

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 2888 of 2022

Nitai Chandra Arjya and another
.... Petitioners

-Versus-

Santosh Chandra Arjya and others
....Opposite parties

Ms. Nahid Yesmin, Advocate
.....for the petitioners

Mr. Bivuti Tarofder, Advocate
.....for the opposite party Nos. 2-4

**Heard on: 31.10.2024, 05.12.2024,
09.12.2024 and 15.12.2024**
Judgment on: 13.01.2025

Partition Suit No. 38 of 2016 was dismissed on contest by the learned Assistant Judge, Kalihati, Tangail, vide judgment and decree dated 28.03.2021 (decree drawn up on 31.03.2021). Partition Appeal No. 83 of 2021 was dismissed on contest by the learned District Judge, Tangail on 06.04.2022. Challenging the same, the plaintiffs filed the instant Civil Revision and obtained Rule on 20.06.2022.

Defendant-opposite party Nos. 2-4 entered appearance in the Rule. During the pendency of the Rule, opposite party No. 4 died. His

only son was substituted as opposite party No. 4(a). He also entered appearance in the Rule.

The plaintiffs filed the suit for partition simpliciter in respect of 75.333 decimals of land out of 209 decimals recorded in the C.S. khatian No. 92, plot Nos. 804 and 805. The defendant No. 1 filed an application in the suit praying for saham of 43 decimals of land. The defendant Nos. 2-4 (present opposite party Nos. 2-4) contested the suit by filing written statement denying the title and possession of the plaintiffs in the suit land.

Admittedly, Taluk Sreenath Bhattacharya and Taraknath Bhattacharya were the rent receivers of 209 decimals of land of plot Nos. 72, 804, 805 and 583 of the C.S. khatian No. 92. It is recorded in the said C.S. khatian that Sutu Mali and others were the occupancy-raiyats under the rent-receivers as 'Chakran Paik' without any rent (Niskar).

The plaintiffs' case is that Sutu Mali, who subsequently inherited the entire portion of 209 decimals of land as legal heir of the C.S. recorded raiyats having occupancy rights, moved to another place along with members of his family due to loss of portion of the suit land including the dwelling house by diluvion. After death of Sutu Mali his only son Kalidas Chandra inherited the entire 209 decimals of land. Since Kalidas was not staying on the said lands due to loss of

the land by diluvion, the land was recorded in the relevant S.A. khatian No. 126, plot Nos. 804 and 805 in the name of Santi Suda Nandi who was neither the owner of the land nor possessor of the same. After re-appearance of the lands, Kalidas returned to the re-appeared lands and started living on the lands in plot Nos. 804 and 805 (suit plots) by erecting houses and cultivating the same. He sold the rest of 209 decimals of land in plot Nos. 72 and 583 to 3rd parties. Kalidas died leaving three sons plaintiff Nos. 1 and 2 and Goura Chanda who inherited the suit land in equal share. Defendant No. 1 is the son of Goura Chandra. He refused to partition the suit land. Other defendants, who are successors-in-interest of Suda Nandi in whose name the S.A. khatian was prepared, claimed ownership in the suit land. B.R.S. record was not prepared in the name of the plaintiffs. They are the owners and possessors of the suit land.

The case of the contesting defendant Nos. 2-4 is that by a partition through the civil Court, Durganath Paul, Krishnath Paul and Debidash Paul became the owners of 209 decimals of land and became the rent-receivers of the same. Thus, the rent-receiving interest of the C.S. recorded rent-receivers Taluk Sreenath Bhattacharya and Taraknath Bhattacharya, under whom the plaintiffs' predecessors Sutu Mali and others were 'Chakran Paik' raiyats, ceased to exist. The subsequent owners of the land gave permanent settlement of the land in favour of Bhabani Kishore by a registered

patta dated 28.04.1923. The S.A. khatian was correctly prepared in the name of daughter-in-law of Bhabani Kishore. The defendant Nos. 2-4 are successors-in-interest of Bhabani Kishore. They are the owners and possessors of the suit land.

Plaintiffs examined 2 witnesses while the defendants examined 4 witnesses. The plaintiffs produced the C.S. khatian (ext. 1) and the S.A. khatian (ext. 2). The defendants produced, *inter alia*, the registered patta dated 28.04.2023 (ext. Ga), rent receipts (ext. Cha).

Plaintiffs' case is solely based on the C.S. khatian evidencing that their predecessors-in-interest were raiyats having the right of occupancy in the suit land as 'Chakran Paik' free of rent under the Zamindars. In *Mridul Kanti Sarder and others vs. Krishna Charan Sarder and others*, 14 BLC 848, it was held:

“In view of the serious contradiction between the evidence of the PWs and the deed itself (Exhibit-2) in respect of source of interest of the inheritors and also on the vague point of Uma Charan's acquiring the occupancy right under section 11 of the State Acquisition and Tenancy Act and its legal implication, it cannot be held the vendors of the plaintiff inherited Chakran interest of Uma Charan or the plaintiff acquired any interest under his kabala, Exhibit-2.”

Relying on the above-quoted passage, the appellate Court below held that the right of occupancy of the Chakran land does not create any title and as such, the plaintiffs did not acquire any title in

the suit land as successors-in-interest of the original Chakran tenants. The proposition of law based on which the appellate Court below dismissed the suit requires examination.

