

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 5057 of 2011

Md. Taher Ali and another petitioners

-Versus-

Government of Bangladesh and others

..... opposite parties

No one appears for the petitioners

Ms. Rahima Khatun, Deputy Attorney General

..... for opposite party 1

Mr. Mohiuddin M Kader, Advocate

..... for opposite parties 2, 8, 9-11, 15 and 16

Judgment on 03.06.2024

In this rule the opposite parties were called upon to show cause as to why the judgment and decree of the Additional District Judge, Jamalpur passed on 10.03.2011 in Title Appeal No. 55 of 2002 dismissing the appeal affirming the judgment and decree of the then Subordinate Judge, Court No. 2, Jamalpur passed on 27.05.2002 in Title Suit No. 13 of 1998 dismissing the suit should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The material facts for disposal of the rule, in brief, are that the land described in the schedule to the plaint originally belonged to Zamindar PK Thakur. The plaintiffs' predecessor Gaffar Sheikh took *pattan* of 21 bighas of land from the Zamindar at an yearly rent of taka 38 and 4 annas in 1350 BS and took possession therein. After

taking *pattan* he erected a house over the suit land and remained in possession of other land by growing crops. He paid rents and obtained *dakhilas* in respect of the suit land. During his possession and enjoyment he died leaving plaintiff 1 and his daughter as heirs. The abovesaid heirs have been owning and the possessing the suit land for more than 12 years. Defendant 4 without serving any notice upon them instituted Other Class Suit No. 105 of 1994 in the Court of Senior Assistant Judge, Jamalpur and obtained an *ex parte* decree on 17.04.1995 but he never owned and possessed the suit land. Although he obtained the decree long ago but did not mutate his name. The recent record of right has been prepared in the name of the defendants erroneously. The plaintiffs came to learn about the record of rights so prepared on 11.01.1988 and then instituted the suit for declaration of title with further prayer that judgment and decree dated 17.04.1995 passed in Title Suit No. 105 of 1994 is illegal, inoperative, fraudulent and null and void.

Defendant 3 contested the suit by filing written statement stating, *inter alia*, that Prodyut Kumar Thakur was the original owner of the suit land. He did never receive salami from Gaffar Sheikh and give the land *pattan* to him. The *pattan* is forged. Samsher Ali took it *pattan* from its original owner on 03.09.1945 through a registered *kabuliyat*. Shamsar Ali died leaving behind his son Jahur Ali and Abdul Hamid, the son of his deceased son Omed Ali. During his life

time Jahur Ali transferred a part of the land to his sons Abdur Rajjak and Abdul Haque and accordingly record of rights have been prepared in their names. In the additional written statement he further contended that Abdul Hamid and Jahur Ali took *pattan* 2.86 acres of land of plot 278. Abdul Hamid again got .49 acres in 1356 BS. This defendant is in possession in the suit plot by registered *kabala* and record of rights have been prepared in his name.

Defendant 4 also filed written statement contending that Gaffar Sheikh did never take *pattan* through *kabuliyat* from original owner Prodyut Kumar Thakur. Mohar Thakur was the original owner of the land of CS plot 272 and Golap Uddin predecessor of this defendant used to possess the same by paying rent through *dakhilas*. After the death of Golap Uddin his only son Siraj Uddin became the owner of the suit land. When ROR in respect of plot 361 was prepared erroneously in *khas* khatian 1 then he instituted Other Class Suit No. 105 of 1994 against the government and obtained a decree. He has been owing and possessing the suit land and as such the suit would be dismissed.

Another set of defendants 2(Kha)-2(Cha) filed written statement and stated that Shamsar Ali through registered *kabuliyat* dated 03.09.1945 took the land of CS plot 236 *pattan* from its owner Prodyut Kumar Thakur. He died leaving behind one son Jahur and Abdul Hamid the son of his deceased son Omed Ali as heirs and they

are in possession of the suit land. Abdul Hamid, Abdur Rajjak and Abdul Haque got the suit land and sold out a part of it and remained in possession of the rest. ROR was prepared in the name of Abdul Hamid and Jahur Ali correctly and they are paying rents to the concerned. The suit, therefore, would be dismissed.

