Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 4064 of 2022
Md. Khabir Uddin and others
.....petitioners
-Versus-
Md. Ali Akbor and others
.....opposite parties

Ms. Syeda Nasrin, Advocate
.....for the petitioners

Mr. Md. Abdullah, Advocate
.....for opposite parties

Heard on: 11.06.2026, 17.06.2026, 18.06.2026, 22.06.2026 and 25.06.2026

Judgment on: 15.07.2026

This Rule is directed against the judgment and decree dated 11.05.2022 passed by the Additional District Judge, Sherpur in Other Appeal Number 33 of 2021 allowing the appeal thereby reversing the judgment and decree dated 27.09.2021 passed by the Senior Assistant Judge, Sherpur in Other Suit No. 425 of 2010 decreeing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party as plaintiff filed Other Suit Number 425 of 2010 on 21.11.2010 for declaration that the judgment and decree dated 29.06.2000 passed in Other Suit Number 169

of 1999 are collusive, illegal, inoperative and not binding upon him.

The plaintiff's case in brief is that one Biru Sheikh was the original owner in possession of $1.83\frac{2}{3}$ acres of land. By registered deed of gift Number 8728 dated 25.04.1969 he gifted 1.52 acres of land including .34 acres of C.S. Plot Number 357 in favour of his three sons named Jabbar, Haleem and Jalil. According to the plaintiff Jalil who is defendant 5 obtained 11 decimals out of .34 acres which he subsequently transferred to the plaintiff by registered deed of exchange Number 14013 dated 18.12.1996. Since the exchange the plaintiff has been in peaceful possession of the land by constructing his residential homestead together with a kitchen, bathroom and toilet, installing a tube-well, planting fruit-bearing trees, obtaining mutation and paying rent regularly.

The plaintiff further stated that on 04.11.2010 he came to learn that defendants 1-4 were claiming title to 10 decimals of land on the strength of the judgment and decree dated 29.06.2000 passed in Other Suit Number 169 of 1999 for specific performance of contract against defendant 5. According to the plaintiff defendant 5 never became the

exclusive owner of the entire .34 acres of land under C.S. Plot Number 357 because the remaining land belonged to his two brothers named Jabbar and Haleem. Consequently the decree obtained by defendants 1-4 cannot affect the plaintiff's independently acquired title and possession over the suit land.

Defendants 1-4 contested the suit denying the plaintiff's claim. Their case is that defendant 5 became the exclusive owner of the entire .34 acres of land under CS Plot Number 357 upon amicable partition and entered into an agreement for sale dated 05.12.1996 with them in respect of 10 decimals of land. As the sale deed was not executed they filed Other Suit Number 169 of 1999 for specific performance of contract which was decreed on 29.06.2000. Pursuant to the agreement and the decree they have been possessing the decretal land. They therefore contended that the suit is misconceived and liable to be dismissed.

The Senior Assistant Judge framed the necessary issues. The plaintiff examined three witnesses and produced documentary evidence including the registered deed of exchange while the defendants examined two witnesses and adduced documentary evidence in support of their defence.

Upon consideration of the evidence the trial Court dismissed the suit holding that the plaintiff and defendants 1-4 have all along been possessing separate parcels of land. Referring to Exhibit-1 series and the admission of PW-3 the trial Court found that there was no dispute regarding the actual possession of either party and therefore no justification for declaring the decree passed in Other Suit Number 169 of 1999 ineffective.

Being aggrieved the plaintiff preferred Other Appeal Number 33 of 2021. The Joint District Judge allowed the appeal holding that the plaintiff lawfully acquired the suit land by the registered deed of exchange dated 18.12.1996 and has successfully established his title and possession. The appellate Court further held that the defendants failed to prove that defendant 5 exclusively acquired the entire .34 acres of land upon amicable partition and the plaintiff not being a party to Other Suit Number 169 of 1999 the decree passed therein is not binding upon him. The suit was accordingly decreed.

Learned Advocate Ms. Syeda Nasrin appearing for the petitioners submits that the appellate Court correctly appreciated the evidence regarding the plaintiff's title and possession but committed an error of law in granting the

declaratory relief after having itself found that both parties have been possessing separate parcels of land and no actual prejudice has been caused to the plaintiff. She contends that in the absence of any present invasion of the plaintiff's established right no subsisting cause existed for maintaining the suit.

