

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2512 of 2022

Md. Pear Ali

... Petitioner

-Versus-

Md. Abdul Hai Sarker and others

...Opposite-parties

Mr. Md. Abdullahel Baki, Advocate

...For the petitioner

Mr. M.M. Shafiullah, Advocate

...For the opposite-party No. 1.

Heard on 17.01.2024, 29.01.24, 06.02.24,
11.02.24, 12.02.2024 and

judgment on 18th February, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 27.02.2022 passed by the learned Joint District Judge, 1st Court, Sirajgonj in Other Class Appeal No. 126 of 2016 allowing the appeal and thereby reversing the judgment and decree dated 29.05.2016 passed by the learned Assistant Judge, Tarash, Sirajgonj in Other Class Suit No. 46 of 2013 decreeing 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. Present petitioner, as plaintiff, filed Other Class Suit No. 46 of 2013 in the Court of Assistant Judge, Tarash, Sirajgonj against the present opposite-parties, as defendants, for declaration that deed No. 2087 dated 12.05.1991 is illegal, collusive, fraudulent and not binding upon the plaintiff stating that the suit property under Mouza Tarash originally belonged to Girish Chandra Chakrabarti, D.S. Khatian No. 527 measuring 7.36 correctly recorded in his name. Grish Chandra Chakrabarti died leaving only son Shis Chandra Chakrabarti who died leaving wife Fuloda Bala Chakrabarti and three sons i.e. Jagodanando, Gopanando and Debanando. During S.A. survey, the suit land stands recorded in the name of Fuloda Bala Chakrabarti in S.A. Khatian No. 604 without including the name of the sons, that is why, S.A. Khatian No. 604 is partly erroneous. Fuloda Bala Chakrabarti died leaving three sons i.e. Jogodanando, Gopanando and Debanando. Debanando died leaving wife Chaina Rani and two sons i.e. Bidhan and Bipodenando Chakrabarti. Land of Plot No. 145 corresponds to R.S. Plot No. 54 and the land of Plot Nos. 32 and $\frac{32}{1152}$ corresponds to R.S. Plot No. 50 under R.S.

Khatian No. 453, recorded in the names of Jogodanando, Gopanando, Bidhan and Bipodenondo Chakrabarti. Among them by amicable arrangement Bipodenondo Chakrabarti got plot Nos. $\frac{32}{1152}$ and 145 out of which sold 64 sataks land of Plot No. 145 to Pear Ali vide registered deed dated 27.04.2008. On the other hand, the defendant No. 01 created a counterfeit Ewaj Deed No. 2087 secretly showing Bidhan and Bipadenondo Chakrabarti as excutants of one part transferring the suit land to the defendant.

There was no delivery of possession of the property under the disputed deed. By the disputed deed the defendant No. 1 had shown that he gave Bidhan and Bipodenondo Chakrabarti 20 sataks land of Plot No. 207 and he also secretly created another deed dated 13.05.1991 showing transfer of exchanged property by Bidhan and Bipodenondo Chakrabarti in favour of his wife Chameli Khatun. There was no transfer of property between the parties by the disputed Ewaj Deed No. 2087. The defendant No. 1 tried to enter into the disputed land on 28.01.2013 claiming title in the suit property on the basis of fraudulent deed of exchange, as such, the plaintiff has compelled to file the suit for declaration to the effect that the

impugned deed being No. 2087 dated 12.05.1991 described in schedule "Ka" to the plaint is illegal, collusive and fraudulent and not binding upon the plaintiff.

The defendant No. 1 contested the suit by filing written statements denying all the material allegations made in the plaint, contending inter alia, that the suit property originally belonged to Girish Chandra Chakrabarti in whose name D.S. Khatian No. 527 stands recorded. Girish Chandra Chakrabarti died leaving only son Shis Chandra Chakrabarti. Shis Chandra Chakrabarti died leaving wife Fuloda Bala Chakrabarti and three sons i.e. Jogodanando, Gopanando and Debanando. S.A. Khatian No. 604 stands recorded in the name of Fuloda Bala Chakrabarti. Fuloda Bala Chakrabarti died leaving three sons i.e. Jogodanando, Gopanando and Debendno. Debanando died leaving wife Chaina Rani and two sons i.e. Bidhan and Bipodenando Chakrabarti. D.S. and S.A. Plot No. 145 corresponds to R. S. Plot No. 54 and the land of S.A. Plot Nos. 32 and $\frac{32}{1152}$ corresponds to R.S. Plot No. 50 in R.S. Khatian No. 453 in the name of Jogodanando, Gopanando, Bidhan and Bipodenondo Chakrabarti. Bidhan and Bipedenando Chakrabarti transferred 31

sataks out of 95 sataks land from Plots No. 145/54 to Md. Abdul Hai Sarker vide a registered Deed of Exchange No. 2087 dated 12.05.1991.

The plaintiff mutated his name for 64 sataks land of Plot No. 145 on the basis of a registered deed dated 27.04.2008. Abdul Hai transferred 10 sataks land to Saiful Islam from his share. The plaintiff filed Partition Suit No. 132 of 2008 against the same defendants which was dismissed. Plaintiff's vendor Bidhan Chakraborti filed a suit against the present defendant for cancellation of exchange deed that was dismissed for default, as such, the present suit at the instance of the plaintiff is not maintainable and liable to be dismissed.

The learned Assistant Judge framed 4 issues, such as; (1) Whether the suit is maintainable in the present form? (2) Whether the suit is barred by limitation? (3) Whether the Deed No. 2087 of 1991 is illegal, ineffective and not binding upon the plaintiff? (4) Whether the plaintiff is entitled to get relief as prayed for?

In course of trial the plaintiff examined 4(four) witnesses as P.Ws and the defendant examined 3(three) witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by its judgment and decree dated 29.05.2016 decreed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the defendant No. 1 preferred Other Class Appeal No. 126 of 2016 before the Court of learned District Judge, Sirajgonj. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Sirajgonj for hearing and disposal who upon hearing by the impugned judgment and decree dated 27.02.2022 allowed the appeal and dismissed the suit by setting aside the judgment and decree passed by the trial court. At this juncture, the plaintiff-petitioner, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Abdullahel Baki, learned Advocate appearing for the petitioner submits that the disputed deed of exchange dated

12.05.1991 contains Plot No. 207 claimed to be owned by opposite-party No. 1, Md. Abdul Hai Sarker but the said plot does not belong to him, it belongs to government as vested and non-resident property. The opposite-party Md. Abdul Hai Sarker exchanged the property with proforma-opposite-party Nos. 2 and 3 having no title at all. The trial court while decreeing the suit rightly held that the defendant No. 1 had no right, title and interest in Plot No. 207 alleged to have been exchanged with defendant Nos. 2 and 3 exchanging the suit property and as such, for inclusion of a fictitious plot, there was no delivery of possession of the property. The appellate court while reversing the judgment has utterly failed to controvert the said observations of the trial court and without giving lawful reason allowed the same and dismissed the suit. He submits that the opposite-party, as plaintiff, earlier filed Other Class Suit No. 146 of 2008 against the present petitioner, as defendant, for a decree of permanent injunction, wherein, he claimed title in the property on the basis of Deed of Exchange No. 2087 dated 12.05.1991 and the suit was dismissed on contest. Thereafter, Md. Abdul Hai Sarker preferred Other Appeal No. 207 of 2012 against the judgment of the

trial court which was withdrawn on 04.02.2016, meaning thereby, the judgment and decree passed by the trial court in Other Class Suit No. 146 of 2008 remained intact, wherein, the trial court clearly found and observed that the exchange deed in question was not acted upon. Therefore, the opposite-party cannot claim title in the property on the basis of said deed of exchange being barred by law. In support of his such submissions he has referred to the cases of ***Robert Pinaru Vs. Moulana Habibur Rahman and others*** reported in **8 BLC (AD) 115, MT. Deoki Vs. Jwala Prasad** reported in **AIR 1928 (Allahabad) 679**.

He argued that since the part of the property of defendant No. 1, Md. Abdul Hai Sarker was government property, there was no earthly reason to acquire the same by him and deliver possession to Bidhan Kumar Chakrabarti and his brother. If any part of the property exchanged between the parties could not give delivery of possession to other party, the deed of exchange is not legally enforceable and effective in law. In support of his such submissions he has referred to the case of ***Ch. Seetaramaswamy Vs. Narasingha Panda and others*** reported in **AIR (1975) (Orissha) 73**.

He submits that the appellate court held that without a prayer for declaration of title the suit is incompetent, but for challenging a deed a simple declaration that the defendant's kabala is false, fabricated and fraudulent is maintainable. In support of his such submissions he has referred to the cases of *Dudu Mia being dead his heirs; 1(a) Md. Moyezuddin and others Vs. Ekram Mia Chowdhury being dead his heirs; 1(a) Nezamatullah and others* reported in 7 *MLR (AD)(2002) 7*, *Sufia Khanam Chowdhury Vs. Faizun Nesa Chowdhury* reported in 39 *DLR (AD)(1987) 46*.

It is also argued that because of non delivery of possession between the parties to the exchange deed and previous judgment in Other Class Suit No. 146 of 2008, claim of the defendant on the basis of exchange deed is not sustainable in law, but the appellate court unfortunately overlooked the facts and circumstances of the case and the decisions referred to. In support of his such submissions he has referred to the cases of *Kamaluddin and others Vs. Abdul Aziz (Md) and others* reported in 56 *DLR (2004) 485*, *Hazi Waziullah alias Waziullah Miah and others Vs. The Additional Deputy Commissioner, Revenue, Noakhali and Assistant*

Custodian of Vested Property and others reported in *41 DLR (AD) (1989) 97*. He submits that admittedly vendor of the present plaintiff earlier challenged the exchange deed by filing suit against Md. Abdul Hai Sarker in which the plaintiff was not a party. He submits that a 3rd party can challenge an exchange deed whose right has been intervened by the said exchange deed. In support of his such submissions he has referred to the case of *Sahera Khatun and another Vs. Anwara Khatun and others* reported in *44 DLR (AD)(1992) 86*.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite-party No. 1 submits that the deed of exchange is of the year 1991 executed and registered in between Bidhan Kumar Chakraborti, Bipodenondo Narayan Chakraborti and the opposite-party No. 1, Md. Abdul Hai Sarker. After execution and registration of the exchange deed, property exchanged between the parties was handed over to the parties to the deed and admitting delivery of possession of the property given to Bidhan Kumar and his brother they on the following day, that is, on 13.05.2019, by another deed of sale sold the exchanged property to opposite-party No. 4, Most. Chameli

Khatun wife of Md. Abdul Hai Sarker. Had Bidhan Kumar and Bipodenondo Narayan not delivered with the possession of the exchanged property owned by Md. Abdul Hai Sarker by the exchange deed, they could not have transferred or sold the same to Most. Chameli Khatun on the following day, meaning thereby, they got delivery of possession of the property exchanged and being satisfied on receipt of consideration money from Most. Chameli Khatun sold the property to her. If the contention of the petitioner is conceded to be true in that case, Chameli is the person who has become affected by the sale deed dated 13.05.1991 not Bidhan Kumar or Bipodenondo Narayan. He submits that Bidhan Kumar had no title in the property after exchange with Md. Abdul Hai Sarker and had no reason to be affected by the exchange deed even if the property given to them covered by Plot No. 207 is recorded in the name of government.

He submits that Bidhan Kumar after about 17 years of execution and registration of the deed of exchange filed Other Class Suit No. 18 of 2009 challenging the exchange deed only on the point of non delivery of possession not in respect of the execution and

registration of the same. But the suit was dismissed for default on 25.11.2013 wherein he also asserted that from R.S. Plot No. 54 he transferred 64 sataks of land to the plaintiff out of 95 sataks and against the order of dismissal he did not take any step either for restoration of the suit or by preferring appeal before the higher court, meaning thereby, the matter whatever, challenged before the civil court was abandoned by Bidhan Kumar. The vendor of the plaintiff being failed in his attempt, the present suit at the instance of the plaintiff declaring the same inoperative, illegal or fraudulent on the same cause of action is not maintainable in law. In support of his such submissions he has referred to the cases of *Suraj Rattan Thirani and others Vs. Azamabad Tea Company Limited and others* reported in *AIR (1965) (SC) 295* and *L. A. Saunders Vs. Land Corporation of Bengal Limited* reported in *AIR (1965) (Calcutta) 169*.

He submits that the suit of the plaintiff is not maintainable in its present form as the plaintiff cannot challenge any deed without declaration of title first. In support of his submissions he has referred to the cases of *Md. Jashimuddin (Kanchan) Vs. Md. Ali Ashraf*

reported in *11 BLD (AD) 101* and *Ratan Chandra Dey and others Vs. Jinnator Nahar and others* reported in *61 DLR (AD) 116*. He submits that admittedly opposite-party, as plaintiff, filed Other Class Suit No. 146 of 2008 against the present petitioner, as defendant, for a decree of permanent injunction which was dismissed on contest. Thereafter, Other Appeal No. 207 of 2012 was preferred which was subsequently withdrawn on 04.02.2016 on the ground for filing a partition suit in respect of the suit plot. Accordingly, the opposite-party, as plaintiff, filed Partition Suit No. 102 of 2016 in the Court of Joint District Judge, 1st Court, Sirajgonj which is now pending for disposal. He argued that because of passing a judgment in a suit for simple injunction dismissing the suit, the defendant cannot be debarred from defending a suit filed by the plaintiff as in a suit for permanent injunction paramount question to be decided whether the plaintiff is in exclusive possession of the property and there is no scope left for the trial court to decide title of the parties. Though the trial court in its judgment observed that the exchange deed was not acted upon such observation is not at all binding upon the plaintiff in suit and to raise claim in subsequent suit, as there was no issue

regarding title of the parties to the suit. He argued that the observations made by the trial court regarding validity of the deed of exchange was beyond the scope and that observation is not liable to be taken into consideration in any subsequent proceeding. In support of his submissions he has referred to the cases of *Chief Engineer, C & B and another Vs. Shah Hingul Mazar Sharif and others* reported in *54 DLR (AD) 73* and *Helaluddin Vs. Nazimuddin and others* reported in *8 ALR (AD) 147*.

He argued that Other Class Suit No. 18 of 2009 filed by the vendor of the present plaintiff Bidhan Kumar was dismissed for default under Rule 8 of Order 9 of the Code and the suit was filed challenging the deed of exchange dated 12.05.1991, like the present suit, as such, the cause of action for filing of the earlier suit as well as present suit are same and since the plaintiff claiming title by purchase from Bidhan Kumar who was plaintiff in earlier suit is barred under Order 9 Rule 9 of the Code of Civil Procedure from bringing a fresh suit. He submits that the present plaintiff also filed Partition Suit No. 132 of 2008 for a decree of partition of the suit property wherein present opposite-party Md. Abdul Hai Sarker was

made defendant No. 1 admitting him as co-sharer in the suit plot, meaning thereby, the present plaintiff was fully aware of the deed of exchange dated 12.05.1991 from Other Class Suit No. 146 of 2008, Other Class Suit No. 18 of 2009 and Partition Suit No. 132 of 2008, but instituted this suit on 11.03.2013 after more than 3 years, on that count also the suit is barred by limitation.

He finally argued that admittedly, the suit plot contains 95 sataks of land in the present record of right. Out of 95 sataks two brothers opposite-party Nos. 1 and 2 exchanged only 31 sataks of land with opposite-party No. 1 leaving 64 sataks of land in their share. The plaintiff claimed 64 sataks of land alleged to have been purchased from Bidhan Kumar and no case has been made out by the plaintiff whether 31 sataks of land exchanged with the defendant No. 1 has been overlapped the property purchased by the plaintiff. As such, the appellate court rightly held that the property exchanged and the property sold to the plaintiff is totalling 95 sataks and found it difficult, where is the dispute between the parties. The trial court while decreeing the suit failed to take into consideration all the

points raised, but rightly decided by the appellate court, as such, the Rule is liable to be discharged.

Heard the learned Advocates of both the parties, have gone through the revision application, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

Both the parties admitted that the property under present Plot No. 54 Khatian No. 453 measuring an area of 95 sataks. It is also admitted that 31 sataks of land under Plot No. 54 was exchanged by 2 brothers, Bipodenondo Narayan Chakraborti and Bidhan Kumar Chakraborti by a deed of Exchange No. 2087 dated 12.05.1991. Said deed of exchange (Exhibit-Ga) in its recital disclosed that Md. Abdul Hai Sarker defendant No. 1 is first part and Bipodenondo Narayan Chakraborti and Bidhan Kumar Chakraborti are 2nd part. Second party in exchange of their property under Plot No. 54 measuring 31 sataks got the property from Md. Abdul Hai Sarker under Plot No. 207 measuring 20 sataks which was purchased by Md. Abdul Hai Sarker by a Registered Deed No. 6265 dated 22.12.1987, but that deed of sale has not been submitted by either of the parties to the

proceeding. The plaintiff claimed that the Deed of Exchange No. 2087 dated 12.05.1991 has not acted upon and not binding upon the plaintiff and also claimed that the deed of exchange is forged, collusive and fraudulent. But facts remains that the plaintiff is not a party to the deed and it was executed and registered before 18 years of plaintiff's coming into scene. At the time of execution and registration of the deed of exchange there was no existence of the present plaintiff to challenge the said deed of exchange, on the ground of want of title of one of the party and non delivery of possession and obtaining the said deed of exchange by practicing fraud. Second part of the deed of exchange is Bipodenondo Narayan and Bidhan Kumar, one of the executant Bipodenondo Naryan did not challenge the deed and even contest the suit by filing written statement even uttered a single word regarding validity of the said deed of exchange.

One of the brothers, Bidhan Kumar by a Registered Deed No. 1299 dated 27.04.2008 sold 64 sataks of land to the plaintiff out of 95 sataks leaving 31 sataks under deed of exchange. After transfer of the property measuring 64 sataks vide "Exhibit-5" to the plaintiff he

filed Other Class Suit No. 18 of 2009 challenging the validity of exchange deed dated 12.05.1991 after 18 years, on the same allegation that the exchange was not acted upon and there was no delivery of possession of the property between the parties which was ultimately dismissed on 25.11.2013. No subsequent step was taken by Bidhan against the order of dismissal. During pendency of Other Class Suit No. 18 of 2009 present plaintiff filed the instant suit on 11.03.2013 challenging the same deed of exchange on the same ground. Therefore, once a deed challenged by vendor of the present plaintiff which was ultimately dismissed on 25.11.2013 and during pendency of that suit a fresh suit at the instance of the purchaser on the same cause of action though not directly barred but improper, as the present plaintiff claims his title through the plaintiff in Other Class Suit No. 18 of 2009.

Next question comes, whether a suit for simple declaration to the effect that a deed of exchange is fraudulent, collusive, ineffective and not binding upon the plaintiff without a declaration of title in the property. Our apex court in the case of *Ratan Chandra Dey and others Vs. Jinnator Nahar and others* reported in *61 DLR (AD) 116*

and *Md. Jashimuddin (Kanchan) Vs. Md. Ali Ashraf* reported in *11 BLD (AD) 101* held that a suit for simple declaration challenging a deed without establishing title of the plaintiff first is not maintainable.

The question now raised by the petitioner that, in Other Class Suit No. 146 of 2008, present defendant, Md. Abdul Hai Sarker sought a decree of permanent injunction against the present petitioner, as defendant, which was dismissed on contest and Other Appeal No. 207 of 2012 was preferred which was subsequently, withdrawn keeping the judgment passed by the trial court intact. The trial court in dismissing the suit for simple injunction incidentally observe that the plaintiff could not prove that the deed of exchange was acted upon and his exclusive possession in the property. Because of existence of a judgment in a suit for simple injunction, observation made therein by the trial court regarding title of any party which was not an issue, is at all binding upon the parties to the suit in defending a subsequent suit for declaration of title or suit for partition.

