

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1091 of 2006

The Assistant Commissioner (land) and  
others

..... Petitioners.

-Versus-

Moin Uddin Mujumder and others

.....Opposite parties.

Mr.Md. Insan Uddin Sheikh,D.A.G. with

Mrs. Shovana Banu, A.A.G. and

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

.....For the petitioners.

Mr. Md. Mubarak Hossain, Advocate

.....For the Opposite parties

Heard and judgment on 22<sup>nd</sup> February, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 07.08.2005 passed by the Joint District Judge, Additional Court, Comilla in Title Appeal No. 35 of 2004 affirming those dated 16.09.2003 passed

by the Assistant Judge (in-Charge), Choddagram, Sadar, Comilla in Title Suit No. 14 of 2001 decreeing the suit should not be set aside.

Opposite party No.1 as plaintiff filed the above suit for declaration of title that the order dated 04.02.2001 passed by the defendant No.2 in Eviction Case No. 10 of 2000-2001 is illegal, arbitrary, without jurisdiction and ineffective with a further prayer that the plaintiff along with the proforma defendant No.5-7 are in the joint possession in the suit land.

Plaint case in short, inter alia, is that the suit land originally belonged to the Moharaja, Tripura Estate and subsequently the suit land including other land were settled to different persons. On 15.03.1941 one Hesab Uddin, son of Mohabbat Ali got 1.60 acres of land as settlement subject to payment of Tk.10/- as Najrana and received a deed of Kabuliat as tenant and as such was in possession by paying rent thereof. During the last S.A. operation the said land was recorded in his name under S.A. khatian No.41 rightly. Thereafter the said Hesab Uddin died leaving behind his 5 sons Abdul Gaffor, Abdul Matin, Abdus Sattar, Abdul and Kader Mollah as legal heirs and Abdus Sattar Mollah got 18 decimals of

land due to amicable settlement. The said Abdus Sattar Mollah died leaving behind his two sons Mizanur Rahman Mollah and Motiur Rahman Mollah, three daughters, Setara Shahita and Hamida as legal heirs and during the D.P. survey and Bangladesh survey suit land was recorded and published in their names. The heirs of Abdus Sattar Mollah proposed to sale 18 decimals of land to the plaintiff and proforma defendant No.5-7 and as such they agreed to purchase the same to establishing homestead by way of suf kabala deed dated 8.2.1999 and as such the purchasers are in possession of the suit land by erecting dwelling house and planting trees some portion thereof. The defendant No. 6 and 7 are impleaded as proforma defendant because they are in abroad. The plaintiff and the proforma defendant No.5-7 are in possession jointly over the suit land. The local people names Abdur Rouf created document to grab the suit land and as such he made an application to the defendant No.1 and as such eviction Case No.2 of 2000-2001 was filed without serving any notice upon the plaintiff. Thereafter Fresh Eviction Case No. 10 of 2000-2001 was filed, the defendant No.2 asked the plaintiff to surrender 12 decimals of land in favour of the petitioner and as such the

plaintiff tried to collect relevant papers and as such on 4.2.2001 the plaintiff asked for time to file the written objection but the defendant No.2 illegally passed the impugned order and as such the title of the plaintiff over the suit land was clouded. On 12.02.2001 the defendant No.4 threatened the plaintiff to remove the structure lying on the suit land but the plaintiff refused to do so and its consequence the police of the concerned police station took the plaintiff to the concerned police station and he was arrested due to cutting a tree. Hence the cause of action arose.

Petitioner as defendant Nos.1-4 contested the suit by filing written statement denying the plaint case alleging, inter alia, that the suit land including other land is a khas land as such S.A. khatian No.1 prepared and published in the name of the government. Therefore 68 decimals of land is being possessed by the people in general as graveyard. The plaintiff is in possession of the land measuring 5 decimals of land by making level of the part of the graveyard as trespasser and as such the Government took steps to dispossess the plaintiff from the said quantum of land by filing erection suit. Therefore the plaintiff filed the present case on the false averments. The plaintiff and the proforma defendant

purchased the suit land from the title less person and as such suit would be dismissed with cost.

By the judgment and decree dated 16.09.2003 the Assistant Judge decreed the suit.

