

District: Magura

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

Present

**Mr. Justice Sardar Md. Rashed Jahangir**

**Civil Revision No. 1055 of 2012**

In the matter of :

The Government of the People's Republic of  
Bangladesh

... Petitioner

-Versus-

Md. Abdul Hakim Sheikh and others

...Opposite parties

Mr. Jahangir Ahmed Khan, D.A.G with  
Mr. Md. Habibur Rahman Sarker, A.A.G and  
Mr. Abdullahil Maruf Fahim, A.A.G

...For the petitioner

Mr. Syed Mohidul Kabir, Advocate

...For the opposite parties.

Heard on: 04.02.2025, 09.02.2025, 10.02.2025

**Judgment on: 17.03.2025**

Rule was issued, at the instance of defendant No. 1, on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the judgment and decree dated 14.03.2011 passed by the Joint District Judge, Second Court, Magura in Title Appeal No. 64 of 2009,

affirming those of dated 21.07.2009 passed by the Senior Assistant Judge, Magura Sadar, Magura in Title Suit No. 10 of 2004 decreeing the suit should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party Nos. 1-4 instituted Title Suit No. 10 of 2004 in the Court of Senior Assistant Judge, Magura Sadar, Magura for declaration of title and confirmation of possession.

Case of the plaint briefly are that upon an amicable partition among the C.S. recorded tenant the scheduled property appertaining to C.S khatian No. 208, plot No. 180 measuring an area of .20 decimals was owned by Moijuddin Sheikh and Felu Sheikh in equal shares. On 11.02.1956, Moijuddin Sheikh settled .10 decimals of land out of the scheduled property to Sonaullah Sheikh through a registered patta. Felu Sheikh, the owner of rest .10 decimals of land died intestate leaving only son, Bodoruddin Mollah, who on 29.10.1952 under a registered patta settled the property in respect of his father's share of .10 decimals of land of plot No. 180 to Sonaullah Sheikh. The further case of the plaintiffs is that although both the registered patta were given in

favour of Sohaullah Sheikh, but in fact Sonaullah Sheikh took settlement on behalf of the 4(four) sons of Paroshullah Sheikh, Sonaullah Sheikh and his brothers. The 4(four) brothers had been enjoyed the property equally with uninterrupted exclusive possession. Sonaullah Sheikh died intestate leaving behind the plaintiff Nos. 3 and 4. On amicable partition among the brothers of Sonaullah Sheikh and their heirs, the settled .10 decimals of land in the year 1956 was owned by plaintiff Nos. 1-4, and in the way, the plaintiffs have right, title and exclusive possession over the scheduled .10 decimals of land and they are enjoying the property uninterruptedly against all the concerned persons including the defendants. During preparation of S.A. khatian, the disputed .10 decimals of land was wrongly recorded in the name of Government in khash khatian beyond the knowledge of the plaintiffs and such wrong recording does not creat any obstacle in any manner in the way of their enjoyment. During the latest survey, the plaintiffs came to know about the aforesaid wrong recording, when the defendants in the first part of the month of Boishak, 1410 B.S. denied the title of plaintiffs, hence the suit.

On the other hand, the defendant No. 1 contested the suit by filing written statement denying all the material averments of the plaint contending, inter-alia that the C.S. recorded tenant surrendered their interest in favour of the rent receiver, the Zaminder, due to non-payment of rents and thereafter, the rent receiver kept the property in their khash without settling the same to anybody else. The Zaminder left for India after the partition and as such, during State Acquisition Survey, the disputed property was correctly recorded in the S.A. khatian and thereafter in the subsequent R.S. khatian. The further case of the defendants is that the registered deeds of patta dated 19.10.1952 and 11.02.1956 are false and fabricated and through those the plaintiffs did not acquire any right, title and possession upon the property. The suit is liable to be dismissed.

Learned Senior Assistant Judge, Magura Sadar, Magura on conclusion of hearing by his judgment and decree dated 21.07.2009 decreed the suit, on the findings that the plaintiffs-opposite parties have successfully proved their registered patta dated 11.02.1956.

Having been aggrieved by the aforesaid judgment and decree of learned Senior Assistant Judge, the defendant preferred Title Appeal No. 64 of 2009 before the District Judge, Magura. On transfer, the said appeal was heard by the Joint District Judge, Second Court, Magura and after hearing by his judgment and decree dated 14.03.2011 dismissed the appeal affirming those of the trial Court dated 21.07.2009.

On being aggrieved by and dissatisfied with the judgment and decree of the Joint District Judge, Second Court, Magura dated 14.03.2011, the defendant-appellant filed this revisional application and obtained the Rule.

