

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 1112 of 2020

Mosammat Monowara Begum and others
.....petitioners

-Versus-

Abul Hossain and others
.....opposite parties

Mr. Md. Humayun Kabir with
Ms. Tasmin Akhter, Advocates
..... for the petitioners

Ms. Preyanka Mohalder, Advocate
..... for opposite party 2

Judgment on 21.05.2024

In this Rule opposite parties 1-3 were called upon to show cause as to why the judgment and decree of the District Judge, Barishal passed on 21.11.2019 in Title Appeal No.90 of 2019 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Uzirpur, Barishal passed on 30.05.2019 in Title Suit No.35 of 2011 dismissing the suit should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

The plaint case, in brief, is that the suit property as described in the schedule to the plaint originally belonged to Afez Uddin, Montaz Uddin and Kayam Uddin. CS *Khatian 27* was prepared in their names for 5.92 acres of land. Title Suit No.370 of 1933 was filed in the Court of the then Munsif, Uzirpur, Barishal for arrear of rents. The suit was decreed. The decree was put for

execution in Execution Case No.373 of 1935 and the land was sold in auction on 31.08.1935. Purnandra Nath Tagore and others being highest bidders purchased it. The purchasers through registered *kabuliyat* dated 04.10.1948 settled a part of the land measuring 1.53 acres to Abdur Rahman Howlader. He sold out .17 acres therefrom to Javed Ali through a *kabala* dated 19.01.1952 and handed over possession thereof. After sale he remained owner in possession over remaining 1.36 acres. He died leaving behind his only son Abul Kalam Howlader who subsequently died leaving plaintiffs as heirs. The land of CS plots 713, 733, 805, 1616 and 1619 were recorded in RS plots 982, 983 and 2693 in RS *Khatian* 510. RS and SA records were prepared wrongly in the name of the predecessor of the defendants. The defendants have no title and possession in the suit land but they claimed title in the suit land on the basis of the erroneous record of rights prepared in the name of their predecessor, hence the suit for declaration of title.

Defendants 22 and 24 filed written statements to contest the suit. In the written statement they denied the facts averred in the plaint. They further contended that although in CS *Khatian* 27 the land was 5.92 acres but in RS and SA operation it was recorded in several plots showing 4.93 acres. Karim Uddin owned and possessed 5 *annas* 6 *gonds* 2 *karas* 2 *karantis* share of the land.

He died leaving behind his 4 sons namely Montaz Uddin, Bashir Uddin, Osim Uddin and Safar Uddin. Karim Uddin died during CS operation but wrongly the record was prepared only in the name of Montaz Uddin excluding the other heirs. During RS operation Osim Uddin died leaving 2 sons Abdul Aziz and Abdul Jabbar. RS and SA *Khatians* were prepared in the names of Abdul Aziz, Osim Uddin and their 3(three) uncles. During possession and enjoyment Osim Uddin transferred .09 acres to Abdul Aziz and Abdul Aziz subsequently transferred it to one Ranjit. Thereafter, Ranjit transferred the same to Harendra and the latter transferred it to Dhamura Harimandir and handed over possession thereof. The plaintiffs have been claiming land of the Mandir. These defendants have three dwelling houses, a kitchen, a cowshed and a tubewell in the suit land. The plaintiffs have no title and possession over those. The defendants disowned that Purnendra Nath and others ever purchased any part of the property in auction. They denied of Purnandra's execution of *kabuliyat* to plaintiff's predecessor Abdur Rahman Howlader. The recent record of right BRS *Khatian* 2622 has correctly been prepared in the name of these defendants. The suit, therefore, would be dismissed.

Defendant 52 also filed written statement to contest the suit.

In the statement he denied the facts of the plaint and further stated

that land measuring 4.93 acres originally belonged to Sarfuddin and others and RS and SA records were correctly prepared in their names. Habibur Rahman son of Sarfuddin sold out .29 acres from SA plots 982 and 983 to these defendants through a *kabala* dated 11.11.2007. In Bujrat *Khatian* Habibur Rahman's name was recorded. The plaintiffs have no right, title and possession in the suit land and as such the suit would be dismissed.

The trial Court framed 5(five) issues to adjudicate the matter in dispute. In the trial, the plaintiffs examined 3 witnesses while the defendants examined 4. The documents produced by the plaintiffs were exhibits 1-3 series and those of the defendants were exhibits-Ka-Uma. However, the Assistant Judge dismissed the suit against which the plaintiffs preferred appeal before the District Judge, Barishal. The appellate Court dismissed the appeal and affirmed the judgment and decree passed by the trial Court. Being aggrieved by the plaintiffs approached this Court with the present revision upon which the Rule was issued and an ad interim order directing the parties to maintain *status quo* in respect of possession of the suit land was passed.

Mr. Humayun Kabir, learned Advocate for the petitioners taking me through the judgments passed by the Courts below and other materials on record submits that the petitioners' predecessor Abdur Rahman Howlader got 1.53 acres of land through *kabuliyat*

dated 07.10.1948. During his possession and enjoyment he sold out .17 acres therefrom to Zabed Ali. In respect of a part of the suit land Title Suit No.105 of 2007 was filed which was decreed on compromise and as such plaintiffs' title in the suit land through *kabuliyat* has been proved. The plaintiffs instituted this suit for wrong record of rights prepared in the name of the predecessor of the defendants which clouded their title in the suit land. He refers to the evidence of DW1 and submits that in evidence he admitted that the predecessor of the plaintiffs sold some lands to others who are in the possession of the same.

