

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No.2914 of 2010**

**IN THE MATTER OF:**

An application under Section 25 of the small causes Court Act

- AND -

**IN THE MATTER OF:**

Md. Motajid Billah @ Badsha and another  
... Plaintiff-Petitioners

-Versus –

Md. Ishahaque Ali Farazi @ Md.Eshaque Farazi

..Opposite Party

Mr. Md. Omar Ali Khan, Advocate

....For the petitioners

Mr. M.G. Mahmud (Shaheen), Advocate

...For the Opposite Party

**Heard on 09.01.2024 and  
Judgment on 15.01.2024**

**Md. Kamrul Hossain Mollah, J:**

On an application filed by the petitioner, under Section 25 of the small causes Court Act, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 28.02.2010(degree signed on 28.02.2010) passed by the learned Senior Assistant Judge, and Small Cause Court, Mymensingh in Small Cause Court Suit No.2 of 2004 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 necessary for disposal of the Rule, in short, are that the plaintiff-petitioners filed S.C.C. Suit No.2 of 2004 before the Court of learned Senior

Assistant Judge, Sadar, Mymensingh for eviction of tenant and recovery of arrear house rent amounting of Tk.14,000/-. Kechuram Ghosh @ Kechuram Gop was the owner of the suit premise. Kechuram died leaving two sons namely Joy Chandra Ghosh @ Joychandra Gop and Janma Joy Ghosh as his only heirs. While they were the owners the suit premise they entered into a contract of sale with the father and mother of the plaintiffs on 14.06.1963 and handed over the possession of the same to them. During the execution of the agreement of sale Janma Joy told the father of the plaintiff that he was in possession of the suit premise by amicable settlement with his brother. Father of the plaintiff was a government servant. He was a sanitary Inspector and served in several places of the Sylhet District. Father of the plaintiffs being government servant used to carry on trade in jute through brother Hafizuddin and thereafter, stationary business in the suit premise through his brother Hafizuddin for more than 12 years. Janmajoy Gop did not execute the safkabala deed in favour of the parents of the plaintiffs. Consequently, the parents of the plaintiffs instituted Other Class Suit No.116 of 1977 in the Court of the learned Munsif, 1<sup>st</sup> Court, Mymensingh.

The suit premise was let out to one Sree Prallad Chandra Sutradhar for annual rent of Tk.700/- on 01.01.1979 receiving advance rent for 02(two) years. After two years Prallad Chandra surrendered this suit premise to the plaintiffs. Thereafter, the plaintiffs let out the suit premise to the defendant a yearly rent of Tk.500/- only within the knowledge and presence of Jiban Chandra Mallik late Aftab Hossain, late Hafizuddin Md. abdur Rahman, Nurullah and others and the defendant paid the house rent of the suit premise to the plaintiffs on 01.06.1982 B.S. The defendant executed a rent receipt to the plaintiff No.1 by putting a joint signature on the rent receipt book by the plaintiff No.1 and the defendant. Thus the defendant paid house rent of the suit premise upto 1383B.S. Giving rent

receipt to the plaintiffs in the aforesaid manner on the plea of paying house rent of the suit premise, the defendant did not pay the house rent of the suit premise upto 1384 B.S.

Thereafter, Joy Chandra Ghosh @ Joy Chandra Gop disclosed that his brother Janmajoy did not get share in the suit premise and he himself alone get share in the suit premise and he would sell his share in the suit premise. In the above circumstances the plaintiffs purchased the suit premise from Joychandra Ghosh on the 29<sup>th</sup> Agrahayan, 1384 B.S. without making any correspondence with their father Abdul Majid. Thereafter, plaintiff No.1 demanded house rent to the defendant, but the defendant did not pay the house rent of the suit premise, but told him that he purchased the suit premise from one Aktaruzzaman who purchased the same from Janmajoy. Thereafter, plaintiffs' father came home and on search found a trace of forged deed on 27.11.1972 in respect of the suit premise.

Thereafter, the plaintiffs served a notice upon the defendant under section 106 of the trespass Act terminating the right of Varatia of the defendant after the month of Chaitra, 1400 B.S. directing the defendant to surrender the vacant possession of the suit premise in favour of the plaintiffs. But the plaintiffs did not surrender the possession of the suit premise to the plaintiffs and illegally retained the possession of the suit premise.

The defendant having entered into the suit premise as Varatia since 1384, he defaulted to pay rent of Tk.8000/- from the month Baishakh of 1400 B.S. and he is bound to pay aforesaid amount of house rent to the plaintiffs. Hence, the suit.

The defendant contested the suit denying plaint case and further contending inter alia that the suit premise belonged to two brothers Joychandra

Gop and Janmajoy Gop and on amicable settlement in between brothers Janmajoy Gop while possessing and owning the same transferred the same to one Akteruzzaman on 27.11.1972. Thereafter, Akteruzaman transferred .06 decimals of the suit premise to Habibur Rahman and Halima Khatun and handed over the possession of the same to them and further stated that the defendant got .03 acres of land from Eshaque Farazi by dint of a deed of gift dated 02.09.1078 and .03 acres of land by dint of a registered deed dated 19.01.1986 and thereafter, erected two chouchala huts, a tube well and has been residing his purchased land. He is not the tenant of the plaintiff and prayed for dismissing the suit.

The plaintiffs examined 5 witnesses and defendant examined 4 witnesses.

