

Present :

Mr. Justice Ashish Ranjan Das.

Civil Revision No. 1549 of 2006.

In the matter of:

Md. Syed Ali and others

.....Petitioners

-Versus-

Forest Beat Officer and others.

.....Opposite parties.

Mr. Md. Monir Hossain, Advocate.

...For the petitioners.

Mr. Md.Rejaul Karim(Helal) with

Ms. Bilgish Nafisa Hoque, A.A.G.

.....For the opposite parties.

Heard on: 17.11.2019 and 05.12.2019

Judgment on : 15.12.2019

Ashish Ranjan Das, J:

The plaintiff – petitioner filed Title Suit No. 18 of 1993 in the 4th Court of Assistant Judge, Kaliakoir, Gazipur that was dismissed on contest on 28.02.1994, decree signed on 08.03.1994. He preferred appeal being Title Appeal No.38 of 1994 and the learned Joint District Judge, 2nd Court, Gazipur by his judgment and decree dated 03.10.2005 and 10.10.2005 dismissed the appeal also. The propriety of the judgment has been called in question by this civil revisional application under section 115(1) of the Code of Civil Procedure.

Facts leading to this revisional application may be summarized as under:

The suit plot no.146 covering 9.73 acres appertaining to C.S. khatian Nos.1, 2, 49 and 92 belonged to the Waqf Estate of Baliadi and the plaintiff's predecessor Soharab Hossain took the land settled on Ist. Baisak, 1355 B.S from its manager Syed Ismail. He took 5.85 acres of land out of the plot from manager Syed Ismail continued possession upon payment of rent to the landlord. On 24.12.1986 Soharab Hossasin sold the land to the plaintiff petitioner Md. Syed Ali and others by way of registered kabala being no. 8504.

As late as on 25.03.1987 the plaintiff came to know that the suit plot has been recorded in S.A. khatian no.93 and R.S. khatian no.511 in the name of the government erroneously. The government recorded the land as a Forest khas land. Hence is the suit for declaration of title pact in the suit land.

The defendant nos. 1, 2, 3 government represented by officers of the department of Forest contested the suit by filing a written statement. Their case is that the suit plot alongwith other plots belonged to the Zamindars of both Sreefaltali and Baliadi. With the advent of State Acquisition and Tenancy Act, the Forest land was made khas by notification no.11397 dated 14.11.1951 and next it was once again was notified in the official gazette being no. 4836 L.R 4849 dated 02.04.1956 as a government khas land. It was once again in 1995 notified in the official gazette under section 4 of the Forest Act of 1927, the gazette notification no. XII for 13-19/85/219 dated 31.03.1985. Since the notification of 1951 the Forest land has been

occupied and managed by the government as a Forest land. Neither the landlord could retain the property as a khas land nor the said landlord ever settled it with the plaintiff's predecessor Soharab Hossain nor the latter was ever inducted into possession, nor the plaintiff does have any cause of action for bringing the suit while the suit is barred by limitation.

The defendant no.4 a descendent of the zaminder of Baliadi contested the suit by filing a separate written statement. However, he virtually endorsed this case of the plaintiff. Defendant no.6 also contested the suit by filing a separate written statement claiming 2.40 acres of land as a descendent of the landlord of Sreefaltali, He, in one hand admitted that the property was acquired by the government as a Forest land through official gazette and the Landlord of Baliadi had got a writ petition, so that the land could not be acquired but he lost. His further case is that the suit plot did not belong to the landlords of Baliadi. Among other landlords of Sreefaltali had a share and as their descendent this defendant no.6 retained title over 2.40 acres of land.

Both oral and documentary evidences were led and the court below disbelieved the story of oral settlement and possession of the plaintiff and dismissed the suit. The learned appellate judge also took the same view and that appeal too was dismissed.

I have gone through the materials annexed to the file including L.C.R and heard submissions for the learned advocates for the

plaintiff petitioner and learned Assistant Attorney General representing the department of Forest under the government.

The plaintiffs case is that the suit land of 5.85 acres belonged to the Landlords of Baliadi from whom his predecessor took itself verbally settled but it appears from the written statement of the defendant no.6 that not only the zamindars of Baliadi but also the landlords of Sreefaltali who had share in the khatian. Now it appears from the C.S. khatian nos.1 and 2 that at least 4.67 acres of land of the plot belonged to Fatema Khatun Chowdhurany and another, who are not the landlords of Baliadi nor it belonged to Chowdhury Kazim Uddin Siddiqi. In that case the alleged verbal settlement of 5.85 acres of land out of plot by the landlords of Baliadi manifestly appeared without jurisdiction.

It appears from the 4 C.S. porchas covering the suit plots of plot no.146 covering 9.73 acre of ext. 1 series that disputed plot along with two more plots used to be Gazari Gor, comparatively high land having abandoned Gazari plantation. If that be the case who ever may be the land lord a question of settlement a particular does not arise in the Forest D.W.2 in his evidence also mentioned that there was gazari plantation there.

As regards the manner of settlement it is simply stated in the pleading that on 1st. Baisak, 1355 B.S. Soharab Hossain took the land "Pattan" settled from the Manager of the Zamindar. It is a statement of the P.W.2 but it appears from the kabala of the plaintiff ext. 2 that

the alleged settlement by the Zaminder to Soharab Hossain sold the land of the plaintiff Md. Syed Ali and 2 others on 24.12.1986 wherein it has been stated that Soharab Hossain took the land settled and next he executed a kabuliyat in favour of the landlord. But the this story of kabuliat was not disclosed in the plaint or in the deposition of the P.W.1 nor any such kabuliat nor a patta was produced before the court. The learned advocate for the plaintiff-petitioner vigorously argued that the landlords issued 3 dakhilas and in its support the P.w.5 an alleged Administrator of the Wakf Estate of Baliadi verbally certified bonafide of the rent receipts issued by the landlords those were marked as Exts. 5 and 6. But according to his deposition he was only be born when the alleged settlement took place. However he admitted that the settlement did not take place in his presence but he knew the signature of the manager of then Estate as his brother was a manager there. Obviously this PW. 5 is not a competent witness to testify bonafide of the papers of pattans i.e. the dakhilas. Besides as has been hinted above, defendant no.4 one of the alleged descendants of landlords of Baliadi, claimed that those were not taken over by the government and it has been argued by the learned Assistant Attorney General that the defendant no.4 and persons under him P.W.5 may have created papers in collusion, I find substance in the submissions and also find merit in the resolution of the learned courts below. The plaintiff claimed and produced rent receipts up to 1987 i.e. long after S.A and R.S records were published in the name of the government. The said Baliadi Estate seems to have

accepted rent from the plaintiff and not from his predecessor Soharab Hossain (Ext.6). This also obviates that the defendant no.4 and his men acted in support of the plaintiff with a common interest.

The learned advocate for the petitioner plaintiff citing a decision reported in 55 DLR(AD)(2003) page-26 argued that if a private document aging more than 30 years old is produced from proper custody no more evidences are required regarding its bonafide. But as has been pointed out not the said sethlee Soharab Hossain rather the present plaintiff Syed Ali produced those private documents and he is incompetent produce or prove bonafide of those papers of settlement. So in my view the decision cited by the learned advocate for the petitioner does not have any manner of application in the instant case.

The plaintiff side examined as many as 8 witnesses including one advocate commissioner. They tried to establish the case of possession of the plaintiff. The advocate commissioner P.W.8 admitted that he did not mention the boundary in his survey nor he conducted the survey fixing a station. Written statement of the defendant no.6, C.S. porcha and the C.S. porcha emanates that this has been a forest under government. In such cases it becomes difficult for the government to prove its case of possession since this is not forest like that of Sudarbans, Forest in Bhawal area is very much bounded by plain land and human habitation which. While the government as the learned Assistant Attorney General argued can not

possess a forest bounded by wall or fencing. It is evident from Ext.3 series that some persons around the time of filing of the suit claimed themselves in possession of some portion of the suit plot and brought criminal proceedings against the plaintiff. It is true that those persons including Osman Ali did not win the case but it remains as the case of the plaintiff that their predecessor had been possessing the land since 1355 B.S. In that event such local persons neither came to the zaminder nor to the government. They are not normally expected to have entered and possessed any portion of the jungle. So, I see both the courts below were correct in reaching resolution that neither the plaintiff's title nor their possession has been proved in any way. As a result cause of action and limitation it is the case of the plaintiff that just on 25.03.1987 the plaintiff came to know that. The suit land has been recorded in the name of the government and since it was so recorded it clouded, his title. The plaintiff seems to have not made out a case that any one threatened them with dispossession or created any hindrance. In that that case naturally the plaintiff is expected to have known that long before both in S.A and R.S operation that the land was recorded in the name of government, Ext. 6 suggests that even in February, 1987, this plaintiffs paid rents to the Zaminder where although 4 C.S. khatians have been noted firstly in February,1987 as has been vividly discussed that the zamindar had no right to collect rent from the under tenants nor any such tenants had to pay rents to Zaminder, in 1987 while the land was acquired by the government and

recorded in the name of government long before, Ext.6 suggested that if the plaintiff goes to pay rent in 1987 to the zamindar in. These days this is no believable proposition that the plaintiff did not look for the position of the RORs. From that point of view one must conclude that the plaintiff has set a got up case of cause of action and the suit for declaration of title is otherwise barred by limitation.

From the above discussions it has by time become vivid enough that both the learned courts below were justified in their findings and resolutions leading to dismissal of both the suits and the appeal which required no interference by this court within the mischief of section 115(1) of the Code of Civil Procedure.

Accordingly the judgment of dismissal dated 03.10.2005 and 10.10.2005 passed by the learned Joint District Judge, 2nd. Court, Gazipur in Title Appeal No.38 of 1994 is hereby affirmed and the Rule is discharged.

Send down the L.C. records at once.

No order as to costs.

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

Justice Ashish Ranjan Das.