

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 1198 of 2006

Liakot Ali Fakir and others ..... petitioners

-Versus-

Ayub Ali Sheikh and others

..... opposite party

No one appears for the petitioners

Mr. Chanchal Kumar Biswas with

Mr. Sougata Guha, Advocates

..... for opposite parties 1 and 2

Judgment on 21.03.2024

In this rule, issued at the instance of the plaintiffs, opposite parties 1 and 2 were called upon to show cause as to why the judgment and decree of the Joint District Judge, Court No. 2, Faridpur passed on 05.09.2005 in Title Appeal No. 27 of 2005 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Bhanga, Faridpur passed on 08.01.2005 in Title Suit No. 114 of 1996 dismissing the suit should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

The plaint case, in short, is that the land described in the schedule to the plaint measuring .27 acres originally belonged to Pazullah Fakir and Asalat Fakir in equal shares. Asalat died issueless and accordingly Pazullah being the brother became owner of total land. He died leaving behind 3 sons, the plaintiff, Hossain Uddin Fakir and Kohel Uddin Fakir and a daughter Baru

Khatun as heirs. The plaintiff and Hossain Uddin Fakir sold out .08 acres to Joygun wife of Ismail. After the death of Hossain Uddin the plaintiff, Kohel and sister Baru Khatun became heirs. Kohel Fakir died leaving behind the plaintiff and sister Baru Khatun. After the death of Baru Khatun, Kohel Uddin became the sole heir of the property measuring .09 acres of suit land. After the death of Joygun her brother Jahur Shikder and Maju Khatun became the heirs. Subsequently, Jahur Shikder sold his share to defendants 3 and 4. The plaintiff further contended that Asalat and Pazullah did not transfer any part of the land on 17.03.1924 to one Khosal. The deed is fraudulent, forged and collusive. Sheikh Khosal did not sell it to Mohiuddin 04.10.1948. The transfer of Sheikh Wahed to the predecessor of the defendants on 20.06.1960 is also collusive. Asalat did never make an oral gift to his wife in respect of the suit land. The *kabala* dated 08.11.1943 is forged. The plaintiff during his possession and enjoyment over .19 acres of land gave permission to Abdus Samad, the predecessor of defendants 1 and 2 on 20 Pous 1393 BS to erect a house on a part of suit land and accordingly he started residing therein by making a hut. But subsequently, defendants 1 and 2 in 1394 and 1396 BS erected two more tin shed houses over the suit land and thus occupied more or less .03 acres of land. The plaintiff on 01.12.1990 went to the concerned office to prepare record in his

name, while defendants 1 and 2 disowned his title in the suit land. They claimed the land by way of registered *kabala*, hence the suit for declaration of title in respect of .10 acres and recovery of possession over .03 acres described in the schedule to the plaint.

The case of defendants 1 and 2, in brief, is that although the suit land belonged to Pazullah and Asalat but CS record was prepared incorrectly in the name of Pazullah only. But RS and SA records have been prepared correctly in the names of Pazullah and Asalat in equal shares. Asalat was issueless and he made an oral gift to his wife Hazera khatun in respect of his .13 acres. Hazera Khatun sold the same to Mohiuddin by a registered *kabala* dated 08.11.1943. Mohiuddin sold it to Sheikh Wahed through another *kabala* dated 04.10.1948 and finally Sheikh Wahed sold the same to the father of these defendants by another *kabala* dated 20.06.1960. The father of the defendants started possessing the same by constructing dwelling houses thereon. The recent record of right has been prepared in the name of the defendants. Although, the plaintiff raised objection under section 30 of the State Acquisition and Tenancy Act against the record so prepared but his objection was rejected. In the premises above, the suit would be dismissed.

The trial Court framed 7 issues to adjudicate the matter in dispute. In the trial, the plaintiffs examined 4 witness and their

documents were exhibits-1, 2 and 3. The defendants also examined 4 witnesses and their documents were exhibits- A-K. However, the trial Court considering the evidence and other materials on record dismissed the suit deciding all the issues against the plaintiff. Being aggrieved by, the heirs of the plaintiff preferred appeal before the District Judge, Faridpur. The appeal was heard on transfer by the Joint District Judge, Court No. 2, Faridpur. The transferee Court dismissed the appeal and affirmed the judgment and decree passed by the trial Court which prompted the heirs of the plaintiff to approach this Court with this revision upon which the rule was issued and an ad interim order of *status quo* was passed.

No one appears for the petitioner, although the matter has been appearing in the daily cause list for couple of days with the name of Md. Dewan Abdun Naser, learned Advocate for the petitioners.

Mr. Sougata Guha appearing for Mr. Chanchal Kumar Biswas, learned Advocate for opposite parties 1 and 2 takes me through the judgments of the Courts below and submits that both the Courts below on assessing and appraising the evidence of witness and considering the exhibited documents dismissed the suit for declaration of title in respect of .10 acres and recovery of possession for .03 acres on the finding that the plaintiffs failed to

prove their title in the suit land and that the predecessor of defendants 1 and 2 were the permissive possessor of the plaintiff. The concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision. The petitioner failed to make out a case of misreading of evidence or non consideration of materials on record. The judgment passed by the Courts below, therefore, should be affirmed and the rule be discharged.

I have considered the submissions of Mr. Guha, learned Advocate for opposite parties 1 and 2, gone through the rule petition, grounds taken therein and the judgments passed by the Courts below.

It transpires that in the plaint the plaintiff stated that he got the suit land by way of inheritance. He produced documents in support of his case exhibits-1-3. The plaintiff mainly relied on the oral evidence of witnesses to prove his case. Although, the plaintiff by oral evidence tried to prove that the predecessor of defendants 1 and 2 was his permissive processor, but both the Courts below found the evidence of PWs 3 and 4 untrustworthy considering their cross-examination by the defendants. On the other hand, the defendants proved their title in the suit property by way of gradual purchase from its original owner. They proved the *kabala* of Hazera Khatun dated 08.11.1943 (exhibit-I) in which

the land was sold to Mohiuddin. The *kabala* dated 04.10.1948 (exhibit-K) through which Mohiuddin sold the same to Sheikh Wahed Ali and *kabala* dated 20.06.1960 (exhibit-B) through which Wahed Ali sold the same land to Abdus Samad, the predecessor of defendants 1 and 2. All these documents are registered and duly proved in evidence and, therefore the title of the defendants in respect of .13 acres of land has been established. RS khatian in respect of the suit land (exhibit H) proves that Pazullah Fakir and Asalat Fakir were the owners of the land measuring .27 acres in equal shares. SA khatian (exhibit-H1) also proves the claim of the defendants.

Thus the evidence of title and possession in respect of the suit land goes in favour of the defendants. It is well settled principle that concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in a revision under section 1115(1) of the Code, if it is not found that there are gross misreading and non consideration of the evidence on record for which the decision passed by the Courts below could have been otherwise. I do not find any misreading and non consideration of the evidence in the judgments passed by the Courts below. No such grounds has been taken in the revisional application.

In view of the discussion made herein above, I find no merit in this rule. Accordingly, the rule discharged. However, there will be no order as to costs. The order of *status quo* stands vacated.

Communicate this judgment and send down the lower Court records.

*Rajib*