

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3786 OF 2011

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Salam Kazi and others

... Petitioners

-Versus-

Government of the Peoples Republic of Bangladesh and others

... Opposite parties

Mr. G.M. Azizur Rahman, Advocate

.... For the petitioner.

Ms. Farhana Afroze Runa, A.A.G.

.... For the opposite party Nos.1-3.

Mr. Md. Habibur Rahman, Advocate

.... For the opposite party No.4.

Heard and Judgment on 18.07.2023.

On an application under Section 115(1) of the Code of Criminal Procedure this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and decree dated 14.06.2011 passed by the learned Joint District Judge, 2nd Court, Rajbari in Title Appeal No.32 of 2009 and reversing those dated 11.02.2009 passed by the learned Senior Assistant Judge, Sadar, Rajbari in Title Suit No.106 of 2005 should not be set aside and or such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 1.18 acres land appertaining to Plot No.2130 alleging that 2.37 acres land of above plot No.2130 and other property belonged to Sharat Chandra Sarker and others who gave settlement of disputed 1.18 acres land to Lokman Kazi predecessor of the plaintiffs by an amalnama on 15 Boishakh 1354 B.S. and on receipt of rents from Lokman Kazi above land lord granted rent receipts. Due to non payment of rent of above land for the period of 1360 to 61 B.S. above landlord instituted Rent Suit No.515 of 1960 against Lokman Kazi and above suit was disposed of by execution of a solenama. Plaintiffs are in exclusive possession by above land by amicable partition with his other brothers and sisters. Above land has been erroneously recorded in the name of Government of Bangladesh in S.A. Khatian No.1.

The suit was contested by defendant Nos.1-3 and defendant No.4 by filing two separate sets of statements.

It was stated by defendant Nos.1-3 that disputed 1.18 acres land belonged to the Government of Bangladesh and the same was correctly recorded in relevant S.A. Khatian. The Government gave settlement of 69 decimals land to plaintiff No.3 and 50 decimals of land to defendant No.4 and they are in peaceful possession in above land. Plaintiffs did

not acquire the disputed land as heir of their father nor their father acquired above property by way of settlement from Sharat Chandra Sarker and others. The plaintiffs do not have any possession in 50 decimals land.

Defendant No.4 reiterated the claims and allegations made in the written statement of defendant Nos.1-3 and claims possession in 50 decimals land by taking settlement from the Government.

At trial plaintiffs examined 3 witnesses and documents produced and proved by plaintiffs were marked the Exhibit Nos.1 and 2. Defendant No.4 did not adduce any evidence in support of written statement.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree defendant Nos.1-3 as appellants preferred Civil Appeal No.32 of 2009 to the District Judge, Rajbari which was heard by the learned Joint District Judge, Second Court, Rajbari who allowed the appeal, set aside the judgment and decree of the Trial Court and dismissed the suit.

Being aggrieved by above judgment and decree of the Court of appeal below respondent Nos.1-3 as petitioners moved to this Court and obtained this Rule.

Mr. G.M. Azizur Rahman, learned Advocate for the petitioners submits that the plaintiffs produced and proved the sole compromise decree passed in the Rent Suit No.595 of 1960 by the learned Munsef of Goalonda and the same has been marked as Exhibit No.2 which clearly shows that the Lokman Kazi was the tenant under Shorot Chandra and others for disputed 1.18 acres of land. Above Lokman Kazi died leaving four sons and one daughter and plaintiffs are three sons of above Lokman Kazi and they are in exclusive possession in the disputed land pursuant to an amicable partition. The plaintiffs have succeeded to prove their continuous and peaceful in above disputed land by evidence of three competent witnesses. On consideration of above facts and circumstances of the case and legal evidence on record the learned Senior Assistant Judge rightly decreed the suit. But the learned Joint District Judge failed to appreciate the evidence on record properly and most illegally allowed the appeal and set aside above lawful judgment and decree of the Trial Court which is not tenable in law.

On the other hand Ms. Farhana Afroze Runa, learned Assistant Attorney General for opposite party Nos.1-3 submits that the petitioner could not adduce a single evidence oral or documentary in support of alleged settlement of 1.18 acres land from Sharat Chandra Sarker and

others and his father's possession in the same by legal evidence. The alleged compromise decree of Rent Suit No.595 of 1960 is a forged document which was never acted upon. The disputed land was not recorded in S.A. khatian in the name of the plaintiff's father on the basis of above settlement or compromise decree. The suit land was rightly recorded in the name of the Government. The learned Advocate further submits that 69 decimals land has been given settlement by the Government to plaintiff No.3 and plaintiffs are in possession in above land and remaining 50 decimals land has been given settlement to defendant No.4 who is possessing the same as well. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge has rightly allowed the appeal and set aside the flawed judgment and decree of the Trial Court which calls for interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined the pleading, evidence, impugned judgment and decree and other materials on record.

It is admitted that total 2.37 acres land of R.S. Plot No.2130 has been recorded in the name of the Government of Bangladesh in the relevant S.A. Khatian.

Plaintiffs claim 1.18 acres land of above Plot No.2130 on the basis of settlement from Sharat Chandra Sarker and others by a deed of amalnama on 15 Boishakh 1354 B.S. At trial plaintiffs examined 3 witnesses. PW2 Kinajuddin and PW3 Siddiquir Rahman gave evidence in support of possession of the disputed land. They did not speak anything about taking of bondobosto of 1.18 acres land by Shahid Kazi. Plaintiff No.2 gave evidence as PW1 and he reiterated the pliant case that his father obtained jomabondobosto on 15 Boishakh 1354 B.S. by dint of an amalnama. But no such amalnama was produced and proved at trial. No reason was assigned for non production of above important document. PW1 has claimed to have paid rent to the landlord on the basis of above settlement. But not a single piece of rent receipt was produced and proved at trial. The age of PW1 Shahid Kazi is only forty years. As such it is crystal clear that he does not any personnel knowledge about above settlement of the disputed land by his father.

It has been claimed that above landlord filed Rent Suit No.595 of 1960 against Lokman Kazi father of PW1 Shahid. But no plaint or written statement of above suit was produced and proved at trial. As far as the sole decree is concerned, above document shows the partial land of a plot was given settlement and in above solenama the settlement of the disputed land has been recognized. It is unusual that a

partial land of a Plot out of more than 50 plots of the same khatian given settlement and above settlement has been admitted in the sole decree of a rent suit.

In view of above materials on record the learned Joint District Judge has rightly held that above sole decree has been subsequently created and above document does not created any valid title in favour of Lokman Kazi.

This suit is also bad for defect of parties for not impleading Khaleque Kazi and Nur Jahan son and daughter of Lokman Kazi. It is well settled that by amicable settlement one cannot acquire title nor the person who is out of the possession loses his title.

On consideration of above facts and circumstances of the case and evidence on record I am of the view that the plaintiffs have failed to prove that Lokman Kazi obtained settlement of 1.18 acres of land by an amalnama on 15 Boishakh 1354 B.S. from Sharot Chandra Sarker and others by legal evidence and on correct appreciation of above materials on record the learned Joint District Judge has rightly allowed the appeal and set aside the flawed judgment and decree of trial Court which calls for no interference.

This Civil Revision is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is discharged.

However, there is no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER