

District: Sylhet

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 1334 of 2022

In the matter of :

Salaur Rahman

... Petitioner

-Versus-

Mahbubul Alam Jibon and others

...Opposite parties

Mr. Khandaker Aminul Haque, Advocate with
Mr. Tajul Islam Chowdhury, Advocate and
Ms. Karishma Hyder, Advocate

...For the petitioner

Mr. Zulfiquar Ahmed, Advocate with
Mr. Md. Tariqul Islam, Advocate

...For the opposite party No. 18

**Heard on: 22.10.2024, 19.11.2024, 08.12.2024,
10.12.2024 and 07.01.2025.**

Judgment on: 20.01.2024.

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 to 27 to show cause as to why the judgment and decree dated 13.11.2022 passed by the Additional District Judge, First Court, Sylhet in Title Appeal No. 236 of 2015 heard analogously with Cross Appeal No. 01 of 2016 dismissing the Title Appeal No.236

of 2015 affirming the judgment and decree dated 23.08.2015 passed by the Senior Assistant Judge, Golapganj, Sylhet in Title Suit No. 90 of 2011, so far it relates to dismissal of the suit and also allowing the Cross Appeal No.01 of 2016 filed by the opposite parties should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present petitioner alongwith opposite party Nos. 34-40 and predecessors of opposite party Nos.28-33 being plaintiffs filed Title Suit No. 90 of 2011 before the Court of Senior Assistant Judge, Golapganj, Sylhet for declaration that the Solenama filed in Title Suit No. 22 of 1992 is false, fabricated, collusive, ineffective and not binding upon the plaintiffs and for further declaration that the deed of exchange No. 4293 of 1993 dated 28.08.1993 regarding the land of plot No. 1017 allegedly executed between the predecessor of the plaintiff, Mosobbir Ali and the predecessor of defendant Nos. 1-14, Abdul Hamid and others is void, collusive, in-operative and not binding upon the plaintiffs and for permanent injunction.

The case of the plaint briefly are that the 1st scheduled property measuring in total an area of 1.25 acres was recorded in the name of predecessor of the plaintiff Nos. 3-7 and pro-forma

defendant Nos.26-28, Mosobbir Ali, Somrun (mother of Mosobbir Ali), Saira Bibi and Sitara Bibi (sisters of Mosobbir Ali) in 8 annas share and the rest 8 annas share was recorded in the name of Israel Ali and Ismail Ali, predecessor of defendant Nos. 1-15. Ismail Ali transferred his share to defendant No. 16 through registered deed No. 896 dated 19.02.1986. Abdul Hamid filed Title Suit No. 22 of 1992 before the Assistant Judge, Golapgonj, Sylhet claiming his title regarding .56 decimals of land of plot No. 1017. The said suit was decreed upon compromise on 10.06.1993. Abdul Hamid created a forged deed of exchange being No. 4293 of 1993 dated 28.08.1993 using the name of Mosobbir Ali; plaintiffs had no knowledge about the exchange deed. The plaintiff No. 3, Salaur Rahman became owner of $.62\frac{1}{2}$ decimals of land of plot Nos. 1017 and 1018 through inheritance. He also purchased .3 decimals of land of plot No. 1018 from Abdul Hamid vide registered deed No. 1737 dated 30.05.1986 and in this way the plaintiff-petitioner became owner of $.65\frac{1}{2}$ decimals of land in the aforesaid plots and he along with others are in exclusive possession by mutating their name and paying rent to the Government. The defendant Nos. 1-15 have no right, title and possession over the aforesaid land including the .11 decimals of

land described in the 2nd Schedule claiming through the exchange deed. That the predecessor of defendants, Abdul Hamid did not hand over any property of plot No.1018 to the plaintiff party (predecessor of plaintiff's). The plaintiff Nos. 1 and 2 did not execute the said exchange deed and as such, the said deed is void, illegal and inoperative. On 02.07.2011, the plaintiffs were informed by Abdul Hamid that they would dispossess the plaintiff from .11 decimals of land of plot No. 1017 and upon getting the said information and collecting the copy of the exchange deed, the plaintiffs got definite information and thereafter filed the suit for the declaration as aforementioned.

Defendant No.16 contested the suit by filing written statement denying all the material averments of the plaint. The specific case of defendant No. 16 are that the suit is not maintainable in its present form. The further case is that Abdul Hamid and Mosobbir Ali executed an exchange deed being No.4293 dated 28.08.1993 exchanging .11 decimals of land of plot No. 1017 with .11 decimals of land of plot No. 1018. Mosobbir Ali was the first party and Abdul Hamid was the second party to the said deed. As per the said deed, Abdul Hamid got .11 decimals of land of plot No. 1017 and in this way Abdul Hamid

became owner of total .26 decimals of land in plot No. 1017; wherefrom he transferred .21 decimals of land to defendant No. 16 vide registered sale deed No. 4294 dated 28.08.1993 and thereby inducted her into the possession of the suit property. In recent survey, .21 decimals of land has been recorded in the name of defendant No. 16 in khatian No. 578. Ismail Ali transferred .16 decimals of plot No.1017 and .18 decimals of plot No.1018 respectively to the defendant No. 15 through registered deed No. 896 dated 19.02.1986 and the defendant No. 15 thereafter transferred .6 decimals of land to defendant Nos. 17 and 18. Abdul Hamid also sold out .5 decimals of land from plot No. 1017 to defendant Nos. 17 and 18. Earlier Abdul Hamid filed Title Suit No. 22 of 1992 against Ismail Ali, Mosobbir Ali and plaintiff Nos. 1 and 2 for declaration of title regarding .56 decimals of land of plot No. 1017. On 27.05.1993 said suit was decreed on compromise declaring that the Solenama shall be treated as the part of the decree. The plaintiffs have knowledge about the decree and solenama. The defendant No. 16 filed an objection case under Rule 30 against the plaintiffs and on 30.05.2006, the said objection case was allowed and the record of right was corrected and thereby prepared in favour of the defendant No. 16 in separate

khatian regarding 0.6 decimals of land of plot No.1018. The plaintiffs suit is false and as such the same is liable to be dismissed.

During hearing, the plaintiffs examined 3(three) witnesses and produced documentary evidences which have been exhibited as Exhibit-‘1’ to ‘3’ and defendants also examined 3(three) witnesses and produced documentary evidences in support of her case, which are exhibited as Exhibit-‘Ka series’ to ‘Ga series’. Learned Judge of the trial Court after hearing both the parties framed as well as 7(seven) issues, which are as follows:

1. Whether the suit is maintainable or not?
2. Whether there is any defect of parties?
3. Whether the suit is barred by limitation or not?
4. Whether the Solenama of T.S. No. 22/92 is false, fabricated or not?
5. Whether the exchange deed no 4294/93 dated 28/08/93 about the land of plot no 1017 of the plaintiff is void, in-operative or not?
6. Whether the plaintiff has title & possession over suit land?
7. Whether the plaintiff is entitled to get the relief as prayed for?

On conclusion of hearing, learned Senior Assistant Judge by her judgment and decree dated 23.08.2015 dismissed the suit on contest against defendant No. 16 and exparte against the other defendants, holding that the suit is barred by article 91 of the Limitation Act, 1908 and the plaintiffs have failed to prove their title and possession over the suit land. It was also specifically found that plaintiffs failed to prove that the Solenama as well as the exchange deed are false, fabricated and collusive documents.

Having been aggrieved by the judgment and decree dated 23.08.2015 the plaintiffs preferred Title Appeal No. 236 of 2015 before the District Judge, Sylhet and the defendant No. 16 also filed cross-appeal No. 01 of 2016 against certain findings of the trial Court. On transfer, both the appeals were heard by the Additional District Judge, First Court, Sylhet and after hearing by his judgment and decree dated 30.11.2021 dismissed the Title Appeal No. 236 of 2015 and allowed the Cross-Appeal No. 01 of 2016.

