

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.2503 OF 2023.

Abdul Mannan alias Md. Mannan Fakir
..... Defendant-Petitioner.

-VERSUS-

Md. Kader and others.
..... Plaintiff-Opposite parties.

Ms. Syeda Nasrin, with
Ms. Jannatul Islam Peya Advocates
-----For the petitioner.

Mr. Masudur Rahman Rana, Advocate
..... For the opposite parties.

**Heard on 04.12.2024, 08.12.2024 and
06.01.2025.**

Judgment on 15.01.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 07.03.2023 passed by the learned Additional District Judge, Barguna in Civil Appeal No.13 of 2019, allowing the appeal and reversing the Judgment and decree dated 27.02.2019 passed by the learned Assistant Judge, Sadar, Barguna, in Civil Suit No.384 of 2014 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.

The facts, in brief, for the disposal of Rule are that the opposite parties, as plaintiffs, instituted the Civil Suit No.348 of 2014 before the Assistin Jadge. Sadar, Barguna for declaration of title by way of Adverse Possession, alleging, inter-alia, that Anu Bibi was the tenant of S.A Khatian Nos.122 / 163 / 121 / 220 and her total land was 0.59 aeres. After her death, the total properties were possessed by her son defendant, namely, Abdul Mannan, and her husband, Hazrat Ali Fakir; they sold a total of 0.6150 acres of land from the Khatian above and other Khatian to the plaintiffs by writing an unregistered sale agreement in non-judicial stamp and Kartiz paper. Accordingly, the receiver of the agreement gave the possession of the land to plaintiff No.1 and the predecessor of plaintiffs Nos.2 and 3; from that very time, the plaintiffs have been in the possession of the disputed land for more than 12 years by establishing dwelling home and cultivation; that on 30.07.2014, the defendant denied to register the deed of sale in favor of the plaintiffs; that therefore, the plaintiffs have instituted the instant suit for adverse possession.

The defendant-petitioner contested the suit by filing a written statement denying all the material allegations of the

plaint, stating, inter alia, that Anu Bibi was the owner of 0.5729-acre land. After the death of Anu Bibi, her husband, Hazrat Ali, also died. After their death, their only son, the defendant, became owner and successor in the interest of the suit land who sold his total 0.1050-acre land vide a registered deed No. 3026 dated 03.05.1988; that after the sale, the defendant left some more properties; that thereafter, from his rest property, he gave 0.15-acre land Pattan / less for 7 years to the plaintiff-petitioners. The plaintiffs received the Pattan on 21.03.2001; that at that time the plaintiffs took signature in Patta on 21.03.2001; the plaintiffs also took signature of the defendant in three blank papers; that after consuming the property for 7 years, plaintiffs returned the property to the defendant; that thereafter, the defendant sold the property to Moktar Ali Hawlader vide a registered deed of sale; that the defendant sold his property through three respective registered deed and sale agreement; that to assimilate the property, plaintiffs wrote down the sale agreement fraudulently by the help of deed writer in the respective three stamps on 27.03.2001; that the plaintiffs have no title in the disputed land and 0.12 acres of the property are possessed by Md. Badsha Mia vide a registered sale agreement bearing No.3782; that the

unregistered sale deed of the plaintiffs is obsoleted in the eye of the law. So, the suit is liable to be dismissed.

The learned Assistant Judge, Sadar, Barguna, framed necessary issues to determine the dispute involved between the parties.

Subsequently, the learned Assistant Judge, Sadar, Barguna, dismissed the suit by the Judgment and decree dated 27.02.2019.

Being aggrieved, the plaintiff-opposite parties, as appellants, preferred Civil Appeal No.13 of 2019 before District Judge, Barguna. Eventually, the learned Additional District Judge, Barguna, by the Judgment and decree dated 07.03.2023, allowed the appeal after setting aside the Judgment and decree of the trial Court.

Being aggrieved, the defendant-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Ms. Syeda Nasrin, the learned advocate appearing on behalf of the petitioner, submits that the appellate court below, as a last Court of facts, without refuting the Judgment of the trial court decreed the suit though in the schedule of the plaint there is no specification of the land with surrounding, so the

appellate Court committed error of law resulting in an error in taking decision of the suit occasioning failure of justice.

Mr. Masudur Rahman Rana, the learned advocate appearing on behalf of the opposite parties, opposes the contention so made by the learned advocate for the petitioner and submits that the appellate court below, having considered all the material aspects of the case and reversing the findings of the trial Court as well as discussing the evidence rightly passed the impugned Judgment and decree and as such the Rule is liable to be discharged.

I have anxiously considered the submissions advanced by the Bar, perused the impugned Judgment and oral and documentary evidence on the records. It manifests that the plaintiffs in the instant case claimed that they had purchased 0.6150 acres of land out of a total of 0.59 acres of land from the defendant Abdul Mannan and Hazrat Ali Fakir by an unregistered sale agreement in non-judicial stamp and kartiz paper on 27.03.2001. Accordingly, the receiver of the agreement gave the possession of the land to the plaintiffs. In order to prove the case, the plaintiff's side examined as many as 3(three) witnesses, and the defendant's side examined 2(two) defense

witnesses. Both parties produced the necessary documents to prove their respective cases.

I have scrutinized each deposition and cross-examination of the witnesses and anxiously considered the documents exhibited by both parties. It appears from the record that while dismissing the suit, the trial Court says that-

There is no specific demarcation of the property for which the plaintiffs are claiming declaration by way of adverse possession. Moreover, in the schedule of the plaint, there is no specification of land with surroundings. In this point of view, I find that, without specific demarcation, it is not possible to declare any title by way of adverse possession among the whole property. So, on careful scrutiny, I find that the plaintiffs have failed to prove their possession in the specific land against which they are sought the relief.

It manifests from the schedule of the plaint that, admittedly, there is no specification of land with surroundings to ascertain the Suit land. Moreover, none of the plaintiffs' witnesses says the specification of the suit lands in their evidence. But the appellate court below, while reversing the finding of the trial Court, observed as follows:

“মূল আরজির তফসিল পর্যালোচনা করে দেখা যায় যে, আপিলকারী-বাদীপক্ষ ০৩টি এস.এ. খতিয়ানের কোন দাগ থেকে কতটুকু জমি দাবী করেছেন, সেই বিষয়ে বিস্তারিত উল্লেখ রয়েছে। অর্থাৎ নালিশী জমি সুনির্দিষ্টভাবেই চিহ্নিতকরণ করা হয়েছে মর্মে প্রমাণিত হয়।”

It is revealed from the S.A. Khatian (Exhibit-1Ka-1Kha) that, admittedly, the plaintiffs mentioned the S.A. Khatian Nos.122/ 103 / 121/ 220. But it appears that the S.A. Khatian No.122 contains 1.42 acres, S.A. Khatian No.103 contains .37 acres, S.A. Khatian No.121 contains .92 acres, S.A. Khatian No.220 contains 2.06 acres of land and the plaintiff claimed total 0.6150 acres of land from the Khatians described above. Therefore, the plaintiff apparently claimed a separate portion of land for the above khatian. Moreover, there is no description of the specific boundaries of the property for which the plaintiffs claim a title by way of adverse possession. In this regard, Order XVII Rule 3 of the Code of Civil Procedure stipulates that-

“Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

It manifests that whereas the plaint does not contain any boundaries or numbers to identify the suit land, a court cannot pass a decree with respect to unspecified immovable property. This view gets support from the case of Earshad Ali Howlader Vs. Santi Rani Dhupi and others reported in 27 BLD (AD) 08, wherein it has been held that-

“Plaintiff for the purpose of success in his suit and thereupon to have the relief sought in the suit is required first to establish that the suit as framed is maintainable and that when the Court finds that the suit is maintainable then goes for consideration of the claim of the plaintiff(s) in respect of the subject matter of the suit and that while the claim made in the suit is being established by legal evidence, the Court passes a decree in favour of the plaintiff and if it is otherwise then dismisses the suit. Thus the plaintiff is to establish first for having the relief in the suit instituted by him that his suit as framed is maintainable and if same is not established then generally the Court is not required to go for adjudication of other contentions making which relief has been sought in the suit. Law as in Order 7, Rule 3 of the Code of Civil Procedure requires the plaintiff to give clear description of

