

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 114 of 2022

Rafiqul Islam

..... Petitioner.

-Versus-

Md. Ramjan Ali and others

.....Opposite parties.

Mr. Mustafa Niaz Mohammad, Adv. with

Mr. A.Z.M. Nurul Amin, Advocate

.....For the petitioner.

None appears.

.....For the Opposite parties

Heard and judgment on 29th February, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 20.01.2021 passed by the Assistant Judge, Domar, Nilphamari in Other Class Suit No.06 of 2016 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for recovery of khas possession in the suit land under section 9 of the Specific Relief Act.

Plaint case in short, inter alia, that the land measuring of 3.82 acres of lands appertaining to the S.A. khatian No. 415 were owned by Mahatab Uddin, Atab Uddin, Ahmed Hossain, Sakim Uddin, Sams Uddin, Safi Uddin and Ajhar Ali. 36 decimals of land mentioned in the Ka Schedule were owned by Safi Uddin Ahmed. After his death his wife Rowshan Ara Begum owned 37 decimals of land vide partition deed No. 1 dated 31/12/1985 from which she was in possession of 36 decimals of land. She then sold the property to the plaintiff vide sale deed No. 1867 dated 11/04/2000. The plaintiff is in possession of the land for more than 12 years. As Rowsan Ara Begum was too old that's why she gave responsibility to his son to record the land in her name. Nojmul Alam, son of Rowsan Ara Begum gave assurance to his mother about the record. The plaintiff came to know about the BS khatian No. 842 for the first time on 04/11/2020 when they submitted the document before the court. Basically Nojmul Alam has no title and possession in the suit land, which is even admitted

by the defendants. The plaintiff will take steps after the final publication of the gazette in the respective mouza. In that khatian the total land is 10.23 acres, which are owned by Nojmul Alam and Mojammel Haque. But in the suit land Nojmul Alam and Mojammel Haque have no title. Samsuddin Sarkar did not own the suit land. Mokim Uddin Sarkar, Samsuddin Sarkar and Samsul Haque Sarkar was in ejmali possession of the suit land. Samsul Haque Sarkar sold 37 decimals of land in the suit property to Safi Uddin and Ajhar Uddin. Their names were recorded in the SA khatian No. 415. The father of defendants No. 6-9 sold 15 decimals of land from 94 decimals of land in dag No. 5536 vide sale deed No. 9243 dated 16/12/1970 to Fazle Karim and then he sold that land to Ashraful Haque vide sale deed No. 5084 dated 09/05/1974. Ashraul Islam then sold the land to Bojlur Rashid and Fazlul Haque vide sale deed No. 2039 dated 22/02/1980. Tamij Uddin, the predecessor of defendant No. 1-5 sold 31 decimals of land in dag No. 5536 to Samsuddin vide sale deed No.8727 dated 18/09/1969. In the western side of the disputed dag number Tamij Uddin had no title and possession. Tamij Uddin never purchased any land vide sale deed No. 4134 dated 27/09/2016 as he died in

the year of 1973. After the dispossession by the defendant in malafide intention they have created a false deed No. 4134 dated 21/01/2016. Fazle Karim, another co sharer, sold lands to Mosarraff Hossain vide sale deed No. 3236 dated 22/02/1979. Mosarraff Hossain then sold his land to Mizanur Rahman and Bablu vide sale deed No. 2167 dated 09/10/2001. Mizanur Rahman sold his share to Rafiqul Islam vide sale deed No. 981 dated 02/05/2004. The plaintiff then sold 44 decimals of land to Abu Sayed vide sale deed No. 1467 dated 27/11/2007. Thus Abu Sayed is in possession of the eastern side of the disputed khatian. The plaintiff was in possession of the suit land. On 21/01/2016 the defendants forcefully and illegally dispossessed the plaintiff from the land mentioned in the Ka schedule. Hence the suit.

Defendant contested the suit by filing written statement denying the plaint case, alleging, inter alia, that partition deed No.1 dated 31/12/1985 is false, fabricated and without any effect. .94 decimals of land appertaining to the dag No. 5536 were owned by Nandura Mohammad Sarkar. After his death, his 3 sons got 31 decimals of land each. After the death of Sahar Uddin Sarkar, son of Nandura Mohammad Sarkar his 3 sons inherited the property

and their names were recorded in the C.S. khatian No. 363. After the death of Mohiuddin Sarkar, his two sons namely Mahtab Uddin and Aftab Uddin inherited his share. After the demise of Sahimuddin Sarkar his son inherited his share and after the demise of Samsul Haque Sarkar leaving no heirs, his brothers inherited his share. Thus SA khatian No. 425 was prepared in the name of Mahtab Uddin, Aftab Uddin, Ahmed Hossain, Mokimuddin and Samsuddin. But the names of Safi Uddin Ahmed and Ajhar Uddin were wrongly mentioned there. Mahtab Uddin Sarkar sold 31 decimals of land to Samsuddin Sarkar from dag No. 5536 vide sale deed number 882 dated 11/02/1958. Ahmed Hossain and Mukimuddin Sarkar did not possess the suit land. Samsuddin Sarkar was peacefully in possession of the suit land. Samsuddin Sarkar sold 38 decimals of land to Tamij Uddin vide sale deed No.847 dated 10/02/1962. Samsuddin Sarkar sold 31 decimals of land in the suit property to Tamij Uddin vide sale deed No.4132 dated 27/09/1963. Samsuddin Sarkar then sold 25 decimals of land in the suit property to Jahir Uddin vide sale deed No.4134 dated 27/09/1963. Tamij Uddin and Jahir Uddin were in possession of suit land since 1962. Tamij Uddin sold 31 decimals

of land in the disputed dag number to the plaintiff vide sale deed No. 8727 dated 18/09/1969. The plaintiff then sold this land to Abu Sayed. Abu Sayed possesses 16 decimals of land in the eastern side of the disputed dag number. The rest 63 decimals of land was owned and possessed by Tamij Uddin, Jahir Uddin and their heirs. Thus the defendants No. 1-5 possess the land since 1962. The other defendants do not have any title to suit land. They have already sold their respective shares. As the deeds of the defendants were earlier, the defendants have been in possession of the land since then. The deeds of plaintiff are created after 40 years. The defendants have never dispossessed the plaintiff. The plaintiff has no title to the land as they have already sold their respective shares. The suit land is wrongly recorded in the name of Nojmul Alam and Mojammel Haque in the B.S. Khatian. Rowshan Ara's name was not mentioned in the B.S. khatian. So the D.P. khatian is false and the deed is also fabricated. The suit is totally false and as such the suit is liable to be dismissed with cost.

By the judgment and decree dated 20.01.2021 the trial court dismissed the suit on contest.

Challenging the said judgment and decree plaintiff petitioner obtained the instant rule.

Mr. Mustafa Niaz Mohammad, the learned advocate appearing for the petitioner drawing my attention to the evidence adduced by the plaintiff submits that although the plaintiff has successfully able to prove his date of dispossession i.e. on 21.01.2016 by the defendants and the case was initiated within time of 6 months on 02.03.2016 but the trial court only upon accepting the evidence of P.W.2 Shofiar Rahman @ Bablu held that date of dispossession as alleged by the plaintiff is not proved and accordingly he dismissed the suit arbitrarily. The learned advocate further submits that although the petitioner has adduced a number of documentary evidences which has exhibited in court as Ext. 1-5 but without discussing the said documents trial court most arbitrarily dismissed the suit of the plaintiffs. He finally prays that the impugned judgment is not sustainable in law, which is liable to be set aside.

None appears to oppose the rule.

Heard the learned Advocate and perused the Lower Court Records and the impugned judgment.

This is a suit for recovery of khas possession filed under section 9 of the Specific Relief Act. In a suit under section 9 of the Specific Relief Act plaintiff is required to prove

- i) that he was in possession;
- ii) that he has been dispossessed, i.e., deprived of actual physical possession of land.
- iii) that the dispossession took place without his consent;
- iv) that it was done otherwise than in due course of law;
- v) that the dispossession took place within six months before institution of the suit under section 9.

Now let us see how the above contention has been proved in the instant case.

