

District: Jhenidah

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 3521 of 1991

In the matter of :

Md. Barik Biswas

... Petitioner

-Versus-

Anar Ali and others

...Opposite parties

Mr. A.H.M. Obaydul Kabir, Advocate

...for the petitioner

No one appears

...For the opposite parties

Heard on: 10.11.2024

Judgment on: 12.11.2024

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 24.10.1989 passed by the Sub-ordinate Judge, Jhenidah in Title Appeal No. 143 of 1986 reversing those of dated 28.06.1986 passed by the Assistant Judge, Kaliganj, Jhenidah in Title Suit No. 138 of 1985, decreeing the suit should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present petitioner as plaintiff instituted Title Suit No. 1668 of 1976 in the Court of Second Munsif at Jhenidah. On transfer to the Court of Munsif, Kaliganj, Jhenidah the suit was renumbered as Title Suit No. 138 of 1985 sought for declaration of title, confirmation of possession and for permanent injunction.

The case of plaintiff briefly are that the suit property appertaining to previous khatian No. 374, plot No. 758 measuring an area of 2.03 acres within bahirgachi mouza under Police Station- Kaliganj was originally belonged to Hasan Mondol and Pachu Mondal in equal share. Ranjet and Nesaron, son and daughter of Hasan Mondol transferred 51 decimals of land out of the aforesaid property to the plaintiff through a registered kabala dated 24.09.1958. Plaintiff also purchased $85\frac{1}{2}$ decimals of land from other 2(two) sons of Hasan Mondol, namely Ebadad and Azibar and Chand Ali son of Mandari Mondol (grandson of Pachu Mondol). Later on, plaintiff transferred 33 decimals of land to defendant No. 3. The plaintiff has right, title and exclusive possession over the rest 1.03 acres of land out of the scheduled property. The defendant on 15 Kartik, 1383 B.S. threatened to dispossess the plaintiff from the suit land, hence the suit.

The defendant No. 1 contested the suit by filing written statement denying all the material averments of plaintiff contending, inter alia that the suit is barred by limitation, the plaintiff has no

right, title and possession over the suit land. The specific case of the defendant is that Refezuddin, grandson of Pachu Mondol gave oral settlement of 33 decimals of land out of his share to defendant No. 2, Fakir Ahmmad on 10 Chaitra, 1357 B.S. Later on, the defendant No. 2 transferred the said 33 decimals of land to defendant No. 1 through registered kabala dated 26.08.1975. Ranjet and Nesaron, son and daughter of Hasan Mondol also transferred $51\frac{1}{2}$ decimals of land out of the scheduled property to defendant No. 1 through a registered kabala dated 28.07.1975. The defendant No. 1 in the way as aforesaid acquiring title over $84\frac{1}{2}$ decimals of land of the scheduled property has possessed the same peacefully. Thus, the plaintiff's suit is liable to be dismissed.

During trial the plaintiff examined 3(three) witnesses and adduced documentary evidences to prove his case. On the other hand, the defendant examined 5(five) witnesses and also adduced documentary evidences to prove his respective case. On conclusion of hearing learned Munsif of Kaliganj Upazila, Jhenidah by his judgment and decree dated 28.06.1986 decreed the suit on contest against the defendant No. 1.

Having been aggrieved by the aforesaid judgment and decree of learned Munsif at the Court of Kaliganj Upozilla, Jhenidah, the defendant No.1 preferred Title Appeal No. 143 of 1986 before the District Judge, Jhenidah. On transfer the said

appeal was heard by the Sub-ordinate Judge, Jhenidah and by his judgment and decree dated 24.10.1989 allowed the appeal reversing those of dated 28.06.1986 passed by the Munsif, Kaliganj, Jhenidah in Title Suit No. 138 of 1985.

On being aggrieved by and dissatisfied with the aforesaid judgment and decree of learned Sub-ordinate Judge, the plaintiff filed this revisional application and obtained the Rule.

Mr. A.H.M. Obaydul Kabir, learned Advocate appearing for the petitioner submits that it is the positive and specific finding of the trial Court that the plaintiff is in possession over the suit land, conversely, it was specifically also found by the trial Court that the defendants have no possession over the suit land. The appellate Court below while reversing the judgment and decree of the trial Court did not at all disturb or controvert the finding of the trial Court regarding possession of the suit land. Thus, the finding of the trial Court as to the possession stands.

He next submits that the defendant opposite party did not challenged the aforesaid findings of possession before the High Court Division in revisional jurisdiction and the uncontroverted findings of fact regarding possession proves that the plaintiff has been enjoying the property uninterruptedly since 24.09.1958, thus acquired a valid title adversely against the defendants.

He further submits that the Court of appeal below reversed the judgment of the trial Court on the findings that the transfer deed dated 24.09.1958 executed by Ebadad, elder brother of Ranjet and Nesaron, son and daughter of Hasan Mondol, as the guardian of minors. It was also found that the said Ebadad had no legal authority to transfer the property on behalf of the minors. Thus, the basic title document of plaintiff regarding 51 decimals of land is an invalid one, which does not confer any right or title upon the plaintiff. Mr. Kabir continues to submit that it is the settled principle that though the transferee (plaintiff) did not acquire any valid title through an invalid document over the aforesaid 51 decimals of land, but when he continues in possession into the said property more than the statutory period of 12(twelve) years uninterruptedly on the basis of said invalid document, therefore, he acquires a good title in the said property by way of adverse possession against the defendants as well as their predecessor-in-interest.