Mr. Jahangir Ahmed Khan, learned Deputy Attorney General appearing for the petitioner makes his submission taking the Court into the fact that the claim of the plaintiffs is that they acquired the property through a registered patta dated 11.02.1956, he continues to submit that taking into consideration of the aforesaid facts together with the provisions of section 75A read with sections 17 and 31 of the State Acquisition and Tenancy Act, 1950, no person is entitled to sublet any land of his khash

possession in the area to which notification under section 17 and 31 having been published and any such sub-let made in contravention of sub-section(1) of section 75A, shall be null and void. He next submit that in view of the aforesaid provisions, the patta dated 11.02.1956 is null and void and having no legal effect. Thus, the plaintiffs cannot acquire any right, title over the scheduled property through the said registered patta.

On the other hand, Mr. Syed Mohidul Kabir, learned Advocate for the petitioners submits that the registered patta dated 11.02.1956 is an old document of more than 30 years, thus, it bears a presumption of correctness, unless the same has not been disproved otherwise. He next submits that under sections 66, 64 read with section 74 of the Evidence Act, 1872 the certified copy of a public document is admissible in the evidence. He further submits that since the deed in question of the year, 1956 is a registered deed, under section 114(c) of the Evidence Act, it is presumed that it was registered in due course. He next submits that the plaintiffs-opposite parties are in possession of the suit property since the year, 1956, thus they acquired a valid title over the years into the suit property. In support of the submission, he

cited the judgment of the case of Joynal Abedin and others Vs. Mafizur Rahman and others, reported in 44 DLR(AD) 162; the case of Mahmud Ali and another Vs. Bangladesh and others, reported in 6 BLD(AD) 56 and the case of Province of East Pakistan Vs. Muhammad Hossain Mia, reported in 16 DLR(SC) 667.

Heard learned Advocates of both the parties, perused the revisional application together with the lower Courts' record; having gone through the cited judgments and the relevant provisions of law.

It appears that the plaintiffs filed the suit for declaration of title and confirmation of possession regarding .10 decimals of land appertaining to C.S. khatian No. 208 corresponding to S.A. khatian No. 1, plot No. 180 of mouza- Griho Gram under Police Station- Magura. Contention of the plaintiffs is that the father of plaintiff Nos. 3 and 4, named Sonaullah Sheikh took settlement of .10 decimals of land from the C.S. recorded tenant Moijuddin Sheikh through registered patta dated 11.02.1956 and thereby, Sonaullah Sheikh together with his co-sharers were inducted into

the possession of the property. Further contention of the plaintiffs is that having acquired the title through the deed of patta in the year, 1956, they are possessing the property exclusively in an uninterrupted manner. During the S.A. survey, the property was wrongly recorded in the name of Government beyond their knowledge, thus, the suit is for declaration of title and confirmation of possession.

Learned Deputy Attorney General for the petitioner contended that under section 75A read with section 17(3) of the State Acquisition and Tenancy Act, 1950, any patta or document of subletting are strictly prohibited after the publication of notification in the official gazette i.e. after 16.12.1955, when the notification is officially published and since the alleged patta was executed on 11.02.1956 in violation of the provision as aforesaid, thus, the patta bears no legal implication whatsoever to confer any right, title upon the plaintiffs.

To consider the contention of learned Deputy Attorney General, let us first examine the provision of the State Acquisition



and Tenancy Act, 1950, particularly the provision specified in section 75A of the aforesaid Act.

The provision of section 75A was firstly introduced in the East Bengal State Acquisition and Tenancy Act by way of amendment in the year, 1954, the said provision is as follows:

*"75A (1) On and from the date of publication of a notification under sub section (3) of section 17 or under sub-section (1) of section 31, no person shall sub-let any land in his khash possession in the area to which such notification relates.*

*(2) Any subletting made in contravention of sub-section (1) shall be null and void.*

*(3) Nothing in sub-sections (1) and (2) shall apply to the sub-letting of any land purchased by a landlord in execution of a rent decree or surrender or abandoned under the provisions of the Bengal Tenancy Act, 1885, or the Sylhet Tenancy Act, 1936, when such land is sub-let at a rent not more than the rent which was payable for such land by the outgoing tenant."*

This section was amended in the year 1956 and after such amendment it is as follows:

*"75A (1) On and from the date of publication of a notification under sub-section (3) of section 17 or under sub-section (1) or section 31, no person shall sublet any land in his khash possession in the area to which such notification relates.*

*(2) Any subletting made in contravention of sub-section (1) shall be null and void and the land so sublet shall be forfeited to the Provincial Government.*

*(3) Any person may, at any time, apply to the Provincial Government for the acquisition of any of his khash lands under sub-section (2) of section 3 on payment of compensation at the rate prescribed for such land in section 39"*

