

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1320 of 2023.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

And

Md. Siddiqur Rahman

...Petitioner

-Versus-

Md. Ashraf Hossain and others

...opposite parties

Mr. Md. Abdul Bari, Advocate

...For the petitioner

Mr. Laxman Biswas, Advocate

..For the opposite party Nos.1-32

Heard & Judgment on: 04.12.2024.

This rule was issued calling upon the opposite party Nos.1-32 to show cause as to why the judgment and decree dated 06.02.2023 (decree being drawn on 09.02.2023) passed by the learned District Judge, Court of Special District Judge, Faridpur in Title Appeal No.246 of 2020 reversing those dated 25.10.2020 (decree being drawn on 28.10.2020) passed by the learned Assistant Judge, Alfadanga, Faridpur in Title Suit No.248 of 2019 dismissing the suit should not be set aside and/or pass such

other order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration of title for 1.8 decimal land appertaining to plot No.172 of R.S. khatian No.299 corresponding to S.A. Khatian Nos.332 & 329 and for further declaration that the deed of settlement as described fully in "Kha" schedule to the plaint is collusive, unlawful and not bindings upon the plaintiffs.

It was alleged that above 1.8 decimal land belonged to Rebati Kumar Basu who gave settlement of the same to plaintiff's predecessor Tajimuddin Sheikh and others on receipt of salami on 15 Aswin 1354 B.S. and on receipt of rent granted rent receipts. The rent of above property having not paid above Surendro Kumar and others filed Rent Suit No.19 of 1956 against Tamijuddin Sheikh and others but above tenants paid due rents and remained in possession of the above land.

During R.S. operation above land has been erroneously recorded in the name of Surendra Kumar and others and in the relevant S.A. Khatian the same has been erroneously recorded in the name of the government and defendant No.5 Aziz Sheikh claimed to have taken settlement of above land from

the government. But above Aziz Sheikh did not get possession of above land and his above deed of settlement was collusive and fraudulent. Above Aziz Sheikh transferred above land to defendant No.23 by registered kobla deed dated 01.11.2010. The plaintiffs are in possession in above 108 decimal land by constructing dwelling house and shops and collecting rent from the tenants of above shops. Against above erroneous R.S. record the plaintiffs filed Title Suit No.125 of 1977 and obtained a decree on 23.03.1981.

The suit was contested by defendant Nos.1-4 by filling a joint written statement and defendant No.23 by filling a separate written statement.

It was alleged by above defendants that above property belonged to Rebati Kumar Basu and Surendra Nath Basu. But above tenants having not cultivated above land for long time the government acquired above land under section 92 of the State Acquisition and Tenancy Act and gave settlement of the same defendant No.5 by a registered kobuliyat on 03.11.1978 and delivered possession. Defendant No.5 is in possessing above land by mutating his name and paying rent to the government. Plaintiffs do not have any title and possession in the above

land nor they obtained any settlement of above land of Surendra Kumar Basu and others.

At trial plaintiff and defendant examined 3 witnesses each and documents of the plaintiffs were marked as Exhibit Nos.1-12 and those of the defendants were marked Exhibit No.ka and documents of defendant No.23 were marked as Exhibit No.ka(1)-Umma(1).

On consideration of facts and circumstances of the case and evidence on records the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial court above plaintiffs as appellants preferred Civil Appeal No.246 of 2020 to the District Judge, Faridpur which was heard by the learned Special District Judge who allowed above appeal and set aside the judgment and decree of the trial court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the court of appeal below above respondent No.23 as petitioner moved to this court and obtained this rule.

Mr. Md. Abdul Bari learned Advocate for the petitioner submits that undisputedly 1.72 acres land appertaining to plot No.1933 has been recorded in the name of defendant No.1 in S.A. khatian

Nos.329 and 332 and defendant No.5 obtained settlement of above land from the government as a landless peasant by a registered kobuliyat on 03.11.1978 and while he was in possession in above land by mutating his name and paying rent to the government he transferred the same to defendant No.23 by registered kobla deed dated 01.11.2010. Defendant No.23 has mutated his name for above land on the basis of his above kobla deed and possessing above land by paying rent to the government. The defendant has produced above two kobla deeds and rent receipts at trial proving his title and possession in above land. On the other hand the plaintiff could not prove by legal evidence the acquisition of title by oral settlement and possession in the above land. On consideration of above materials on record the learned Assistant Judge rightly dismissed the suit but the learned Special District Judge completely failed to appreciate the facts and circumstance of the case and evidence on record and most illegally allowed the appeal, set aside the judgment and decree of the trial court and decreed the suit which is not tenable in law.

Mr. Laxman Biswas learned Advocate for the opposite parties submits that the plaintiffs

obtained settlement of disputed 1.16 acres land from Rebati Kumar Basu and Surendra Kumar Basu orally by two settlements on 1354 B.S. and 1357 B.S. But in R.S khatian above land was erroneously recorded in the name of above landlords. As such the plaintiffs filed Title Suit No.125 of 1977 and obtained a decree on 23.03.1981 and by above decree of a civil court plaintiffs title and possession was established for above 1.16 decimal land. The plaintiff transferred 8 decimal land to defendant Nos.1-4 by a registered deed of gift and is in possession in remaining 1.08 acres land but above land has been erroneously recorded in the S.A. khatian No.329 & 332 in the name of defendant No.1 the Government of Bangladesh. As such plaintiffs filed this suit and has succeeded to prove their title and possession in above land by consistent and mutuality supportive oral evidence of three competent witnesses and relevant documentary evidence. On consideration of above facts and circumstance of the case and evidence on record the learned Special District Judge has rightly allowed the appeal, set aside the flawed judgment and decree of the trial court and decreed the suit which calls for no interference.

I have considered the submission of the learned advocate for the respective parties and carefully examined all materials on record.

It is admitted that disputed 108 acres land and other undisputed land appertaining to plot No.1933 belonged to Rebati Kumar Basu and Surendra Kumar Basu.

Plaintiff claims title in above land on the basis of two separate oral settlements on 15th Aswin 1354 B.S. and the other in 1357 B.S. It was further claimed that on the basis of above oral settlements above landlords received rents from the plaintiffs and granted rent receipts. P.W. 4 while giving evidence as P.W.1 stated in his cross examination that he does not have any personal knowledge about taking of settlement by his predecessors the disputed land of R.S. plot No.1933 and 1939. Above witness produced 4 rent receipts granted by the above superior landlords but the execution of those private documents could not be at trial. In his cross examination P.W.1 stated that Fazlur Rahman had personal knowledge about above oral settlement of the disputed land and he would give evidence but above Fazlur Rahman was not examined as a witness. Nor the plaintiff has provided any explanation as to non examination of

above competent witness at trial. P.W.2 Babul Sheikh and P.W.3 Rustom Mir did not give evidence about above oral settlements of the disputed land. In view of above evidence on record the learned Assistant Judge rightly held that the plaintiffs could not prove by legal evidence their claim of taking oral settlements of the disputed land from Surendra Kumar and Rebati Kumar.

As far as possession of the disputed land is concerned in the plaint the plaintiff has claimed that they are possessing above land by constructing dwelling house and shops and collecting rents for the tenants. In his evidence P.W.1 reiterated above claims as to possession of the disputed land but in his cross examination above witness stated that there are some shops in above land and 15-20 katha of above land has been deluviated in river and in the remaining land there is C & B Ghat and he does not know whether defendant No.23 possesses the disputed land or not.

It turns out from above evidence of P.W.1 that in cross examination he contradicted the mode of possession of the plaintiffs in the disputed land as stated in the plaint. He further stated that there is government terminal in a part of the

disputed land and 15-20 katha of the disputed land has lost due to river erosion.

As far as the decree of Title Suit No.125 of 1977 is concerned admittedly defendant Nos.1-4 and 23 were no party in above suit as such above decree is not binding upon above defendants.

It is well settled that the plaintiff of a civil suit for declaration of title must prove his own case by legal evidence and he cannot rely on the weakness of the defense case. Since the plaintiffs have miserably failed to prove their title in the disputed land by way of oral settlement and possession in the same as stated above the learned Judge of the trial court rightly dismissed the suit but the learned Judge of the court of appeal below without reversing any material findings of the trial court most illegally allowed the appeal, set aside the judgment and decree of the trial court and decreed the suit on the basis of conjecture and surmise which is not tenable in law.

In above view of the materials on record I find substance in this civil revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The judgment and decree dated 06.02.2023 passed by the learned Special District Judge, Faridpur in Title Appeal No.246 of 2020 is set aside and those of the trial court is restored.

Let the lower courts' records be transmitted down at once.

Md. Kamrul Islam
A.B.O