

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.282 OF 2013

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Jata @ Jatu Mondal

.... Petitioner

-Versus-

Tara Rani Tarafder and others

.... Opposite parties

Mr. Tapan Kumar Bepary, Advocate

.... For the petitioner.

Mr. Samiran Mallik, Advocate

.... For the opposite party Nos.1

and 2.

Heard and Judgment on 13.07.2023

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite Nos.1-2 to show cause as to why the impugned judgment and decree dated 07.10.2012 passed by the learned Additional District Judge, Fourth Court, Khulna in Title Appeal No.281 of 2004 and affirming those dated 12.08.2004 passed by the learned Senior Assistant Judge, Daulatpur, Khulna in Title Suit No.91 of 2002 should not be set aside and or such other or further order or orders as to this Court may seem fit and proper..

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration of title and recovery of khas possession for 4 decimals of land by eviction of house the defendants.

It was alleged that above 4 decimals land belonged to Nanibala, Chandicharan and Mandar Tarafder in equal shares and they had their dwelling house in the above land. Above Nanibala transferred her $\frac{1}{2}$ decimals land to Kheparam Mondal by registered kabala deed dated 27.06.1961. Kheparam Mondal died leaving three sons namely Subod, Golok and Binoy and Subod and Golok transferred that land to Younus Ali by registered kabala deed dated 19.01.1977 and Binoy transferred his 0.133 ajutangsha land to Pulin Tarafder by registered kabala deed dated 18.04.1980 who in his term transferred the same to the plaintiff No.1 by registered kabala deed dated 27.02.1983. Chandichoron died leaving two sons namely Rupchan and Sonaton who transferred above 4 decimal land to Binoy Kumar Mondal by registered kabala deed dated 21.06.1960 who in his turn transferred the same to Hazari Lal by registered kabala deed dated 04.06.1982 . Above Hazari Lal and Younus Ali transferred their land to plaintiff No.2 by registered kabala deed dated 28.03.1992 and plaintiff No.2 has transferred above land to plaintiff No.1 by registered kabala deed dated 10.05.1994.

In September 1995 plaintiff No.1 rented the house in the disputed land to the defendants at a monthly rental of Tk.100/-. Defendant Nos.1 and 2 paid rent regularly till September 1996. But thereafter they stopped paying rents and plaintiffs filed S.C.C. Suit No.2 of 2022 for eviction of above defendants from the disputed premises. Due to formal defects the plaintiffs withdrew above suit with permission to sue afresh and thereafter he filed this suit.

Defendant No.1 contested the suit by filing a written statement wherein he denied all claims and allegations made in the plaint and stated that disputed 4 decimals land belonged to Behari Lal Tarafder, Ramdoyal and Bishnu in equal shares and by amicable partition Behari Lal Tarafder alone possessed above land by constructing his dwelling house. Nani Bala who was the only daughter of Behari Lal was given marriage to Hira Lal Mondal who was a domesticated husband and used to live in the disputed house. Above Nanibala died leaving her only daughter's son defendant who is residing in the above house for more than 80 years. Defendant No.1 or his mother was not a tenant of the plaintiffs nor he paid any rent to the plaintiffs. Sensing sure defeat the plaintiffs withdrew S.C.C. Suit No.1 of 1999 and filed this false suit which is liable to be dismissed with cost.

At trial plaintiffs and defendants examined 3 witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos.'Ka' series – 'Ga' series.

On consideration of the facts and circumstances of the case and materials on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the Trial Court defendant No.1 preferred Title Appeal No.281 of 2004 to the District Judge, Khulna which was heard by the learned Additional District Judge, 4th Court, Khulna who dismissed the appeal and affirmed the judgment and decree of the Trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below appellant as petitioner moved to this Court and obtained this Rule.