On a bare reading of section 75A (as it was stood before the amendment) it appears that the provision having been incorporated declaring that if the initiative is taken by the Government to take up the preparation of new record of rights under section 17 and the assessment of compensation thereof

payable for the acquired interest under section 31 of the State Acquisition and Tenancy Act, 1950, then no person shall be entitled to sub-let any land of his khas possession in the area concerned and thereby giving notice to all concerned of such intention by way of notification in the official gazette, and such date of notification shall be the date of imposing prohibition. The provision of sub-section(1) of 75A put a complete embargo or prohibition on the sub-letting of any land in the khas possession of any rent receiver and therefore sub-letting or giving settlement of any property on or after the said date i.e. 16.12.1955 (the date of publication) is absolutely prohibited. In the language employed in sub-section (2), any subletting made in contravention of sub-section (1) shall be null and void and as such, through the registered deed of patta dated 11.02.1956, the executor of the deed having not been permitted to confer any title upon the plaintiffs. On the other hand, the plaintiffs did not acquire any valid title into the .10 decimals of land through the patta dated 11.02.1956.

This view of mine gets support from the case of the Province of East Pakistan Vs. Muhammad Hossain Mia, reported in 16 DLR(SC) 667 and the case of Alhaj Kutbuddin Ahmed Vs.

Abu Jafar Hridwan Uddin Ahmed and another, reported in 14 DLR(Dacca) 128.

It is pertinent to mention here that the substituted provisions of sub-section (2) of section 75A (through amendment of 1956) further provides that the land so sub-let shall be forfeited to the Government, meaning thereby if any sub-let or lease is given in contravention of the provision of sub-section (1), the said sublet shall be null and void and the land so sub-let shall be forfeited to the Government (The provision of forfeiture was not available before the amendment of 1956).

It is the case of the defendant-petitioner that the scheduled property is the khash land of Government, claiming that the C.S. recorded tenant surrendered their right to the rent receiver (Zaminder) due to non-payment of rent and the property was taken into khash possession of the rent receiver. Thereafter, the rent receiver left the country after the partition, thus, the property became khash. This contention of the Government does not have any leg to stand, because it is the specific case of the defendant that the C.S. recorded tenant surrendered their right in favour of

the rent receiver, but the defendant hopelessly failed to establish its said case by adducing any piece of evidence.

The D.W. 1 in his evidence categorically admitted that the defendant has no evidence to prove the aforesaid surrender, thus, the claim of defendant that the property having been recorded in the khash khatian of the Government due to surrender and thereafter abandonment of property by the rent receiver is not proved.

The alternate contention of the defendant is that since the property having been sub-let in contravention of the provision of sub-section (1) of section 75A of the State Acquisition and Tenancy Act, 1950, thus, in virtue of the provision of sub-section (2), the property so sub-let has been forfeited to the Government.

It is already found herein before that before the amendment in the year 1956 the provision of forfeiture was not available in the original provision of sub-section (2) of section 75A of the East Bengal State Acquisition and Tenancy Act. The provision of forfeiture introduced in the original provision in the year 1956. It is held, in the case of Province of East Pakistan Vs. Muhammad

Hossain Mia that the provision of section 75A is prospective, having no retrospective effect. Meaning thereby, if any subletting or lease is made in contravention of sub-section (1) before amendment, shall not be affected by the amended provision and is not liable to be forfeited in favour of the Government. The only implication of law is that the instrument of subletting or lease shall be null and void having no legal implication, but the right to property or title shall be intact and remains to the lessor or vendor as the case may be.

In the case in hand, the property was subletting through registered deed of patta dated 11.02.1956 before the amendment comes into existence, thus, by operation of law there is no scope for the Government to acquire the title of the property or in other words, the vesting of the property upon the Government as alleged by the defendant petitioner having no foot to stand.

Having gone through the evidences on record, it appears that the plaintiffs are in possession of the suit property at least since 11.02.1956 and their uninterrupted enjoyment and exclusive possession having been supported by the D.W. 1. Meaning

thereby, the plaintiffs by way of 'Acquisitive Prescription' or on the basis of adverse possession acquired a valid title over the aforesaid .10 decimals of land. The claim of acquisition of title of the plaintiffs by way of adverse possession having been specifically asserted in paragraph No. 4 of the plaint.

In view of the discussions above, this Court finds that although the plaintiffs having not been acquired any title through the registered deed of patta dated 11.02.1956, but they have acquired a valid title through the 'Acquisitive Prescription' upon the suit property.

In the premise above, this Court finds no reason to interfere into the decree of the Courts' below, since, the failure of justice having not been occasioned by the said judgment and decree.

Accordingly, the Rule is discharged.

No order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.