Under Section 11 of the State Acquisition and Tenancy Act, 1950 (in short, the 'SA & T Act') a person possessing land as Chakran gets a right of occupancy from the date the Act came into force. The SA & T Act came into force on 16.05.1951. In *Sakhina Bibi vs. Nazira Bibi*, BCR 1985 (AD) 37 the plaintiff filed suit for recovery of khas possession of the suit premises by evicting the defendant therefrom on the ground that the latter was the permissive possessor of the land. The suit was decreed. The lower appellate Court dismissed the suit. The High Court Division dismissed the second appeal holding that the defendant possessed the land based on the Chakran right which became occupancy right after coming into force of the State Acquisition and Tenancy Act. The Appellate Division observed that the important question was whether the defendant was holding the land as Chakran tenant when the Act came into force. The apex Court held that the answer was negative and allowed the appeal.

The above-discussed case does not answer the question of law as to whether the occupancy right of Chakran land creates any title and whether the same is transferable. Section 11(1) of the SA & T Act clearly states that the provisions of the Bengal Tenancy Act, 1885 (in short, the 'BT Act') or the Sylhet Tenancy Act, 1936 so far as they

apply to occupancy raiyats known as Nankar, Chakran will apply. The term 'occupancy-raiyats' was defined in clause 3(b) of Section 4 of the BT Act as raiyats having a right of occupancy in the land held by them. One of the incidents of occupancy-right under Section 26 of the BT Act is that on the death of the raiyat his right in the land devolves to his legal heirs in the same manner as other immovable property. Another incident of occupancy-right under Section 26B of the BT Act is that holdings of an occupancy-raiyat or a share or portion thereof, together with the right of occupancy therein, is transferable. In *Amal Chandra Dhupi alias Das and others vs. Lakshan Chandra Das and others*, 10 LM (AD) 5, it was held that when land was given to a family on account of service rendered, *i.e.* as Chakran tenants, a part of that family does not lose their right of tenancy simply on the ground that part of the family ceased to render the service. If, in fact, the service to the landlord had ceased, it was up to the landlord to take action for his eviction. The tenancy of a particular member of the Chakran tenant family cannot cease automatically.

The above discussions on point of transferability of Chakran land based on Section 11(1) of the SAT Act, Sections 26 and 26B of the BT Act and case laws unequivocally establish that the rayati interest of Chakran land is transferable and heritable. Clearly, the appellate Court below was wrong on this point of law.

In the instant suit for partition simpliciter, although the point of law that Chakran land is transferable and heritable goes in favour of the plaintiffs, yet their title in the suit in land has to be considered in some more details than in a suit for permanent injunction.

In *Rezaul Karim and others vs. Shamsuzzoha and others*, 49 DLR (AD) 68, the apex Court held that in a suit for partition, the Court cannot convert itself into a Court for determination of the respective titles of the parties if a serious dispute emerges from the pleadings as to the title of the plaintiffs to effect partition without formally determining the plaintiffs' title. In that case, the plaintiff is required to file a full-fledged suit for declaration of title to prove his claim. 49 DLR (AD) 68 was relied upon in *Jotirmoy Datta and others vs. Mritunjoy Datta and others*, 16 BLT 446 wherein it was held that a simple suit for partition without claiming declaration of title is not maintainable when a complicated question of title is involved in the suit for partition.

Reverting back to the case in hand, both the Courts below concurrently observed that the defendant Nos. 2-4 proved that the suit land was settled in favour of their predecessors-in-interest by the then Zamindars, vide registered patta deed No. 2754 dated 28.04.1923 (ext. Ga). In this regard, I note that PW1 (plaintiff No. 1) stated that they did not file any case against the patta. The patta executed in 1923 implies that the earlier grant of the suit land in favour of the

predecessors-in-interest of the plaintiffs as Chakran land had ceased to exist and the same was no longer valid. The relevant S.A. khatian was prepared in the name of the predecessor-in-interest of the defendant Nos. 2-4. They filed rent receipts (ext. Cha) in support of possession of the suit land by them. The plaintiffs, on the other hand, did not submit any document in respect of possession. PW1 admitted in examination-in-chief that they had not paid any rent for the suit land. The instant suit for partition involves determination of complicated question of title which can only be resolved in a full-fledged suit for declaration of title. Therefore, the suit is not maintainable. Moreover, the learned Advocate appearing for the defendant Nos. 2-4 rightly pointed out that the suit land sought to be partitioned has not been identified by giving boundaries. Reference of the C.S. khatian numbers and C.S. plot numbers are not sufficient to identify the suit land. Order VII rule 3 of the Code of Civil Procedure requires that where the subject matter of the suit is immovable property, its description must be sufficient to identify it and must not be vague and unspecified. In *Md. Sorboddi Miah vs. Md. Serajul Haque and another*, XII ADC 413, the Appellate Division held that when the land is vague and indefinite without any specific boundary, the plaintiff cannot get a decree in respect of any unspecified land and on this score alone the suit is liable to be dismissed. The observation made in XII ADC 413 squarely applies to the case in hand.

In view of the foregoing discussions, I do not find merit in the Rule.

In the result, the Rule is discharged.

Send down the LCR.