

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1455 of 2013

Keshab Cnandra Das and others
... Petitioners

-Versus-

Sheymal Kanti Das and others
...Opposite-parties

Mr. Md. Mizanur Rahman, Advocate

...For the petitioners

Mr. Moinuddin Faruqui, Advocate

...For the opposite-parties.

**Heard on 22.02.24, 03.03.24, 04.03.24, 11.03.24,
12.03.2024 and**

Judgment on 13rd March, 2024.

In this application under Section 115(1) of the Code of Civil Procedure, Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and decree dated 15.04.2013 passed by the learned Joint District Judge, 1st Court, Narsingdi in Title Appeal No. 17 of 2008 allowing the appeal and reversing the judgment and decree dated 31.01.2008 passed by the learned Senior Assistant Judge, Sadar, Narsingdi in Title Suit No. 66 of 2005 dismissing 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 compus. The opposite-parties, as plaintiff, filed Title Suit No. 66 of 2005 in the Court of Senior Assistant Judge, Sadar, Narsingdi against the present opposite-parties, as defendant, for declaration of title and S. A. and R. S. Khatians wrongly recorded in the name of the defendants, contending inter alia, that C.S. Khatian No. 2171, Plot No. 192 measuring 21 decimals belonged to one Sharan Kaibarta Das to the extent of 8 annas, Shashi, Dinanath and Jaladhar to the extent of 8 annas share. Sharan Das sold out $7\frac{1}{4}$ decimals from his share to the predecessor of plaintiffs, Nikhil Chandra Das by an unregistered sale deed on 10.05.1944 at a consideration of Tk. 94/-. Sharan Das died issueless, leaving Shashi, Dinanath and Jaladhar as his heirs to inherit $3\frac{1}{4}$ decimals land. Shashi and Dinanath died issueless leaving Jaladhar to inherit their share. Jaladhar died leaving 3 sons Sree Dhar, Monindra and Harendra. S.A. khatian stands recorded in the name of predecessor of defendant Nos. 1-3 and defendant No. 4. Sree Dhar and Harendra transferred 7 decimals of land in favour of Monindra Chandra.

Monindra Chandra died leaving 3 sons defendant Nos. 5-7. In the manner aforesaid Monindra Das got 13.75 decimals land which was inherited by defendant Nos. 5-7. The plaintiffs from their predecessor have been possessing the suit property with the knowledge of defendants. The plaintiffs constructed house on the suit property. Father of the plaintiff was illiterate. On the other hand, Nandalal Das taking advantage of his father's illiteracy very cunningly got his name recorded in S. A. Khatian No. 2319 and on the basis of said S.A. khatian the defendant Nos. 1-4 got their names recorded in R. S. Khatian No. 3061, but such wrong recording has not in any way affected the right, title and possession of the plaintiffs in the suit property. But the defendants on the basis of wrong record of right in their names filed Case No. 29 of 2005 before Purashava, Narsingdi against the plaintiffs. On receipt of notices in said case and upon inquiry the plaintiffs came to know on 16.03.2005 that S.A. and R. S. Khatians wrongly recorded in the name of the defendants. Because of such recording in the name of defendants they are claiming title in the suit property, hence, the plaintiffs compelled to file the instant suit for declaration of title and declaring the S.A. and R. S. khatians prepared wrongly in the name of defendants.

The defendant Nos. 1, 3 and 4 contested the suit by filing written statement denying all the material allegations made in the plaint contending, inter alia, that the property in question originally belonged to Sharan Kaibarta Das 8 annas, Shashi, Dinanath and Jaladhar Das 8 annas. Accordingly, C.S. Khatian No. 2171 stands recorded in their names. Sharan Kaibarta Das died leaving 3 sons Mahim Chandra, Digambar and Hukum Chandra Das. Hukum Chandra Das died leaving 2 sons Monmohon Das and Nishi Kanta Das. Another son Digambar Das transferred his share to his nephew Monmohan Chandra Das by a Registered Deed of Gift No. 21086 dated 02.02.1953. Aforesaid Monmohan Das and Nishi Kanta Das by purchase and by inheritance got 7 decimals of land. Monmohan Chandra Das had only son Sankar Chandra Das who was traceless for 60 years. Consequently, Sankar Chandra Das is civilly dead. His share devolved upon Monmohon Das and Nishi Kanta Das.

