

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.2574 of 2022*

*Md. Aftabuddin.*

*.....Petitioner.*

*-Versus-*

*Government of Bangladesh and others.*

*.....Opposite parties.*

*Mr. S.M. Obaidul Haque, Adv.*

*.....For the petitioner.*

*Mr. Md. Ensan Uddin Sheikh, D.A.G.*

*.....For the Opposite parties.*

*Heard and Judgment on 01.08.2024.*

*A.K.M.Asaduzzaman,J.*

This Rule was issued calling upon the opposite party nos. 1-2 to show cause as to why the judgment and decree dated 08.12.2021 passed by the Joint District Judge, 3<sup>rd</sup> Court, Naogaon in Title Appeal No. 228 of 2018 affirming those dated 31.07.2018 passed by the Senior Assistant Judge, Patnitala, Naogaon in Other Class Suit No. 33 of 2002 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for declaration of title with regard to the suit property measuring an area of 7.33 acres of land as described in the schedule of the plaint.

Plaint case in short inter alia, is that suit property described in the schedule to the plaint belonged to Shil Shree Juktya Maharaj Jagadis Nath Ray, who proposed for perpetual settlement of the suit property. Plaintiff's predecessor applied for the settlement of the suit property and Jamindar gave assent to that proposal for consideration of Tk. 11/- as annual premium Jamindar gave perpetual settlement of the suit property by way of hukumnana to the plaintiff's predecessor on the 1<sup>st</sup> day of Baishakh, 1350 B.S. Plaintiff's predecessor paid rents to Jamindar and obtained dakhilas. The draft of the S.A. and the R.S. records were prepared in the name of the plaintiff's predecessor, but wrongly the final publication of the S.A. and the R.S. records as to the suit property were recorded in the name of the defendant no. 1 as khas property. On 18.02.2002 the Tahshildar declined to collect rents of the suit property from the plaintiff expressing the recording of the suit property as Government khas property. The wrong recording of the suit property as Government khas property cast cloud over the plaintiff in the suit property and as such the

cause of action has been arisen. Now the plaintiff prays for the declaration of title as to the 7.33 acres of land in favour of him.

Opposite party as defendants contested the suit by filing written statements denying the plaint case, alleging inter alia that originally the suit property is the khas property of the Government and the S.A. record no. 1 was prepared and published in the name of the defendant no. 1. Thereafter, Government transferred the suit property to the Forest Department vide the gazette notification being No. II/For 6M 31/61/1666 dated 18.11.1961 and the suit property was declared as protected forest. R.S. record no. 2 had been rightly prepared in the name of Forest Department. Plaintiff in order to grab the forest land of the Government has filed the suit on false, forged and fabricated papers. Forest Department has title and possession of the suit property. Forest Department planted akashmoni and arjun trees for the years 1994-95 over the suit property. Hence the suit will be dismissed with cost.

Trial Court framed the following issues-

- 1) Whether the suit is maintainable in its present form and manner?
- 2) Whether the present suit is barred by limitation?

- 3) Whether the suit is bad for defect of parties ?
- 4) Whether the plaintiff has got right, title, interest and possession in the suit property?
- 5) Whether the plaintiff is entitled to get relief as prayed for?

By the judgment and decree dated 31.07.2018, the learned Senior Assistant Judge, Patnitala, Naogaon dismissed the suit on contest.

Challenging the said judgment and decree, Plaintiff-Petitioner preferred Title Appeal No. 228 of 2018 before the Court of District Judge, Naogaon, which was heard on transfer by the Joint District Judge, 3<sup>rd</sup> Court, Naogaon, who by the impugned judgment and decree dated 08.12.2021 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree Plaintiff-Petitioner obtained the instant rule.

