

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1516 of 2018

Mosammat Nasimunnessa Begum alias  
Munni and others

.....Petitioners.

-Versus-

Police Commissioner, Chattagram  
Metropolitan Police and others

.....Opposite parties.

Mr. Md. Mubarak Hossain, Advocate

.....For the petitioners.

Mr. Md. Insan Uddin Sheikh, D.A.G. with  
Mr. Mirza Md. Soyeb Muhit, A.A.G. and  
Mrs. Shovana Banu, A.A.G.

..... For the opposite parties.

Heard and judgment on 28<sup>th</sup> November, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 22.02.2018 passed by the Additional District Judge, 5<sup>th</sup>

Court, Chattagram in Title Appeal No. 226 of 2011 affirming those dated 19.04.2011 passed by the Assistant Judge, 5<sup>th</sup> Court, Sadar, Chattagram in Title Suit No. 152 of 2001 dismissing the suit should not be set aside.

Facts relevant for disposal of this rule are that petitioner as plaintiff filed above suit against the opposite parties for perpetual injunction and subsequently prayed for declaration of title and recovery of khas possession into the suit land.

Plaint case in short, inter alia, is that one Bazal Ahammad was the original owner of .0769 acres of land in P.S. plot No. 2246 corresponding to B.S. plot No. 2052 by way of inheritance and purchase. Accordingly P.S. mutation and B.S. khatians have been prepared into his name. Out of the same land plaintiff Nos. 1 and 2 purchased  $.03+.03=.06$  acres of land from him through registered kabala No. 360 and 359 both dated 29.02.88 and got possession thereon. Proforma defendant No.6 government acquired .0340 acres of land through L.S. Case No. 1/88-89 and accordingly plaintiffs received compensation thereon. Plaintiff filled up the rest of the land measuring .0260 acres of land and

remained in possession thereon through tenant on making a shop thereon.

Thereafter defendant No.6 government again acquired .005 acres of land along with the structure thereon belonged to the plaintiffs through L.A. Case No. 25/95-96. Plaintiff received compensation money and remaining in possession out of the rest .0210 acres of land and got his name mutated in Mutation Khatian No. 970/5 vide Mutation Case No. 744/1999-2000 and paying rents to the government regularly. Defendant No.2 left the acquired property unused for a long time and recently has appointed defendant Nos. 4 and 5 as contractor to construct the Chandgao Police Station building and also appointed the defendant No.7 to remove the buildings situated over the acquired property. Recently defendants are threatening on 12.7.01 to the plaintiffs to evict him from the suit land claiming that all properties have been acquired and hence the plaintiff filed the suit.

Subsequently the plaintiffs amended the plaint and claimed for ad-interim injunction and got an order of status-quo from the court. But on 01.02.07 defendant No.3 disobeyed the order of status-quo and evict the plaintiff from the suit land and

accordingly he further amended the plaint and added a prayer for declaration of title and recovery of khas possession.

Defendant No.2 and 3 contested the suit by filing written statements denying the plaint case, alleging, inter alia, that plaintiffs have filed the instant suit being influenced by the defendant No.7. Defendant No.2 has given possession for connecting the Bus Terminal Road together with Bahaddarhat as well as fast construction of the police station cum Barrack on the suit land. In fact 1.05 acres of land was acquired from the entire land of plot No. 2052, 2050 and part land of plot Nos. 2027, 2035-2039, 2048, 2049, 2058, 2067-2070 and 2074, which is situated at the north east side of plot No. 2052. Part of land of suit plot No. 2052 was acquired for construction of Karnafuly connecting road through L.A. Case No. 1/88-89, which is situated to the west and south west side of the acquired property.

It is further stated in the written statement that plaintiff purchased their title on 19.2.88, during the pendency of L.A. Case No. 1/88-89. Plaintiffs have inserted the R.S. plot No. 965 without mentioning the number of the concerned R.S. record and has not provided P.S. plot No. 2246 in the schedule. It will appear from

the P.S. record No. 386/3 filed by the plaintiffs that the area of land in P.S. plot No. 2246 is .1050 acres but the corresponding B.S. plot as stated by the plaintiffs is 2052, which contents .0769 acres of land and the plaintiffs have not stated about the rest of .0281 acres of land. It appears from the boundary provided in the schedule that the defendants have no connection with the land claimed by the plaintiffs, it is situated outside the property possessed by the defendants.

Plaintiffs filed this suit in order to create abstractions to the development work of the defendant Nos. 2/3. The purchased deeds of the plaintiffs contain no boundary and the title of the seller has also not been clearly defined. After acquisition in L.A. Case No. 25/95-96, the acquired property was measured through dual surveyor on 7.3.96 and possession certificate was given on 7.8.96. Thereafter the defendant No.4 constructed the police station building and boundary wall thereon. Property possessed by the defendants have no connection with the property claimed by the plaintiffs. A notice was served to the plaintiffs on 3.12.06 to evict from the unauthorized occupied but failed them the illegal

establishments were removed on 1.2.07. Plaintiffs suit is false and is liable to be dismissed with cost.

The Assistant Judge vides judgment and decree dated 19.04.2011 dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 226 of 2011 before the Court of District Judge, Chattagram, which was heard on transfer by the Additional District Judge, 5<sup>th</sup> Court, Chattagram, who by the impugned judgment and decree dated 22.02.2018 dismissed the appeal and affirmed the judgment of the trial court.

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

Mr. Md. Mubarak Hossain, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that although the petitioner has produced in court and asked for exhibit the same, the information slip of L.A. Case No. 25/95-96 and it was recorded in the deposition as P.W.1 for making the same as Ext. 9(ka) but mistakenly that document was not marked as Ext. 9(Ka) rather a different document has been exhibited as Ext.9(ka). The court below concurrently failed

to consider the aspect of this case from the record and come to a wrong finding that plaintiff failed to prove by adducing any evidence of the paper on L.A. Case No. 25/95-96 illegally. The learned Advocate further submits that by way of amendment of the plaint, plaintiff has stated that during pendency of the suit plaintiffs were evicted by the defendants illegally upon demolishing their construction in the suit land on 01.02.07, which has also been admitted by the defendant, in reply to their additional written statements and as such the said admitted fact need not require to prove any more but the court below upon non-reading of the evidence have held that “No statement can be found in the plaint on how, when or by whom such dispossession was made.” and accordingly dismissed the suit illegally. The judgment thus suffers from non-reading of the evidences and accordingly is not sustainable in law. The learned advocate further drawing my attention to the B.S. khatian No. 970 as has been exhibited as Ext. 2(ka) along with the land acquired by the government in L.A. Case No. 1/88-89 (Ext.6) with L.A. Case No. 25/95-96 (which is not marked as Ext.9(kha) mistakenly but the said document is lying in the records) and the schedule of the plaint submits that in

the B.S. khatian in plot No. 2052 total land was .0769, which would also be appeared (from the Ext.9(ka)) amongst that, land in L.A. Case No. 1/88-89 .0070+.01 (in L.A. Case No. 25/95-96) of land was acquired from Bazal Ahammad and .0340 acres of land ( in L.A. Case No. 1/88-89) and .005 acres of land (in L.A. Case No. 25/95-96) were acquired from plaintiff Nurunnahar Begum. Which means altogether  $.0340+.0050+.0070+.0100=.0560$  was acquired in two L.A. case out of total .0769 decimals of land as it would appears from the B.S. khatian No. 970, which contents .0769 acres of land. If the property been acquired i.e. .0560 acres of land is being reduced from the total quantum of land i.e. .0760 acres of land there remains .0209 acres of land, which is the suit land .0210 acres of land as been stated in the schedule of the plaint and also recorded in B.S. khatian No. 970/5 in the name of Nurunnahar Begum, who is the plaintiff, who filed this suit. Although all these documents are been placed in court for the satisfaction of the plaintiffs title and claim but both the courts below totally failed to assess the above aspect of the case and come to a wrong findings on dismissing the suit. The impugned judgment is thus not sustainable in law.



Mr. Md. Insan Uddin Sheikh, the learned Deputy Attorney General appearing for the state opposes the rule and submits that both the courts below committed no illegality in dismissing the suit, rule contains no merit, it may be discharged.

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

This is a suit for permanent injunction. But subsequently by way of amendment further prayer for declaration of title and recovery of khas possession was prayed for, as and when during pendency of the suit, plaintiffs were dispossessed by the defendants on 01.02.2007. Record speaks that in reply to the amendment of the plaint, government further make an additional reply, wherein they have admitted the alleged allegation of the plaintiffs dispossession on 01.02.07.

In that view of the matter, when the fact of dispossession was not been denied by the defendant, the findings of the court below to the effect that when and how and whom the plaintiffs were dispossessed not been there, is nothing but a non-reading of the evidence. From the deposition of the plaintiffs i.e. P.W.1 it

appears that an information slip on the acquisition of land measuring .005 from B.S. plot No. 2052 from Nurunnahar Begum and .0100 acres of land from the same plot from Bazal Ahmed was shown to have acquired in L.A. Case No. 25/95-96 was been placed through schedule of the exhibits and asked to marked as exhibit-9(ka), which was also been noted by the court concerned but record speaks that mistakenly that document was not been marked as Ext.9 (Ka) rather B.S. khatian No. 970/5 was marked as Ext.9(ka). The aforesaid mistake was not been committed by the plaintiff rather it was a clerical mistake of the court for which plaintiff cannot suffer. When plaintiffs by producing all his supporting documents as been submitted above in the submission of the learned advocate for the petitioner got support from the records and the plaintiffs has successfully able to prove that excepting the acquired property, plaintiffs got their .0210 acres of land purchased and remaining in possession and the defendants also did not come with any case that this property was also been acquired by the government, the plaintiffs is obviously entitled to get a decree on the rest of the land measuring .0210 acres of land,

which is out of the acquired land of L.A. Case No. 1/88-89 and L.A. case No. 25/95-96.

Regard being had to the above law, fact and circumstances of the case, I am of the view that both the court below erred in law in not properly assessing the records and dismissing the suit most arbitrarily. The impugned judgment is not sustainable in law and the plaintiff is entitled to get a decree as prayed for.

I thus find merit in this rule.

In the result, the rule is made absolute and the impugned judgment and decree passed by the court below is hereby set aside and the suit is decreed.

Send down the L.C.R along with the judgment to the courts below at once.