On the other hand learned Advocate Mr. Md. Abdullah appearing for the opposite party supports the impugned judgment and submits that the defendants having failed to prove the exclusive title of defendant 5 over the entire .34 acres of land the decree obtained against him cannot prejudice the plaintiff's independent title acquired under a registered deed. He further submits that the plaintiff not being a party to the earlier suit is not legally bound by the decree passed therein.

I have heard the learned Advocates for both sides, perused the pleadings, the oral and documentary evidence and the judgments of the Courts below.

The rival submissions require an examination of the evidence to ascertain whether the findings recorded by the appellate Court are borne out by the record and if so whether

those findings legally justify the declaratory relief granted in favour of the plaintiff.

The principal controversy does not centre upon the execution of the plaintiff's registered deed of exchange but upon the validity of the competing claims founded on the alleged amicable partition and the decree passed in Other Suit Number 169 of 1999.

The plaintiff's title rests upon the registered deed of exchange dated 18.12.1996 executed by defendant 5. The execution and existence of the said deed have not been successfully impeached by the defendants. The plaintiff also produced evidence of mutation and payment of rent and adduced oral evidence that after acquiring the land he established his residential homestead by constructing dwelling houses together with a kitchen, bathroom and toilet, installed a tube-well and planted fruit-bearing trees. Nothing has been brought on record to discredit this part of the plaintiff's case.

The defendants on the other hand sought to justify defendant 5's competence to transfer the land by asserting that upon an amicable partition he became the exclusive owner of the entire .34 acres of land comprised in CS Plot Number 357. The burden of proving such exclusive allotment clearly rested

upon the defendants. Mere assertion of an amicable partition was not sufficient and such assertion is required to be established by satisfactory evidence showing that the interests of the other two co-sharers namely Jabbar and Haleem ceased or extinguished in respect of the said plot but no reliable material capable of establishing such exclusive allotment is available on record. The appellate Court therefore rightly rejected the defendants' claim in this regard.

The evidence also satisfactorily establishes the plaintiff's possession over the 11 decimals acquired under the deed of exchange. Significantly no convincing evidence has been produced to show that the plaintiff was ever dispossessed from the land claimed by him.

At the same time the record also establishes that defendants 1-4 have long been possessing 10 decimals of land under colour of the agreement and decree passed in Other Suit Number 169 of 1999. PW-3 candidly admitted such possession during cross-examination. The trial Court upon consideration of Exhibit-1 series found that the lands possessed by the respective parties are different in boundary. Although the appellate Court disagreed with the ultimate conclusion of the trial Court it substantially accepted the same

factual position by observing that both parties have been possessing separate parcels of land and the plaintiff has not been prejudiced thereby.

The above evidence clearly leads to four conclusions. First the plaintiff has successfully established his lawful title under the registered deed of exchange dated 18.12.1996. Secondly he has also proved his continuous possession over the suit land. Thirdly the defendants have failed to establish that defendant 5 exclusively acquired the entire .34 acres of land under CS Plot Number 357 upon amicable partition. Fourthly the evidence concurrently establishes that the plaintiff and defendants 1-4 have throughout been possessing separate parcels of land under their respective claims.

These findings in the opinion of this Court are fully borne out by the evidence on record. To that extent the appreciation of evidence made by the appellate Court does not call for interference. The controversy however does not end there. The decisive issue still remains whether the aforesaid findings by themselves entitled the plaintiff to the declaration granted by the appellate Court.

The appellate Court appears to have proceeded on the footing that since the plaintiff established his title and

possession and was admittedly not a party to Other Suit Number 169 of 1999 he became entitled as a matter of course to the declaration sought. In the opinion of this Court the evidence justified the former finding but not the latter conclusion.

A distinction must always be maintained between the proof of a legal right and the necessity for granting declaratory relief. The former establishes the plaintiff's legal character and the latter determines whether the Court should exercise its discretionary jurisdiction. A declaration is not granted merely because the plaintiff proves a better title or because the defendant fails to substantiate his own claim. The Court must further be satisfied that the plaintiff's established right has been subjected to a real and present challenge requiring judicial protection but the evidence in the present case does not disclose such a situation.

The plaintiff has established his title independently of the decree obtained by defendants 1-4. His possession has likewise remained continuous and undisturbed. His deed of exchange continues to remain operative and there is no evidence that it has ever been avoided or declared ineffective by any competent Court. Equally the defendants have failed to

establish that by virtue of the decree passed in Other Suit Number 169 of 1999 they have entered upon the plaintiff's 11 decimals or interfered with his possession in any manner.

Conversely the evidence accepted by both Courts establishes that defendants 1-4 have been possessing another parcel of land under the decree obtained by them while the plaintiff has continued to possess the land acquired under his registered deed. Indeed the appellate Court itself observed that both parties have been possessing separate parcels of land and no actual prejudice has been caused to the plaintiff and finding in the opinion of this Court is decisive.

If the plaintiff's title remains intact and his possession remains undisturbed the existence of the earlier decree does not by itself create such a present or effective cloud upon his legal right as would justify the declaration sought. The mere fact that the plaintiff was not a party to the earlier suit does not automatically entitle him to maintain a separate suit challenging that decree. He must further establish that the decree presently affects or threatens his existing civil right. The evidence on record falls short of establishing any such consequence.

The plaintiff undoubtedly has a grievance when the defendants asserted a competing claim under the earlier decree. However the evidence ultimately adduced before the Court shows that such assertion has not matured into any present legal injury affecting his established title or possession. The controversy therefore remains one of competing claims rather than one involving an existing invasion of the plaintiff's legal right.

In view of the discussions made above this Court is of the considered opinion that the appellate Court rightly appreciated the evidence in holding that the plaintiff acquired valid title under the registered deed of exchange dated 18.12.1996 and has remained in continuous possession of the suit land and the defendants failed to establish the alleged exclusive allotment of the entire .34 acres of land under CS Plot Number 357 in favour of defendant 5. Those findings are fully supported by the evidence on record and call for no interference.

The error of the appellate Court lies in the legal consequence drawn from those findings. Having itself found that both parties have throughout been possessing separate parcels of land and the plaintiff's possession has remained

unaffected it ought to have held that no present necessity existed for granting the declaration sought. The plaintiff's independently established title was never shown to have been displaced nor was his possession shown to have been disturbed by reason of the decree passed in Other Suit Number 169 of 1999.

A declaratory decree is intended to protect an existing legal right against a present invasion or a real and effective cloud. It is not granted merely because the plaintiff succeeds in proving his title or because the defendant's claim is found to be unsupported by satisfactory evidence. Unless the declaration is shown to be necessary for the protection or enforcement of an existing civil right the Court ought not to exercise its discretionary jurisdiction.

In the facts of the present case the plaintiff has undoubtedly established his lawful title and continuous possession in 11 decimals of land. At the same time the evidence establishes that defendants 1-4 have remained in possession of another parcel of land measuring 10 decimals of land under the decree obtained by them. The plaintiff's apprehension though understandable did not ultimately

translate into a present legal injury warranting the declaration sought.

In view of the discussions and findings made hereinbefore this Court holds that although the plaintiff has successfully established his own independent title and pssession over the land acquired by the registered deed of exchange dated 18.12.1996 and although defendants 1-4 have failed to prove that defendant 5 became the exclusive owner of the entire 34 decimals of land comprised in C.S. Plot Number 357 upon amicable partition the plaintiff has nevertheless failed to establish any subsisting legal injury or present cloud upon his title or enforceable cause of action entitling him to maintain the instant suit for declaration.

Accordingly the judgments and decrees passed by both the Courts below are set aside.

The Rule is therefore disposed of.

It is however made clear that this judgment shall not be construed as affirming the defendants' claim that defendant 5 became the exclusive owner of the entire .34 acres of land under CS Plot Number 357 upon amicable partition nor shall it prejudice or otherwise affect the plaintiff's independently

established title and continuous possession over the suit land as proved by the evidence on record.

There shall be no order as to costs.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher-B.O.