

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1234 of 2012

Naresh Rajbangshi being dead his legal

heirs 1(Ka) Liton Rajbangshi and others

..... Petitioners.

-Versus-

Anwara Begum and others

.....Opposite parties.

Mr. Ranjan Chakravorty, Advocate

.....For the petitioners.

Mr. Muhammad Tajul Islam, Advocate

.....For the Opposite parties

Heard and judgment on 3rd June, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 19.03.2012 passed by the Joint District Judge, 2nd Court, Manikganj in Title Appeal No. 116 of 2008 reversing those dated 30.07.2008 passed

by the Assistant Judge, Shibaloy, Manikganj in Title Suit No. 58 of 1998 dismissing the suit should not be set aside.

Opposite party Nos. 1-3 as plaintiff filed Title Suit No. 58 of 1998 before the Court of Assistant Judge, Shibaloy, Manikganj for declaration of title and recovery of khas possession and for declaration that suit land is not vested and non-resident property.

Plaint case in short, inter alia, that Amiya Kumar Goshwami was the original owner of the lands of C.S. khatian No. 309 and 525. He died leaving behind 3 sons namely Amullya Kumar, Amal Kumar and Atul Kumar. Amal Kumar got the suit land by amicable settlement comprising 0.10 acres of R.S. Plot No. 1377, 0.26 acres of plot No. 1376, 0.02 acres of R.S. plot No.1362 and 0.18 acres of R.S. plot No. 1375 in total 0.56 acres out of 0.95 acres out of 0.95 acres, Amal Kumar executed bainanama on 25.09.1976 for selling 0.56 acres of land in favour of the plaintiff namely Monirul Islam and ultimately executed registered Kabala dated 25.9.1973 in favour of the plaintiff namely Md. Monirul Islam. Shambu Rajbangshi took lease of 0.46 acres from R.S. plot No. 1376 and 1377 as vested property. The plaintiff raised objection against lease of Shambu Rajbangshi, as

such 0.24 acres of land was leased out to three sons of the plaintiff herein the defendant No. 6-8 and the rest 0.22 acres was leased out to the defendants. S. A. khatian No. 431 for 0.56 acres was recorded for Amal Kumar and Mutation khatian was recorded in Mutation Case No. 65/9-1/92-93. R.S. plot No. 1377 comprises 0.06 acres and R.S. Plot No. 1618 comprises 0.26 acres. The plaintiff permitted orally Shambu Charan to reside on 0.04 acres of R.S. plot No. 1377. Shambu took lease. The defendant No.1-3 instituted Other Suit No. 19 of 1990 against the plaintiff where the plaintiff filed written statement as the defendant No.9. The plaintiff is in possession of 0.10 acres of land of R.S. plot No. 1377 and 0.26 acres of land of R.S. plot No. 1376 in total 0.36 acres by purchase from Amal Goshwami. The suit land is not abandoned property. The suit land cannot be leased out to the defendants. 0.24 acres of land of suit land is not abandoned property. Shambu took lease .48 acres, which was not renewed. He is in permissive possession of 0.04 acres of land out of 0.10 acres of R.S. plot No. 1377.

Petitioner as defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that R.S.

recordee Amullya, Amal and Atul were owners of 0.10 acres land out of 0.20 acres of R.S. Plot No. 1377 under R.S. Khatian No. 531, 0.26 acres land of R.S. Plot No. 1376 under R.S. khatian No. 352 and 0.02 acres land of R.S. Plot No. 1362 and 0.18 acres land of R.S. Plot No. 1375 under R.S. khatian No.833. Amullya, Amal and Atul left for India in 1962. S.A. Khatian No. 352 was recorded for Drabamoyee for 0.10 acres land out of 0.02 acres of R.S. plot No. 1377. Land of R.S. plot No. 1376 is vacant land, as such Shambu Charan Rajbangshi constructed residence thereon. He took lease of the suit land in V.P. Case No. 15/She/85. Paid rent up to 1395 B.S. from 1372 B.S. She applied for renew of the lease land in 1376. Shah Mohammad Rezaul Islam and others raised objection and applied for lease as claiming possessor on 0.24 acres land of R.S. plot No. 1376/1377. The Tashilder submitted report and proposed for lease of 0.24 acres land in favour of Shah Mohammad Rezaul Islam and others. 0.24 acres land were lease out to Shah Mohammad Rezaul Islam and others and 0.22 acres land were leased out to Shambu Charan. Shambu Charan the defendants instituted Other Suit No. 90 of 1996, against the plaintiff, which was withdrawn. Shah Mohammad

Rezaul Islam and others did not claim about purchase of the suit land. The plaintiff is not owner of the suit by registered deed. Amal did not sell or execute bainanama and the alleged deed is forged. Defendants are not a permissive possessor on 0.04 acres land of R.S. Plot No. 1377. The suit is liable to be dismissed with cost.

Trial court framed the following issues:

- i) Whether the suit is maintainable to its present form?
- ii) Whether the suit is bad for defect of parties?
- iii) Whether the suit is barred by limitation?
- iv) Whether the plaintiff has got right title over Ka and Kha schedule land? Whether defendants are the permissive possessor in Kha schedule?
- v) What else reliefs plaintiff are entitled to get?

In order to prove their respective cases plaintiff adduced 3 witnesses and the defendant examined two witnesses.

By the judgment and decree dated 30.07.2008 the Assistant Judge dismissed the suit on contest.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 116 of 2008 before the Court of District Judge, Manikganj, which was heard on transfer by the Joint District Judge, 2nd Court, Manikganj, who by the impugned judgment and decree dated 19.03.2012 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiff.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Mr. Ranjan Chakraborty, the learned advocate appearing for the petitioner by filing a supplementary affidavit of annexing the plaint of suit being No. Orpito Shompotti Mamla No. 997 of 2013 filed before the Court of Orpito Shompotti Prottarpon Tribunal, Manikganj by the opposite party No.5 for releasing the suit property from 'ka' list and drawing my attention to the provision as laid down under section 13 of the Orpito Shompotti Prottarpon Ain, 2001 submits that since the property is listed in the 'Kha' schedule as abandoned and non-resident property and for releasing the same one of the plaintiff has already filed a suit before the Orpito Shompotti Prottarpon Tribunal, Manikganj, as per section

13 of the Orpito Shompotti Protorpon Ain, 2001, the instant Civil Revision as well as the decree passed in Title Suit No. 58 of 1998 together with Title Appeal No. 116 of 2008 are all been abated by operation of law. He finally prays that since the decree passed in the instant case as well as the whole proceedings pending before the civil court is barred as well as been abated pursuant to the provision as laid down under section 13 of the Orpito Shompotti Prottarpon Ain, 2001 the instant rule may be disposed of accordingly.

Mr. Muhammad Tajul Islam, the learned advocate appearing for the opposite party, on the other hand by filing supplementary affidavit on behalf of the opposite parties submits that by the judgment and decree dated 19.03.2012 appellate court being the competent civil court found and declared that property in question was not been there in the census list as well as since not been recorded in the R.S. khatian as government khas land, it is not vested and non-resident property and the list published through Gazette Notification thereafter on 25.04.2012 upon listing the property in question in the list for vested and abandoned property is illegal pursuant to the provision as laid down under

section 6(Ka) of the Orpito Shompotti Prottarpon Ain, 2001. When the listing of the suit land as vested and abandoned property is illegal as well as without jurisdiction the instant rule, which was obtained subsequently on 13.05.2012 after the Gazette Notification through which a decree of a competent civil court has been challenged, cannot be said to be abated as per section 13 of the said Ain. The learned advocate further submits that appellate court being the last court of fact after assessing all the relevant documents of the parties clearly found that defendant could not prove that Amal Kumar Goshwami and others left this country during the Indo Pak war 1965 as well as property was declared as enemy property and listed in the census list, consequently acquiring the property by Shambu Charan Rajbongshi by way of V.P. Case No. 15/শিবা/85 through settlement in the year 1988 is illegal and accordingly decreed the suit in favour of the plaintiffs. Since the said decree contains no misreading or non-reading of the evidence, the judgment and decree passed by the appellate court may be upheld and rule may be discharged.

Heard the learned Advocate and perused the Lower Court Records and the impugned judgment.

Property admittedly was belonged to Amiya Kumar Goshwami, who died leaving behind three sons Amullya Kumar, Amal Kumar and Atul Kumar. On an amicable settlement 0.95 decimals of land from different plots were obtained by Amal Kumar Goshwami, who sold 0.56 decimals of land to the plaintiff by way of deed of agreement dated 22nd Srabon, 1379 B.S. and subsequently sale deed was registered on 28.09.1973. The said property was subsequently been recorded in the S.A. khatian in the plaintiffs predecessor name. Subsequently by way of Mutation Case No. 65/9-1/92-93 plaintiff mutated their name on the said 0.56 acres of land and remaining in possession by paying rents. During the R.S. operation it was correctly been recorded in the name of the plaintiffs. Defendants father Shambu Charan Rajbongshi since became landless and he on the permission taken from the plaintiffs was allowed to stay orally on .4 decimals of land. Defendants since try to get lease from the government on treating the property as a vested and non-resident property, Plaintiffs was compelled to file the suit.

