

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 2784 of 2011

Matiur Rahman Matubbor and others
..... Petitioners

-Versus-

A. Basar Howlader and others
..... Opposite Parties

Mr. M.A. Khaleque, Advocate
..... For the petitioners

Mr. Kazi Obadur Rahman, Advocate
..... For the Opposite Parties

Heard on 07.08.2016 and
Judgment on 11.08.2016

At the instance of the plaintiff-appellant-petitioners, Matiur Rahman Matubbor and others, this Rule has been issued calling upon the Opposite Party Nos. 1-31 to show cause as to why the judgment and decree dated 6.1.2011 passed by the learned Joint District Judge, 1st court, Madaripur in Title Appeal No. 13 of 2009 disallowing the appeal thereby affirming those dated 4.2.2009 passed by the learned Senior Assistant Judge, Madaripur Sadar, in Title Suit No.91 of 1999 should not be set aside.

The relevant facts for disposal of the Rule, inter alia, are that the present-petitioners' father as the plaintiff filed the Title Suit No. 91 of 1999 for a declaration of title in the court of learned Assistant Judge, Madaripur Sadar, Madaripur.

The plaintiffs case, in short, is that the land measuring 2.57 acres in Tarmugria Mouza under R.S. Khatian No. 5, Madaripur was recorded in the name of Radhika Jiban Goswami and Bidhu Mukhi Devi and they sold 0.90 acres of land to other persons but they have been in possession of the other measurement of land. A Patton was created by Bidhu Mukhi Devi for land 0.66 acres from the plot N o. 37 in favour of the plaintiff's father and R.S. and S.A. record were accordingly published. The nature of the land is pond and the petitioners filled up the pond by earth and constructed houses thereon for living and some lands have been in use for cultivating fishery. However S.A. record was published in the name of Radika Jibon Goaswami which came into knowledge of the plaintiff-petitioners in the Month of April, 1999 which caused to file the suit.

The suit has been contested by the present opposite party Nos. 5 to 18 as the defendants by filing a written statement denying the statements made in the plaint and contending that originally the suit land belonged to the said Radika Jibion Goswami and Bidhu Mukhi Devi in R.S. Khatian but on death of Bidhu Mukhi Devi her only cousin Radika Jibon Goswami got the ownership upon the land on her own and S.A. record was published accordingly. Rakika sold 0.66 acres to one Syed Abdul Mazid by the registered deed N o. 4705 on 29.07.1961. Subsequently the said Abdul Mazid sold the land by registered deed No. 937 in favour of the predecessor of the present defendant-opposite parties on 19.02.1964 and the possession was handed over in their favour. However the present petitioner No. 1 got a lease from the plot No. 36 for land measuring 0.01

acres but he wrongly taken possession from plot No. 37 which plots are adjacent to each other. Regarding 1(one) decimal of land a title suit was filed being the Title Suit No. 103 of 1988 by the present-opposite parties which came into High Court by way of revisional application and the matter was remanded by the High Court regarding one decimal of land.

The plaintiff-petitioner examined 3 witnesses whereas the defendant-opposite parties examined 6 witnesses to prove their respective cases.

After hearing the parties the learned Senior Assistant Judge, Madaripur Sadar, Madaripur dismissed the suit by its judgment and decree dated 04.02.2007. The present petitioners preferred the appeal No. 13 of 2009 in the court of learned District Judge, Madaripur which was heard by the learned Joint District Judge, 1st Court, Madaripur on transfer who by his judgment and decree disallowed the appeal on 06.01.2011 which is the impugned judgment in this revisional application under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. M.A. Khaleque, the learned Advocate for the petitioner submits that the plaintiffs have instituted the suit for declaration of title claiming their title and possession in the suit land measuring 0.66 acres on the basis of Amalnama dated 05.01.1354 B.S for the rent of taka 4/- and got rent receipts which was proved by the plaintiffs by marking the same as Exhibit 2 series without objection and those cannot be agitated later on according to the settled principles of law. But the learned Judges of both the Courts below erred in contending that the plaintiffs failed to prove the Amalnama

which resulted in an error in the decisions occasioning failure of justice and as such the impugned judgment ad decree is liable to be set aside.

The Rule has been opposed by the opposite parties.

Mr. Kazi Obadur Rahman, the learned Advocate for the opposite party submits that the learned trial court after hearing the parties and considering the evidence on records dismissed the suit. The learned Appellate Court also concurrently decided against the present petitioners and disallowed the appeal. Both courts below committed no error of law, as such, he prays to discharge the Rule.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with its Annexure therein, in particular, the impugned judgment and decree and also considering the L.C.Records, it appears to me that the present the father of the present petitioners as the plaintiff filed the title suit for declaration of title on the basis of a patton by way of Amalnama executed on 5 Baishak, 1354 B.S. regarding 66 decimals of land from the plot No. 30 which has been exhibited as exhibit-2 along with a dakhila part exhibited as exhibit-2(Ka). I have carefully examined those two documents which have been exhibited but the present plaintiff-petitioners had failed to prove or substantiate the evidential value of these two documents as foundation of the petitioners' case. In this regard I have carefully examined the witnesses statements deposited in the court in favour of the plaintiff-petitioners as the P.Ws.

