

Present:-

Mr. Justice Mahmudul Hoque

**Civil Revision No. 424 of 2023**

Younus Mia

..... Petitioner

-Versus-

Tahshildar, Indeswar Tahshil Office, Rajnagar,  
Moulvibazar and others

..... Opposite-Parties

Mr. Tabarak Hussain, Advocate with

Mrs. Urmee Rahman, Advocate

... For the Petitioner

Mr. A.M. Amin Uddin, Senior Advocate with

Mr. Munshi Moniruzaman, Advocate

Mrs. Shamima Binte Habib, Advocate and

Mr. Enayet Baten, Advocate

... For the Opposite Party No.6

**Judgment on 31.10.2024**

In this revision Rule was issued calling upon the opposite party Nos. 1-6 to show cause as to why the impugned judgment and decree dated 11.04.2022 (decree signed on 13.04.2022) passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Moulvi Bazar in Title Appeal No. 68 of 2008 dismissing the appeal and affirming those dated 06.02.2008 (decree signed on 13.02.2008) passed by the learned Assistant Judge, Rajnagar, Moulvi Bazar in Title Suit No. 62 of 2003 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 of the case for disposal of this Rule, in short are that, the petitioner, as plaintiff, instituted Title Suit No. 62 of 2003 in the court of

Assistant Judge, Rajnagar, against the opposite parties, as defendants, for declaration of title in the suit property stating that one Meherbanu and 8 others were owners in possession of 6 acres of land appertaining to S.A. Khatian No.3, S.A. Plot No. 767. Meherbanu got 10.15 decimals land in her share and she died leaving one son Montaz Miah and two daughters Zainab Bibi and Meherjan Bibi. Subsequently, Zainab Bibi died unmarried and Meherjan died issueless, consequently, Montaz Miah got their share. He died leaving 3 sons, the plaintiff and defendant Nos. 7 and 8 who became owners by way of inheritance. Farther of the defendant Nos. 7 and 8 and the plaintiff made the suit land cultivable and gifted the same in favour of the plaintiff before 30 years back. The plaintiff has been possessing the said land by planting trees and growing vegetables thereon by himself and through bargadar. The defendant No. 6 threatened the plaintiff with dispossession claiming title in the suit property. Being threatened the plaintiff went to local Tashshil Office on 07.01.2001 and upon search came to know for the first time that the suit land has been wrongly recorded in the name of the Government and in the remark column of the khatian plaintiff's possession has been noted as possessor instead of recording his name as owner which has clouded the title of the plaintiff, hence, the present suit for declaration of title.

The defendant Nos. 1-5 and defendant No. 6 contested the suit by filing two separate written statements. The defendant No. 6 in their written statement stated that the suit land is in possession of Polymer Agro Industries which is known as Uttarbhag Tea Estate. The

Government granted lease in favour of defendant No. 6. The defendant No. 6 prayed for long term lease which is under process and they have been possessing the suit land by paying rents to the Government regularly. There is no existence of 6 acres of land separately. The plaintiff is not in possession. The suit is false and as such, liable to be dismissed.

The defendant Nos. 1 to 5 in a separate written statement stated that 598.97 acres of land including 20.81 acres land recorded in the name of Indeswar Tea Estate which belongs to Polymer Agro Industries who purchased the land by registered Kabala and mutated their names in Mutation Case No. 414 of 92-93. The suit land along with other lands stand recorded in the name of Uttarbhag Tea Estate. The land being excess of retainable land, the Tea Estate authority prayed for long term lease on 23.11.1994, which is under process. The plaintiff has no right, title and possession in the suit land, as such, the suit is liable to be dismissed.

The trial court framed 4 (four) issues to decide the controversy between the parties. The plaintiff examined 3 P.Ws and submitted documents which were marked as exhibits 1 to 4. The defendant Nos. 1-5 examined single witness as DW.1 and filed S.A. Khatian number 3 as exhibit "Ka" and the defendant No. 6 examined the manager of the Uttarbhag Tea Estate as D.W-2 who filed exhibit-"Kha-1". The trial court upon consideration of the evidences on record dismissed the suit by the Judgment and decree dated 28.01.2008.

Being aggrieved by the Judgment of the trial court the plaintiff filed Title Appeal No. 68 of 2008 in the court of District Judge, Moulvibazar. The appeal was transferred to the Court of Joint District Judge, 2<sup>nd</sup> Court, Moulvibazar for hearing and disposal who after hearing by the impugned judgment and decree dated 11.04.2022 dismissed the appeal and affirmed the judgment and decree of the trial court. At this juncture the petition moved this court by filing this revision and obtained the present Rule and order of status quo.

