

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1132 of 2022

Md. Humayun Kabir

..... Petitioner.

-Versus-

Md. Abdus Salam Shonar and others

.....Opposite parties.

Mr. Md. Shahadat Tanveer Amin, Adv.

..... For the petitioner.

Mr. Shaheed Alam, Advocate

.....For the opposite parties.

Heard and judgment on 2nd July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 10.10.2021 passed by the District Judge, Joypurhat in Other Class Appeal No.28 of 2021 affirming those dated 28.02.2021 passed by the Senior Assistant Judge, Kalai, Joypurhat in Other Class Suit No. 43 of 2013 decreeing the suit should not be set aside.

Opposite parties as plaintiffs filed Other Class Suit No. 43 of 2013 before the Court of Assistant Judge, Kalai, Joypurhat for permanent injunction against the petitioner.

Plaint case in short, inter alia, is that Mehanot Ali Fakir, Maharaj Ali Fakir, Moslem Ali Fakir were the owner of 4(four) Annas share each of land measuring 33.11 acres of settlement Khatian No.82 Mouza-Purbo Krishtopur, Thana- Kalai, District-Joypurhat. Former tenants have partitioned their land amicably for the convenient of enjoying their possession of the land. C.S. Khatian No.82 has been prepared in the name of the tenants in which possession has been mentioned in favour of the tenants in comment column. C.S. tenant Moslem sold 87 decimals of land of C.S. plot No.442, 39 decimals of plot No.512 and 79 decimals of plot No.612 to Abdul Jalil by a registered deed of Kabala being No.793 dated 05.03.46 and since then he had been possessing the said land by paying rent to Government. Abdul Jalil died leaving behind him only one son Fazlul Karim. M.R.R. Khatian was not prepared in the name of Fazlul Karim for his inherited land and as such he filed a case being No.314/74 under Section 143 of the State Acquisition and Tenancy Act for correction of M.R.R.

khatian against Abdus Samad and others and notice was served upon them and they submitted written statements but they ultimately did not contest the said case and the said Misc. Case was allowed exparte by order dated 07.02.1970. Fazlul Karim filed an application under Section 54 of S.A.T. Act according to the said judgment and order and Misc. Case No.44/77-78 was filed and the said application was allowed and M.R.R. Khatian No.106 was prepared in the name of Fazlul Karim. Fazlul Karim mutated his name through Mutation Case No.904/99, 85-86 dated 23.04.1985 for his land and R.S. Khatian No.304 has been prepared in his name. Fazlul Karim Sarkar sold 39 decimals of land of C.S. Plot No.612 to the plaintiff No.1 and 2 by a registered deed of kabala being No.5228 dated 20.10.1997. The plaintiff have been possessing the land by paying rent to the Government. Defendant filed objection Case under Section 30 against the field porcha of Fazlul Karim, which was rejected on 24.02.1994. Thereafter the defendants filed Appeal No. 1094/94 under Rule 31 against the said order and the said appeal was disallowed on 20.02.1995. The father of the plaintiffs have been possessing 39 decimals of land of C.S. plot No.612 by paying rent to the

Government. Defendants have no title and possession in the suit land but they threatened the plaintiff on 15.07.2013 to dispossess them from the suit land forcibly and hence the suit.

Petitioner and opposite party No.10 as defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that the suit land is included in C.S. Khatian No.82 and M.R.R. Khatian No.106, the suit land is recorded in the name of Mehanot Fakir and others, the name of C.S. recorded tenant Moslem Uddin has been recorded with his another brothers for 1/4 share. Moslem Uddin died leaving behind him only daughter named Amena. M.R.R. Khatian was prepared and published in the name of Amena. Amena sold .39 decimals of land of Plot No.512 to the defendant No.1 by registered deed of Kobala being No.4034 dated 04.08.2010. Amena also sold .87 decimals of land of C.S. plot No.442 including 1.81 acres to the defendant No.1 by registered deed of Kobala being No.4215 dated 24.08.2010. Defendant No.1 mutated his name for the land of 87 decimal of C.S. plot No.612 and opened holding in his name by Misc. Case No. 415(9-1) 10-11 dated 04.11.2010. The deed of Kobala No.793 dated 05.03.46 as mentioned in the plaint is false

and ineffective. Jalil Sarkar or his son did not get possession of the suit land on the basis of the said deed and as such the said deed was not acted upon. Amena was not made party in the case of rectification of M.R.R. Khatian and summons was not served upon the defendant. Amena Khatun, the mother of the defendant No.1 was not made party in cases relating to Rule 30 and 31 of the SAT Act. Defendant No.1 has been possessing the land of plot No.442 and 512 by cultivating paddy and planting of trees. The mutation order of the plaintiff has been cancelled by order dated 24.04.2011 in case No. 12(10) 2010-2011. Defendant did not give any threat to the plaintiff and as such the suit is liable to be dismissed with cost.

Trial court framed the following issues.

- i) Whether the plaintiff has got prima facie title and exclusive possession over the suit land?
- ii) Whether the suit is maintainable to its present form or not?
- iii) Whether the plaintiff is entitled to get a decree for permanent injunction or not?

During trial both the parties adduced 4 witnesses each and adduced a number of documents, which are marked exhibited in court as Exhibits.

Considering the evidences and hearing the parties, Trial Court decreed the suit on contest vide judgment and decree dated 28.02.2021.

Challenging the said judgment and decree, defendant petitioner preferred Other Class Appeal No. 28 of 2021 before the Court of District Judge, Joypurhat, who by the impugned judgment and decree dated 10.10.2021 dismissed the appeal and affirmed the judgment of the trial court.

