

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No. 4007 of 2012*

*Md. Joynal Sardar being dead his legal  
heirs Md. Lokman Hossain Sardar and  
others.*

*.....Petitioners.*

*-Versus-*

*Government of Bangladesh and others*

*.....Opposite parties.*

*Mr. Md. Afzal H. Khan, adv. With*

*Mr. Fokhra Jahan Mehedi, adv*

*.....For the petitioners.*

*Mr. Ensan Uddin Sheikh, D.A.G with*

*Mrs. Shovana Banu, A.A.G with*

*Mr. Mohammad Shafayet Zamil, A.A.G.*

*.....For the opposite parties.*

*Heard on 04.06.2024 and*

*Judgment on 7<sup>th</sup> July 2024.*

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 08.11.2012 passed by the Joint District Judge, 2<sup>nd</sup> Court, Rajbari in Title Appeal No. 14 of 2011, reversing those dated 27.10.2010

passed by the Assistant Judge, Pangsha, Rajbari in Title Suit No. 136 of 2006 decreeing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for permanent injunction against the opposite parties.

Plaint case in short inter alia is that the suit land originally belonged to Profulla Kumar Chattopadaya and Hemonto Kumar Chattapadaya with equal share namely each of them was owner of 08 annas share. Government put the suit land in auction for non payment of rents vide Certificate Case No. 1660 for the year 1964-65. Plaintiff purchased the auction and took possession of the suit land after getting Boinanama. Further case of the plaintiff is that in Mutation case No. IX-P-I-12/95-96/IX-P-9/95-96 the petitioner got his name mutated. Plaintiff becoming the owner of R.S. Plot No. 257 covering 23 decimals of land and R.S. Plot No. 258 covering 20 decimals of land total 43 decimals of land while plaintiff petitioner was in possession, he constructed one 04 rooms building and 06 tin sheds as guest room, kitchen, godown etc. Thus he has been possessing the suit land for over 40 years back. Further case of the plaintiff is that on 09.11.2006 while plaintiff petitioner went to pay his rent in the office of opposite party No. 1 at that time opposite party No. 1 refused to take rent. Under the aforesaid circumstances, he filed the suit with a prayer for

permanent injunction against the defendant opposite parties so that they can not disturb the peaceful possession of the plaintiff.

Opposite party as defendants contested the suit by filing written statement denying the plaint case alleging, inter alia, that property was never been sold in auction as praying by plaintiff rather the property was acquisition in L.A. Case No. 99/61-62 long before the alleged auction sale and Water Development Board is in possession into the suit land. Plaintiff case is false and liable to be dismissed with cost.

By the judgment and decree dated 27.10.2010 Trial Court decreed the suit on contest.

Challenging the said judgment and decree, defendant preferred Title Appeal No. 14 of 2011 before the Court of District Judge, Rajbari, which was heard on transfer by the Joint District Judge, 2<sup>nd</sup> Court, Rajbari, who by the impugned judgment and decree dated 08.11.2012 allowed the appeal and after reversing the judgment of the trial court dismissed the suit.

Challenging the said judgment and decree, plaintiff obtained the instant rule.

Mr. Afzal H. Khan, the learned advocate appearing for the petitioner drawing my attention to the evidence adduced by the

defendants and the findings of the trial court submits that in a suit for permanent injunction, the main issue is to be decided that who is in possession into the suit property and in the instant suit D.W.1 has clearly admits that plaintiff are in possession into the suit property and as such Trial Court relying upon the said evidence decreed the suit and granted injunction in favour of the plaintiff but the appellate court totally failed to appreciate this observation as well as reversing the said findings most illegally held that plaintiff deeds of purchase by way of auction sale is not been proved by bringing the original record of the said certificate sale and as such plaintiff title was not been proved in this suit and accordingly he dismissed the suit most illegally. He finally prays that the impugned judgment is thus not sustainable in law, which is liable to be set aside and rule may be made absolute.

On the other hand, Mr. Md. Ensan Uddin Sheikh, the learned Deputy Attorney General together with Mr. Mohammad Shafayet Zamil, the learned Assistant Attorney General appearing for the opposite party government submits that the property in question was acquired by the government long before the alleged story of plaintiff, obtained to have purchased the suit property in auction sale. Moreover, plaintiff totally failed to prove by bringing any records that property was at all been ever sold in auction