P.W. 1, Matiur Rahman Muttabor deposed in the court stating about the parcha but he failed to make any statement in support of their case. He simply stated that patton was given in favour of his father on 05.01.1954 B.S. and he has been possessing of the suit land.

P.Ws. 2 and 3, Musai Talukder and Hossain Mutubbor also deposed in favour of the plaintiff-petitioners. These witnesses simply disputed the documents which is an un-register deed of amalnama. The plaintiff-petitioners should have been more serious to prove their case on the standard of balance of probability that the documents carried sufficient evidential value. However in my view that the petitioners had not taken sufficient steps to do so. The Amalnama is the foundation of the petitioners claim which are the petitioners lay strongly by calling the creator of the documents, namely, Bidhu Mukhi Devi wife of late Rajendra Nath Bondopadhaya was not called to depose in favour of the plaintiff-petitioners to prove the documents as it appears that she was alive. The petitioners also could not prove by adducing evidence to the writer of un-register deed of amalnama, therefore, the petitioners could not bear the burden to prove its own claim. On the other hand, the defendants claimed that the property was sold to them by registered deed on 19.02.1964 by Abdul Mazid who purchased land by registered deed No. 4705 dated 29.07.1961 who earlier purchase the land from the of the land being Bidhu Mukhi Devi and Radika was death.

Under the Evidence Act the plaintiff bears burden to prove its own case on the basis of his/her own documents and testimony but the plaintiff-petitioners in the instant case have failed to prove its own case.

The learned trial court after taking into consideration all the documents adduced by both the parties in support of their respective cases came to a conclusion to dismiss the suit filed by the present plaintiff-petitioners on the basis of the following findings:-

“ On examination of Amalnama it is found that it, is an unregistered deed. An unregistered deed must be proved by the deposition of executors of the deeds or by the witnesses of that deed. Since it was executed by Hamed Matobbar and Bidhu Mukhi Devi it should have proved by Bidhu Mukhi Devi as she is still alive as per the plaint. It could have proved by the witnesses /writers of that deed if they are alive. D.W. 3 has said that he knew the hand writing of Ananto Kumar and admitted that Anona Kumar wrote this Amalnama. Later on he said that he could not read this amolnama. The deposition of D.W. 3 is not acceptable as he cannot read. Moreover, it can be said that he is illiterate. Since this amalnama is not proved by anyone mentioned above and it is an unregistered deed. So it is presumed that this Amolnama is fabricated. Perused the document of Khazna and it is also presumed that this document is fabricated as the plaintiffs did not pay any khazna after 1357 (Banglashan).So, this issue is decided against the plaintiffs”.

The learned Appellate Court below also considered the record of this case, in particular, the documents filed by the respective parties and after applying judicial mind came to conclusion to disallow the appeal preferred by the plaintiff-petitioners on the basis of the following findings:-

“উপরোক্তভাবে, বাদী ও বিবাদীপক্ষ উপস্থাপিত দালিলীক ও মৌখিক পর্যালোচনায় অত্রালতের নিকট প্রমানিত হয় যে, নালিশী ভূমিত্র বাদীপক্ষের কোন স্বত্ব দখল নাই। বাদী পক্ষ আমলনামা মূল জমি দাবী করিলিও আইনগতভাৱে আমলনামা প্রমান করিত্র সক্ষম হন নাই। পক্ষান্তর বিবাদী পক্ষ দলিল সমূহ বালাম বহি আনিয়া প্রমান করিত্র সক্ষম হইয়াছ। স্থানীয় নিরপক্ষ সাক্ষী দ্বারা বিবাদীপক্ষের দখল সন্দ্বহাতীতভাৱে প্রমানিত হইয়াছ। এমতাবস্থায় বিজ্ঞ বিচারিক আদালত সঠিক সিদান্ত উপনীত হইয়া বাদীপক্ষের মোকদ্দমা খারিজ করিয়াছন। উহাত্র হস্তক্ষপ করার কোন কারন নাই। আপীল্যান্ট পক্ষ অত্র আপীলি কোন প্রতিকার পাইত্র পারি না।”

In view of the above concurrent decision of the courts below I am also of the view that the plaintiff-petitioners could not prove its own case by adducing and producing sufficient documents for any entitlement and possession upon the suit land measuring 0.66 acres, therefore, I do not consider that this is proper case for interference by this court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The interim order of direction to maintain statusquo in respect of possession and position of the suit land is hereby recalled and vacated.

The office is directed to communicate the judgment and order to the court concerned and send down the Lower Court Records immediately.