

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 5630 of 2022

Avoy Chandra Barmon and others

..... Petitioners.

-Versus-

Alhaj Md. Mostafizur Rahman

.....Opposite party.

None appears

..... For the petitioner.

Mr. Md. Zahangir Alam, Advocate

.....For the opposite parties.

Heard and judgment on 9th July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 28.03.2022 passed by the Additional District Judge, Nilphamari in Other Appeal No.46 of 2017 reversing those dated 30.04.2017 passed by the Assistant Judge, Nilphamari in Other Suit No. 13 of 2016 dismissed the suit should not be set aside.

Opposite parties as plaintiffs filed Other Suit No. 13 of 2016 before the Court of Assistant Judge, Domar, Nilphamari for permanent injunction against the petitioner.

Plaint case in short, inter alia, is that Rotikanto Barmon was the original owner of the suit land and after his demise, his successors three sons got the possession of the suit land. The plaintiff-appellant claimed that he purchased 44 decimals of land from dag No. 7002/8900 through deed No. 2102, 10 decimals land from dag No. 7193/8901 through deed No. 2102 and the plaintiff got the ancestral property measuring about 54 decimals land along with 05 decimals of land from dag No. 7194/8903 and accordingly the plaintiff-appellant is in full possession on the suit land and prayed for permanent injunction on the suit land.

Defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that 4 decimals of land out of 66 decimals has been sold out on 15.08.1978 from khatian No. 1885 dag No. 7002/8900 to Subal Chandra Das. Again the owner of the suit land Rotikanto Barmon transferred the 30 decimal suit land on 10.03.1980 through Orponnama Deed No. 2894 and 09 decimal suit land from Benalashi Dag to Sebait

Gokul Chandra Barmon of Bargola Kali Mondir. Subsequently the successors of Rotikanto transferred the 38 decimals suit land on 13.02.1981 to Bargola Kali Mondir through Orpannama Deed No. 1192 but accurate transferred land is 32 decimals. Subal Chandra Das transferred 04 decimals land to Bargola Kali Mondir on 23.09.2013 through Orpannama Deed No. 2565 and in such way, about 66 decimals land has been transferred to Bargola Kali Mondir and all the records has been recorded in the name of Kali Mondir. Bargola Kali Mondir is in full possession on the suit land. The plaintiff wrongly filed this instant suit for permanent injunction in view to grab the suit land, which is liable to be dismissed with cost.

By the judgment and decree dated 30.04.2017, the Assistant Judge dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Other Appeal No. 46 of 2017 before the Court of District Judge, Nilphamari, which was heard on transfer by the Additional District Judge, Nilphamari, who by the impugned judgment and decree dated 28.03.2022 allowed the appeal and

after reversing the judgment of the trial court decreed the suit in favour of the plaintiff.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Although the matter is posted in the list for several days and finally for delivery of judgment upon mentioning the name of the learned advocate for the petitioner but no one is found to press the rule.

Mr. Md. Jahangir Alam, the learned Advocate appearing for the opposite party drawing my attention to the judgment of the courts below submits that although the trial court found plaintiff has got prima facie title over the suit property and the defendants witnesses could not support the possession of the suit property, in favour of the defendant as been supported by Ext.Uma of the defendant, showing the name of the plaintiffs in the possession column of the B.S. khatian, found the possession of the plaintiff in a suit for permanent injunction even then upon misguided himself on disbelieving the P.Ws. dismissed the suit illegally but the appellate court being the last court of fact has rightly found the

title and possession, upon discussing the evidence on record as well as found the admitted possession of the plaintiffs in the suit property through the B.S. khatian as has been submitted by the defendant reversed the findings of the trial court and decreed the suit in favour of the plaintiffs. The impugned judgment since contains no illegality, the rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the lower court record and the impugned judgment.

This is a suit for permanent injunction, wherein factum of possession is the main question to be considered in the instant suit. Although the plaintiff has successfully able to prove his prima facie title as been affirmed by the court below concurrently and the possession of the plaintiffs has been ascertained by the P.Ws. as well as from the recording of the B.S. khatian (Ext.Uma) as has been submitted by the defendant, the appellate court appears to have rightly decreed the suit in favour of the plaintiffs. The impugned judgment thus contains no illegality.

I thus find no merits in the rule.

In the result, the Rule is discharged and the impugned judgment and decree passed by the appellate court is hereby affirmed.

The order of stay and status-quo granted earlier is hereby recalled and vacated.

Send down the Lower Court records and communicate the judgment at once.