Mr. Tapan Kumar Bepary, learned Advocate for the petitioner submits that in this suit for declaration of title and recovery of khash possession the plaintiffs did not mention their date of alleged dispossession by the defendant from the disputed land. Plaintiff No.2 Debendra Nath transferred his share in the disputed land by registered kabala deed dated 10.05.1994 to the plaintiff No.1. But still he remains as plaintiff No.2 in this suit. Plaintiff No.1 claimed that the defendant

was his tenant in the disputed premises and for eviction of above tenant plaintiff instituted S.C.C. Suit No.2 of 2002 in the Small Causes Court, Khulna. But subsequently withdrew above suit with permission to sue a fresh. But instead of filing another S.C.C. Suit for eviction of the tenant he has filed this suit for declaration of title and recovery of khas possession. . Undisputedly 4 decimal land is a homestead land and in above land father of Nanibala used to reside and subsequently Nanibala resided in above house . There is no mention in the plaint the date when predecessors of the plaintiffs got possession of the above house and tenanted above house to Nanibala or defendant No.1. There is no evidence on record to show that the defendant or his predecessor Nanibala was evicted from their ancestral home and Kheparam, Younus Ali, Binoy Kumar or plaintiff No.2 got physical possession of the same. Possession of the defendant in the above house is an admitted fact. In view of above materials on record the learned Additional District Judge should have allowed the appeal, set aside the flawed and unlawful judgment of the Trial Court and dismissed the suit. But the learned Additional District Judge has miserably failed to appreciate the facts and circumstances of the case and evidence on record and most illegally dismissed the appeal which is not tenable in law.

On the other hand Mr. Samiran Mallik, learned Advocate for the opposite party Nos.1 and 2 submits that the plaintiffs are successive purchaser of disputed 4 decimals land by 2 kabala deeds of 1983 and 1984 from Pulin Tarafder and plaintiff No.2 respectively. The predecessors of the plaintiffs purchased above land from Nanibala by a registered kabala deed on 27.06.1961 and from sons of Chandicharan and Mander by registered kabala deed dated 21.06.1960. All above registered kabala deeds were produced at trial and the defendant could not deny the correctness and genuinity of above deeds of more than thirty years old. Those transfers show that defendant does not have any remaining title or share in the disputed land. Defendant has merely claimed that Nanibala did not sale her land and plaintiffs documents were forged but the defendant did not make any endeavor to prove above claims by legal evidence. The plaintiffs have succeeded to prove that defendant No.1 is in possession in the disputed land on the permission of the plaintiffs as there are tenant. On consideration of above evidence on record the learned Senior Assistant Judge rightly decreed the suit and the learned Additional District Judge on an independent assessment of materials on record has rightly dismissed the appeal and affirmed the lawful judgment and decree of the Trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for respective parties and carefully examined the pleadings, evidence, impugned judgment and decree and other materials on record.

It is admitted that 4 decimal land appertaining to S.A. Plot No.343 and Khatian No.1221 belonged to the Nanibala, Chandicharan and Mander in equal shares and above land was homestead land and Defendant No.1 is the son of only daughter of above mentioned Nanibala.

Plaintiff Nos.1 and 2 claim title on the basis of successive purchase by registered kabala deeds.

Defendant No.1 claimed in the written statement that above property originally belonged to the father of Nanibala namely Bihari Lal, Ramdoyal and Bishnu in equal shares and this has not been denied by the opposite party. It has been further stated by the defendant that by amicable partition with other co-sharers Behari Lal alone possessed above land by constructing his dwelling house and he had only one daughter namely Nanibala who was given marriage to Harilal Mondal who was a domesticated husband of Nanibala and defendant No.1 was born in the above house.

While giving evidence as defendant witness No.1 defendant Jata @ Jatu Mondal reiterated in his examination in chief above claims made

in his written statement. He stated that his mother Nanibala acquired the dispute property from her father Beharilal who on the basis of amicable partition possessed above land alone by constructing his dwelling house and his father was a domesticated husband in above house and he was born in above house.

Above specific claim of exclusive and successive possession of the defendant has not be specifically denied by the plaintiffs by amendment of the plaint or by cross examination of DW1 Jantu or by adducting credence inspiring evidence.

