

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 770 of 2013

Abdul Salam and others

... Petitioners

-Versus-

People's Republic of Bangladesh, represented
by Additional Deputy Commissioner (ADC)
(Revenue), Narsingdi and others

...Opposite-parties

Mr. Rafiqul Islam Sohel, Advocate

...For the petitioners

Mr. Apurba Kumar Bhattacharjee, DAG with

Mr. Md. Kamal Haider, AAG and

Mr. Md. Faruk Hossain, AAG

...For the opposite-parties-Government.

Heard on 18.02.24, 20.02.2024 and

Judgment on 22nd February, 2024.

In this application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.08.2012 passed by the learned Joint District Judge, 1st Court, Narsingdi in Title Appeal No. 84 of 2003 allowing the appeal and setting aside the judgment and decree dated 07.07.2002 passed by the learned Assistant Judge, Belabo, Narsingdi in Title Suit No. 14 of 2001 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The petitioners, as plaintiff, filed Title Suit No. 14 of 2001 in the Court of Assistant Judge, Belabo, Narsingdi against the present opposite-parties, as defendant, for declaration of title, stating that the property under C.S. Khatian No. 19, Plot No. 4 along with other non suited property measuring 5·86 acres covering total 9 plots originally belonged to Sheikh Masud Hossain and Sheikh Abu. Sheikh Masud Hossain got 45 decimals of land in the suit plot who died leaving 2 sons Sarafat Ali and Rajab Ali, only daughter Namuna Bibi. S.A. Khatian prepared correctly in their names. Namuna Bibi died leaving husband Abdul Barik, two sons Aminul Huq and Abdul Huq and daughter Zobeda Khatun. Sarafat Ali and others got the property partitioned by a Registered Deed of Partition No. 3124 dated 22.02.1968 and by partition, Sarafat Ali and Rajab Ali got 45 decimals of land from Suit Plot No. 4 and Sarafat Ali got the land under dispute, measuring 25 decimals in his share. Rajab Ali got 20 decimals land in the plot. Sheikh Abu died leaving 2 sons, A. Gofur and A. Sobhan. S.A. Khatian No. 64 stands recorded in their names. Sarafat Ali was in possession and enjoyment of 25 decimals of land on the eastern side of the suit plot and died leaving wife Banesha

Bibi, 5 sons, A. Razzak, A. Hoq, A. Hashim, A. Hanif and plaintiff No. 1 and daughter Rajater Nesa. Five sons of Sarafat Ali got the property amicably partitioned among them and each of 5 sons equally got 5 decimals of land in the suit plot. A. Razzak and A. Hoq sold their 10 sataks of land to A. Hamid and A. Hashim sold $1\frac{3}{4}$ sataks out of 5 decimals to A. Hamid and rest $3\frac{1}{4}$ decimals land to plaintiff Nos. 2-4, sons of plaintiff No. 1, A. Salam. In the manner aforesaid the plaintiffs acquired title in $8\frac{1}{4}$ decimals, whereon they constructed one storied building comprising two rooms measuring 25x16 feet and planted trees surrounding the building.

On 24.02.2001 when plaintiff No. 1 went to get the name mutated in the khatian came to know that 25 decimals of land including the suit land measuring 8.25 decimals wrongly recorded in the name of the government as Plot No. 43 under Khatian No. 1. It is also stated that C.S. plot number corresponds to R. S. Plot Nos. 44, 48 and 43. Out of 3 plots, Plot No. 44 and 48 rightly recorded in the name of other co-sharers of the plaintiff, but Plot No. 43 measuring 25 sataks under R.S. Khatian No. 1 wrongly recorded in the name of

the government treating the said property as khas land, which has created cloud over the title of the plaintiff, hence, the present suit for declaration.

The government, as defendant Nos. 1-3, contested the suit by filing written statement denying all the material allegations made in the plaint, contending inter alia that 25 decimals of land of C.S. Plot No. 4 under C.S. Khatian No. 19 corresponds to R. S. Plot No. 43. The nature of land is Bazar and the said plot being Bazar along with other properties as per Section 20 of the SAT Act taken over by the government and rightly recorded in the khas khatian as Bazar land along with other adjacent plots. It is also stated that since 1965 the suit plot was taken over by the government as Bazar for development of Narayanpur Bazar in which admittedly established a cattle market, as such, the plaintiff have had no right, title and possession in the property and the property rightly stands recorded in the name of the government under Khatian No. 1, as such, the suit is liable to be dismissed.

The trial court framed 5(five) issues for determination of the dispute between the parties. In course of hearing the plaintiffs

examined 3(three) witnesses as P.Ws and the defendant government examined single witness as D.W.1. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by its judgment and decree dated 07.07.2002 decreed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the defendant-government preferred Title Appeal No. 84 of 2003 before the Court of learned District Judge, Narsingdi. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Narsingdi for hearing and disposal who after hearing by the impugned judgment and decree dated 27.08.2011 allowed the appeal and dismissed the suit by setting aside the judgment and decree passed by the trial court. At this juncture, the plaintiff-petitioners, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status-quo.

Mr. Rafiqul Islam Sohel, learned Advocate appearing for the petitioners submits that as per C.S. Khatian No. 19, Plot No. 4 measuring 97 sataks of land belonged to one Sheikh Abu and Sheikh

Masud Hossain in equal share as appearing from Exhibit-1. By successive inheritance the plaintiff No. 1 as one of the heirs of Sarafat Ali inherited 5 sataks of land and the rest 3·25 sataks of land was purchased by his 3 sons, plaintiff Nos. 2-4 from their uncle Abdul Hashim by a Registered Deed No. 471 dated 01.02.1997. Accordingly, the plaintiffs jointly acquired 8·25 sataks of land in C.S. Plot No. 4. He submits that admittedly, C. S. Plot No. 4 corresponds to R. S. Plot Nos. 43, 44 and 48. Plot Nos. 44 and 48 correctly recorded in the name of other co-sharers, but the disputed Plot No. 43 measuring 25 sataks wrongly recorded in the name of the government.

He submits that the trial court while decreeing the suit rightly held that the claim of the government has no basis at all, but right from C.S. record the plaintiff could able to prove that they acquired title in 8·25 decimals of land under Plot No. 43. The appellate court while allowing the appeal and setting aside the judgment and decree of the trial court did not controvert the observations and findings made by the trial court in its judgment, but wrongly found that the purchase deed of the plaintiff Nos. 2-4 contains no plot number and the said deed registered in the Sub-Registration, Belabo Upazilla

instead of Upazilla Raipura which has no jurisdiction and as such, it has committed error of law in the decision resulting in an error occasioning failure of justice.

Mr. Apurba Kumar Bhattacharjee, learned Deputy Attorney General with Mr. Md. Kamal Haider, Assistant Attorney General appearing for the opposite-parties government at the very outset submit that Khatian No. 1 containing 5 plots clearly mentioned that the nature of the land is Bazar. By operation of law all the Hats and Bazars automatically vest in the government under Section 20 of the SAT Act. It is also argued that the property under R.S. Plot No. 43 measuring 25 decimals of land was taken over by the government in the year 1965 for development and extension of Narayanpur cattle market which is admitted by all the P.Ws in their deposition and cross-examination. Therefore, the government has nothing to prove that the property rightly recorded in khas khatian as Bazar of the locality, as such, the appellate court rightly allowed the appeal and set aside the judgment and decree of the trial court.

Heard the learned Advocate for the petitioners and the learned Deputy Attorney General and Assistant Attorney General of the opposite-party-government, have gone through the revision

application, plaint, written statement, evidences both oral and documentary and the impugned judgment and decree passed by both the courts below.

Both the courts below concurrently observed that the property in question as per C.S. Khatian No. 19 belonged to Sheikh Abu and Sheikh Masud Hossain in equal share. The property under Plot No. 4 corresponds to R. S. Plot Nos. 43, 44 and 48. In C.S. and R. S. record nature of property has been recorded as garden. During R. S. operation major portion of C.S. Plot No. 4 corresponding to R.S. Plot Nos. 44 and 48 stands recorded in the name of a portion of heirs of Sheikh Abu and Sheikh Masud Hossain. But Plot No. 43 has been recorded in khas Khatian No. 1 as khas land of the government describing the same as Bazar. The plaintiff No. 1 is a heir of Sheikh Masud Hossain. By inheritance and amicable partition among the co-sharers he got only 5 sataks of land in C.S. Plot No. 4 corresponding to R. S. Plot No. 43. His brother Abdul Hashim also got 5 sataks of land who subsequently sold out 3.25 sataks of land to plaintiff Nos. 2-4, sons of plaintiff No. 1. In support of their such claim they filed C.S. Khatian (Exhibit-1), S. A. Khatian (Exhibit-2), R. S. Khatian

No. 139 Plot No. 44 recorded in the name of Mollah Abdul Gafur. R. S. Khatian No. 177 Plot No. 48 recorded in the name of Mollah Abdus Sobahan and Rajab Ali Mia and also filed Registered Deed No. 471 dated 01.02.1977 in original executed by Abdul Hashim son of Sarafat Ali, full brother of plaintiff No. 1 and uncle of plaintiff Nos. 2-4. Right from C.S. record upto R. S. record the plaintiff could able to show chain of title of the plaintiff. R.S. Khatian No. 1 (Exhibit-Ka) stands recorded in the name of government, mentioning nature of the property as Bazar. But the government could not prove the basis of recording of such khatian in the name of government by showing any paper or gazette notification.

The trial court upon consideration of the facts and evidences both oral and documentary found that the plaintiff No. 1 inherited a portion of the property and got 5 sataks by amicable partition among the heirs and plaintiff Nos. 2-4 purchased a portion of land from one of the co-sharer Abdul Hashim and decreed the suit finding that the government could not show on what basis the property was recorded in the khas khatian. The appellate court did not even touched any of the findings and observations of the trial court regarding chain of

title, basis of the government for recording khatian as well as evidences both oral and documentary. But observed that in Registered Deed No. 471 dated 01.02.1997 (Exhibit-4) plot number is totally absent and also observed that as per khatian the property situates under Police Station Raipura, but the sale deed registered with the Sub-registry of Belabo Upazilla which is absolutely barred under Section 28 of the Registration Act. But failed to find that now the property is situated within the jurisdiction of Belabo Upazilla and the plaintiff rightly got the sale deed registered under the Sub-registration of Belabo and the suit was also tried by Assistant Judge, Belabo Upazilla. From perusal of the deed, I clearly find that the property transferred in favour of plaintiff Nos. 2-4 is under C.S. Plot No. 4, as mentioned in the deed.

Apart from this, by the said deed plaintiff Nos. 2-4 purchased 3.25 sataks from Abdul Hashim. Plaintiff No. 1 claim title in 5 decimals of land by way of inheritance. The appellate court utterly failed to find why plaintiff No. 1 will not get 5 sataks of land which was not registered with the Belabo Registration Office.

I have gone through the judgment and decree of both the courts below and find that the trial court while decreeing the suit rightly observed that the plaintiffs could able to prove their case by evidences both oral and documentary, but the appellate court unfortunately failed to appreciate those evidences and for the reason best known to him made out a 3rd case finding no plot in the Registered Deed No. 471 and the deed was registered with Belabo Sub-registration instead of Raipura, as such, I find that the appellate court committed error in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and decree of the appellate court is hereby set aside and the judgment and decree of the trial court is hereby restored.

Order of *status-quo* granted at the time of issuance of the
Rule stand vacated.

Communicate a copy of the judgment to the Court concerned
and send down the lower court records at once.

Helal-ABO