Mr. S.M. Obaidul Haque, the learned advocate appearing for the petitioner submits that when the plaintiff's predecessor Mohiuddin has successfully able to prove that he obtained the suit property from Ex-Jamindar by way of hukumnama (Exhibit No. 1) issued on 1<sup>st</sup> Baishakh, 1350 B.S. and remaining in possession by

paying rents to Jamindar (Exhibit No. 3 series) and the field survey of R.S. khatian was prepared in his name (Exhibit No. 2) and all his P.Ws in a voice stated that plaintiff are in possession into the suit property but the courts below totally failed to consider this aspect of this case properly and dismissed the suit most illegally and as such the impugned judgment of the courts below are not sustainable in law, which are liable to be set aside. He thus prays for making the rule absolute

Mr. Md. Ensan Uddin Sheikh, the learned Deputy Attorney General appearing for the government opposed the rule and submits that property is a reserved Forest and Forest Department is now owning and possessing the same by plantations. The S.A. and R.S. khatian has rightly and finally been published in the name of the Forest Department, who are now in possession into the suit property. Plaintiff neither have any title nor possession into the suit property and has failed to prove his chain of title into the suit property. Accordingly Court below thus rightly dismissed the suit. In the said concurrent judgment since there is nothing to show that it was suffered by any misreading or non reading of the evidences, rule contains no merits, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

Since the S.A. and R.S. khatians were not prepared in the name of the plaintiff, the instant suit was filed for declaration of title. Plaintiff claimed that property was belonged to Shil Shree Juktya Maharaj Jagadis Nath Ray. From whom plaintiff's father got settlement at Tk. 11/- as annual premium. Ex-Jamindar then gave perpetual settlement of the suit property by way of hukumnama to the plaintiff's predecessor on 1<sup>st</sup> Baishakh, 1350 B.S. Plaintiff's predecessor paid rents to Jamindar and obtained dakhilas. In draft of S.A. and R.S. khatinan although it was prepared in the name of the plaintiff's predecessor but wrongly they were finally published in the name of defendant no. 1 as khash property. On 18.02.2002 when local Tahshildar declined to collect rent from the plaintiff, expressing the recording of the suit property as government khash property, plaintiff filed this suit for declaration of title.

On the other hand, defendants claimed that suit property is the khash property of the Government. S.A. khatian was prepared in the name of the defendant no. 1. Government thereafter

transferred the suit property to the Forest Department vide gazette notification being No. II/For 6M/31/61/1666 dated 18.11.1961 and the suit property was declared as protected forest. R.S. khatian was rightly prepared in the name of Forest Department. In order to grab the government khash land, plaintiff filed this false suit.

During trial plaintiff has filed the draft copy of the S.A. record and the draft copy of the R.S. record (Exhibit Nos. 1 and 2), the original hukumnama (Exhibit No. 3), the original rent receipts (Exhibit No. 3(ka-ga)) and the rent receipt, paying rent to the government (Exhibit No.3 gha) and also adduced 03 P.Ws to prove the possession in the suit property. Although this hukumnama as well as original rent receipt of the Jamindar were ancient documents more than above 75 years old but the courts below most illegally without appreciating the provision under Section 60 of the Evidence Act most illegally held that these documents were not been properly proved and disbelieved these documents. Rent receipt to the Ex-Jamindar and to the government proved the possession of the plaintiff into the suit property, which also got corroboration from the recording of the name of the plaintiff's predecessor, in the draft copy of the S.A. and R.S. khatian (Exhibit Nos. 1 and 2) but the court below failed

to appreciate these documents. Moreover, plaintiff's witnesses P.W.2 Abdul Kuddus together with P.W.3 Md. Toyab Ali when corroborate the possession as being ascertained by the P.W.1 of the plaintiff in the suit land, the courts below totally disbelieved their statements most illegally.

On the contrary, defendants produced gazette (Exhibit No. ga) showing unspecified land of different plot including plot no. 402 under Rahimpur Mouza and the R.S. khatian (which is under challenged). Defendants could not show that a property was ever at all been acquired by the government as khash land and being possessed by the Forest Department in any way. In the absence of any document as well as any fact of acquiring the property of the ex-Jamindar, it is difficult to hold the view that property was at all been owned by the government and it was rightly been given to the Forest Department and the recording of the khatian in the name of the government was correct. In the premises, when the plaintiff's title and possession has been proved by way of documentary as well as oral evidences and the defendants contention of acquiring the property by the Forest Department is not been proved, Plaintiff is entitled to get a decree as prayed for.

Failing which both the courts below concurrently committed error of law resulting an decision occasioning failure of justice.

In that view of the matter, I thus find merits in this rule.

Accordingly the Rule is made absolute without any order as to costs. The judgment and decree passed by the Courts below are hereby set aside and the suit is decreed. The recording of S.A. and R.S. khatian found no basis and accordingly are erroneous and is directed to correct.

Send down the L.C.Records and communicate the judgment to the court below at once.