

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 4810 OF 2010

Babunia Guabari Bhagabat Ashram
Sree Sree Radha Gobinda Zeo
represented by Sebayet Rajendra Nath Roy
Plaintiff-Respondent-Petitioner

Versus

Md. Shahjahan Sarker
Defendant-Appellant-Opposite Party No. 1

The Government of Bangladesh represented by
Deputy Commissioner, Nilphamari and others
Defendants-Respondents-Opposite Parties

Mr. Md. Zakir Hossain, Advocate
for the Plaintiff-Respondent-Petitioner

Mr. Md. Asaduzzaman Bosunia, Advocate
for the Defendant-Appellant-Opposite Party

Judgment on: 13.3.2023

This Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned Judgment and Decree dated 09.11.2010 passed by the learned Joint District Judge, Nilphamari, in Title Appeal No. 12 of 2003 allowing the appeal and thereby reversing the Judgment and Decree dated 27-01-2003 passed by the learned Assistant Judge, Dimla, Nilphamari in Title Suit No. 30 of 1992 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper

The petitioner as plaintiff instituted the instant suit praying for declaration of title of the suit land to the effect that auction sales dated 25-01-1962 and 23-02-1962 are illegal and inoperative.

The plaintiff's case, in short, is that the land of C.S khatian No. 169, S.A khatian No. 218 and Plot No. 1407 measuring an area of 1.61 acres of land originally belonged to Narayan Barman and the land of C.S khatian No. 481, S.A khatian No. 558 and Plot No. 1407 measuring an area of 0.81 acres of land originally belonged to Manna Ram Barman and others and the area of the suit land is known as 'Bazarer Dighi'. The predecessor of the proforma defendants by way of oral gift transferred the same in favor of Babunia Guabari Bhagabat Asram Sree Sree Radha Gobinda Bigrah and the Asram was running by the sale proceed of fish and at the first instance one Brindaban Barman was appointed as Shebayet and later on while the said Shebayet became ill then as per opinion and decisions of the heirs of the owners, Rajendra Nath Roy was appointed as Shebayet through registered Arpannama deed No. 7476 dated 07-09-1982 and R.S record was published with the name of original owner and in the recent survey the suit land has been wrongly recorded in the name of defendant No. 1 collusively in field Parcha against which appeal was filed and the defendant No.1 filed written objection from which the plaintiff came to know about the disputed auction sale dated 25-01-1962 in

Case No. 425/59-60 and auction sale dated 23-02-1962 in Case No. 14850/59-60 beyond the knowledge of the plaintiff and the same was not done in accordance with law under Section 7 and 46 of the Public Demands Recovery Act and in those cases co-sharers were not made parties and the possession was not delivered to the defendant and under the facts and circumstances he prayed for declaration that the auction is false, collusive, inoperative and also declaration of title of the suit land.

The defendant No.1 contested the suit by filing written statement stating that the original owner failed to pay rent and accordingly auction sale took place on 25-01-1962 in connection with Rent Suit No. 5425/59-60 and another auction sale took place on 23-02-1962 in connection with Rent Suit No.14850/59-60 and the defendant No.1 as the auction purchaser got delivery of possession on 20-12-1962 and since then he has been owing and possessing the suit pond and also rearing fish thereon and accordingly the recent khatian No. 1876 (Exhibit-‘Cha’) in respect of the suit property was correctly prepared and finally published in the name of the defendant No.1 and defendant No.1 also mutated his name through Mutation Case No. 407/88-89 (Exhibit - ‘Gha’ and ‘Uma’) and by virtue of that paying rent to the Government through rent receipt and in this regard defendant No. 1 submitted 6 rent receipts which are marked as Exhibit- ‘Sa’-‘Sa-5’, the plaintiff

after creating a forged Arpannama tried to grab the suit property filed the instant suit.

The defendant No. 2 Government contested the suit by filing written statement stating that the original owner of the suit land left for India after 1965 for which the property has been vested upon the Government and the property has been given lease in V.P. Case No. 50 of 1980.

The Assistant Judge, Dimla, Nilphamari decreed the aforesaid Title Suit No. 30 of 1992 vide Judgment and Decree dated 27.1.2003. Against the aforesaid Judgment and Decree the defendant as appellant preferred appeal being Title Appeal No. 12 of 2003 before the District Judge, Nilphamari which was transferred before the Joint District Judge, Nilphamari and the aforesaid Appellate Court below allowing appeal and thereby reversing the Judgment and Decree of the Trial Court on 09.11.2010 and hence the plaintiff as petitioner moved this application under Section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Md. Zakir Hossain, the learned Advocate for the plaintiff-respondent-petitioner, submits that the Appellate Court below though reversed the Judgment and Decree but did not reverse the finding of the Trial Court. The Trial Court decided that the disputed property is not vested. The opposite party No. 1 at the

revisional stage filed certified copy of judgment and decree of Arpita Sampotti Prattarpan Tribunal and as such judgment and decree does not affect the point of determination of the cause. The plaintiff succeeded to prove its possession where there is a Mondir and plaintiff Asram is enjoying the sale proceed of fish but the Appellate Court below failed to discuss the evidences on record. Determining question is that whether there is any valid auction in this regard the Trial Court discussed elaborately from which it transpires that the facts as to auction sale is disproved and decree has been rightly passed by Trial Court. The Appellate Court below failed to follow the legal provision of law as to deciding the appeal and as such the judgment and decree of Appellate Court below is liable to be set aside and the learned Advocate lastly submits that the present petitioner has good merits and as such the rule should be made absolute for the ends of justice.