Mr. Kabir then refers to the order sheet of the appellate Court and submits that the plaintiffs on 05.11.2019 filed an application under Order 6 Rule 17 of the Code therein and prayed for amendment of the plaint. Through the proposed amended they tried to convert the suit for declaration of title into suit for partition. The appellate Court heard the said application on that day but did not pass any order on it but on the next date dismissed the appeal. If the application had been disposed of and allowed, the suit would have been turned into a suit for declaration of title and partition. In that case the petitioners could have get share in the suit land as per their claim. The appellate Court without disposing the application for amendment of the plaint committed error of law resulting in an error in such decision occasioning

failure of justice. The Rule, therefore, should be made absolute and the judgment and decree passed by the Courts below be set aside.

Ms. Preyanka Mohalder, learned Advocate for opposite party 2 on the other land opposes the Rule. She supports the judgments passed by the Courts below and submits that this is a suit for declaration of title simpliciter. In such a suit the plaintiffs have to prove title and possession in the suit land. They have to show that the land is well bounded. But they failed in all the scores. The plaintiffs did not produce the judgment and decree of the rent suit, *baynama* and writ of delivery of possession in favour of Purnandra Nath Tagore and others. The plaintiffs further failed to produce any *pattannama* in support of the *kabuliyat*. The schedule of the land is unspecified. The Courts below correctly assessed the evidence and other materials on record and dismissed the suit for declaration of title. There is no error of law in the impugned judgments and as such those may not be interfered with by this Court in revision.

I have considered the submissions of both the sides and gone through the materials on record. The plaintiffs brought the suit for declaration of title in the suit land measuring 1.36 acres out of 3.94 acres of CS *Khatian 27* corresponding to RS *Khatian 510* and SA *Khatian 737* respectively consisting of plots 982, 983

and 2696 as described in the schedule to the plaint. In the plaint, the plaintiffs claimed that Afaz Uddin was the recorded tenant of CS *Khatian 27* consisting of 16 plots. They defaulted in paying rent to the concerned and accordingly Rent Suit No.370 of 1933 was filed and decreed. The decree was put into execution in Execution Case No.573 of 1935 and Purnandra Nath Tagore and others purchased the suit land on 15.08.1936 through auction and accordingly got possession of the same through Court. Subsequently, they transferred it to the predecessor of the plaintiffs Abdur Rahman by a *kabuliyat* dated 07.10.1948. But the plaintiffs did not produce a single scrap of paper in support of the rent suit and auction purchase by Purnandra Nath Tagore and others. No *baynama* and writ of delivery of possession was produced in evidence. The plaintiffs only produced certified copy of *kabuliyat* dated 07.10.1948 exhibit-3 and claimed that their predecessor Abdur Rahman Howlader accrued title in the suit land through it. The *kabuliyat* is found to be an unilateral document signed by Abdur Rahman Howlader only. It is not followed by any *patta* or *dakhilas*. Therefore, I find that the plaintiffs failed to prove their title in the suit land through *kabuliyat*.

The schedule of the plaint shows that the suit land is not specified. The plaintiffs claimed 1.36 acres of land out of 3.90 acres of 3(three) different RS and SA plots but no boundary was

given as is required under Order 7 Rule 3 of the Code. The plaintiffs did not file any rent receipts in support of their possession over the suit land. The argument of Mr. Kabir that the plaintiffs accrued title in the suit land through exhibits-‘Ka’ and ‘Kha,’ *i.e.*, compromise decree passed in Title Suit No.105 of 2007 for .17 acres of land which was transferred by their predecessor to Javed Ali, bears no substance because a compromise decree passed in a different suit can no way create plaintiffs’ title in the scheduled of this suit land which is not included here.

In the order the appellate Court passed on 05.11.2019, it is found that the instant petitioners filed an application therein under Order 6 Rule 17 of the Code for amendment of the plaint which was neither allowed nor rejected expressly but the next date of the appeal was fixed for delivery of judgment. I have perused the application for amendment of the plaint and the relevant order of the appellate Court. It appears that the District Judge heard the application on 05.11.2019 but fixed next date of the appeal to 21.11.2019 for delivery of the judgment which means that it virtually rejected the application for amendment of plaint. Though, it was the duty of the appellate Court to pass a speaking order on the application but he did not do so. Even the application for amendment of plaint was allowed by the appellate Court, the

present suit for declaration of title would have been turned into a suit for declaration of title and partition, because the word- “এবং বাদীপক্ষের দাবিকৃত উক্ত সম্পত্তি সম্পর্কে বন্টনের ডিক্রি পাইবার আবেদন” would have been inserted after the word “রায়তি স্বত্ত্ব থাকা মর্মে ঘোষনামূলক ডিক্রি দিবার” । (emphasis supplied). In that case also the plaintiffs had to prove their title in the suit land which they filed. If the application for amendment of the plaint had been allowed and the suit was turned into a suit for declaration of title with partition, the result of it would have been the same for want of proving title in the suit land. Since the plaintiffs have failed to prove their title and possession in the suit land, the trial Court correctly dismissed the suit which has been affirmed by the appellate Court. I find no error in the impugned judgments for which those may be interfered with by this Court in revision.

Therefore, the Rule is discharged without any order as to costs. The judgment and decree passed by the Courts below is hereby affirmed.

The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Court records.