

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.2563 OF 2019.

Bimal Sardar @ Munda and others
..... *Defendant-Petitioners.*

-VERSUS-

Alhaj Sheikh Md. Wazed Ali and
others
.....*Plaintiff-Opposite Parties.*

Mr. Al Faishal Shiddique, Advocate
..... *For the Petitioner.*

No one appears
..... *For the Opposite Parties.*

Heard on 28.10.2024 and 05.11.2024.

Judgment on 11.11.2024.

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and decree dated 14.07.2019 passed by Additional District Judge, 1st Court, Khulna in Title Appeal No.26 of 2017, allowing the appeal and reversing the judgment and decree dated 06.11.2016 passed by the Senior Assistant Judge, Koyra, Khulna in Title Suit No.69 of 2014 dismissing 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.

Facts relevant in brief for disposal of the Rule are that the opposite parties, as plaintiffs, instituted Title Suit No.69

of 2014 before the Assistant Judge, Koyra, Khulna, for a permanent injunction contending inter-alia that the land measuring 0.22 acres of S.A. Plot No.2371 appertaining to S.A. Khatian No.544 of Mouza Uttar Bedkashi under Police Station Koyra, District Khulna belonged to Gopinath Sardar; that Gopinath Sardar sold out said land in favor of Suratun Nessa, the predecessor of the plaintiffs through registered sale deed bearing No. 2068, dated 09.04.1970; that Suratun Nessa died leaving plaintiffs as her heirs and successor in interest; that on 04.07.2014 the defendants threatened plaintiffs to dispossess them from the suit land and hence the suit.

The defendants 1-4 contested the suit by filing a set of written statement contending inter-alia that the suit land measuring 0.22 acres of S. A. plot No. 2371 appertaining to S. A. Khatian No. 544 of Mouza-Uttar Bedkashi under Police Station- Koyra within District-Khulna belonged to Gopinath Sardar; that Gopinath Sardar sold out 0.12 acres of land out of said 0.22 acres in favor of Bimal Sardar @ Munda (defendant No. 1) and Nirmal Chandra Kuli through registered sale deed No. 7951, dated 10.09.1977; that Gopinath Sardar also sold out 0.11 acres of land out of said 0.22 acres in favor of Bimal Sardar @ Munda (defendant No. 1) and Nirmal Chandra Kuli through registered sale deed

dated 31.03.1979; that said Nirmal Chandra Kuli sold out his said purchased land measuring 9.852 decimals in favor of Rukshini Dasi through registrate deed No. 3786, dated 03.04.1982; that Rukshini Dasi transferred said land, i.e., 9.852 in favor of defendant No. 1 by way of gift through registered deed No. 697, dated 20.12.1997; that the latest record of right has been prepared and published in the name of the defendant No. 1; that said Gopinath Sardar never sold out the suit land in favor of Suratun Nessa and the deed in favor of said Suratun Nessa is forged and fabricated one; that the plaintiffs have no title and possession in the suit land and the defendants never threatened them to dispossess from the suit land and thus the suit is liable to be dismissed.

During the trial, the Senior Assistant Judge framed necessary issues.

Subsequently, the learned Senior Assistant Judge, Koyra, Khulna, dismissed the suit by the judgment and decree dated 06.11.2016.

Being aggrieved, the plaintiff, as appellant, preferred Title Appeal No.26 of 2017 before District Judge Khulna. Eventually, the learned Additional District Judge, 1st Court, Khulna, by the judgment and decree dated 14.07.2019, allowed the appeal after setting aside the judgment and decree passed by the trial Court.

Being aggrieved, the defendant-respondent as petitioner filed an application under section 115 (1) of the Code of Civil Procedure before this Court and obtained the instant Rule.

Mr. Al Faishal Shiddique, the learned Counsel appearing on behalf of the petitioner, submits that the trial Court, upon proper examination of the evidence on record, found that the plaintiff has no exclusive possession in the suit land and the boundaries of the suit land as claimed in the plaint rather, the learned Judge of the appellate Court without assessing any reason decreed the suit by the impugned judgment and decree which resulted in an error of law occasioning failure of justice; that the defendant has succeeded to prove his prima-facie title and possession in the suit land for which he should not be restrained by way of the injunction but the appellate Court upon an erroneous view passed the decree restraining him by way of permanent injunction which resulted in an error of law occasioning failure of justice; that the suit property is not specifically and described adequately by its four boundaries, and from the evidence of the plaintiff witnesses, it is found that the boundaries are not correct and the trial Court rightly dismissed the suit.

No one appears to oppose the Rule on behalf of the opposite parties.

I have considered the submission of the learned advocate and perused the impugned judgment as well as oral and documentary evidence. It reveals that, considering the evidence of PWs and Dws, Exhibit Ka and Kha deed nos. 3110 and 2371, respectively, the learned judge of the trial court dismissed the suit chiefly on the ground that the defendants who threatened to dispossess the plaintiffs have not been proved; that the plaintiffs failed to prove their title and possession of the suit land; that the plaintiffs were unable to prove his title as there involved a complicated question of title of both the party so the suit was not maintainable.

The appellate court considered the oral and documentary evidence, which says that plaintiffs had successfully proved their prima facie title in the suit land. Moreover, plaintiffs established their exclusive possession and boundary in the suit land through their evidence and decreed the suit.

In a suit for a permanent injunction, the plaintiff must prove the exclusive possession of the suit land to get a decree. The Court may incidentally enquire into the prima facie title of the parties unless the plaintiff's possession is clearly established by the evidence that the plaintiffs cannot have any decree for a permanent injunction.

In the instant case, I have perused oral and documentary evidence, i.e., exhibit 'Ka' deed no. 7951 dated 10.9.77; Exhibit 'Kha' deed no. 3110 dated 31.3.79 and Exhibit 'Cha' rent receipt. PW1-the plaintiff stated details of the chain of the title of the suit land rather, he failed to give the specification of the suit land and admitted in the cross-examination that- “এই খতিয়ানের জমি এজমালি।”

PW 2 deed writer, PW3 Assistant deed writer.

PW4, this witness had not stated that when the defendants threatened the plaintiff to dispossess the suit land, he failed to give the specification of the suit land. Rather, he admitted in the cross-examination that- “কোন খতিয়ানের, কোন দাগের জমি নিয়ে মামলা তা জানিনা। বাদীর কোন দাগের জমি ভোগ দখল করে তা জানি না। ওখানে হাজী সাহেবের মোট কতটুকু জমি তা জানি না। ----- বিবাদীরা ওখানে কত বছর ভোগ দখল করে তা জানি না।”

It reveals that the plaintiffs claim the defendants threatened to dispossess them from the suit land, but none of the witnesses supported his claim. Moreover, the plaintiff has failed to prove their exclusive possession over the suit land by giving oral and documentary evidence.

Notably, it is a settled proposition of law that if the dispute involves complicated questions of title, a simple suit for a perpetual injunction must not be maintainable. In this

context, the case of Rafizuddin Ahmed vs. Mongla Barman and others reported in 43DLR(AD) 215, it was held that-

“If the dispute involves complicated questions of title, the plaintiff must establish his title by filing a regular suit for declaration of title. A simple suit for a permanent injunction should not be allowed to be used as a testing device to ascertain the title”.

In the instant case, it reveals that the plaintiff and the defendant both the parties claimed the same suit land by producing their respective registered deeds. So, it reveals that the dispute involves complicated question of title to the land in question between the parties.

In view of the above, I am of the view that the trial Court has elaborately discussed oral and documentary evidence and justifiedly says that the defendants who threatened to dispossess the plaintiffs have not been proved, that the plaintiff failed to prove his title and possession of the suit land, that the plaintiff was unable to prove his title as there involved a complicated title of both the party so the suit was not maintainable. On the other hand, the learned judge of the appellate court reversed those findings of facts as a last court of facts without considering oral and documentary evidence and, very unfortunately, says that- “বিজ্ঞ বিচারিক আদালত মতামত প্রকাশ করিয়াছেন যে, উভয়পক্ষের নামীয় দলিল এবং খাজনার দাখিলা দাখিল করে অত্র মামলায় যাহা দ্বারা

এই মামলায় নিরস্পন করা যায় না একচ্যুয়ালী কে নালিশি জমি ভোগ দখল করে। উক্ত ফাইন্ডিংস সঠিক হয় নাই। কারণ একজন নিন্দু ভদ্র লোকের কাছ হইতে একজন মুসলিম যখন কোন কবলা দলিলমূলে খরিদা দাবি করেন এবং সেই দলিল যতক্ষন পর্যন্ত জাল প্রমাণিত না হইতেছে, ততক্ষন পর্যন্ত সেই দলিলটি সঠিক এবং সেই দলিলের জমি স্বত্ব দখল ক্রেতার অনুকূলে থাকিবে ইহাই স্বাভাবিক। আলোচনামতে বাদীপক্ষের স্বত্ব দখল প্রমানিত হওয়ায় বাদীপক্ষের অনুকূলে চিরস্থায়ী নিষেধাজ্ঞার ডিক্রী প্রদানযোগ্য ছিল।” As a result, the learned Judge of the appellate Court committed an error of law resulting in an error in decision occurring failure of justice.

In the result, the Rule is made absolute without any order as to costs. The impugned judgment and decree dated 28.08.2017 passed by the learned Joint District Judge, 1st Court, Khulna, in Title Appeal No.52 of 2012, is hereby set aside and affirmed the judgment and decree dated 06.11.2016 passed by the Senior Assistant Judge, Koyra, Khulna. So, the suit is dismissed.

Communicate the judgment and LCR to the Courts below at once.

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(Md. Salim, J).