

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.2283 OF 2022.

S. M. Prince (Babu)
..... *Defendant-Respondent-Petitioner.*

-VERSUS-

Md. Tozammel Haque Sarker and others
... *Plaintiff-Appellants-Opposite Parties.*

Mr. A.H.M. Kamruzzaman, Advocate
..... *For the Petitioner.*
Mr. Md. Abdul Baten Sheikh, Advocate
..... *For the Opposite Parties.*

19.11.2024, 01.12.2024 and 02.12.2024

Judgment on 15.12.2024.

By this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 24.11.2021 passed by the learned Joint District Judge, 2nd Court, Sirajgonj in Other Class Appeal No.226 of 2018, allowing the appeal and reversing the judgment and decree dated 26.06.2018 passed by the learned Assistant Judge, Raigonj, Sirajgonj in Other Class Suit No. 29 of 2012 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in brief for disposal of the Rule is that the plaintiff-opposite parties instituted Other Class Suit No. 29 of 2012 before the Assistant Judge, Raigonj, Sirajgonj, for permanent injunction, contending inter-alia that Pamosa Pramanik and others were the owners and possessors of 7.85 acres of land, including 4.32 acres of land of Naupa Mouza of Raiganj police station under C.S Khatian No. 39 consisting of C.S dag No.108 and others. Then Pamosa Pramanik, while being the owner and possessor of those lands, died, leaving two sons, namely Baher Uddin and Babar Ali. Then, through mutual compromise, Babar Ali became the owner and possessor of 107 decimals out of 423 decimals of land consisting of C.S. dag No. 108. Later on, those 107 decimals of land out of 423 decimals of land were recorded correctly and published in the name of Babar Ali in S.A Khatian No. 61. Then Baher Uddin, through mutual compromise, became the owner and possessor of 151 decimals of land out of 423 decimals of land under of C.S dag No. 108. Later on those 151 decimals of land out of 423 decimals of land were recorded correctly and published in the name of Baher Uddin in S.A Khatian No. 62. Then Baher Uddin on 26.04.1962 through a registered sale deed No. 4267 transferred 48 decimals of land to Md. Akbar Hossain (son of Babar Ali) and provided delivery of possession. Then Babar Ali died, leaving

one wife, Rokimon Nesa, and one son, Md. Akbar Hossain and one daughter, Khodeja Khatun. Then, through several sale deeds, the heirs of Babar Ali transferred 106 decimals of S.A dag No. 108 land to Changta Majhi and provided delivery of possession. Then, during the period of preparing R.S Khatian, those 106 decimals of land were recorded correctly and published in the name of Changta Majhi in R.S Khatian No. 6. Then Changta Majhi on 08.06.1979 through a registered sale deed No. 7796 transferred 36 decimals of land to Md. Abdul Mannan Gong and provided delivery of possession. After that, Md. Abdul Mannan Gong, on 27.09.1999, through a registered sale deed No. 6050, transferred 33 decimals of land to Ziaul Haque (plaintiff No. 03) and provided delivery of possession. Then Md. Abdul Mannan Gong, on 26.10.1999, through a registered sale deed No. 6880, transferred three(3) decimals of land from the disputed dag to Ziaul Haque (plaintiff No. 03) and provided delivery of possession. Though R.S dag No. 257 was mentioned in that deed, plaintiff No. 03 got the possession from R.S dag No. 259. Then Changta Majhi, on 11.02.1980, through a registered sale deed No. 2481, transferred 68 decimals of land to Siddik Hossain and provided delivery of possession. Though R.S dag No. 257 was mentioned in that deed, the transferee got the possession from R.S dag No. 259.

Then Siddik Hossain, on 15.07.1987, through a registered sale deed No. 4917, transferred 35 decimals of land to Sufia Khatun and provided delivery of possession. Then Siddik Hossain, on 15.07.1987, through a registered sale deed No. 4918, transferred 16.5 decimals of land to Tozammel Haque (plaintiff No. 01) and provided delivery of possession. After that, Siddik Hossain, on 15.07.1987, through a registered sale deed No. 4919, transferred 16.5 decimals of land to Shamsur Rahman (plaintiff No. 04) and provided delivery of possession. Then, Sufia Bewa, on 13.03.2003, through a registered sale deed No. 1445, transferred 35 decimals of land to Meherul Islam (plaintiff No. 02) and provided delivery of possession. As mentioned above, the plaintiffs became the owners and possessors of 102 decimals of land under R.S Khatian No. 6 consisting of R.S dag No. 257 and 259. After that, the plaintiffs will remain in possession of those lands. On 10.02.2012, the defendants threatened the plaintiffs to dispossess them from the suit lands as described in the plaint schedule. Hence, the suit is.

The defendants 2-4 contested the suit by filing a joint written statement contending inter alia, denying all the material allegation that Pamosa Pramanik and others were the owners and possessors of 7.85 acres of land, including 4.32 acres of land of Naupa Mouza of Raiganj Thana under

C.S Khatian No. 39 consisting of C.S dag No. 108 and others. Then Pamosa Pramanik, while being the owner and possessor of those lands, died, leaving behind two sons, namely Baher Uddin and Babor Ali. Then, through mutual compromise, Babar Ali became the owner and possessor of 107 decimals out of 423 decimals of land consisting of C.S. dag No. 108. Later on, those 107 decimals out of 423 decimals of land were recorded correctly and published in the name of Babar Ali in S.A Khatian No. 61. Then Baher Uddin, through mutual compromise, became the owner and possessor of 151 decimals out of 423 decimals of land under of C.S dag No. 108. Later on those 151 decimals out of 423 decimals of land were recorded correctly and published in the name of Baher Uddin in S.A Khatian No. 62. Then Baher Uddin on 26.04.1962 through a registered sale deed No. 4267, transferred 48 decimals of land to Md. Akbar Hossain (son of Babar Ali) and provided delivery of possession. Then Babar Ali died, leaving one wife, Rokimon Nesa, and one son, Md. Akbar Hossain and one daughter, Khodeja Khatun. Then, by way of several sale deeds, the heirs of Babar Ali transferred 106 decimals of land consisting of S.A dag No. 108 to Changta Majhi and provided delivery of possession. Then, while preparing R.S Khatian, those 106 decimals of land were

recorded correctly and published in the name of Changta Majhi in R.S Khatian No. 6.

Then Chengta Majhi died, leaving only son Mono Majhi. Then Mono Majhi decided to sell 141 decimals of land, including disputed 102 decimals, to Nurul Islam and Bellal Hossain, and as Mono Majhi is an aboriginal, so as per the provision of section 97(3) of the State Acquisition and Tenancy Act, 1950 he filed an application before the District Commissioner in order to get permission to sell property mentioned above. Accordingly, on 08.03.2010, the District Commissioner approved that application. Then Mono Majhi, on 01.02.2010, through a registered sale deed No. 1376, transferred 141 decimals of land, including disputed 102 decimals of land, to Nurul Islam and others and provided delivery of possession. Then, on 20.10.2011, through a registered sale deed No. 8720, Nurul Islam and others transferred 52 decimals of land from the suit jote to S. M. Prince Babu (defendant No. 02) and provided delivery of possession. Again, on the same date, Nurul Islam and others, through a registered sale deed No. 8721, transferred 51 decimals of land from the suit jote to Md. Saiful Islam (defendant No. 03), as well as Md. Shariful Islam (defendant No. 04) and provided delivery of possession. The defendants have better title and possession over the suit lands. By

preparing false and fabricated documents, the plaintiffs wrongfully claimed the suit property. The plaintiffs have filed this suit before the learned Court only to harass the defendants. The plaintiffs have no title and possession over the suit lands.

The learned Assistant Judge framed necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Assistant Judge, Raigonj, Sirajgonj, dismissed the suit by the judgment and decree dated 26.06.2018.

Being aggrieved, the plaintiff, as appellant, preferred Other Class Appeal No.226 of 2018 before the District Judge Sirajgonj. Eventually, the learned Additional District Judge, Sirajgonj, allowed the appeal by the judgment and decree dated 24.11.2021 after setting aside the judgment and decree passed by the trial Court.

Being aggrieved, the defendant-respondent as petitioner filed this Civil Revision under section 115 (1) of the Code of Civil Procedure before this Court and obtained the instant Rule.

Mr. A.H.M. Kamruzzaman, the learned advocate appearing on behalf of the defendant-petitioner, submitted that the impugned judgment is not a proper judgment of reversal, inasmuch as the Court of appeal without reversing

findings of the trial court, abruptly decreed the suit. He next submitted that the appellate Court below failed to appreciate that the plaintiffs failed to prove their exclusive possession by giving boundary of the suit land; that there are complicated questions of title involved in the instant suit, so the plaintiff-opposite party needs to establish their title by filing a suit for declaration of title.

Mr. Md. Abdul Baten Sheikh learned advocate appearing on behalf of the plaintiff-opposite parties 1-4, submitted that the appellate Court below, after considering the materials on record, justifiedly found that the plaintiff successfully proved their possession in the suit land by producing and adducing oral and documentary evidence.

I have anxiously considered the submission of the learned advocate for both parties, perused the impugned judgment, oral and documentary evidence. It reveals that the learned Judge of the trial Court dismissed the suit chiefly on the grounds that the plaintiffs failed to prove their prima facie title and exclusive possession of the suit land by giving boundary. On the other hand, after reversing the trial court's findings, the appellate Court says that plaintiffs had successfully proved their prima facie title in the suit land. Moreover, plaintiffs established their exclusive possession and

boundary in the suit land through their evidence, so the appellate Court below decreed the suit.

In a suit for a permanent injunction, the plaintiff must prove the exclusive possession of the suit land by giving a boundary of the suit lands to get a decree as per provisions so enumerated under Order VII Rule 3 of the Code of Civil Procedure. The Court may incidentally enquire into the prima facie title of the parties unless the plaintiff's possession is clearly established by the evidence that the plaintiffs cannot have any decree for a permanent injunction.

