

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 1354 of 2016

The Chief Executive Officer, Zilla Parishad,
Netrakona of Nagra, Netrakona petitioner

-Versus-

Abul Kashem and others and others

..... opposite parties

Mr. Shishir Kanti Mazumder, Advocate

..... for the petitioner

Mr. Kanai Lal Saha, Advocate, Advocate

..... for opposite party 1

Judgment on 03.07.2025

In this Rule, issued at the instance of defendant 1, plaintiff-opposite party 1 was called upon to show cause as to why the judgment and decree of the Joint District Judge, Court 1, Netrakona passed on 10.06.2015 in Other Class Appeal 34 of 2009 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Barhatta, Netrakona passed on 30.11.2008 in Other Class Suit 31 of 2005 decreeing the suit should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaint case, in brief, is that the suit land described in the schedule to the plaint originally belonged to the then Zaminders Bhabatarini Chowdhury and others and Jagannath Bhadra acquired *jote* title in the suit land under them. Jagannath died leaving behind Shyamram Bhadra and Durganath Bhadra two sons as heirs and accordingly CS record was prepared in their names. Shyamram died unmarried and accordingly Durganath acquired the whole property. Durganath subsequently died leaving behind six sons and SA record

was prepared in their names. On a mutual partition among the brothers Paresh Chandra got the suit land with other lands. He died leaving behind two daughters Rita Rani and Seli Rani as heirs and accordingly they got the suit property. They sold the suit property with other non suited land to Sirajul Haque through two *kabalas* dated 11.01.1997 and 03.07.1997 and handed over possession thereof. The plaintiff purchased the suit land from Sirajul Haque measuring 1.21 acres through a *kabala* dated 28.08.2000 and took over its possession. He mutated his name and has been enjoying the same by paying rent to the concerned. Defendant 1 Zilla Parishad had/has no title and interest in the schedule suit land. In collusion with some greedy villagers it took steps to lease out the schedule pond and for that purpose published a tender notice on 14.03.2005, hence the suit for permanent injunction.

Defendants 1 and 2 contested the suit by filing a set of written statement denying the statements made in the plaint contending that Durganath Badhra during his possession and enjoyment handed over the property to this defendant Zilla Parishad, Netrakona on 16 Magh, 1327 BS through a registered prottarpan (reconveyance) deed. Zilla Parishad excavated a pond on 1.21 acres of land. The villagers used to take drinking water from the pond and the original owner transferred the land to this defendant for that purpose. But on the passage of time deep tubewell came and the villagers started taking drinking water using it and the pond became useless for the purpose it was excavated.

To protect the pond and to keep it clean defendant 1 leased out it as fishery. In the years 1995-1996 they leased out it to one Paltan Sarkar and subsequently in the years 2005-2008 to one Shahed Mia. The pond is under the control and supervision of defendant 1. The plaintiff has no right, title, interest and possession in it and as such the suit would be dismissed.

On pleadings the Assistant Judge framed 4 issues. In the trial the plaintiff examined 7 witnesses and their documents were exhibits-1-8 while defendant 1 examined DW 1 and its documents were exhibits-Ka and Kha. However, the Assistant Judge decreed the suit against which defendants 1 and 2 preferred appeal before the District Judge, Netrakona. The Joint District Judge, Court 1, Netrakona heard the appeal on transfer and dismissed it affirming the judgment and decree passed by the trial Court. In this juncture, defendant 1 approached this Court with a revisional application and obtained the Rule with an interim order of *status quo*.

Mr. Shishir Kanti Mazumder, learned Advocate for the petitioner takes me through the judgments passed by the Courts below and other materials on record and submits that original owner of land Durganath Bhadra gifted it to petitioner Zilla Parishad through a registered prottarpan deed dated 31.01.1921. The present suit for permanent injunction without any prayer for cancelling the aforesaid registered deed is not maintainable. He then submits that in a suit for permanent injunction the plaintiff is to prove his exclusive possession

in the suit property which he failed. Therefore, he is not entitled to get a decree in the suit. Both the Courts below without discussing the oral evidence of the plaintiff in support of possession decreed the suit which is required to be interfered with by this Court in revision. Mr. Majumder then submits that the registered deed exhibit-‘Ka’ and the lease agreement exhibit-‘Kha’ are the proof of possession of defendant Zilla Parishad in the suit pond. The Court of appeal did not comply with the mandatory provisions of law provided under Order 41 Rule 31 of the Code of Civil Procedure in disposing the appeal and, therefore, the Judgments passed by the Courts below would be interfered with by this Court.

Mr. Kanai Lal Saha, learned Advocate for plaintiff-opposite party 1 on the other hand opposes the Rule and supports the judgments passed by the Courts below. He submits that both the Courts below concurrently found the plaintiff’s title and possession in the suit land. The aforesaid findings may not be interfered with by this Court unless the petitioner can show gross misreading and non consideration of evidence on record effecting the merit of the case. He submits that the Courts below left no stone unturned in decreeing the suit. Therefore, this Rule having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record.

The plaintiff claimed the suit property through gradual purchase from its original owner. It is found in the evidence of witnesses that after purchase the plaintiff mutated his name and paid rent. The title deeds of the plaintiff have been produced in evidence and duly marked as exhibits. On going through the recital of the prottarpan deed exhibit-‘Ka’ it is found that the original owner of the suit land handed over it to defendant Zilla Parishad with condition that it will bear the expenditure of excavating a pond in the suit land and villagers would use it for taking drinking water but if it is used other than the purpose as mentioned above in the deed its ownership would go to the heirs of the doner. Defendant 1 admitted that at the present time nobody is using the pond for taking water rather they leased it as fishery for its maintenance. In view of the above position of the prottarpan deed it is found that the ownership of the suit pond has reverted to the heirs of original owner long ago for breach the terms of deed by Zilla Parishad. The heirs of original owner validly sold the same to the vendor of the plaintiff.

The evidence of PWs1-7 is found corroborative in respect of the plaintiff’s title and possession in the suit pond. In addition to oral evidence the plaintiff produced a series of documents exhibits-1-8 in support of his claim including registered *kabalas* and rent receipts. In a suit for permanent injunction the prime consideration is the possession of the claimant in the suit land, question of title can be seen there incidentally. But in the present suit the plaintiff proved his

title and possession in the suit land. I find no error of law in the judgments passed by the Courts below in decreeing the suit.

Therefore, I find no merit in this Rule. Accordingly, the Rule is discharged. No order as to costs. The judgments passed by the Courts below are hereby affirmed. The order of *status quo* stands vacated.

Communicate this judgment and send down the lower Court records.

Rajib