After hearing both the parties and upon considering the evidences on record, the learned Senior Assistant Judge and Small Cause Court, Mymensingh dismissed the Small Cause Court Suit No.2 of 2004 by his judgment and decree dated 28.02.2010(decree signed on 28.02.2010).

Being aggrieved by and dissatisfied with the judgment and decree dated 28.02.2010(decree signed on 28.02.2010) passed by the learned Senior Assistant Judge and Small Cause Court, Mymensingh in Small Cause Court Suit No.2 of 2004, the petitioners filed this revisional application under Section 25 of the Small Causes Court Act and obtained the present Rule.

Mr. Md. Omar Ali Khan, the learned Advocate appearing for the petitioners submits that the plaintiff-petitioners were put into the possession of the suit premise by dint of an agreement sale dated 14.06.1963 in between the parents of the plaintiffs and Janmajoy Gop son of Kachuram Gop is proved by the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and thereby it is also proved that the defendant has been a Varatia under the plaintiffs since 1381 B.S. and thereby the learned Small Cause Court below committed error of law resulting

error in the decision occasioning failure of justice in not considering the aforesaid evidence on record and dismissing the suit.

He further submits that P.Ws. disposed before the learned S.C.C. Court that the defedant has been residing as a varatia of the plaintiffs for 30/35 years, but the evidence of the P.Ws. has not been challenged in cross examination. P.W.5 Shanker Chandra Roy, an ex-commissioner of the locality deposed before the learned trial Court adducting the defendant had been vartia under the father of the plaintiffs and has been now also a varatia under plaintiffs, but this evidences of P.W.5 have not been challenged in cross-examination by the defendant to falsify the case of the plaintiffs but the learned trial Court did not consider the evidence of the vital witness of the case.

He next submits that the present suit being one between a landlord and tenant for enforcement of certain rights of land and the simple question which is to be tried in such a suit is whether there is the existence of any relationship of a landlord and tenant and is such case the question of title to the premise in question is not relevant at all.

He also submits that the learned S.C.C. Court failed to consider that the defendant under the provision of law of Rule evidence regarding doctrine of estoppels as embodied in section 116 of the evidence Act if the landlord can prove that the defendant was inducted by him on the disputed premise or that the defendant has allotted to him and has continued in possession on payment of rent after recognizing him as the landlord he cannot turn round and denying the title of the said landlord at the inception of the tenancy.

In support his submissions he referred a decision of our Apex Court. In the case of Md. Atiqullah Vs. Mrs. Sanwara Begum and others reported in 16 BLD(AD), 260, clearly held that “a tenant cannot be permitted during the

continuance of the tenancy to resist a suit for eviction by his landlord without surrendering his possession to his landlord”.

The learned Advocate lastly submits that the learned trial Court did not properly discuss and assess the evidence on record and did not consider the same to its true perspective and dismissed the suit and thereby committed error of law resulting error in the decision occasioning failure of justice and as such the impugned judgment and decree is liable to be set-aside. Accordingly, he prays for making the Rule absolute.

Mr. M.G. Mahmud (Shaheen), the learned Advocate appearing for the opposite party submits that the suit premise belonged to two brothers Joychandra Gop and Janmajoy Gop and on amicable settlement in between brothers Janmajoy Gop while possessing and owning the same transferred the same to one Akteruzzaman on 27.11.1972. Thereafter, Akteruzaman transferred .06 decimals of the suit premise to Habibur Rahman and Halima Khatun and handed over the possession of the same to them and further stated that the defendant got .03 acres of land from Eshaque Farazi by dint of a deed of gift dated 02.09.1078 and .03 acres of land by dint of a registered deed dated 19.01.1986 and thereafter, erected two chouchala huts, a tube well and has been residing his purchased land. After conclusion of trial, the learned Senior Assistant Judge and Small Cause Court, Mymensingh dismissed the suit by his judgment and decree dated 28.02.2010 (decree signed on 28.02.2010) in S.C.C. Suit No.2 of 2004 rightly, which is maintainable in the eye of law. So, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Court below, the submissions of the learned Advocates for both the parties, the papers and documents as available on the record.

It appears from the record and submission of the learned Advocates for both the parties that, the plaintiff-petitioners filed the case before the S.C.C. Court for eviction of tenant and recovery of arrear house rent amounting of Tk.8,000/- against the defendant. But defendant appeared before the S.C.C. Court and claiming that he is not the tenant of suit property rather, he claimed that he is the owner of the suit property. Accordingly, after hearing the case the learned trial Court dismissed the suit mentioning that as the defendant claimed that he is the owner of the suit property and question of title is involved here. The learned trial Court further mentioned that as the question of title is involved with the case and the plaintiff has failed to prove that defendant is the tenant of the plaintiff and accordingly, the learned trial Court dismissed the suit.

Considering the above facts, circumstances and materials on record, I find that as the question of title is involved with the suit land, so it is out of jurisdiction of the learned trial Court. Therefore, the learned Senior Assistant Judge and Small Cause Court, Mymensingh rightly passed the judgment and decree dated 28.02.2010 (decree signed on 28.02.2010), which is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite party.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 28.02.2010 (decree signed on 28.02.2010) passed by the learned Senior Assistant Judge and Small Cause Court, Mymensingh in Small Causes Court Suit (SCC) No.2 of 2004 dismissing the suit against the plaintiff-petitioners is hereby upheld and confirmed.

Let a copy of this judgment and order along with L.C.R be communicated to the concerned Court below at once.

Md. Anamul Hoque Parvej  
Bench Officer