the land in suit so that the land in suit is identifiable. In the instant case it is seen that the particulars of the land as in schedule 'Ga' to the plaint is vague and unspecified. In that state of the matter it is clear that the plaintiffs have sought for declaration of title in respect of unspecified, vague and undivided land. If the land in suit is vague, unspecified and that relief sought is in respect of undivided portion of land of particular plot(s) in that case suit seeking mere declaration of title is not maintainable. In this regard reference may be made to the case of Tayeb Ali Vs. Abdul Khaleque and others reported in 43 DLR (AD) 87. Since plaintiffs suit was not maintainable as they filed a mere declaratory suit in respect of unspecified as well as undivided portion of the land and as such even if any adjudication is made as regard the relief sought as to the decree obtained in Title Suit No. 206 of 1976 would be of no purpose since in the absence of seeking consequential relief of recovery of possession mere declaration of title as regard the land described in the schedule 'Ga' can not be allowed as because the land as regard which declaration of title has been sought is vague and unspecified as well as relief has been sought as to

land of undivided part of the plots mentioned in schedule 'Ga'."

Notably, In case of adverse possession, the possession of the property must be continuous and uninterrupted. The occupation must be hostile and adverse to the interests of the true owner and take place without their consent. This view gets support in the case of Abdul Kader and others Vs. A.K. Noor Mohammad and others reported in 36 DLR (AD) 261 where their Lordship of the Appellate Division held that -

"As regards the plaintiff-appellants' claim of title to the property on the basis of adverse possession for 12 years preceding the institution of the suit, the finding of the trial court as well as High Court Division is that they were aware that the suit premises was requisitioned by the Government for the accommodation of Government employees. They could not produce any papers whatsoever to show that the same had been derequisitioned and that they had been possessing the suit property since then, claiming hostile title. Noor Mohammad Bepari who is alleged to have executed the bainapatra died some time in 1956 long before the institute of the present suit by the plaintiff-appellants. No claim of hostile title was ever made

by them nor in the various civil suits filed before the present one out of which this appeal has arisen any mention regarding the bainapatra was made. In such circumstances it cannot be said that the plaintiff-appellants have acquired title to the suit premises by adverse possession.”

A similar view has been taken in the case of Ejas Ali Qidwai and others Vs. Special Manager, Court of Wards, Balrampur Estate, and others reported in A.I.R. 1935 Privy Council 53 (From Oudh: 510) where their Lordships held that-

“----- The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

In the instant case, the plaintiffs stated the cause of action that- “ছবেদ মুসুলগী পুত্র জাহাঙ্গীর এর মোকাবেলা সাব কবলা দলিল রেজিস্ট্রি করিয়া দিতে অস্বীকার করায় উক্ত তারিখ হতে অত্র মোকদ্দমা দায়েরের কারণ উদ্ভব হইয়াছেক”

Therefore, the plaintiffs’ opposite parties were aggrieved for the non-registration of the deed and filed the instant suit for adverse possession.

Admittedly, a deed of Bainapatra is not a deed for title. It is a contract between the parties to sell the land, and title can be obtained by execution and registration of a sale deed. So, the plaintiffs should have filed suit for specific performance of a contract in time in accordance with the law. But they filed this suit for adverse possession rather than could not be mentioned in the plaint or their evidence in court when their possession in the disputed land became adverse to the real owner-defendant petitioner and when the above adverse possession matured into title.

Considering the above facts, circumstances of the case, and discussions made herein above, I am of the firm view that the learned Additional District Judge, Barguna, did not correctly appreciate and construe the documents and materials on record in accordance with the law in allowing the appeal setting aside the Judgment of the trial Court. The appellate court did not advert the reasoning of the trial court, and this hit the root of the merit of the suit; it also appears that the appellate court did not comply with the requirements of Order XVII Rule 3 of the Code of Civil Procedure in delivering the impugned Judgment and decree and thus it is not a proper

judgment of reversal and has occasioned a failure of justice. Consequently, I find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned Judgment and decree dated 07.03.2023 passed by the learned Additional District Judge, Barguna in Civil Appeal No.13 of 2019 is set aside, and the Judgment and decree dated 27.02.2019 passed by the learned Assistant Judge, Sadar, Barguna, in Civil Suit No.384 of 2014 is hereby affirmed.

Communicate the Judgment and send down Lower Court Records at once.

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(Md. Salim, J).