

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 2883 OF 2006

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Abul Hossain being dead his legal heirs: Md. Ali Mortuza and others

... Petitioners

-Versus-

Md. Robin Sarker and others

... Opposite parties

Mr. Md. Helal Uddin Mollah, Advocate

... For the petitioners.

None appears

.... For the opposite party Nos.1 and

3-4.

Heard and Judgment on 22.08.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 15.03.2006 passed by the learned Joint District Judge, 3rd Court, Naogaon in Title Appeal No.78 of 2005 dismissing the same and thereby affirming the judgment and decree dated 30.03.2005 passed by the learned Senior Assistant Judge, 8th Court, Naogaon in Other Class Suit No.17 of 2005 dismissing the suit on contest with cost should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that petitioners as plaintiffs instituted Title Suit No.17 of 2005 for a decree of perpetual injunction against the defendants in respect of a pond as described in the schedule to the plaint alleging that above propriety belonged to Abdur Rahman Chowdhury who transferred the same to plaintiff No.1 and Oli Mohammad by a registered kabala deed on 01.03.1973 and delivered possession. Oli mohammad died leaving behind plaintiff Nos.2-11 as his heirs and plaintiffs are in peaceful possession in above property and the same has been recorded in the name of the plaintiffs in R.S. Khatian No.74. On 01.01.2005 the defendants threatened the plaintiffs with dispossession from the above property.

Defendants contested the suit by filing a joint written statement alleging that above disputed pond belonged to Abdur Rahman Chowdhury who transferred the same to Bholovodra Chandra by registered kabala deed dated 04.08.1972 and delivered possession. The predecessor of defendant No.1 Abdus Samad preferred Pre-emption Case No.188 of 1975 which was allowed on 03.01.1981 and he obtained possession in above property through Court on 11.01.1981. After the demise of defendant No.1 these defendants as his heirs are in peaceful possession of above property for more than 12 years. Plaintiff No.1 and Oli Mohammad filed Title Suit No.768 of 1981 challenging the

judgment and order passed in above pre-emption case which was renumbered as Title Suit No.116 of 1987 which was dismissed on contest. Challenging the legality and propriety of above judgment and decree plaintiff No.1 and Oli Mohammad preferred several Appeals which was finally dismissed. At trial plaintiff examined 5 witnesses and defendants examined 3. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1 and those of the defendants were marked as Exhibit Nos.Ka-Ja.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree plaintiffs preferred Title Appeal No.78 of 2005 to the District Judge, Naogaon which was transferred to the Court of Joint District Judge who on consideration of submissions of the learned Advocates for the respective parties and evidence on record dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below the plaintiff as petitioners moved to this Court and obtained this Rule.

Mr. Md. Helal Uddin Mollah, learned Advocate for the petitioners submits that plaintiff No.1 and predecessor in interest of plaintiff Nos.2-11 jointly purchased disputed property from Abdur Rahman Chowdhury by a registered kabala deed on 09.03.1973 and got possession of the same and they are in peaceful possession of the above property till date. The defendants have claimed that Abdur Rahman Chowdhury transferred above property to one Bholivodra but above bholivoda did not get possession of the property. The alleged pre-emption of the defendants against the document of the Bholivodra was ineffective document and they did not get any possession in the suit property by virtue of above judgment and order of the pre-emption case. But the learned Judges of the Courts below failed to appreciate the evidence on record properly and most illegally dismissed the appeal and affirmed the judgment and decree of the trial Court which is not tenable in law.

No one appears on behalf of the opposite party Nos.1 and 3-4 at the time of hearing of this Rule.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record including the pleadings, evidence adduced by both the parties and other materials on record.

Admittedly the suit property belonged to Abdur Rahman Chowdhury. Plaintiffs claimed to have purchased the same by a registered kabala deed from above Abdur Rahman Chowdhury on 09.03.1973. The defendants claimed that above Abdur Rahman Chowdhury transferred above property to Bholivodra by an earlier registered kabala deed dated 04.08.1972. The father of defendant No.1 namely Abdus Samad instituted Pre-emption Case No.185 of 1975 against above kabala deed dated 11.08.1972 which was allowed on 03.01.1981 and Abdus Samad got possession of above property through Court on 11.01.1981.

It was further stated in above written statement that challenging the legality and propriety of above judgment and order passed in above pre-emption case plaintiff instituted Title Suit No.768 of 1981 which was dismissed on contest on 17.02.1992 and the defendants preferred Title Appeal No.42 of 1992 against above judgment and decree but the same was dismissed for default.

In view of above statements made in the written statement by the defendants the plaintiffs should have amended the plaint and set out his case or claim against above mentioned facts and documents but the plaintiff did not make any endeavor to do so.

Both the parties have produced their respective kabala deed as mentioned above and it is found that the registered kabala deed executed by Abdur Rahman Chowdhury in favour of Bholivodra was earlier at the point of time and that was a lawful and effective document. Since the kobla deed of the plaintiffs was latter to above kobla deed of the defendants the plaintiffs did not acquire any lawful title or possession in the disputed of property on the basis of the same. Defendants has acquired, valid title as well as possession of the disputed land by the judgment and order passed in Pre-emption Case No.6 of 1980. The plaintiffs challenged the legality and propriety of above judgment and order passed in above pre-emption case by filing T. S. No.668 of 1981 which was dismissed on contest and the appeal preferred against above judgment and decree was also dismissed. The defendants have produced the certified copies of above judgment and order and decree of pre-emption Case No.06 of 1980, Title Suit No.116 of 1987 and Title Appeal No.42 of 1992 which were marked as Exhibit No.Ka, Kha, Ja and Jha respectively.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned Senior Assistant Judge has rightly on detailed analysis of evidence on record dismissed the suit and the learned Joint District Judge on correct appreciation of materials

on record rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

I am unable to find any substance in this application under Section 115 (1) of the Code of Criminal Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to cost.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER