

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 1819 of 2012

Jitendra Nath Sana being dead his heirs:

1(a) Jagadish Chandra Sana and others

.....petitioners

-Versus-

Dabiruddin Sarder and others

.....opposite parties

Mr. Tapan Kumar Bepary with

Mr. Bulbul Das and

Mr. Tarak Chandra Roy, Advocates

.....for the petitioners

Mr. Ahmed Nowshad Jamil with

Mr. H.M. Borhan,

Ms. Fatima Nasrin and

Ms. Sayeda Soukat Ara, Advocates

.....for the opposite parties

**Heard on: 13.11.2025, 16.11.2025,
18.11.2025 and 19.11.2025**

Judgment on: 30.11.2025

In the instant revision Rule was issued on 27.05.2012 calling upon the opposite parties 1-7 to show cause as to why the impugned judgment and decree dated 13.02.2012 passed by the learned Special District Judge and Jananirapatta Bignakari Apparadh Daman Tribunal, Khulna in Title Appeal No. 155 of 2003 reversing the judgment and decree dated 24.04.2003 passed by the learned Joint District Judge, 4th Court, Khulna in Title Suit No. 83 of 1996 should not be set

aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

Petitioners as plaintiff filed Title Suit Number 83 of 1996 in the Court of Joint District Judge, 4th Court, Khulna on 05.08.1996 for declaration of title.

The case of the plaintiffs in short is that the landlord settled the suit land measuring an area of 36.23 acres appertaining to C.S. khatians 50, 66 and 67 in favour of the plaintiffs by receiving a lump sum premium of taka nine thousand with a fixation of taka 260 at an annual rental in the year 1354 B.S. and delivered possession. Plaintiffs have been maintaining title and possession in the suit land by erecting homestead, planting trees, digging ponds and through cultivation. The landlord that is the predecessor of the plaintiffs managed to prepare the S.A. record in their names despite the settlement for which plaintiffs filed Title Suit Number 464 of 1969 in the court of the then Subordinate Judge, Khulna and obtained a compromise decree on 16.02.1971. Subsequently defendants claimed their title through Title Suit Numbers 558 of 1962 and 459 of 1969 for which plaintiffs filed Title Suit Numbers 245, 246 and 247 in the year 1975. It is further asserted that the defendants also

filed Title Suit Numbers 147, 171 and 241 in the year 1974 against the plaintiffs challenging their title. All those suits were tried and heard analogously and dismissed by the trial Court. Defendants then preferred Title Appeal Numbers 23, 24 and 25 in 1976 against that impugned judgment and decree passed by the trial Court. Plaintiffs also filed a cross appeal in that appeal. The appellate Court did not pass any finding on title but dismissed all those appeals and cross objection. It is also the case of the plaintiffs that all those documents of the plaintiffs were lying with the custody of their Advocate and subsequently those documents were not found out. Plaintiffs have been maintaining title and possession in the suit land and defendants denied their title on 9th Shraban 1403 B.S. for which the cause of action of this suit arose. Hence the suit was filed.

The opposite parties as defendant appeared and contested the suit by filing written statement denying all material statements made in the plaint contending *inter alia* that the land appertaining to State Acquisition khatian 14 was sold in Certificate Case Number 2034/1969-70 and defendants purchased that auction. They have mutated their names accordingly. The land of S.A. khatian 840 was also sold in

auction in Certificate Case Number 2133 of 1963-64 and the auction was purchased by defendants on 08.04.1964 and got the writ of delivery of possession on 06.06.1965. State Acquisition khatian 691 also was sold in Certificate Case Number 580-R/1959-60 which was purchased by the defendants as well and they got possession on 02.07.1961 on the basis of writ of delivery of possession. By virtue of the above mentioned three certificate cases defendants acquired title and possession in the suit land. They have been in possession upon payment of rent and plaintiffs have got no title and possession in the same and the suit being false is liable to be dismissed with cost.

The trial Court framed as many as five issues and in course of trial plaintiffs examined two witnesses and defendants also examined four witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

The trial court upon perusal of the pleadings and evidence and hearing the parties decreed the suit by judgment and decree dated 24.04.2003.

As against the same defendants preferred Title Appeal 155 of 2003 in the Court of Special District Judge and Judge

(District Judge), Jananirapotta Bighnakari Aparadh Daman Tribunal, Khulna who heard the appeal and was pleased to allow the same and dismissed the suit by judgment and decree dated 13.02.2012.

Being aggrieved by and dissatisfied with the judgment passed by the appellate Court plaintiffs came before this Court with this revision and obtained the instant Rule on 27.05.2012.

