

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1268 of 2011

Md. Abul Khair being dead his legal
heirs 1(Ka) Shahnaj Begum and others

..... Petitioners.

-Versus-

Roksana Akter and another

.....Opposite parties.

Mr.Mohammad Noor Hossain, Advocate

.....For the petitioners.

Mr. Md. Ismail Hossain, Adv.

.....For the Opposite parties

Heard and judgment on 5th June, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 24.01.2011 passed by the Joint District Judge, 1st Court, Narayangonj in Title Appeal No. 271 of 2007 affirming those dated 23.09.2007 passed

by the Senior Assistant Judge, Aryihazar, Narayangonj in Title Suit No. 186 of 2006 decreeing the suit should not be set aside.

Opposite party as plaintiff filed the above suit for eviction against the petitioner.

Plaint case in short, inter alia, is that the original owner of the suit land was one Nogorbasi Mondol and his 4 brothers and in 1926 they sold the suit land to Monsur Ali and Arman Nesa. Thereafter Monsur Ali and Arman Nesa sold the suit land to Bosor Uddin by separate two deeds. S.A, and R.S. record was prepared by the name of Bosor Uddin. On 23.02.1987, Bosor Uddin sold 8 decimals of land to the mother of the defendant and 8 decimals of land to the defendant. The defendant No.1 sold his land to Nur Ali and Abdur Rashid. The mother of the defendant No.1 sold 4 decimals of land to her grandson namely Nazrul Islam and Nazrul Islam transferred the said land to his aunt by a heba deed on 14.07.1999. The defendant No.1 and plaintiff are brother and sister in relation and as such the plaintiff gave permission to the defendant to stay in her land with his family. In the year 2002, the plaintiff request the defendant to vacant the suit land but the defendant denied to vacant the suit land, on the other hand the

defendant tried to bring gas line on the suit land in the name of his son.

Petitioner contested the suit by filing written statement denying the plaint case alleging, inter alia, that the original owner of the suit land were Nogorbasi Mondol, Mohonbasi Mondol, Darikanath Mondol, Manikchand Mondol and C.S. record was prepared with their names. By a family amicable settlement Nogorbasi Mondol got his saham in Dag No. 385. On 05.05.1925 he sold .55 decimals of land to one Yakub Sorder by a unregistered deed and also delivered the possession to him. During the liberation war the said deed was lost. During S.A. operation Yakub Sorder's name was recorded in khatian No. 270 with other co sharers. After the death of Yakub Sorder his 3 sons (namely Unis Mia, Md. Idris Ali, Md. Israfil) out of 6 sons obtained 6 decimals of land in dag No. 385. On 17.04.2002 Unis Mia, Md. Idris Ali and Md. Israfil sold 6 decimals of land to the defendant No.3 by a registered kabala deed being No. 1971 and also delivered the possession of the land to the defendant No.3 and the defendant No.3 put a huge soil into the suit land and made a semi pakka house with veranda and made bath rooms and had

been living there with his family. The defendant No.3 got gas line into his house with his own name but could not use the same as the suit was pending. The defendants No.1 and 3 are not licensee into the suit property. They are living in their own house with right and title.

By the judgment and decree dated 23.09.2007, the Assistant Judge decreed the suit on contest.

Challenging the said judgment and decree, defendant petitioner preferred Title Appeal No. 271 of 2007 before the Court of District Judge, Narayangonj, which was heard on transfer by the Joint District Judge, 1st Court, Narayangonj, who by the impugned judgment and decree dismissed the appeal and affirmed the judgment of the trial court.

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

Mr. Mohammad Noor Hossain, the learned advocate appearing for the petitioner drawing my attention to the registered deed of the defendant (Ext.Ka) submits that defendants are the owner of the suit land by way of registered sale deed, which is

exhibited in court but the courts below totally failed to consider the true aspect of this case and decreed the suit most arbitrarily. The impugned judgment is not sustainable in law. He further submits that defendant No.3, who is also an owner of the suit land along with the defendant No.1 now in possession in the suit property but the decree was erroneously passed against the defendant No.1 to evict him, the decree is not a executable decree and it was passed illegally, which is liable to be set aside.

Mr. Syed Mahmudul Ahsan, the learned advocate appearing for the plaintiff opposite party, on the other hand submits that the plaintiff has categorically stated that in the year 1999 defendant No.1, who is the elder brother of the plaintiff was allowed to stay in the house as a permissive possessor of the plaintiff, who has valid title and possession over the suit land but as and when defendant denied to vacant the suit land, she was compelled to file the instant suit. Both the courts below upon discussing the evidences on record correctly found that plaintiffs title deed was legally been proved through the P.Ws. as well as on the recording of the S.A. and R.S. khatian correctly into their names and that defendant since could not prove his title in the suit land rather it

was proved from the evidences that he was a mere possessor in the suit land by way of a permission taken from the plaintiffs since 1999. Court below concurrently passed the decree in favour of the plaintiff. Since the judgment and decree contains no misreading or non-reading of the evidences, concurrent decreed should not be interfered with and thus he prays for discharging the rule.

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

This is a suit for simple declaration claiming that plaintiff is the owner and possessor in the suit property and the defendant, who is the elder brother of the plaintiffs, upon taking an oral permission he was staying in a portion in the house but subsequently refused to vacate the land, the suit was instituted. Defendant although try to establish his title over the suit land by producing a document obtained from his predecessor, who obtained the suit land from the original owner by way of registered sale deed but could not produce in court the said sale deed, on saying that it was lost from his custody but in support of this contention defendants failed to produce any evidence and as such both the courts below rightly held that plaintiff title deed as

well as the title of the predecessor as claim by him was not been proved by any evidence rather plaintiff has successfully able to prove his title by bringing the volume of the said sale deed together with the recording of the S.A. and R.S. khatian into their names proved the title as well as possession of the plaintiff of the suit land. Although it has been objected by the defendant that there is no date mentioned on which plaintiff allowed the defendant to stay in the house as a permissive possessor but going through the plaint the appellate court has correctly held that at the end of year 1999 defendant was allowed to stay in the house noticing the same from the recital of the plaint as disclosed by the plaintiff. In the premises defendants objection got no legs to stand.

Both the court below thus concurrently decreed the suit in favour of the plaintiff. The petitioner by showing from any evidence could not establish before this court that the said concurrent judgment contains any misreading or non-reading of the evidences, which calls for any interference by this court.

Regard being had to the above law, fact and circumstances of the case, I am of the opinion that the court below committed no illegality in decreeing the suit in favour of the plaintiff.

I thus find no merits in this rule.

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

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

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