In the written statement defendant try to say that admittedly Amullya Kumar, Amal Kumar and Atul Kumar 3 brothers were

the owner and possessor of the suit property and S.A. record was correctly been recorded into their names. These three brothers never transferred the property to the plaintiffs as claimed by them but they left this country before 1965 and permanently resided in India and the property when was found abandoned, defendants father Shambu Charan Rajbongshi started living there by erecting house on plot No. 1376-1377 and applied for getting lease as the property was vested and non-resident property in V.P. Case No. 15/She/85 and got lease and remaining in possession since 1372 B.S. Amal Kumar Goshwami never sold .56 decimals of land to the plaintiffs but plaintiffs filed this false suit.

Going through the record it appears that although the trial court dismissed the suit on contest but the appellate court upon assessing the evidence on records found that defendant could not produce any census list showing that the property in question was at all been recorded as vested and abandoned property. Moreover the recording of S.A. khatian also proved that the original owner, three brothers Amullya Kumar Goshwami and others since were recorded in the S.A. khatian they were very much present after 1965 in this country. Accordingly the question of listing the

property as vested and non-resident property does not arise at all as well as not been proved. Moreover the recording of R.S. khatian into the name of plaintiffs instead of recording the same in the name of government proved that property was never been a vested and non-resident property as well as possessed by the government. Accordingly the appellate court gave a declaration that:

"নালিশী আরজীর ক ও গ তপশিল বর্ণিত জমিতে বাদীগনের স্বত্ব সাব্যস্তক্রমে ক তপশিল বর্ণিত জমিতে তাহাদের দখল স্থিরতর করা হইল এবং ক ও খ তপশিল বর্ণিত জমি অর্পিত ও অনিবাসী সম্পত্তি নহে মর্মে ঘোষিত হইল।"

That judgment was passed on 19.03.2012 by the Joint District Judge, 2nd Court, Manikganj. Although the said judgment is challenged in the instant rule upon filing the Civil Revision No. 1234 of 2012 on swearing an affidavit on 08.05.2012 and the petitioner submit while placing the rule that the suit stand abated as per section 13 of the Orpito Shompotti Protorpon Ain, 2001 and it has been opposed by the opposite parties. Now I like to see the relevant provision of law.

Section 6 of the Orpito Shompotti Prottarpon Ain, 2001 disclosed which property cannot be enlisted as vested and non-resident property. Section 6 (Ka) of the Orpito Shompotti Prottarpon Ain, 2001 disclosed that:

"৬। (প্রত্যর্পণযোগ্য সম্পত্তির তালিকায়) নিম্নবর্ণিত সম্পত্তি
অন্তর্ভুক্ত করা যাইবে না, যথাঃ-

(ক) কোন সম্পত্তি অর্পিত সম্পত্তি নহে মর্মে এই আইন প্রবর্তনের
পূর্বে যথাযথ আদালত চূড়ান্ত সিদ্ধান্ত প্রদান করিয়া থাকিলে সেই
সম্পত্তি।"

Upon perusal of this provision it is apparently crystal clear that no property can be enlisted or declared as abandoned and non-resident property, which has already been declared by a competent civil court as not been vested property before enactment of this law i.e. Orpito Shompotti Prottarpon Ain, 2001 vide Gazette Notification being No. 31.00.0000.040.53.005.2012-271 on 25.04.2012 a list was published, publishing the gazette of listing the property in 'Ka' and 'Kha' schedule as vested and non-resident property through which property in question was enlisted as vested and non-resident property. But by the impugned

judgment the learned Joint District Judge said on considering the evidences adduced by the defendant that property was never been listed in the census list as vested and non-resident property ever before at least till 25.04.2012 from the date on which it has been listed as vested and non-resident property. On the date of publication of this gazette on 25.04.2012 of listing the property as vested and non-resident property by dint of provision as laid down under section 6(Ka) of the Orpito Shompotti Protorpon Ain, 2001 since the property was declared by a competent civil court as not a vested and non-resident property, this enlistment apparently is illegal and without jurisdiction. Although this is a domain of the Tribunal to adjudicate the same but pursuant to provision as laid down under section 13 of the Orpito Shompotti Prottarpon Ain, 2001 as been argued by the petitioner that this suit became abated as a whole is no legs to stand. Moreover upon perusal of the impugned judgment it is apparent that in the absence of any census list as well as recording of S.A. khatian in the name of the plaintiffs predecessor together with recording of R.S. khatian in the name of the plaintiffs since been found by the appellate court are very much correct and the plaintiff has got valid title over the

suit land by dint of a registered sale deed obtained from the S.A. recorded tenant and he got a legal possession of the suit land accordingly decree passed by the appellate court contains no illegality, which contains any causes for interference by this court.

I thus find no merit in the rule.

In the result, the Rule is discharged and the judgment and decree passed by the appellate court is hereby affirmed and the suit is decreed in favour of the plaintiff opposite parties.

The order of stay granted earlier is hereby recalled and vacated.

Send down the lower court records and communicate the judgment at once.