From the facts, I find that the plaintiff in Other Class Suit No. 146 of 2008 withdrawn Other Class Appeal No. 207 of 2012 on 04.02.2016, on the ground of filing a properly constituted partition suit as he is a co-sharer in Plot No. 54. Accordingly, the opposite-party Md. Abdul Hai Sarker, as plaintiff, filed Partition Suit No. 102 of 2016 which is now pending before the Joint District Judge as appearing from “Exhibit-১”. Moreover, in the instant suit Md. Abdul Hai Sarker is not a plaintiff, but he is a defendant, as such, he has every right to defend this case. It is true that validity of the deed of exchange dated 12.05.1991 has not been earlier adjudicated upon on merit by any court in any proceeding, it means that, the validity, existence and effectiveness of the deed of exchange is still open for the defendant in suit. Therefore, because of observations made by the trial court in dismissing Other Suit No. 146 of 2008 is not at all binding upon any of the parties to the proceeding as held by our apex court in the cases referred hereinabove.

Now, whether a person not a party to any deed of exchange is at all entitled to challenge that deed on the ground of non execution of the same by any of the parties or his vendor to be forged and

fabricated? The answer is no, because the aggrieved persons are, only parties to the exchange deed who can challenge the same on the ground that the deed of exchange is ineffective for lack of title of the other part in the property and non delivery of possession of a portion of exchanged property to them within a reasonable time not after 18 years. In the present case admittedly Bidhan Kumar and his brother after exchange of the property with Md. Abdul Hai Sarker, sold their portion on the following day by a registered deed dated 13.05.1991 to opposite-party No. 4 on receipt of consideration money. It means that, they undoubtedly got delivery of possession of the property in exchange and being satisfied about title, possession and upon receipt of money they sold the same to opposite-party No. 4, Chameli Khatun. With the transfer of the property they got by exchange from Md. Abdul Hai Sarker, they lost every right to challenge the exchange deed or claim any property on the ground of lack of title or on the ground of non delivery of possession. Had there been any defect in title and possession of the property already transferred to opposite-party No. 4, the opposite-party No. 4 can claim compensation against Bidhan Kumar and his brother.

Moreover, when any part of the property under exchange deed has been transferred by any of the party to any other persons either of the party has no right to challenge that deed of exchange by any means. Here Bidhan Kumar and his brother after exchanging the property with Md. Abdul Hai Sarker by a sale deed on the following day transferred entire property to opposite-party No. 4, it means that, they have no connection with the property in question after sale. On the other hand, Md. Abdul Hai Sarker after acquiring the property by deed of exchange transferred 10 sataks of land out of 31 sataks to one Saiful Alam, wherein, Saiful Alam established a Biscuit Factory as admitted by the parties. Therefore, the property under deed of exchange are not in the hands of Bidhan Kumar and his brother or a part in the hands of Md. Abdul Hai Sarker. Because of this situation and subsequent alienation of the property under deed of exchange neither of the party has any right to challenge the validity of the said deed of exchange after 18 years and the deed of exchange has in its own capacity automatically acquired validity and legality. The trial court while decreeing the suit failed to appreciate all those provisions of law and facts. The trial court put heavy stress on the facts that the

property given in the share of Bidhan Kumar and his brother measuring 20 sataks under Plot No. 207 stands recorded in the name of the government as vested property, but failed to appreciate the fact that the deed was challenged by one of the party in earlier suit. The plaintiff in suit filed partition suit seeking partition of the property making Md. Abdul Hai Sarker, as defendant No. 1, and challenging legal stand of the deed of exchange after 18 years. The appellate court while allowing the appeal rightly held that the plaintiff failed to establish that the property exchanged measuring 31 sataks overlapped the property measuring 64 sataks purchased by the plaintiff from Bidhan Kumar. In the absence of such evidence it cannot be said that the property purchased by plaintiff overlapped the property under exchange deed of the year 1991. The appellate court also rightly held that any observation made by any court in a suit for simple injunction in respect of title of the property is not binding upon the parties to defend any suit or to file subsequent suit for declaration of title along with consequential relief. Fact of the cases referred by the petitioner's counsel substantially different from the

facts and circumstances of the present case, as such, those are not applicable in the instant case.

In view of the observations made hereinabove, I find that the appellate court in allowing the appeal and setting aside the judgment and decree of the trial court has not committed any illegality calling for interference.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is discharged, however, without any order as to costs.

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.