In the plaint in paragraph-3 it has been stated that:

"৩। নালিশী বিত্ত নিঃস্বত্ববান ও নিঃদখলীকার বিবাদীগণ
স্থানীয় ৪০/৫০ জন দস্যু প্রকৃতির লোক লইয়া বিগত
২১/০১/১৬ইং তারিখ রোজ বৃহস্পতিবার দিবাগত রাত্রি অনুমান

৩.০০ ঘটিকার সময় বাদীর স্বত্ব দখলীয় "ক" তপশীল বর্ণিত বিত্বের পশ্চিম দক্ষিণ কোণে অনুমান ০.৫ শতক বিত্বে ০২টি দোচালা খড়ের ঘর, ০১টি টিনের ঘর ও ০১ খানা ছাপড়া উত্তোলন করে এবং বক্রি বিত্বে বাদাম ও মরিচের ক্ষেত রোপন করিয়া বাদীকে নালিশী "ক" তপশীল বর্ণিত বিত্ব হইতে বেদখল করে। নালিশী "ক" তপশীল বর্ণিত বিত্বে বিবাদী পক্ষের কোনই স্বত্ব দখল ছিল না বা নাই। বিবাদীগণ পেশী শক্তির বলে উক্তরূপে বাদীকে "ক" তপশীল বর্ণিত বিত্ব হইতে বেদখল করে।"

In order to prove the above contention as narrated in the plaint, plaintiff has adduced a number of witnesses.

Md. Rafiqul Islam, plaintiff while deposing in court as P.W.1 has stated that:

"আমি ভোগদখলে থাকাবস্থায় ২১/০১/১৬ তাং দিবাগত রাত অনুমান ৩ ঘটিকার সময় দাগের উত্তর পশ্চিম কোণে রাস্তার সাথে অনুমান ৫ শতক জমিতে ৩টি ঘর উত্তোলন করে। ১টি খড়ের ঘর, ১টি টিনের ঘর ও ১টি ছাপড়া। পরদিন সকালে অবশিষ্ট জমিতে বাদাম ও মরিচ ক্ষেত করে।"

Shofiar Rahman @ Bablu, P.W.2 while deposing in court has said that:

"উভয়পক্ষ ও নালিশী জমি চিনি। নালিশী জমি বাদী ভোগদখল করে। বাদী খরিদ করেছে ২১/০৭/২০০০ সালে। ঐ দলিলে আমি সাক্ষী ছিলাম। ঐ সময় বিক্রেতার জমি দেখাশুনা করতাম। বাদী ১১/০৭/১৬ তারিখে বেদখল হয় নাঃ জমি হতে। "

One Abu Syed, deposing in court as P.W.3 and said that:

"উভয়পক্ষ ও নালিশী জমি চিনি। নাঃ জমির সাথে লাগোয়া জমি আমার। আগে বাদী নাঃ জমি খেত। ২১/০১/১৬ তারিখে রাত ৩টায় বিবাদীয়া নাঃ জমি বেদখল করে।"

Mujibul, P.W.4 stated in his deposition that:

"নাঃ জমি এখন বিবাদী খায়। আগে বাদী খেত।"

Atul Chandra Deb Singh, deposing in court as P.W.5, who is the official witness, who brought the balam books from the Sub-Registry Office. P.W.5 and 6, who is the same person as Mohrar of the S.R. Office, who brought the volume of the balam books in court and said nothing about the date of dispossession.

One Mst. Morsheda Begum, deposing in court as P.W.7, who is the Assistant Court Keeper, who brought the balam books

from the Sub-Registry Office also said nothing about the date of dispossession.

One Syedul Islam Shah, deposing in court as P.W.8, who is the Advocate Commissioner, who submitted a report on local inspection on the suit land, said that:

"আমি গত ১২/১০/২০১৯ইং তারিখে সকাল ১০ ঘটিকার সময় নালিশী জমিতে উপস্থিত হই। বাদীপক্ষ ও বিবাদীপক্ষের সনাক্ত মতে নালিশী জমিতে সরেজমিনে উপস্থিত হয়ে মাপজোখ ও পরিদর্শন করি। বাদীপক্ষ ও বিবাদীপক্ষ ও স্থানীয় লোকজন উপস্থিত থেকে ফিল্ডযুক্ত সাক্ষর করিয়াছেন। নালিশী জমি, নীলফামারীর ডোমার থানার চিলাহাটি মৌজার জে এল নং-৫। সিএস ৩৬৩, এস এ ৪১৫ নং খতিয়ানে ৫৫ শতক দাগে ৯৪ শতকের মধ্যে ৬০ শতক জমির নালিশী দাগে পশ্চিম দক্ষিণ কোনে ৪ শতক জমির উপর দুইচালা টিনশেড ঘর একটি, দোচালা খড়ের ঘর ১টি, কাশফুলের চাটি দিয়ে ঘেরা রয়েছে এবং খরের ভাঙ্গা দোচালা ঘর ১টি মাটিতে পরে আছে। ১টি টিউবওয়েল, ১টি টয়লেট রয়েছে। টয়লেটটি চাটির বেড়া দিয়ে ঘেরা ৪ শতক জমির মধ্যে ২২টি মেহগনি চারাগাছ, ৬টি কলাগাছ, ১টি আমগাছ, ১টি বিগিনি গাছ, ১টি সুপারী গাছ রয়েছে। নালিশী জমির উত্তরদিকে আইল সীমানার পাশ দিয়ে ৯টি

বাঁশ, ১টি ছাতনাই গাছ রয়েছে। মেহগনি ২২টি গাছের মূল্য ১,৫০০/- টাকা আমগাছ ১টির মূল্য ৫০০/-, ঝিগীনি গাছের মূল্য ২০০/-, সুপারী গাছের আনুমানিক মূল্য ১০০/-, ছাতনাই গাছের আনুমানিক মূল্য ১০০০/- টাকা ৯টি, মোট আনুমানিক মূল্য ১,৮০০/- টাকা। বাড়িঘর উত্তোলন ও আমগাছ, ঝিগীনি গাছ রোপন করার বয়স অনুমান ৪ বছর হবে। মেহগনি গান, কলা গাছ, সুপারী গাছের বয়স অনুমান ১ বছর ৬ মাস হবে। বাঁশ ৯টি ও ছাতনাই গাছ ১টি বয়স ৪-৫ বছর হবে। নালিশী জমি ৪ শতক বাড়িঘর বাদে অবশিষ্ট জমিতে ধানক্ষেত রয়েছে।"

These are the evidences adduced by the plaintiff to prove his possession and dispossession of the suit land.

Upon perusal of the plaint it is apparent that plaintiff want to disclose that on 21.01.2016 at 3 at night he was dispossessed by the defendants from 5 decimals of land. Taking help from 40-50 peoples defendant erected to straw made two storied room, one Tin shed room and one sapra room thereon and rest of the land he cultivated nut and chili plant. In order to prove this contention, while deposing in court plaintiff Rafiqul Islam as P.W.1 tried to reiterate the similar version as of the plaint. But this statement does not get any corroboration from the deposition of P.W.2 and

P.W.3. P.W.2 said Plaintiff was dispossessed on 11.07.2016 although P.W.3 corroborate the date of dispossession i.e. on 21.01.16 at 3 at night but did not mention by whom and what manner plaintiff was dispossessed from the suit land as has been mentioned in the plaint as well as disclosed by the plaintiff himself, while deposing in court as P.W.1. P.W.8 Syedul Islam Shah, the Advocate Commissioner after inspection of the suit land has made a different story. He said that there is a tin shed two storied room and a straw made two storied room and which is surrounded by a fencing made by thatch of the Kash ful and there are number of trees surrounding the said room, which were erected, and the construction was made more than about 4 years before and the trees were planted about one and half years before and the bamboo tree and Satnai trees were there since for more than 4-5 years before. Leaving behind this 4 decimals of land in the rest of land there is a paddy field, which is cultivated and possessed by the defendants.

Taking into consideration of all these evidences trial court found that relying upon this evidences it is difficult to find that plaintiff was at all been in possession in the suit land and that he

was dispossessed therefrom on 21.01.2016 that means within 6 months of filing the suit, which are the prime requirements to get a decree under section 9 of the Specific Relief Act as been noticed above.

Going through the evidence together with the impugned judgment thus I do not find any illegality was done by the trial court in dismissing the suit.

I thus find no merit in the rule.

In the result, the rule is discharged and the judgment and decree passed by the trial court is upheld.

Send down the lower court records and communicate the judgment at once.