

Present :

Mr. Justice Ashish Ranjan Das.

Civil Revision No. 5065 of 2000

In the matter of:

A.K.M.Shamsuddin being dead his heirs

(1) Hasina Begum and others

.....Petitioners

-Versus-

Sree Sree Shambu Nath, Sree Sree Chandra Nath, Sree Sree Birupakya, Sree Sree Baairab, Sree Sree Adinath, Sree Sree Austa Bhuja Bigraha Estate, represented by Secretary Sitakunda and others.

.....Opposite parties.

None appears

....For the petitioners.

Mr. Ranabir Kumar Paul Chowdhury with

Mr. Abul Kalam Mainuddin, Advocates

.....For the opposite parties

Heard on: 21.01.2020 and 26.01.2020

Judgment on: 27.01.2020

Ashish Ranjan Das, J:

Rule under section 115 of the Code of Civil Procedure (for short CPC) was issued at the instance of the defendants-respondents -petitioners calling in question the propriety of the Judgement and order dated 27.08.2000 passed in Other Appeal No. 77 of 1998 by the learned Additional District Judge, 3rd. Court, Chittagong allowing the same and thereby reversing the judgment and decree dated 25.02.1998 and 02.04.1998 respectively passed by the learned Senior Assistant Judge, 1st Additional Court, Chittagong in Other Suit No.

47 of 1997 dismissing the same.

None appeared to press the rule although the matter has been occurring in the daily cause list over the period with the name of the advocate. Thus, considering long pendency and gravity of the matter and hearing the learned advocate for the opposite parties, the matter has been taken up for disposal.

Short facts relevant for the purpose that could be gathered from the file are the suit land is a pond which appertains to R.S. plot No.755 and R.S. khatian No.1704. The pond belongs to the plaintiff Bigrah a estate which has been possessed by the same for a long time. R.S. record has been published in the name of the then Sebayet Kumodbondhu Mohonta. A scheme was taken and formed by the Hon'ble High Court of the then undivided India in Civil Revision No.158F of 1945 for proper administration and maintenance of the properties belonging to the plaintiff Bigraha Estate.

All the properties of the plaintiff Bigraha estate have been administered by the Shrine Committee formed by the learned District Judge of Chittagong in accordance with the order of the Hon'ble High Court Division in the said Civil Revision. At present the properties have been administered by Sukhamoy Chakrabortee, Secretary of the Shrine Committee. He was ill and for this reason the P.S. Record had not been prepared in the name of the then Secretary. The Suit pond had not been recorded in the name of Government also. A local investigation was conducted by the local Tahshil office while the suit

pond was found to be belonging to the plaintiff Bigraha Estate and a report was submitted by them in this regard.

One Abdul Aziz Sowdagar filed a petition for lease of the suit pond but the government did not approve the petition for lease. The plaintiff instituted a suit for declaration of title being No.49 of 1989 where the defendant no.4 was impleaded as defendant and he filed a written statement. The defendant No. 4 mentioned some documents in his written statement which fact induced the plaintiff to withdraw the suit No. 49/1989 for formal defect. The alleged patta deed dated 03.12.1935 in favour of the defendant No.1 was for only five years i.e. the validity of this deed was for five years. The plaintiff did never operate perpetual settlement of the suit pond in favour of the defendant No. 1's father Abdul Aziz. The possession of the suit pond was handed over to the plaintiff after the expiry of the specified time in the patta deed. The plaintiff has been possessing the suit pond by cultivation of fishes in the suit pond. The Defendant No.1's father was never a permanent raiyat under the plaintiff Bigrah estate. Ganga Giri Mohanta had no right to file any suit regarding the land belonging to the Bigraha estate in the year 1960 AD. Mahanta was to appoint priest and his duty was prescribed in the order passed by the Hon'ble High Court. The suit No. 03/1960 in the name of Mohonta Ganga Giri was illegal, out of Jurisdiction and void. He had no power to perform any solenama in the suit No. 03/1960 and the Solenama is false and fabricated. The defendant No. 1's father did never dig the suit pond.

The Shrine Committee did never admit the defendant No. 1 as a tenant. Now a days, the defendant is threatening the plaintiff to dispossess the plaintiff from the suit Plot on 20.06.1992 AD. The defendant denied the plaintiffs title to the suit pond and threatened to dispossess from the same which in fact induced the plaintiff to institute the instant suit.

The case of the defendant no.1 is that one late Abdul Aziz father of the defendant no.1 owned the suit pond from the plaintiff Bagraha Estate on the basis of Patta deed dated 25.02.1936 AD and mutation khatian no.1704/2 was prepared in the name of defendant no.1's father. Later on the P.S. and B.S. khatian was recorded in the name of the defendant no.1's father. One Ganga Giri Mohonta filed a suit being no.3/1960 in the 2nd Assistant Judge Court, Chittagong for long after 24 years of operation the patta deed. But the suit was disposed of on compromise between the parties. In this suit the plaintiff admitted the defendant No. 1's fathers right, title and interest in the suit pond. The plaintiff received rents from the defendant from 1343 B. S. to 1370 B.S. by admitting the defendants tenancy under him. After extinction of Jamindary system, the Govt. received rents from the defendant. The Govt. of the then East Pakistan received rent from the defendant No. 1's father from 1363 B.S. to 1376 B.S. while the Govt. of Bangladesh received rents from the same from 1377 B.S. to 1399 B.S. The defendant No. 1 as well as his father has been possessing the suit pond from 1935 A. D. by fish cultivating therein.

The defendant has got the tenancy right on the basis of long term possession and once a tenant is always a tenant. The plaintiff has filed the suit being relying upon some false and concocted stories.

The learned advocate Mr.Ranabir Kumar Paul Chowdhury appearing for the opposite party submits that an action has been taken by the petitioners with a view to evict the opposite party from the pond. He next submits that the opposite party has unalienable right title and possession in the suit land and he has possessed the suit land free from all encumbrances and the government respondent has not right title or any interest in the suit land.

It appears that the predecessor in interest of the opposite party has acquired the land in question by way of a registered patta deed dated 25.02.1936 AD and since then he has been enjoying the same by exercising all acts of possession thereon through his predecessor in interest and by himself against the knowledge of the petitioners and all other concerned and has required a possessory right over the land as per provision of law envisaged in section 27 of the Limitation Act. I find ex-facie legality in the order of the lower court.

As a result, the Rule is discharged. The Judgment and order dated 27.08.2000 passed in Other Appeal No. 77 of 1998 by the learned Additional District Judge, 3rd. Court, Chittagong is hereby set aside and the judgment and decree dated 25.02.1998 and 02.04.1998 passed by the learned Senior Assistant Judge, 1st Additional Court, Chittagong in Other Suit No. 47 of 1997 is hereby upheld.

The interim order of injunction passed at the time of issuance of Rule is hereby vacated and recalled.

However, there is no order as to cost.

Send down the L.C. R at once.

The office is directed to communicate this judgment and order to the courts below, at once.

Justice Ashish Ranjan Das.

Bashar, B.O.