rather Appellate Court correctly found that document as being produced by the defendants proved that property was been acquired by the government for Water Development Board and plaintiff's title not been established and accordingly rightly dismissed the suit upon allowing the appeal. Learned Deputy Attorney General further bringing a photostat copy of the volume of the Certificate Office submits that the case number as being shown through which plaintiffs is claiming to have purchased the suit land in auction is no longer there in the volume and as such all the documents and the claim of plaintiffs are false and concocted. He finally prays that since the rule contains no merits, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a suit for permanent injunction. Plaintiff claimed that suit property was belonged to 02(two) brothers namely Profulla Kumar Chattapadaya and Hemonto Kumar Chattapadaya in equal 08 annas share. On failing to pay the rents, property was put on auction by the government in Certificate Case No. 1660 of the year 1964-65 and plaintiff purchased the said property in auction and upon mutating his name in Mutation Case No. IX-P-I-12/95-96/ IX-P-9/95-96, his name was correctly been recorded in

the R.S. khatian and government has accepted rent. Since the defendants threatened to dispossess the plaintiff, suit was instituted. Defendants objected the said suit by saying that property was not been sold in auction rather government acquired the property in L.A. Case No. 99/61-62 and handover the possession to Water Development Board. Plaintiff's story is all false and concocted.

In view of the respective case, both the parties adduced evidences.

Exhibit No. 1 is the document to show that property was belonged to Profulla Kumar Chattapadaya and Hemonto Kumar Chattapdaya. Exhibit No. 2 is the proof of Certificate sale held under Rule 74 of PDR Act. The original document of the court of P.R. Case No. 1660 of 1964/65. Exhibit No. 3 is the document to prove the handing over the possession to Joynal Abedin Sardar (plaintiff) in said Certificate Case by the court. All these are the original documents as being submitted before the court. Exhibit No. 4 is the rent receipt of showing the auction of payment rent by the plaintiff Joynal Abedin Sardar to the government.

By this way, plaintiff tried to establish the fact that he purchased the property in auction in a Certificate Case being No. 1660 of 1964-65. There is nothing on record to show that these

documents are forged or being declared as concocted and void by any competent Civil Court. Thereby by these documents obviously plaintiff acquired valid title over the suit land by way of a public document Exhibit Nos. 2 and 3.

Moreover, D.W.1 Assistant Land Officer of Ratandia Union Land Office while admits in his cross-examination that

‘এস এ পর্চার ফটোকপিতে না: জমি এল এ কেস মূলে অধিগ্রহণ করা হয়েছে বা ৯২(ক) ধারা মোতাবেক খাস করা হয়েছে সেটা উল্লেখ নেই। না: জমির হাল রেকর্ডের attested পর্চার ফটোকপিতে হাল ২৪৭ দাগে জমি ৩৫ শতাংশ এবং জমির শ্রেণী বাড়ী হিসাবে লেখা আছে। সাবেক ২৫৭ ও ২৫৮ দাগের জমিতে বাড়ী আছে, টিনের ঘর আছে এবং অল্প গাছপালা আছে। এই বাড়ীটা সরকার পক্ষ ভোগদখল করে না।’

In the plaint, plaintiff shown the schedule as of the suit land as below-

ক তপশীল (দাবীর ভূমি)

জেলা রাজবাড়ী, থানা-পাংশার অন্তর্গত মৌজা রতনদিয়া মধ্যে

এস,এ ৪১৪ নং খতিয়ান ভুক্ত:-

আর,এস ২৫৭ নং দাগে ১ আনায় ২৩ শতাংশ

আর, এস ২৫৮ নং দাগে ১ আনায় ২০ শতাংশ

.৪৩ শতাংশ। (দাবীকৃত)

When the plaintiff claimed the entire suit land measuring 43 decimals of land from R.S. Plot No. 257-258 as described in the plaint and the D.W.1 admits the possession of the plaintiff in the said land with having his dwelling house thereon and further admits that this property was not been owned and possessed by the defendants, Trial Court relying upon all these admission in the suit for permanent injunction passed a decree in favour of the plaintiff rightly.

This is a suit for permanent injunction where possession is the main factor to decide, title of the suit land may come incidentally into the suit but the Appellate Court without at all considering the admission of the D.W.1 as stated above as well as finding by the trial court most arbitrarily held that plaintiff's title was not been proved on bringing the original volume of the said certificate case and dismissed the suit most illegally. When the plaintiff's title of documents of purchasing the suit property in auction is on possession through court, not been found or held illegal or void or concocted by any competent court, plaintiff's possession have been admitted by the defendants into the suit land, the judgment of the Appellate Court of dismissing the suit appears to be passed illegally and not sustainable in law, which is liable to be set aside. I find substance and merits in the rule.



According the Rule is made absolute without any order as to costs. The judgment and decree passed by the Appellate Court is hereby set aside and the judgment and decree passed by the Trial Court is hereby upheld.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

Send down the L.C.R and communicate the judgment to the court below at once.