Defendant 1, the government filed written statement stating facts that after preparation of CS khatian the land diluviated into the river and accordingly RS khatian was prepared showing the land as *khas*. The plaintiffs' predecessor did never take the land *pattan* from the Zamindar and possession of it was not handed over. In order to grab the land of government the plaintiff created the *kubuliyat* and *dakhilas* falsely and as such the suit would be dismissed.

On pleadings the trial Court framed 4 issues. In the trial, the plaintiffs examined 5 witnesses and produced their documents exhibits-1 and 2. On the other hand defendants examined 5 witnesses and their documents were exhibits-Ka-Cha. However, the trial Court dismissed the suit against which the plaintiffs preferred appeal before the District Judge, Jamalpur. The Additional District Judge, Jamalpur heard the appeal on transfer and dismissed it that prompted the petitioners to approach this Court with the revisional application upon which the rule has been issued.

No one appears for the petitioners although the matter has been appearing in the daily cause list for a couple of days with the name of

learned Advocate for the petitioners. This is a very old matter and as such it is taken up for disposal on merit upon hearing the learned Advocates for the opposite parties.

Ms. Rahima Khatun, learned Deputy Attorney General for opposite party 1 submits that both the Courts below found that defendant 4 has been able to prove his right and title over the suit land on the strength of judgment and decree passed in Other Class Suit No. 105 of 1994. The aforesaid findings of the Courts below is beyond the materials on record. She further submits that in the previous suit defendant 4 did not mention clearly the plot numbers and quantum of land. The suit land is the *khas* land of the government and record of right has been prepared correctly. In the premises above, although the suit has been dismissed but the findings and decisions about the ownership of the land in favour of defendant 4 cannot be sustained in law.

Mr. Mohiuddin M Kader, learned Advocate for opposite parties 2, 8, 9-11, 15 and 16 on the other hand opposes the rule and supports the judgment and decree passed by the Courts below. He submits that both the Courts below concurrently found that the plaintiffs failed to prove their title and possession in the suit land by producing evidence both oral and documentary. Such findings of the Courts below should not be interfered with by this Court in revision. The rule, therefore, having no merit would be discharged.

I have considered the submissions of the learned Deputy Attorney General, the learned Advocate for other opposite parties and gone through the judgments passed by the Courts below.

The suit was for declaration of title with further declaration that the judgment and decree passed in Other Class Suit No. 105 of 1994 is not binding upon them. Both the Courts below found that the plaintiffs failed to produce any scrap of paper to prove that their predecessor took the land *pattan* from original owners. Exhibit-1, the information about plots 272, 278 and 236 of CS khatian 2 show that the concerned authority failed to give any information about the record because volume of the khatian was torn. The plaintiffs also failed to produce any documentary evidence in support of their possession over the suit land. Moreover, the oral evidence of the plaintiffs' witnesses is not corroborative to find their possession in the disputed land. The Courts below correctly held that the plaintiffs failed to prove their title and possession in the suit land and consequently dismissed the suit. The findings of the Courts below that defendant 4 has been able to prove his title over the suit land on the strength of documents and decree passed in Other Class Suit No. 105 of 1994 was not challenged by defendant 1 government by filing an appeal before the appellate Court, even by filing a revision in this Court. Therefore, the government cannot raise objection against the findings of the Courts below in this revision which is filed by the plaintiffs. Moreover,

defendant government filed written statement in this suit but finally did not contest it by examining witness. Therefore, the submission of the learned Deputy Attorney General bears no substance. But it is true that in a suit for declaration of title a Court cannot declare title of any of the defendants.

It is well settled principle that concurrent findings of facts arrived at by the Courts below should not be interfered with by this Court in revision unless there is gross misreading and non consideration of the evidence and other materials on record for which the decision passed by the Courts below could have been otherwise. On perusal of the grounds taken in the revision, I do not find that any such ground has been taken. Moreover, I find no error in the impugned judgments passed by the Courts below which occasioned failure of justice.

Therefore, this rule bears no merit. Accordingly, it is discharged. However, there will no orders as to costs. The judgment and decree passed by the Courts below is hereby affirmed.

Communicate the judgment and send down the lower Court records.