Mr. Tapan Kumar Bepary, learned Advocate appearing on behalf of the petitioners submits that the trial Court upon proper consideration of material evidence has correctly found the title and possession in favour of the plaintiffs but the appellate Court could not reverse that particular finding arrived at by the trial Court thus the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice. He submits that the acquisition of title by virtue of Title Suit Number 464 of 1969 is evidently proved in evidence and reliance upon such decree by the trial Court was just and proper but the appellate Court failed to appreciate this particular aspect of the case and wrongly dismissed the suit which cannot be sustained in accordance with law. He then submits that claim of defendants through auction purchase is absolutely wrong and they have no definite

claim on title because at one time they are claiming through settlement but subsequently they are claiming through auction purchase which cannot be sustained in accordance with law because no one is permitted to play hot and cold or to approbate and reprobate in the same breath in order to establish their claim. He also submits that the trial Court upon perusal of the pleadings and following the issues passed the judgment in accordance with law but the appellate Court could not reverse all those material findings of the trial Court in accordance with the provisions laid down in order 41 rule 31 of the Code of Civil Procedure and the impugned judgment being not a proper judgment of reversal is liable to be set aside outright. He emphasized that the auction claimed by defendant was not formally proved in evidence and such claim on auction cannot be sustained in accordance with law and the decree upon which plaintiffs claim their title cannot be assailed by such fraudulent auction and the appellate Court failed to appreciate this aspect of the case and wrongly dismissed the suit by which justice came undone and this impugned judgment being misconceived and perverse cannot be sustained in accordance with law.

On the other hand Mr. Ahmed Nowshad Jamil, learned Advocate appearing on behalf of the opposite parties submits that the appellate Court upon proper perusal of the pleadings and evidence on record correctly reversed the judgment passed by the trial Court which cannot be interfered with by this Court in revision. He submits that the judgment of the appellate Court since being passed following the provision of Order 41 Rule 31 of the Code of Civil Procedure is immune from interference being a proper judgment of reversal and there is nothing to show in the impugned judgment that the appellate Court committed any error of law occasioning failure of justice or the appellate Court misread the material evidence or misconstrued the document of either parties thus the judgment passed by the appellate Court is just and proper and cannot be interfered with in this revision. He also submits that the finding arrived at by the appellate Court is independent and the appellate Court was judicious while reversing the finding arrived at by the trial Court and as such the appellate Court committed no error of law resulting in an error in such decree occasioning failure of justice. He very emphatically submits that the trial Court failed to consider that the suit land is evidently unspecified and unidentifiable as well

and thus this suit for declaration of title being not maintainable on ground of non-specification is liable to be dismissed and the judgment passed by the appellate Court is correct in law which may be maintained by this Court.

Heard the learned Advocates for both sides and gone through the judgment of the courts below and perused the materials on record as well as the revisional application with the documents appended thereto.

This is a suit for declaration of title in respect of 36.23 acres of land appertaining to C.S. records 50, 66, 67 corresponding to S.A. records 840, 691, 14. Plaintiffs claim that the landlord gave settlement of the suit land in around 1947 upon receiving a lump sum premium of taka 9,000/- (nine thousand) with a fixation of an annual rental of taka 260/- and till then plaintiffs have been maintaining title and possession in the suit land upon constructing homestead and by planting trees, digging ponds and through cultivation. Plaintiffs further claim that S.A. records were prepared in the names of the landlord for which they filed Title Suit Number 464 of 1969 against the landlord for declaration of title and the suit was decreed on compromise by order number 13 dated 16.02.1971 Exhibit-3. The petition of compromise was filed

on 17.12.1969 and the decree containing the same land as claimed in the present suit was signed on 23.02.1971 which is evident from Exhibit-3(Ka). Plaintiffs also claim that they filed Title Suit Numbers 201, 202, 203 in 1973 which were renumbered as 245, 246, 247 all of 1975 against the defendants challenging their Certificate Cases 2034/1969-70, 2133/1963-64, 580/R/1959-60 by which defendants claimed title in the suit land. On the other hand defendants filed Title Suit Numbers 147 of 1974, 171 of 1974, 241 of 1974 challenging the compromise decree passed in Title Suit Number 464 of 1969. All the above six suits were tried analogously and dismissed by the trial Court by judgment and decree dated 31.12.1975 Exhibit-4 series. As against the same defendants preferred Title Appeal Numbers 23 of 1976, 24 of 1976, 25 of 1976 before the District Judge, Khulna in which plaintiffs also filed cross objection and all of those were heard together and both appeals and objection were dismissed by judgment and decree dated 23.02.1977 Exhibit-5 series on the finding that the present plaintiffs could not adduce any positive evidence to show any material irregularity in publishing and conducting the sale and the suits filed by the present defendants challenging the compromise decree were

not maintainable without declaration of title being third parties to the decree.

