

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 255 of 2023

Samaru Ray and others petitioners

-Versus-

Md. Abdur Rahim and others

..... opposite parties

Mr. Mohiuddin Ahmed, Advocate

..... for the petitioner

Mr. Alamgir Kabir, Advocate

..... for the opposite parties

Judgment on 21.05.2024

Bhishmadev Chakrabortty, J:

The Hon'ble Chief Justice of Bangladesh has sent this matter to this bench for hearing and disposal.

This rule at the instance of the defendants was issued calling upon the plaintiff-opposite parties to show cause as to why the judgment and decree of the Additional District Judge, Thakurgaon passed on 31.10.2022 in Title Appeal No. 62 of 2016 dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Sadar, Thakurgaon passed on 19.06.2016 in Title Suit No. 78 of 1997 decreeing the suit for declaration of title should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of the rule, in brief, are that the plaintiff instituted the suit stating, *inter alia*, that the suit property as detailed in the schedule to the plaint measuring 1.79 acres

appertaining to 4 CS plots of CS khatian 153 corresponding to SA khatian 175 and .63 acres of 2 CS plots of CS khatian 155 corresponding to SA khatian 177 of *mouza* kismot kesuorbari within the district of Thakurgaon originally belonged to Khocha Hazra. CS khatian was correctly prepared in his name except .30 acres of plot 621. Khocha Hazra died leaving behind his sons Asulal Hazra who also died leaving his son Thiram Chandra and Binoy Chandra. Thiram Chandra was blind by birth and consequently Binoy inherited the total paternal property. During his possession he transferred .38 acres from plot 910, .07 acres from plot 922 and .25 acres from 910 by registered *kabala*s dated 12.06.1981 and 18.07.1984 to Naimuddin, brother of the plaintiffs. Naimuddin then transferred .21 acres to the plaintiff through *kabala* dated 02.10.1984. Binoy further transferred .25 acres of CS khatian 153 corresponding to SA khatian 175 and .88 acres of CS khatian 155 corresponding to SA khatian 177 to plaintiff Abdur Rahim through *kabala* dated 25.09.1994. The plaintiff thus became owner in possession of the suit land. He mutated his name and paid rents to the concerned. Defendants 1-3 on 20.05.1995 tried to cause damage to the crops grown by the plaintiff. Then he filed a criminal case under section 144 of the Code of Criminal Procedure and consequently a police officer was appointed as receiver to look after the disputed land. Hence the suit for declaration of title in the suit land described in the schedule to the plaint.

Defendants 1(Ka), 2 and 3 and 4 filed 2 separate sets of written statements to contest the suit. Their common case is that the suit land originally belonged to Khocha Hazra who transferred it to the father of defendant 1 Amika Das through a *kabala* dated 10.05.1940. In the *kabala* the land has been described by metes and bounds. The land described in the schedule to the plaint dated 10.05.1940 has been owned and possessed by these defendants and as such the suit would be dismissed.

The trial Court framed 5 issues to adjudicate the matter in dispute. In the trial the plaintiffs examined 4 witness while the defendants examined 7. The documents produced by the plaintiffs were exhibits 1-9 and the documents of the defendants were exhibits A-C and D series. The trial Court decreed the suit on 29.04.2001 declaring plaintiff's title in the suit land. Then two sets of defendants preferred Title Appeal Nos. 39 and 40 of 2001. The appellate Court set aside the judgment and decree of the trial Court and sent the suit on remand to the trial Court by its judgment and decree dated 06.04.2002. The plaintiffs then filed Civil Revision No. 3877 of 2002 in this Court. The rule issued in the aforesaid revision was made absolute in part and the trial Court was directed to relay the *kabala* of the defendants dated 10.05.1940 alleged to have been executed by Khocha Hazra as to whether it attracts the suit land and to dispose of the suit within 06 (six) months. After remand by this Court as

aforestated, the trial Court appointed an Advocate Commissioner to relay the land of the deed with the plaintiffs land as described in the schedule to the plaint. The Advocate Commissioner relayed the land of the deed with the suit land and submitted his report exhibit-I. He was examined on oath in support of his report. Thereafter, the learned Assistant Judge by the judgment and decree dated 19.06.2016 decreed the suit declaring plaintiffs' title in the suit land. Against the aforesaid judgment and decree the defendants preferred appeal before the District Judge, Thakurgaon. The appeal was heard on transfer by the Additional District Judge, Thakurgaon. The transferee Court by the judgment and decree passed on 31.10.2022 dismissed the appeal and affirmed the judgment and decree of the trial Court. The defendants then approached this Court with this revisional application upon which the rule was issued and an *interim* order of stay of the impugned judgments was passed.

This matter was heard in part on 15.05.2024 in presence the learned Advocates for both the sides. It again appeared in the cause list on 20.05.2024 but none appeared for either of the parties and it was adjourned on that day for ends of justice. Today it appeared in the list as part heard item but on repeated calls the learned Advocate for the petitioners is bound absent. After hearing the learned Advocate for opposite party 1, I started delivery of judgment giving dictation. At the fag end of delivery the judgment Mr. Mohiuddin Ahmed, learned

Advocate for the petitioners entered into the Court room. I offered him to make submission, if any, but he refused.

Mr. Alamgir Kabir, learned Advocate for opposite party 1 supports the judgments passed by the Courts below and submits that the plaintiff proved his title and possession in the suit land by adducing evidence both oral and documentary. Furthermore, the deed of the defendants dated 10.05.1940 exhibit-A through which they claimed title over the suit land has been relayed by the Advocate Commissioner as per direction passed by this Court in a civil revision. The Advocate Commissioner did not find any similarity of the plaintiff's land with the land of the defendants as described in exhibit-A. The concurrent finding of facts arrived at by the Courts below should not be interfered with in revision unless there is gross misreading and non consideration of the evidence and other materials on record. No such ground is found to have been taken in the revisional application. This rule, therefore, having no merit would be discharged.

I have considered the submissions of the learned Advocate for opposite party1, gone through the judgments passed by the Courts below particularly the report of the Advocate Commissioner exhibit-I about relay of the *kabala* dated 10.05.1940 exhibit-A with the land described in the schedule to the plaint.

It appears that the plaintiff proved exhibits-1 and 6, the *kabalas* through which he acquired title in the suit land. He produced mutation khatian exhibit-3 and rent receipt exhibit-2 in support of his possession in the suit land. Exhibit-I, i.e., the report of the Advocate Commissioner relating the land of the defendants' deed with the land of the plaintiff's described in the schedule to the plaint proves that the land mentioned in the deed by which the defendants claimed title over the suit land in no way attract the suit land. Therefore, the defendants have failed to prove their claim over the suit land through exhibit-A. The Courts below correctly assessed the facts and evidence adduced by the parties and decreed the suit for declaration of title. The trial Court had nothing to do with the suit except the work of holding relay by the Advocate Commissioner as per the remand order passed by this Court in the earlier revision. I find no error in the impugned judgments for which those can be interfered with by this Court in revision. The Courts below left no stone unturned in disposing the suit finding plaintiff's title and possession in the suit land. I find nothing in the record for which the result of the suit could have been otherwise.

In view of the discussion made hereinabove, I find no merit in this rule. Accordingly, the rule is discharged. However, there will be no order as to costs. The order of stay stands vacated.

Communicate this judgment and send down the lower Courts' record.

Rajib