He also submits that from the findings of the trial Court it is established that the plaintiff is in possession of the suit property since 1958 and from the record it also appears that the predecessor-in-interest of the defendant No.1, namely Ranjet and Nesaron, son and daughter of Hasan Mondol though had valid title over the suit land, but could not take any initiate to recover or restore their possession in the suit property within 12(twelve)

years from discontinuation of the possession or within 3(three) years after attainment of their majority. Thus, their title has been extinguished under section 28 of the Limitation Act, conversely, the plaintiff acquired a valid title by way of adverse possession. The Court of appeal below committed an error of law resulting in an error in the decision occasioning failure of justice in dismissing the suit without taking into consideration the aforesaid provision and findings of fact into his judicial mind.

He lastly submits that although the plaintiff could not specifically seek his title over the suit land by way of adverse possession, but the provision of Order VII, rule 7 of the Code of Civil Procedure provides scope to declare his entitlement to a decree for a declaration of title through adverse possession, though not specifically prayed for.

In support of his submission Mr. Kabir cited the case of Sree Santipada Datta Vs. Satish Chandra Das and others reported in 7 MLR(AD) 249, the case of Syed Aynul Akhter Vs. Sanjit Kumar Bhowmik and others reported in 20 BLC 598, the case of Kashem Molla Vs. Fajel Shek and others reported in 3 DLR 206 and in the case of Commander (Retd.) A.A. Chowdhury Vs. A.K.M. Imam Hossain and others reported in 16 BLD 510.

No one appeared to contest the Rule.

Heard learned Advocate for the petitioner, perused the revisional application. Having gone through the cited judgments and the provision of law.

From the record, it transpires that whole controversy of the suit in question is relates to a property measuring an area of 51 or $51\frac{1}{2}$ decimals out of the scheduled property, which was belonged to Ranjet and Nesaron by way of inheritance. It is the case of plaintiff that he acquired title through a registered kabala dated 24.09.1958 executed by Ebadad, the elder brother of 2(two) minors on their behalf, namely, Ranjet and Nesaron, son and daughter of Hasan Mondol, the admitted co-owners of the said property.

On the other hand, the defendant's case is that Ebadad being elder brother of minors had no authority to transfer the minors' property in favour of the plaintiff through registered deed dated 24.09.1958.

The trial Court upon believing the case of the plaintiff decreed the suit on the basis of the aforesaid registered title deed dated 24.09.1958, together with a specific and positive findings that the plaintiff is in possession of the suit land since execution of the deed dated 24.09.1959, conversely, also found that the defendants have no possession in the suit land.

The appellate Court below while reversing the judgment and decree of the trial Court found that the registered deed dated 24.09.1958 (Exhibit-‘1’) was an invalid one and void-ab-initio, because the executant, Ebadad had no authority to transfer the minors property. Thus, the said deed does not confer any valid title upon the plaintiff and on the basis of the said finding he dismissed the suit.

The appellate Court below came to the definite finding that plaintiff did not acquire any title into the suit land through the invalid or void registered deed dated 24.09.1958, but did not at all disturb or controvert the specific findings of the trial Court to the effect that the plaintiff is in possession and the defendants have not possession in the suit land. Thus, the finding of fact of the trial Court regarding possession of the plaintiff stands and which continues uninterruptedly from the execution of the deed of the year 1958. Under section 28 of the Limitation Act, 1908, the title of the legal owner of the property would be extinguished for his failure to claim or exercise his right or title over a period more than 12(twelve) years from the date of discontinuation of possession or in case of minors 3(three) years after attainment of his/their majority, whichever is later.

Although the appellate Court below found that the elder brother of the minors had no authority to transfer their property on their behalf, but failed to consider that on the strength of the said

invalid document dated 24.09.1958, the plaintiff has been continuing into the possession and uninterruptedly enjoyed the property and thus, acquired a valid title through 'Acquisitive Prescription', adversely against the defendant or his predecessors-in-interest, who lost their title by failure to claim or institute a suit for possession within 12(twelve) years from the date of discontinuation of possession on the basis of the aforesaid invalid deed i.e. since 24.09.1958 and or within 3(three) years from the date of their attainment of majority, whichever is later.

From the premise above, it appears that in the year, 1975 when Ranjet and Nesaron by a registered kabala transferred the property in favour of defendant No. 1, had lost their title by way of Extinctive Prescription, under the provision of section 28 of the Limitation Act, 1908.

I have examined the plaint of the suit, although the plaintiff in the prayer portion of the plaint could not specifically sought for the title by way of adverse possession, but at paragraph No. 2 of the plaint, the plaintiff specifically asserted that he has acquired his title even by way of adverse possession. The mere fact that the plaintiff did not specifically sought for the declaration of title by way of adverse possession, cannot be a legal ground to disentitle him from getting a decree of declaration to that effect by way of adverse possession.

The aforesaid view of this Court is supported by the judgment passed in the case of Sadek Ali Vs. Suruj Ali and others reported in 7 DLR 94 and in view of the cited cases from the petitioner's side, this Court finds merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and decree dated 24.11.1989 passed by the Sub-ordinate Judge, Jhenidah in Title Appeal No. 143 of 1986 is hereby set aside and the judgment and decree dated 28.06.1986 passed by the Munsif, Kaliganj, Jhenidah in Title Suit No. 138 of 1985 is hereby restored.

The interim order of status-quo passed at the time of issuance of the Rule is hereby recalled.

No order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.