The claim of the plaintiffs is that they took settlement of 36.23 acres of land from the landlord in around 1947. Plaintiffs did not produce any document in support of their claiming title by virtue of the settlement. Plaintiffs explained away in their plaint that the documents which they filed in earlier suits were withdrawn by their advocate but could not be found out despite search. But plaintiffs did not make out any statement that they lodged any general diary with any police station for such tremendous loss in respect of such a huge quantum of land. S.A. records admittedly were also prepared in the name of the landlord. Therefore the foundation of the compromise decree Exhibit-3 is unfounded in evidence since no document whatsoever was filed by the plaintiffs. It appears from Exhibit-3 series that Title Suit 464 of 1969 was filed on 16.07.1969 where an application for compromise was filed on 17.12.1969 and the suit was decreed on compromise by order 13 dated 16.02.1971. The decree shows that in the suit defendant 2 was Nepal Chandra Roy Choudhury but the compromise was signed by one Nepal Chandra Mukhapadhya which generates doubt. The defendants were not parties to the

compromise decree passed in Title Suit 464 of 1969. So that decree is not binding upon the defendants. The decree Exhibit-3 is binding only upon the landlord and the plaintiffs since were not parties to the certificate cases as well they were not competent to challenge the auctions under Sections 36 and 37 of the Public Demands Recovery Act. The sale certificates and writs of delivery of possession of the 3 certificate cases were produced before the court by DW 1 and no objection was raised against those documents and those were marked in evidence as Exhibits-Uma series. It appears from reading of Exhibit-Uma series that the disputed 3 holdings were sold in auction by certificate cases and Exhibit-5 which was the judgment passed in the earlier appeals is the material evidence affecting the merit of the case. Since auction was held before the compromise decree passed on 16.02.1971 and the superior landlords did not take any step challenging those certificate cases plaintiffs did not acquire any right, title and interest in the suit land. Exhibit-Ga series show that defendants mutated their names and they have been maintaining possession upon payment of rent as evident from Exhibit-Ka series. The order dated 20.07.1994 passed in Mutation Appeal Case Number 87 of 1992 (Mutation) Exhibit-Jha(1) shows that the landlord

being appellant failed in the appeal and mutation in favour of defendants was maintained. The further attempt by the landlord through Miscellaneous Case Number 195 of 1994 also failed on 03.02.1996 which is apparent from Exhibit-Jha(2). Exhibit-Eno shows that defendants took loan of take 3 lac 40 thousand from the Krishi Bank on 10.02.1998 to set up a shrimp enclosure. Exhibits-Jha series read with Exhibits-Ka series and Ga series show that it was not the plaintiffs but the landlords were contesting the mutation cases against the defendants which means that the compromise decree Exhibit-3 was never acted upon and the same is fraudulent. Therefore the finding of the trial Court that plaintiffs acquired title by Exhibit-3 is apparently wrong.

Law is settled that Exhibit-ka series are strong documents of possession and may be used as collateral evidence of title. Trial Court found that PW 1 is well supported by PW 2 on question of possession of 36.23 acres of land. Appellate Court reversed the finding on the observation that on question of possession PW 1 was not supported by PW 2 because PW 2 came from long distant area. On the other hand DW 1 on question of possession is supported by DW 2, 3, 4 which is backed up by Exhibits-Ka series, Ga series, Uma

series, Jha series. Therefore the finding of the trial Court that plaintiffs have title and possession in the suit land has no basis.

Another important aspect of this case is whether the suit land measuring an area of 36.23 acres is specified and identifiable. The same land of Exhibit-3(ka) has been introduced in the present suit. Exhibits-1 series, 2 series, Kha(2), Ga(2) clearly show that some of the plots such as plots 1030, 1038 are not in any of the holdings and some of the plots for example 1058, 1037 contain 0.05 acres and 0.16 acres of land but plaintiffs claim 1.03 acres and 3.05 acres out of those plots respectively. Thus it appears that the instant suit is not at all maintainable under Section 51(a) read with Order 7 Rule 3 and Order 20 Rule 9 of the Code of Civil Procedure and Exhibit-3 was obtained by practicing fraud upon Court. Law is also settled that it is the duty of the Court to entomb the suit the moment fraud comes to its notice.

Therefore I find no merit in this Rule.

Accordingly the Rule is discharged.

The judgment and decree passed by the appellate Court is hereby upheld and the judgment and decree passed by the trial Court is set aside.

The order of *status quo* passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

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