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

Mr. Md. Shahadat Tanveer Amin, the learned advocate appearing for the petitioner drawing my attention to the documents submitted in court as well as oral evidence as adduced by the defendant submits that court below mainly relying upon the document of the plaintiff decreed the suit in favour of the plaintiffs, it will appear from nowhere in the judgment of the court below that they have at all considered evidences adduced by the

defendants, apparently the judgment passed by the court below are on mere presumption. The learned advocate further submits that plaintiffs although failed to prove their cause of action of giving threat to dispossess from the suit land by the defendants but the court below decreed the suit most arbitrarily. The impugned judgment is not sustainable in law, which is liable to be set aside.

Mr. Shaheed Alam, the learned Advocate on the other hand, appearing for the opposite parties drawing my attention to the judgment of the courts below submits that both the court below concurrently found that plaintiff has got valid prima facie title over the suit land and has got exclusive possession therein and accordingly decreed the suit in favour of the plaintiff. Since the said judgment contains no misreading or non-reading of the evidences, the rule contains no merits, he thus prays for discharging the rule.

Heard the learned Advocate and perused the lower court record and the impugned judgment.

This is a suit for permanent injunction. Admittedly suit property was belonged to Moslem Uddin. According to the

plaintiff, he transferred the suit property in favour of Abdul Jalil Sarker by way of registered sale deed No. 793 dated 05.03.46. That Abdul Jalil died leaving behind son Fazlul Karim, who filed Title Suit No. 314/74 before the Court of Subordinate Judge, Bogura for correcting the M.R.R. Khatian, which are wrongly been prepared in the name of defendant and got decree on 07.02.1970 and corrected the M.R.R khatian No. 106 by recording his name thereon vide Misc. Case No. 44/77-78. That Fazlul Karim thereafter sold the suit land measuring .39 decimals of land from Plot No. 612 to plaintiff by way of registered sale deed No. 5228 dated 20.10.1997. Thereafter plaintiffs are in possession in the suit land by plantation, when the defendants gave threat to dispossess the plaintiff from the suit land, he was compelled to file the suit for permanent injunction. On the other hand, defendants claimed that property was admittedly belonged to Moslem Uddin, who died leaving behind daughter Amena. Who thereafter sold the suit land measuring 1.81 acres of land from C.S. plot No. 442 to the defendant by way of registered sale deed No. 4215 dated 24.08.2010, who after purchase the said land possessing the same by mutating his name thereon. Defendants further case is that no

suit being No. 314/74 was ever been filed for correcting the M.R.R. khatian No. 106 and the said khatian was also not been ever corrected and the sale deed in favour of the plaintiffs predecessor dated 05.03.46 was forged one. Plaintiffs cause of action is not correct and accordingly the suit is false and is liable to be dismissed with cost.

Upon discussing the document submitted by the plaintiff and defendants, both the court below concurrently found that plaintiff predecessor Abdul Jalil purchased the suit land from Moslem Ali Fakir vide registered sale deed dated 5.3.46. That document is an ancient document and was executed and registered long before 75 years back and has got presumptive value and subsequently recording of S.A. and R.S. khatian in the name of the plaintiff predecessor as well as in the plaintiffs name carried the presumption of the valid title and possession over the suit land. Since the defendants could not show by adducing any evidence that the documents dated 05.03.46 was in any way not been executed or a forged document, the plaintiff acquired valid title by way of purchase from the admitted C.S. recorded tenant. Moreover paying rents by the plaintiffs for the land they have

purchased carries the valid prove of possession. In nowhere in the said concurrent judgment of the court below it is found that the defendants purchased deed dated 24.08.2010 from Amena Khatun, daughter of Moslem Uddin is a forged and concocted document. Moreover there is no findings that the defendant at all encroached the land of plaintiffs.

In the premises, when plaintiff deeds are been found as correct by the court below upon discussing the evidences on record and the title deed and possession of the defendant on their purchased land has also not been found not correct, so both the party obviously got their valid title and possession over the suit land. But only question remains whether the defendants gave a threat to the plaintiffs to dispossess from their purchased land. In the schedule of the suit, property was shown by giving a red marking on the sketch map showing they are in possession on the land they have purchased measuring .39 decimals of land from plot No. 612.

Regarding the threat of dispossession plaintiff has adduced a number of witnesses, who in a voice has said that:

"১৫.০৭.১৩ তারিখে বিবাদীগণ নাঃ সম্পত্তি হতে বেদখল করার হুমকি প্রদান করে এবং আমরা বাধা দিলে তাহারা ফিরে চলে যায়।"

This contention of P.W.1 was also affirmed by the P.W.3 Md. Shahabuddin and by P.W.4 Shahadul Islam. By this way plaintiff try to establish the cause of action for getting an order of permanent injunction. The learned advocate for the petitioner try to establish that the cause of action was not correct and they did not give any threat to the plaintiff to dispossess them from the suit land. If there is no threat to dispossess the plaintiffs as been advanced by the learned advocate appearing for the defendant – petitioner before this court and the plaintiff contention is been found to be proved that they are in possession on their purchased land and there is no harm to pass an order of permanent injunction restraining the defendant from dispossession to the plaintiff in the suit property wherein they have got valid title and exclusive possession. However since the judgment of the court below contains no misreading or non-reading of the evidences, I find no merits to interfere in the said concurrent judgment of the court below.

I thus find no merits in the rule.

In the result, the Rule is discharged and the judgment and decree passed by the court below are hereby affirmed.

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

Send down the Lower Court records and communicate the judgment at once.