Plaintiffs claim that Nanibala sold her share in the above land to Kheparam by registered kabala deed dated 27.06.1961. While giving evidence as PW1 the son of plaintiff No.1 a young man of 28 years namely Subod Tarafder has produced a certified copy of above document which was marked as Exhibit No.4. It turns out from Exhibit No.4 that above certified copy was obtained on 25.05.1998 and Nanibala executed above document by putting her left thumb impression. It has been stated at Paragraph No.8 of the written statement that Nanibala did not sale the disputed land and above document of the plaintiff is a forged document. Above claim has been reiterated by DW1 Jantu in his evidence in Court. Since the plaintiffs could not produce in Court the original registered kabala deed dated 27.06.1961 allegedly executed by

Nonibala an illiterate village woman plaintiffs should have proved the certified copy (Exhibit No.4) by producing the volume book and LTI register from the relevant Registry Office. But no such endeavor was made by the plaintiffs. In a suit for declaration of title and recovery of khas possession besides proving lawful title a plaintiffs must prove his previous possession and alleged subsequent dispossession and further prove that the suit has been brought within the statutory period of limitation of 12 years from the date of alleged dispossession.

As mentioned above a series of registered sale deeds have been produced by the plaintiffs showing that the disputed land was sold by Nanibala sons of Chandicharan and Mander since 21.06.1960 and 27.06.1961 and by successive purchase plaintiffs acquired title. But there is no statement as to getting of physical possession by the predecessors of the plaintiffs who purchased the disputed land in 1960, 1961, 1977 or 1980 nor any description as to the manner of their possession. No evidence was adduced at trial to show that at any point of time above purchasers in fact got physical possession of the disputed house by evicting Nanibala or defendant No.1 or they were accepted as monthly tenants by Binoy Kumar, Kheparam and Younus Ali. In the plaint the plaintiffs did not mention the date of their alleged dispossession from the disputed house. PW1 Subod Tarafder did not mention in his

evidence that his mother plaintiff No.1 has been dispossessed by defendant No.1 from the disputed land let alone mentioning the date of dispossession.

In the plaint a claim has been made that in September 1995 disputed home was rented to the defendants at a monthly rental of at Tk.100/-. Before above rental the brother-in-law of plaintiff No.2 namely Shamol used to reside in the above house. But there is no mention in the four corners of the case record that the plaintiff Nos.1 and 2 ever constructed above dwelling house in the disputed land or they purchased the land alongwith above dwelling house. No tenancy document was produced by the plaintiffs at trial. Plaintiff No.2 who allegedly tenanted the disputed premises to defendant Nos.1 did not come to the Court to give evidence in support of above claim. Her son PW1 Subod did not mention anything in his evidence about giving of rental of the disputed house to defendant No.1 by his mother. PW2 Hazari Lal Bairagi and PW3 Adhir Mondal also mentioned nothing about giving of rental of the disputed premises to defendant No.1.

As such the claim of the plaintiff of renting of the disputed house to the defendant remains not proved. As mentioned above the plaintiffs instituted S.C.C. Suit No.1 of 1999 for eviction of the defendant from the disputed house claiming that the defendant was their monthly

tenant but above suit was withdrawn by the plaintiffs of formal defect no new suit was filed.

It is crystal clear from above evidence on record that defendant No.1 is residing in the disputed house as a successive heir of Nanibala and the plaintiffs have miserably failed to prove their previous possession in the disputed premises and the alleged dispossession by the defendant by legal evidence.

In above view of the materials on record I hold that the learned Additional District Judge has failed to appreciate the materials on record properly and most illegally dismissed the appeal and affirmed the unlawful judgment and decree of the Trial Court which is not tenable in law.

I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 07.10.2012 passed by the Additional District Judge, Fourth Court, Khulna in Title Appeal No.281 of 2004 affirming those dated 12.08.2004 passed by the learned Senior Assistant Judge, Daulatpur, Khulna in Title Suit No.91 of 2002 is set aside and above suit is dismissed on contest against the defendant without cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER