

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2964 OF 2006

Kulsum Nesa

....Plaintiff-Appellant-Petitioner

-Versus-

Bhaktaranjan Biswas and others

.... Contesting defendant No. 1-

Respondent-Opposite Parties

No one appears

.... For the Petitioner

Mr. Bivash Chandra Biswas, Advocate

.... For the Opposite Party

Heard on: 10.10.2017

Judgment on: 30.10.2017

At the instance of the present plaintiff-appellant-petitioner, Kulsum Nesa, this Rule has been issued calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 29.05.2006, passed by the learned Additional District Judge, First Court, Jhenidah, in Title Appeal No. 61 of 1997 dismissing the appeal thereby affirming those dated 29.04.1997 passed by the learned Senior Assistant Judge, Additional Court, Jhenidah in Title Suit No. 153 of 1991 dismissing the suit should not be set aside.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner, as the plaintiff filed the Title Suit No. 153 of 1991 for declaration of title upon the suit land measuring .50 acres appertaining to C.S. Khatian No. 124, 545 and 546 and at present Khatian No. 95 and

402, mouza 107 No. Goriana, Upazial and District-Jhenidah as describe in the schedule of the plaint. The plaint contains that Shib Chandra Paul and Purna Chandra Paul were Korfa tenants in equal shares under the landlord Solim Biswas. When they failed to pay arrear rents they surrendered possession to the said landlord. The land of C. S. Khatian No. 575 belonged to Solim Biswas, Dilbar Mondol, Osim Mondal, Khiro Bibi and Khotgejan Nesa. Badruddin as the legal heir of Delbor Mondol and Solim orally settled .50 acres in favour of the plaintiff in the year of 1357 B.S. but said Bodruddin recorded his name in S.A. record. Bodruddin sold other than the suit land .40 acre of land to the plaintiff by the registered document dated 27.01.1969. Bodruddin filed Title Suit No. 480 of 1969 for setting aside the said transfer deed but he later on withdraw the suit. Bodruddin fraudulently transferred 50 decimal to the defendant No. 2 on 30.01.1969 and the land was mutated in the name of the defendant No. 2 fraudulently. However, Bodrudin filed Miscellaneous Case No. 649 of 1975-76. The defendant No. 2 gifted .35 acres of land on 01.07.1978 in favour of Hasan, the defendant No. 3. The said defendant No. 2 and 3 than transferred land on 17.04.1980 in favour of the defendant No. 1 regarding schedule "Ka" land of the describe in the plaint and the land was mutated in her name through the legal procedure. However, the present plaintiff- petitioner challenge said mutation but the defendant filed Title Suit No. 253 of 1990 and an exparte decree was passed. On 04.03.1991, defendant No. 1 denied title of the plaintiff.

The suit was contested by the present opposite party No. 1 as the defendant by filing a written statement denying all statements made in the plaint. It is contended that the suit land belonged to Jafor Ali, Jamir Ali, Bodruddin and others. Jafor and Jamir sold total $1.85\frac{1}{5}$ acres to Bodruddin including the land measuring .40 acres on 29.01.1996. The said Bodruddin transferred land measuring 85decimals by a registered heba-bil-awaz dated 30.01.1969 in favour of his wife Zobeda Khatun who later on transferred .35 acres in favour of his son Johurul by a heba deed dated 01.06.1979. Zobeda and Johurul sold $.53\frac{1}{2}$ acres of land to the defendant and mutated accordingly.

After hearing the parties and considering the evidence adduced and produced by the parties the learned trial court dismissed the suit by his judgment and decree dated 29.04.1997. Being aggrieved the present petitioner as the appellant preferred the Title Appeal No. 61 of 1996 in the court of the learned District Judge, Jhenidah which was heard by the Additional District Judge, First Court, Jhenidah on transfer who by his judgment and decree dated 29.05.2006 disallowed the appeal. This revisional application has been filed challenging the legality of the said impugned judgment and the Rule has been issued thereupon.

This Rule has been appearing in the list for a long period of time but no one appears to support the Rule. However, in the revisional application the present petitioner took a ground that the courts below though found the specification of the suit land upon appraisal of evidence of P.W-1 yet abruptly came to a wrong conclusion that the suit

land was not specified thus the courts below committed error of law. The courts below upon misreading of evidence failed to consider that the oral settlement was proved in evidence and P.W-2 who was the son of Bodoruddin deposed on behalf of the settlement as corroborating witness was not questioned about the fact of the settlement thus the courts below committed error of law.

The Rule has been opposed by the present opposite party No. 1.

Mr. Bivash Chandra Biswas, the learned Advocate appearing for the opposite party No. 1 submits that the suit was filed by the plaintiff for declaration of title and cancellation of the sale deed dated 17.04.1980 which was dismissed by the learned trial court after consideration of the relevant evidence both documentary and oral submitted by the parties. The learned appellate court also concurrently disallowed the appeal preferred by the present petitioner after considering and examining all relevant documents, as such, no error of law has been committed by the learned appellate court below.

The learned Advocate also submits that the plaintiff-petitioner failed to prove her own case as the claim of title upon the suit land measuring .50 acres was a false claim on the basis of an oral settlement of the suit land which could not be proved by the plaintiff with sufficient supporting evidence as such the learned courts below came to a concurrent finding against the present plaintiff-petitioner, as such, no interference from this court is called for and the Rule should be discharged.

Considering the above submissions made by the present opposite party No. 1 and also considering the revisional application filed under Section 115 (1) of the Code of Civil Procedure along with the Annexures therein, in particular, the impugned judgment passed by the appellate court below and also perusing the materials in the lower court records, it appears to me that the suit was filed by the present plaintiff petitioner claiming entitlement upon the suit land measuring 50 decimal describe in the plaint. The plaintiff's claim was basically upon the oral settlement by Dilbar Mondal and Solim Biswas in favour of Bodoruiddin by an oral settlement in the year of 1357 B.S. The defendant however claimed that Bodruiddin unlawfully transfer the land to the defendant No. 2 and 3 who thereafter transferred the land to the defendant opposite party No. 1 Bhaktaranjan Biswas, thereby the suit land was mutated and recorded in her name. I have carefully examined the relevant documents adduced and produced by the respective parties, in particular, exhibit-1(a), 1(b) and 1(c) which appear to be doubtful and unclear as to the entitlement of the petitioner. Moreover the petitioner's claim is based upon an oral settlement of the land even though the practice at that period of time was to have a written settlement by way of Dakhila, Korfa and Amolnama. Therefore, any oral settlement despite the other options of written settlement were available, as such, an oral settlement cannot be reliable for any entitlement upon a land.

Regarding the possession of the suit land the plaintiff failed to prove any actual possession which is necessary for an entitlement as

claimed. Moreover the suit land was mutated and recorded in the name of the present defendant opposite party No. 1 after following a legal procedure for entering the name in the record of right. In view of the above I am satisfied that the plaintiff petitioner failed to prove her own entitlement in the suit land as required under the provision of law of evidence and other relevant laws.

Now I am inclined to examine the judgment and decree passed by the learned courts below.

The learned trial court perused and considered all the relevant documents produced by the parties as well as the deposition by way of witness statements as PWs and DWs and also came to a lawful conclusion to dismiss the suit on the basis of the following findings:

“বাদীর মোকদ্দমা বাদীকেই প্রমান করিতে হইবে। কিন্তু বাদীপক্ষ অত্র মোকদ্দমায় তাহার দাবীকৃত পত্তন বন্দোবস্ত, পত্তন বন্দাবস্তুর দাখিলা প্রমান করিত্ত সক্ষম হয় নাই। বন্দাবস্তকৃত জমি ও বাদীপক্ষ সুনির্দিষ্ট ভাবে প্রমান সক্ষম হয় নাই। নালিশী তপশীল জোত্র বাদিনী ও বাদিনীর স্বামীর স্বত্ব ও দখল থাকিলও কত শতক জমিত্ত তাহাদির স্বত্ব দখল রহিয়াছ উহা বাদীপক্ষ সুনির্দিষ্টভাবে প্রমান সক্ষম হয় নাই। বাদীপক্ষ নালিশী জমিত্ত এজমালিত্ত স্বত্ব ঘোষনার প্রার্থনা করিয়াছেন। কিন্তু নালিশী জমিত্ত বাদীপক্ষ বন্দবস্ত মূল স্বত্ব দখল প্রমান ব্যর্থ হইয়াছেন। ফলে উক্ত রূপ প্রতিকার পাইতে বাদিনী হকদার নহেন।”

The learned appellate court below concurrently came to a lawful finding against the present plaintiff petitioner and in favour of the present opposite party No. 1 on the basis of the following findings:

“সুতরাং উপরোক্ত আলোচনার আলোকে, দালিলিক ও মৌখিক সাম্প্র প্রমান বিচার বিশ্লেষনের পর এই সিদ্ধান্ত উপনীত হওয়া গেল যে, বাদী নালিশী জমিত্ত বন্দাবস্ত মূল তাহার স্বত্ব, স্বার্থ ও দখল প্রমান করিত্ত

ব্যর্থ হইয়াছেন। অপরদিকে বিবাদীপক্ষ আরজির তপশীল ভুক্ত ১.৬০ একর জমির মধ্যে ৫৩ $\frac{১}{২}$ শতাংশ ভূমি তাহার স্বত্ব, স্বার্থ ও দখল প্রমান করিতে সমর্থ হইয়াছে। বাদিনী তাহার মোকদ্দমা যথাযথ ভাবে প্রমান করিতব্যর্থ হওয়ায় বাদিনী তাহার প্রার্থিত প্রতিকার পাইত আইনতঃ হকদার নহেন। তাহা ছাড়া বাদীপক্ষ বিবাদীপক্ষের খরিদা দলিল তঞ্চকী ও যোগাযোগী বলিয়া দাবী করিলেও উক্ত দলিল সমূহ তঞ্চকী ও যোগসাজসী তাহা প্রমান করিত বাদীপক্ষ সক্ষম হন নাই বা বাদীপক্ষ তাহা প্রমানের জন্য কোন চেষ্টায়ই ক্রম নাই। ফলে বাদিনী তাহার প্রার্থিত প্রতিকার পাইত আইনতঃ হকদার নহেন।”

In view of the above discussions and also considering the concurrent findings of the courts below, I am of the opinion that the learned appellate court below committed no error of law by disallowing the appeal preferred by the present plaintiff petitioner affirming the judgment of the learned trial court. I am, therefore, not inclined to interfere into the judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The interim order of direction to maintain status-quo regarding the possession of the suit land is hereby recalled and vacated.

The office is directed to communicate the judgment and decree to the concern Court immediately and the section is also directed to send down the lower court records at once.