Challenging the said judgment and decree petitioner preferred Title appeal No. 29 of 2004 before the Court of District Judge, Comilla, which was heard on transfer by the Joint District Judge, Additional Court, Comilla, who by the impugned judgment and decree dated 07.08.2005 dismissed the appeal and after affirming the judgment of the trial court decreed the suit.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Mr. Md. Insan Uddin Sheikh, the learned Deputy Attorney General appearing for the petitioner drawing my attention to the deed of kabuliat being No. 2039 dated 13.05.41 (Annexure-1) submits that the lease holder Hesab Uddin obtained the lease for 5(five) years on 13.5.41, which expired in the year 1946. Subsequently the property went back to the then Moharaja Sir Bir Bikram Kishore Manikya Bahadur and ultimately after the

promulgation of S.A. & T Act, property has rightly been vested to the government as a government khas land. The learned advocate further drawing my attention to the Clause 4 of the said deed of kabuliat submits that the land was settled only for residing thereon by erecting their huts but subsequently violating the said terms and condition of the deed said Hesab Uddin, the lease holder transfer the suit land in favour of the plaintiff by way of registered sale deed, which is a clear violation of the deed in question and thereby the said lease became null and void and property was also been relinquished by the government after the prolongation of the S.A &T Act. Thereby the plaintiff did not acquire of the right title over the suit land, both the courts below totally failed to consider this aspect of this case and decreed the suit in favour of the plaintiffs most illegally and the impugned judgment is thus not sustainable in law.

Mr. Md. Mubarak Hossain, the learned advocate appearing for the opposite party in reply to the submission of the learned advocate for the petitioner submits that the publication of S.A. khatian in the name of lessee of the predecessor, the petitioner plaintiff apparently proved that the lease through kabuliat was not

for a limited period but subsequently in course of time it becomes a permanent lease and Hesab Uddin acquires valid title over the suit land and his name was rightly been published in the S.A. khatian (Ext.3) and the D.P. khatian. Both the courts below upon considering the evidence of record found that the plaintiff is in possession in the suit land even on admission and thereby rightly decreed the suit in favour of the plaintiff. Since the said concurrent findings of the court below contains no misreading or non reading of the evidence, rule contains no merits it may be discharged.

Heard the learned advocate and perused the lower court record and the impugned judgment.

This is a suit for declaration of title. Plaintiff sought for a declaration on his title over the suit land as and when an eviction case was filed for evicting the plaintiff from the suit land in Eviction Case No. 10 of 2000-2001 and the plaintiff asked to surrender 12 decimals of land. Plaintiffs case is that their predecessor, Hesab Uddin obtained settlement of the suit land vide registered kabuliat on 13.05.41, the said deed was exhibited in court as Ext.1. Subsequently said Hesab Uddin while enjoying the

suit property his name has rightly been published in the S.A. khatian No.41 (Ext.3). Thereafter Hesab Uddin died leaving behind 5 sons and subsequently D.P. khatian was recorded in the name of successor of said Hesab Uddin. Plaintiff purchased 18 decimals of land from the heirs of Abdus Sattar Molla, who is the successor of the said Hesab Uddin vide registered sale deed dated 8.2.1999 (Ext.2), who is now in possession jointly along with the defendant Nos. 5-7. One Abdur Rouf created document on the suit land and filed Eviction Case No. 2 of 2000-2001 and thereafter filed another Eviction Case No. 10 of 2000-2001 and when the defendant No.2 asked the plaintiff to surrender 12 decimals of land in favour of the petitioner then the plaintiff filed the suit for title.

In the judgment of the court below it appears that both the court below upon discussing the evidence on record found that S.A. khatian and D.P. khatian has rightly been recorded in the name of lessee Hesab Uddin and his successor, who transferred the suit property in favour of the plaintiff and he is in possession in the suit property. During trial local inspection was held and a report was obtained and in the said report it appears that the



plaintiff is in possession in the suit property, is not the same land as claimed by the petitioner Abdur Rouf for eviction. Since the plaintiff was admitted by the government as tenant and recording of S.A. khatian was never been challenged as wrong and the said lease as well as subsequent possession of the heirs of lessee appears to be found correct, and the local inspection also proved that the land, which has been claimed by the said Abdur Rouf in eviction case are not the land, which has been owned by the plaintiff through the successive heirs of Hesab Uddin, who got lease from the jaminder vide kabuliat, in the year 1941, the question raised by the petitioner to the effect that the lease deed was for a limited period and after the expiry of the lease, it was returned to the ex-jaminder, and subsequently owned by the government cannot be established in as much as recording of S.A. khatian obviously proved that property was not returned back to the jaminder or it was been acquired by the government as vested property or government property, rather the lessee and his successor possession in the suit property have been ascertained. Moreover the local inspection report also proved that property, which has been asked to surrender in Eviction Case No. 10 of

2000-2001 are not the same land with the land as been purchased by the plaintiffs. Wherein the concurrently findings of the court below since contains no misreading or non-reading of the evidence, I find nothing to interfere in the instant rule.

I find no merit in the Rule.

In the result, the Rule is discharged and the impugned judgment and decree passed by the court below is hereby affirmed.

Send down the Lower Court Record and communicate the judgment at once.