

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 2392 of 2010

With Civil Revision No. 2393 of 2010.

Ohiduzzaman and others.

.....Petitioners.

Versus

Ali Ahmed and others.

.....Opposite parties.

Mr.S.M. Bazlur Rashid, Advocate.

-----For the petitioners.

Mr. Nazmul Karim, Advocate.

-----For the Opposite Party.

Heard and Judgment on 29.01.2024.

A.K.M. Asaduzzaman, J.

These 02(two) rules since arisen out of same judgment and decree dated 19.03.2009 passed by the Joint District Judge, 2nd Court, Lakhipur in Title Appeal No. 154 of 2005 heard analogously with Title Appeal No. 45 of 2006 reversing those dated 31.07.2005 passed by the Assistant Judge, Raypur, Lakhipur in Title Suit No. 343 of 2004 heard analogously with Title Suit No. 344 of 2004 decreeing the suit should not be set aside, are heard together and disposed of by this single judgment.

One Sreemati Purnoshashi Debnath along with others on 17.09.1992 as plaintiff filed Title Suit No. 211 of 1992 against Abdur Rahman and others for declaration of title. Subsequently on 08.02.1998 Wahiduzzaman and others filed Title Suit No. 17 of 1998 against Sreemati Purnoshashi Debnath and others for declaration of title and recovery of khas possession.

Title Suit No. 211 of 1992 was thereafter re-numbered as Title Suit No. 343 of 2004 and Title Suit No. 17 of 1998 was re-numbered as Title Suit No. 344 of 2004 after being transferred to the Court of Assistant Judge, Lakhipur.

Fact of this case mainly as would be derived from the plaint and written statements of both the suit is that as per Sreemati Purnoshashi Debnath and others, wherein the present plaintiff Ali Ahmed and others added in defendant no. 7 disclosed that 04 decimals of land on plot no. 1293 under no. 16 of Denathpur Mouza was belonged to Jamindar Prosonomoyee Chowdhurani, which was settled orally as of rent to one Abdur Rahman and others, who possessed the suit land by dwelling there. D.S. record was prepared into their name. Since Abdur Rahman was engaged in religious activities in elsewhere and could not stay in the house finally in the month of Choitro 1336 B.S. he surrendered the said property in favour of the then landlord. Thereafter Krisno Sondar

Boisnob took settlement of the said land on 15 Vadro 1350 B.S. and possessing the said land upon erecting to one shop in front of the suit land and residing rest in backside of the suit land. After the death of the Krisno Sandar Boisnob, plaintiff nos. 1 and 2 as his 02 daughters survived and thereafter plaintiff nos. 3 and 6 got the property as reversioners. Pranhor Boisnob gifted her share to her brother plaintiff no. 5 through register deed of gift on 01.06.1999. Plaintiff no. 4 transferred her share through gift to her brother plaintiff no. 5 on 09.03.1994. Plaintiff no. 3 exchanged his land with plaintiff no. 5 through a deed of Ewaj dated 27.03.1994. Thereafter plaintiff no. 5 transferred his land along with plaintiff no. 7 Ali Ahmed through a registered deed of Ewaj dated 03.10.1994 and plaintiff nos. 1,2 and 6 transferred their share to plaintiff no. 7 Ali Ahmed to register sale deed dated 19.04.1995 and accordingly plaintiff no. 7 Ali Ahmed is now owning and possessing the suit land. The recording of M.R.R. khatian was not within the knowledge of the plaintiff and as an when plaintiff went to pay their rents at the time of revisional survey and revisional court was going to be prepared, plaintiff came to know about the wrong recording of M.R.R. khatian and found that it was not been recorded name the name of the plaintiff rather in the remarks column plaintiff's in were recorded there as a forceful possessor. In fact, it ought to be prepared in the name of the plaintiff since

the recording was wrong and plaintiff's title became clouded and hence they filed this suit for title.

On the other hand from the written statement as well as from the plaint of Title Suit No. 344 of 2004 case of the Wahiduzzaman and others are that admittedly suit property was belonged to Jamindar Prosonnomoyee Chowdhurani and 04 decimals of land was orally settled to Abdur Rahman, who is the predecessor of the Wahiduzzaman and others, who after obtaining the settlement constructed two houses in the suit land on which in the front size, he established a library and resides rest of the land. In the last settlement, it was recorded in the name of Abdur Rahman along with his 02 brothers although they did not have any right title over the suit land. Abdur Rahman died leaving behind his sons, who are the present plaintiffs in the suit being Title Suit No. 344 of 2004. Since Abdur Rahman was engaged in his religions activities and moved here and there and thus could not continue with his library business and as such subsequently became closed and thereafter in the month of Boishak of 1345 B.S. he rented the suit land to his follower Krisno Sandar Boisnob fixing a rent of Tk. 24/- per anum. Krisno Sandar Boisnob during his life time continued their business along with his nephew Harihor Debnath. Krisno Sandar Boisnob died childless. Wherein

defendant no. 4 continued the business taking help of defendant nos. 4 to 5 with the permission of the plaintiff, he renovated the room establishment in the suit property by spending Tk. 7500/- in the month of Baishak 1395 B.S with stipulation that after completion of renovation, the money spend would be adjusted with the rent as would be re-fixed but thereafter defendant did not follow the agreement. In the month of April in 1991 when plaintiff asked to vacate the premises and in the meantime recording of revisional settlement started wherein defendant tried to record their names and finally succeed to record their names in the remarks column as a possessor and by dint of that recording making an imaginary story filed Title Suit No. 211 1992 and thereafter refused to handover the possession to the plaintiff. They were compelled to file this suit for title and recovery of khas possession.

Both the suits were heard together and by the judgment and decree dated 31.07.2005 Assistant Judge dismissed both the suits.

Challenging the said judgment and decree both the plaintiffs preferred 02(two) appeals being no. Title Appeal No. 154 of 2005 and Title Appeal No. 45 of 2006 before the Court of District Judge, Lakkhipur, which were heard on transfer by the Joint District Judge, 2nd Court, Lakkhipur, who by the impugned

judgment and decree dated 19.03.2009 reversed the judgment of the trial court and decreed the suit being Title Suit No. 343 of 2004 and gave title and dismissed the suit being Title Suit No. 344 of 2004.

Challenging the said judgment and decree present petitioner obtained these 02 (two) rules.

Mr. S.M. Bazlur Rashid, the learned advocate appearing for the petitioners drawing my attention to the judgment of the court below submits that although by sufficient oral testimonies, Ohiduzzaman, the present petitioner as being the legal heirs of Abdur Rahman, who took oral settlement of the then Jamindar, has successfully able to prove his title in the suit property through the recording of D.S. as well as M.R.R. Khatian but the courts below most illegally disbelieved the same and refused to grant the title in their favour. He further submits that the oral witnesses although proved that Ali Ahmed and his predecessor were the tenant under the Abdur Rahman in the suit premises but the court below disbelieved the same and most illegally refused to pass a decree in their favour. He finally prays that the impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Nazmul Karim the learned Advocate for the opposite parties, on the other hand, submits that when the plaintiff Ohiduzzaman and others in the other suit failed to prove by any document that Krisno Sandar Boisnob was a tenant under Abdur Rahman and the deed purchased by the plaintiff Ali Ahmed from the owners of Krisno Sandar Boisnob not being challenged in the suit rather it has been admitted by D.W.1 Aatur Rahman together with his possession in the suit land as being established in the suit property, appellate Court being the last court of fact has rightly assessed the same and decreed the suit in favour of Ali Ahmed and others declined their title in the suit property.

Learned advocate further submits that document of the Ali Ahmed as obtained from the reversioners has now been challenged by the Ohiduzzaman and others before this court was not there in the suit, so it is out of the pleadings. Moreover, now the heirs of Krisno Sandar Boisnob has ever come forward to challenge the deed of the Ali Ahmed as not been acted upon and the said Ohiduzzaman or any other has no right to challenge the deed. Since the impugned judgment contains no misreading or non reading of the evidence, the decree passed by the Appellate Court contains no illegality, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

02(two) suits were filed by two sets of plaintiff in one suit plaintiff of the other suit are defendants and in the other suit plaintiff are defendants of in another suit. Title Suit No. 211 of 1992 is a simple suit for declaration of title and other suit being Title Suit No. 17 of 1998, which is subsequently re-numbered as Title Suit No. 344 of 2004 is a suit for declaration of title together with recovery of khas possession.

In the instant case admittedly suit property was belonged to the then Jamindar Prosonomoyee Chowdhurani. 04 decimals of land was settled orally without any rent in favour of Abdur Rahman and others. Ohiduzzaman and others claimed that they are the heirs of Abdur Rahman. On the other hand the plaintiff of other suit Sreemati Purnoshashi Debnath and others wherein Ali Ahmed, who subsequently added as a plaintiff no. 7 claimed that Abdur Rahman surrender the property in favour of Jamindar and subsequently it was re-settled in favour of Krisno Sondar Boisnob, thereby Krisno Sondar Boisnob was not a tenant under Abdur Rahman rather he claims his independent title in the suit property by dint of settlement taken from the Jamindar after the suit land was surrendered by the Abdur Rahman to Jamindar. Admittedly

Krisno Sondar Boisnob and thereafter Ali Ahmed is in possession in the suit property. According to the Ohiduzzaman and others they are nothing but a tenant under Abdur Rahman and his successors. Now in that suit main question to be decided here that whether Ali Ahmed or his predecessor Krisno Sondar Boisnob or his heirs were a tenant under Abdur Rahman or not ? Ohiduzzaman can not show by anything that Krisno Sondar Boisnob or his successors and thereafter Ali Ahmed were the tenant under Abdur Rahman or Ohiduzzaman, the decree passed in Title Suit No. 211 of 1992 by the Appellate Court is illegal and the Title Suit No. 344 of 2004 can be decreed.

Going through the record, it appears that although number of oral witnesses were examined by Ohiduzzaman in Title Suit No. 344 of 2004 but surprising to notice that save and accept D.W.1 Aatur Rahman there is no other evidence, as has come forward to prove the contention of taking settlement of the property by Abdur Rahman and Krisno Sondar Boisnob or his successors were tenant under Abdur Rahman. Regarding the giving rent to Krisno Sondar Boisnob and others said Aatur Rahman only said that Krisno Sondar Boisnob has taken rent from Abdur Rahman. Save and accept this discloser there is nothing to show before this court that contention have got any basis. Rather it

has come out on his testimonies that Krisno Sondar Boisnob and his successors are in possession since more than 50 years in the suit premises and Ali Ahmed purchased the property from the successor of Krisno Sondar Boisnob through registered sale deed and in possession thereon. Appellate Court being the last court of fact thus only analyzing the evidence of both the parties found that fact of giving rent to Krisno Sondar Boisnob and he along with his successors including the present plaintiff Ali Ahmed are in the suit property as a tenant under Abdur Rahman or his successors was not been proved by any evidence. Moreover upon admission of the D.W.1 Aatur Rahman along with other P.W.s it is found that Ali Ahmed and his predecessors are in possession in the suit property long before. The title deed of the Ali Ahmed along with the other transfer as being made amongst the plaintiffs, the successor of Krisno Sondar Boisnob was not been challenged in the suit rather it has been admitted in court, the decree passed by the Appellate Court contains no illegality. The question raised by the petitioner that the document has obtained by Ali Ahmed from reversioners in the life time of the heirs of the Krisno Sondar Boisnob is a void document and not been acted upon contains no basis. Since it was not been challenged in the plaint of the suit or by Aatur Rahman while deposing in court as well as it was not been challenged by any heirs of Krisno Sondar Boisnob. Moreover Ohiduzzaman and

others has got no legal right to challenge the deed, which has been obtained by the Ali Ahmed from the reversioners heirs of Krisno Sondar Boisnob, who is remaining in possession in the suit property long before as claimed to have obtained by oral settlement from the then Jamindar Prosonnomoyee Chowdhurani, after being surrendered by Abdur Rahman in favour of the Jamindar. By way of long possession as well as recording in the M.R.R. khatian in the column as possessor also apparently prove the above alleged story of the plaintiff Krisno Sondar Boisnob and others, plaintiff in Title suit No. 343 of 2004.

Regard being had to the above factual aspect of this case, I am of the view that the appellate court committed no illegality in decreeing the suit in Title Suit No. 343 of 2004 and dismissed the suit in Title Suit No. 344 of 2004 after reversing the judgment of the trial court dated 31.07.2005

I thus found no merits in both the rule. Both the Rules are hereby discharged and the judgment and decree passed by the Appellate Court is hereby affirmed.

Send down the L.C.Records and communicate the judgment to the court below at once.