The careful assessment of the plaint, deposition of witnesses, and other materials on record shows that the suit land described in the schedule of the plaint has not been demarcated yet. Moreover, none of the witnesses says the boundary of the suit lands in their evidence. Therefore, the plaintiffs are not entitled to get an order of permanent injunction on the suit land since the suit land is not ascertainable and unspecified.

In this regard, Mr. Md. Abdul Baten Sheikh submitted that the R.S. record had been correctly prepared in the plaintiff's name, so there was no necessity to provide a boundary for the suit lands to get a permanent injunction. In his contention, he referred to the case of Karim Khan and

others Vs. Kala Chand Miah and others reported in 7SCOB(2016)AD page 32 wherein it is held that—

The plaintiff mentioned the number of the C.S. and S. A. Khatians and also the plot numbers in the suit, and thus, there was full compliance with the provisions of Order VII Rule 3 of the Code. And since no fraction or portion of the lands of the two plots was claimed, there was no necessity of giving any Chauhaddi or boundary of the suit plots.

I fully agree with the decision regarding the above-referred case. However, it is notable that each case has its own facts and circumstances. The fact of the above-cited case was that the plaintiff filed a suit for a permanent injunction but failed to give a boundary of the suit plots to ascertain the lands. Since the plaintiff mentioned the number of the C.S. and S. A. Khatians and the plot numbers in the suit, no fraction or portion of the lands of the two plots was claimed, so the Apex court decreed the suit of a permanent injunction.

On the other hand, in the instant case, the plaintiffs mentioned that 423 decimals of land were correctly recorded in the C.S. and S. A. Khatians of their predecessor's name, further claimed that 106 decimals of land were recorded in the name of one Chengta Majhi in R. S Khatian No.6, the predecessor of the plaintiffs. Plaintiff N0.1 purchased 16.05 decimals of land out of 106 decimals lands, plaintiff No.2

bought 36 decimals out of 106 decimals of land, Plaintiff No.3 purchased 33 decimals out of 106 decimals of land, and Plaintiff No. 4 purchased 16.5 decimals out of 106 decimals of lands. Though they bought the above lands from R. S plot No.257, they claimed they got possession from R. S plot No. 259. In that way, they have brought 102 decimals of land out of 106 decimals of land, and in the plaint or their oral evidence, they did not claim they jointly possess the suit land. And since the plaintiffs-opposite parties claimed a fraction or portion of the lands, the plaintiffs are not entitled to an order of permanent injunction. Therefore, I do not find substance in the submission of Mr. Md. Abdul Baten Sheikh.

Notably, it is an ample settled proposition of law that a simple suit for a permanent injunction should not be maintainable if the dispute involves complicated questions of title. In this context, the case of Rafizuddin Ahmed vs. Mongla Barman and others reported in 43DLR (AD) 215; it was held that-

"If the dispute involves complicated questions of title, the plaintiff must establish his title by filing a regular suit for declaration of title. A simple suit for a permanent injunction should not be allowed to be used as a testing device to ascertain the title".

On perusal of the record of the instant case, it appears that the plaintiffs' predecessor purchased the suit land from R.S. recorded tenant Chengta Majhi by several Kabalas. On the contrary, the defendants also claimed that they bought the same suit land from the heirs of Chengta Majhi and that the defendant possessed the suit land by mutation their name in the Khatian. Moreover, Though the plaintiffs bought the above lands from R. S plot No.257, they claimed they got possession from R. S plot No. 259.

Considering the above facts and circumstances, it reveals that the dispute among the parties involves a complicated question of title, so the plaintiff should establish his title by filing a suit for declaration of title. Therefore, the instant suit in the name of a permanent injunction should not be allowed as the plaintiffs instituted the instant suit as an experiment to ascertain their title.

In view of the above facts and circumstances, it appears that the learned Judge of the trial court, after properly assessing the evidence and other materials on record, very rightly and justifiedly dismissed the suit. On the other hand, the learned Judge of the appellate Court, without considering all aspects of the case and without properly evaluating the evidence on record, simply reversed the trial court's findings. Therefore, the impugned judgment and

decree of the appellate Court is not based on correct evaluation of the facts and materials of the case nor proper appreciation of the evidence on record, and as the same is not an appropriate judgment of reversal which does not deserve to be sustained.

Resultantly, the Rule is made absolute without any order as to costs. The impugned judgment and decree dated 24.11.2021 passed by the learned Joint District Judge, 2nd Court, Sirajgonj, in Other Class Appeal No.226 of 2018, is hereby set aside. However, the judgment and decree dated 26.06.2018 passed by the learned Assistant Judge, Raigonj, Sirajgonj, in Other Class Suit No. 29 of 2012 is affirmed.

Communicate the judgment and LCR to the Courts below at once.

Order

The suit is dismissed.

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(Md. Salim, J).