein as claimed by the plaintiffs. The certified copy of the aforesaid order exhibit-5 submitted by the plaintiffs is forged and created. The original record shows that the order has been passed in favour of Matubbar Sana. Moreover, the trial Court found that the signature put by Matubbar Sana on the agreement exhibit-2 is dissimilar with his admitted signatures in other documents which appears to me correct. The plaintiffs failed to examine any witness in support of their claim that Matubbar Sana received Taka 1000.00 from Kosimuddin and gave up his right over the suit land. The aforesaid findings of the trial Court was affirmed by the appellate Court. Therefore, I find no reason to interfere with the judgments passed by the Courts below. The aforesaid documents submitted by the plaintiffs before the Court in support of their claim has been created only to grab the property, right and title and possession of which was with Matubbar Sana, the predecessor of the defendants. He himself and his heirs, the defendants are entitled to get the aid of section 95A of the SAT Act which they have already got in the miscellaneous case. Form scanning the evidence of witnesses, I find that the plaintiffs are not in possession of the suit land, therefore, the suit in the present form without any prayer of consequential relief is not maintainable. The petitioners failed to make out a case of misreading and non consideration of the evidence and materials on

record for which the decision passed by the Courts below could have been otherwise.

In view of the discussion made hereinbefore, I find no merit in this rule. Accordingly, the rule is discharged. However, there will be no order as to costs. The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Court records.

Rajib