Mr. Khandaker Aminul Haque, learned Advocate appearing for the petitioner submits that the plaintiffs in their suit specifically challenged the Solenama of Title Suit No. 22 of 1992

on the ground that the plaintiff Nos. 1 and 2 and Mosabbir Ali, predecessor of the plaintiff Nos. 3-7 did not appear before the Court and or did not execute the deed of compromise, and as such, it is a forged one. It is also claimed that the deed of exchange being No. 4293 dated 28.08.1993 is false, fabricated, collusive and not binding upon the plaintiffs. In support of their case, they have produced some documents/deeds claiming that those documents have been executed by Mosabbir Ali as well as by plaintiff Nos. 1 and 2. But both the Courts below failed to consider the aforesaid documents with judicial temperament and thereby illegally held that the plaintiffs failed to prove that the Solenama and the exchange deed are forged, fabricated and collusive documents by adducing adequate evidences.

In the mid of hearing, Mr. Haque filed an application sought for sending back the case on remand asserting that the present opposite party Nos. 19 and 20 being plaintiffs filed Title Suit No. 93 of 2024 before the Senior Assistant Judge, Golapganj, Sylhet impleading the present petitioner as defendant No.2 and present opposite party No.16 as defendant No.11 for declaration of title regarding .19 decimals of land appertaining to B.S. Plot No. 1018, B.S. Khatian No. 785 and if the present revision as well as the suit

is decided against the petitioner, then they cannot defend themselves adequately in the aforesaid Title Suit No. 93 of 2024. It is also mentioned that the plaintiffs of Title Suit No. 93 of 2024 are claiming their title through Abdul Hamid, party to the Solenama of Title Suit No. 22 of 1992 and to the deed of exchange being No. 4293 dated 28.08.1993 and as such, he prayed for sending back the case on remand to hear and dispose of Title Suit No. 90 of 2011 along with Title Suit No. 93 of 2024, otherwise the petitioner shall be highly prejudiced.

On the other hand, Mr. Zulfiquir Ahmed, learned Advocate for the opposite party No. 18 made his submissions on 3(three) scores. Firstly, the plaintiffs filed the suit for declaration that the compromise decree passed in Title Suit No. 22 of 1992 between Mosobbir Ali and Abdul Hamid is collusive, fraudulent and not binding upon them. In deciding the issue, both the Courts below upon assessing the evidences on record refuted the claim of the plaintiffs holding that Mosobbir Ali, the predecessor of the plaintiffs himself appeared before the Court and deposed in support of the Solenama. Secondly, the plaintiffs also claimed that the deed of exchange dated 28.08.1993 executed between Mosobbir Ali and Abdul Hamid is collusive and not binding upon

them. Both the Courts below concurrently found that a registered document bears a presumption of correctness, of course such presumption is rebuttable, but the plaintiffs failed to rebut the presumption, thus, the suit of the plaintiffs failed. And Thirdly, he submits that the plaintiffs sought for a declaration of their title over .11 decimals of land, but both the Courts below concurrently found that the plaintiffs failed to prove their title and exclusive possession over the .11 decimals of land in plot No. 1017, he continues to submits that concurrent findings of fact cannot be interfered in revisional jurisdiction unless there is misreading, misconstruing and non-consideration of the evidences on record, occasioning failure of justice. He lastly submits that both the Courts below concurrently also found that the suit is barred by limitation under article 91 of the Limitation Act, 1908.

Heard learned Advocates of both the parties, perused the revisional application as well as the application for sending back the suit on remand.

It appears that both the Courts below concurrently found that the suit of the plaintiffs is barred under article 91 of the First Schedule to the Limitation Act, 1908, holding that from the objection case filed by the defendant No. 16 under Rule 30, it

transpires that the opposite party of the said objection case appeared before the authority concerned, and in their presence the objection case was allowed on 30.05.2006, wherefrom, it can be presumed that the present plaintiffs (opposite parties of objection case) had knowledge regarding the title and possession of defendant No. 16 based upon the compromise decree of Title Suit No. 22 of 1992 and the exchange deed of the year, 1993. But the suit was filed on 31.10.2011 beyond the 3 years of prescribed period. On perusal of the record, this Court finds no infirmity in the aforesaid findings.

Both the Courts below concurrently found that on 10.06.1993 the father of the plaintiff No.3, Mosabbir Ali himself appeared before the Court and deposed as P.W.2 supporting the Solenama and the Senior Assistant Judge, Golapganj, Sylhet by his order No. 22 noted the said fact in the order sheet to the effect that Mosabbir Ali appeared and deposed in his presence. The order No. 22 dated 10.06.1993 has been exhibited as Exhibit- 'Ga(2)'. Under section 80 of the Evidence Act, 1872 read with section 74, endorsement of recording of deposition and noting the said endorsement in the order of the Court to the effect that Mosabbir Ali has deposed before the Court in support of the

Solenama, bears a presumption of correctness; of course the said presumption is rebuttable one, but the plaintiffs could not rebut the said presumption by adducing any adequate or reliable evidence in their favour.

Both the Courts below concurrently also found that the plaintiffs could have adduced or examined any other reliable evidence to discard the presumption that the plaintiff Nos. 1, 2 and predecessor of plaintiff No. 3 were party to the solenama or the exchange deed in question or could have caused to disprove their signatures available in those documents by taking necessary steps, but they failed.

At the mid of hearing, Mr. Haque by filing an application sought for an order sending back the case on remand to provide them an opportunity to prove that the signature of Mosobbir Ali as well as the signature of Sitara and Saira are forged and fabricated by examining those signatures taking recourse of expert. It is also asserted that the present opposite party Nos. 19 and 20 filed Title Suit No. 93 of 2024 claiming their title through Abdul Hamid, the predecessor-in-interest of defendants and for the ends of justice the plaintiffs may be allowed to get an opportunity to prove their case in an analogous hearing of both the suits.

In support of his submission, he referred the case of Shawkat Hossain (Md) and another Vs. Golam Mohammad and another reported in 20 BLC(AD) 27 and the case of Md. Jahangir Howlader Vs. Bachchu Mia Deowan and others reported in 30 BLT 350. This Court has gone through both the judgments as well as considered the submissions of learned Advocate for plaintiff-petitioner of the instant revisional application.

It appears to this Court that apart from the provisions of rule 23 and 25 of Order XLI of the Code of Civil Procedure, Court of law (the appellate Court as well as the revisional Court) may allow a remand, sending back the case to ensure the proper justice, provided that such authority should be exercised judicially, meaning thereby, in guise of remand or ends of justice, the plaintiffs should not be allowed to fill up their lacuna, providing them an opportunity to prepare their case afresh. In the instant case, earlier they could have taken recourse to examine the signature of Mosabbir Ali as well as plaintiff Nos.1 and 2, but being well conversant with the facts and law they opted not to take recourse of the assistance of hand writing expert, and if now they are allowed to start a fresh battle then the litigation between the parties shall be endless and that shall be an opportunity to fill up

the lacuna. Moreover, both the Courts below concurrently found that the instant suit of the year, 2011 is barred by limitation.

The facts and circumstances of the cited judgments are quite distinguishable from the present one.

In view of the above, this Court finds no cogent reason to send back the case on remand.

In the premise above, I do not find any reason to interfere into the concurrent findings of fact of both the Courts below, as well as into their judgments.

Accordingly, the Rule is discharged without any order as to cost.

Send down the Lower Courts' Record.

Communicate the judgment and order at once.