Mr. Tabarak Hussain, Senior Advocate with Mrs. Urmee Rahman, learned Advocate appearing for the petitioner submit that the suit property originally belonged to one Meher Banu and eight others, out of nine owners, Meher Banu acquired 10.15 decimals of land in the suit khatian. Meher Banu died leaving son Montaj Miah and two daughters Joynab Bibi and Meher Jan Bibi. Joynab Bibi died unmarried and Meher Jan Bibi died issueless, consequently, their brother Montaz Miah acquired the property in his share who died leaving three sons, the plaintiff and defendant Nos. 7 and 8. Father of the plaintiff during his life time had been possessing the suit property by planting different types of trees on a portion of the suit land and letting out other portion to borgadar.

While the plaintiff has been possessing the suit land peacefully without any intervention from any quarter, all of a sudden on 07.01.2001 defendant No. 6 threatened the plaintiff with dispossession claiming title in the property. Thereafter, he made a search with local Tahshil Office and came to know that S.A. khatian stands recorded wrongly in the name

of the government and also found that R.S. record also wrongly recorded in the name of defendant No. 5 government and in remark column name of the plaintiff has been shown as forceful possessor in one acre six sataks land. Apart from this the defendant No. 6 by filing various criminal cases harassing the plaintiff and tried to dispossess from the suit property.

He submits that the plaintiff could not file any document except khatian before the trial court, but facts remain that the plaintiff is in possession of a portion of the suit property for more than sixty years. At least the plaintiff acquired title in one acre six sataks by adverse possession against the government, but the trial court as well as the appellate court failed to appreciate the fact even did not utter a single word regarding possession of the plaintiff in a portion of land and its legal consequences, as such, both the courts below committed illegality as well as error of law in the decision occasioning failure of justice.

Mrs. Shamima Binte Habib, learned Advocate appearing for the opposite party No. 6 submits that as per record disputed Plot No. 767 contain 20.81 acres land along with other properties in the khatian measuring total 589.97 acres stand recorded in the name of Uttarbhag Tea Estate. Said garden was purchased by Polymar Agro Industry by a register deed and after purchase got their names mutated vide Mutation Case No. 414/92-93. The suit property along with other non-suited property now under the ownership and possession of Uttarbhag Tea Estate. Defendant No, 6 obtained settlement of the property from government and have been

possessing the same on payment of lease money to the government and waiting for permanent settlement in its name. Claim of the plaintiff is false and fabricated as the plaintiff failed to show any paper entitling him to claim title in the property and failed to prove his possession.

She submits that the trial court while dismissing the suit rightly found that the plaintiff could not even produce a single paper which can be considered that the plaintiff or his predecessor acquired the property by any deed. Mere forceful possession in the remark column cannot establish title of the plaintiff in the suit land. Both the courts below concurrently found that the plaintiff could not prove his title by any evidence though an order of non G.R. Case No. 80 of 2001 (wxhibit-3) was filed to show his possession in the suit land, but the suit was not filed against the plaintiff. It was filed against other persons named Shaheb Ali and others. Those papers does not prove that the plaintiff was in possession, as such, both the courts below rightly dismissed the suit finding no title in favour of the plaintiff.

Heard the learned Advocates for both the parties, have gone through the revisional application, plaint in suit, written statement, evidences both oral and documentary and the impugned judgment and decree of both the courts below.

The plaintiff claimed that the property originally belonged to one Meher Banu and others, but could not prove the same by any evidence. He claimed that Meher Banu died leaving son Montaz Miah who died leaving three sons plaintiff and defendant Nos. 7 and 8 and also claimed

that Montaz Miah gifted the property before 30 years to the plaintiff, but in support of such contention he could not produce any document as well as oral evidence for proving the fact that the property belonged to his grandmother or his father Montaz Miah gifted the same to him. On the other hand, admittedly the property in S.A. khatian stand recorded in the name of the defendant No. 5 and R.S. khatian stood recorded in the name of the government.

The defendant also could able to prove that they have been possessing the same by planting tea thereon. They purchased vast property from real owners and also obtained lease from the government on 23.11.1994. Since the plaintiff could not prove his title by showing any paper as well as exclusive possession by adducing evidence mere wrong recording of his name as forceful possessor in the remark column cannot entitle him to claim the property as owner.

Both the courts below discussed all the evidences both oral and documentary and concurrently found that the plaintiff though claimed title in the property, but utterly failed to prove the same on both count in respect of title as well as possession, as such, both the courts below rightly dismissed the suit and disallowed the appeal and have committed no illegality in the decision occasioning failure of justice.

Taking into consideration the above, I find no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner, calling for interference by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

The order of status quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.