Mr. Md. Asaduzzaman Bosunia, the learned Advocate for the defendants-appellants-opposite parties, submits that the Trial Court in its judgment after misinterpreting the Hindu Law wrongly held in respect of oral gift that “হিন্দু আইন অনুযায়ী দানের বিষয়টি লিখিত হওয়া অত্যাবশ্যিক নয়, মৌখিকভাবে দান করা সম্ভব” which is absolutely wrong and in this regard a Division Bench of this Hon’ble Court reported in 51 DLR 77 that “In absence of a registered instrument a gift by a person belonging to Hindu community (governed by the

Dayabhaga School of Hindu Law) is not valid under section 123 of the Transfer of Property Act,1882". He further submits that in the judgment the Trial Court himself made some contradictory observation regarding nature of the suit property, wherein it has been stated that “নালিশী দিঘী প্রকৃতপক্ষে দেবোঙর সম্পত্তি” but later on the Trial Court opined that “এস, এ রেকর্ডে নালিশী সম্পত্তি বাবদ লিখিত কোন দানপত্র না থাকার কারণে দিঘী দেবোঙর সম্পত্তি হিসাবে চিহ্নিত হয়নি” in view of the above it is clear that the property even never been recorded as “Debottor property” under the Hindu Law. He then submits that the learned Appellate Court below after considering the oral and documentary evidences very rightly allowed the appeal and found the papers submitted by the defendant in support of the auction sale is very much genuine and it is the settled principle that according to provision of section 92 of the Evidence Act documentary evidences will prevail over the oral evidence and in this regard referred a decision reported in 60 DLR 212. He next submits that the Appellate Court below rightly held in its judgment that the suit is seriously barred by limitation and the petitioner filed the instant suit long after thirty years later so the Appellate Court below did not commit any error of law resulting in an error in the decision occasioning failure of justice. He then submits that in the plaint the plaintiff failed to explain the chain of ownership and title of the original owners, moreover neither in C.S and S.A record the

suit property was recorded as “Debottor property” nor in the present record the same was recorded as “Debottor property” and as such by way of so called ‘Arpanama Deed’ dated 07-09-1982 the plaintiff petitioner does not create any right, title and interest over the suit property but the Trial Court without considering such material aspect decreed the suit very illegally and as such same is liable to be set aside. He further submits that during pendency of the instant Rule while the suit property has been enlisted as ‘Ka’ schedule land published in the Bangladesh Gazette Additional Copy, Serial No. 125, then the defendant opposite party No.1 as plaintiff filed Orpito Case No. 592 of 2013 before the Court of Orpito Sampati Prottarpon Tribunal No.02, Nilphamari for releasing the suit property from ‘Ka’ schedule list and after hearing both parties, the Tribunal was pleased to decree the suit by judgment and decree dated 23-09-2018 holding that according to Section 2(da) of the Orpito Sampati Prottarpon Ain 2001, the plaintiff has been able to prove himself as the owner of the property and as such the Tribunal directed to release the suit property from the ‘Ka’ schedule list and against which the Government preferred appeal and the same was also dismissed by the judgment and decree dated 11.9.2022. In respect of the suit property the present B.S Khatian No. 1166 has also been prepared with the name of defendant opposite party No. 1 and as per Section

144 of the State Acquisition and Tenancy Act, 1950 records of right prepared and finally published has presumption of correctness so long not rebutted by showing the contrary.

Heard the learned Advocates for both the parties and perused the record.

The plaintiff-petitioner claimed that the predecessor of proforma defendants as original owner of the suit land gifted the suit land to the plaintiff Asram by way of oral gift. But the plaintiff witnesses did not support the plaintiff's case. Moreover, neither in the C.S. and S.A. record the suit land was recorded as "Dabottor property" and admittedly present B.S. Khatian has been prepared in the name of the defendant opposite party No. 1. As such by way of so called Arpanama Deed dated 07.9.1982 no right, title and interest was created in favour of the plaintiff and on the other hand, I found the papers submitted by the defendant-opposite party No. 1 in support of the auction sale is genuine. Moreso, during pendency of the instant Rule the suit land was enlisted as Ka schedule land published in the Bangladesh Gazette Additional Copy, Serial No. 125; then the defendant-opposite party No. 1 as plaintiff filed case before the concerned Tribunal and the Tribunal released the same from the Ka schedule list and against which the Government preferred appeal and the same was also dismissed.

Considering the facts and circumstances of the Case, I find no substance in this Rule, rather I find substance in the submissions of the learned Advocate for the defendant-opposite party No. 1.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 09.11.2010 passed by the learned Joint District Judge, Nilphamari, in Title Appeal No. 12 of 2003 allowing the appeal and reversing the Judgment and Decree dated 27-01-2003 passed by the learned Assistant Judge, Dimla, Nilphamari in Title Suit No. 30 of 1992 is hereby up-held.

The interim order of status-quo granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of the Judgment to the Courts below at once.