In the manner aforesaid 2 sons of Hukum Chandra Das named Monmohan Chandra Das and Nishi Kanta Das acquired entire share of Sharan Kaibarta Das measuring $10\frac{1}{2}$ sataks in the Suit Plot No. 192. Subsequently, Monmohan Das gifted his share to his full

brother Nishi Kanta Das. Said Nishi Kanta Das by acquiring the property by inheritance and gift from his brother Monmohan Das while in possession transferred the same to Sree Nandalal Das by a Registered Sale Deed No. 6167 dated 14.07.1956. Said Nandalal Das acquired the property by purchase and constructed houses thereon, planted different types of trees and while in possession, S.A. khatian rightly recorded in his name along with other co-sharers. Nandalal Das while in possession of $10\frac{1}{2}$ sataks land died leaving 2 sons Jogesh Chandra Das and Romesh Chandra Das in whose name R.S. khatian correctly recorded and they have been possessing the same on payment of rents to the government and they obtained electricity connection in their names in the house standing thereon. Jogesh Chandra Das died leaving 3 sons and another one named Poresh Chandra who left this country and leaving in India. Father of defendant Nos. 1-3 transferred 3.25 decimals of land to one Mahananda Das by a Registered Deed No. 2541 dated 08.04.1989. Said Mahananda Das is in possession of 3.25 decimals, whereon he constructed a tinshed semi pucca building comprising 4 rooms, bath room, tubewell and obtained electricity connection in his name. Very

recently the plaintiffs disclosed that they have title in the suit property by way of purchase from Sharan Kaibarta Das by an unregistered sale deed dated 10.04.1944 claiming 7.25 decimals land. Claim of the plaintiffs is false and fabricated. They could not produce any such deed before Purashava in Case No. 29 of 2005. Subsequently, they created the said deed on a white paper forging signature of Sharan Kaibarta Das.

It is also stated that father of the plaintiffs was not illiterate as he for recording of khatian in the name of the government for other non suited land field Title Suit No. 79 of 1993 in the Court of Senior Assistant Judge, Sadar, Narsingdi, wherein he signed the plaint and other papers as Sree Nikhil Chandra Das. It is also contended that had the suit property purchased by Nikhil Das in the year 1944 he would have claimed the property during his life time and filed suit for declaration of title against the wrong S.A. and R.S. khatians in the name of defendants. Since the alleged unregistered deed has been created by the plaintiffs after his death and before filing of this suit their father Nikhil Das did not claim the suit property as well as

filed any suit, as such, the claim of the plaintiffs is false and fabricated calling for dismissal of the suit.

Defendant No. 2 Suresh Chandra Das though filed written statement admitting claim of the plaintiffs but he did not contest the suit and deposed before the court in support of his such statement, consequently, his statement lost force in accordance with law. Defendant Nos. 5-7 filed written statement but they did not contest the suit at the time of hearing.

The trial court framed 6(six) issues for determination of the dispute between the parties. In course of hearing the plaintiffs examined 3(three) witnesses as P.Ws and the defendants examined 3(three) witnesses as D.Ws. 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 31.01.2008 dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the plaintiff preferred Title Appeal No. 17 of 2008 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 15.04.2013 allowed the appeal and decreed the suit by setting aside the judgment and decree passed by the trial court. At this juncture, the 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 stay.

Mr. Md. Mizanur Rahman, learned Advocate appearing for the petitioners submits that admittedly the property in question originally belonged to one Sharan Kaibarta Das to the extent of 8 annas measuring $10\frac{1}{2}$ decimals, who died leaving 3 sons namely, Digambar Das, Hukum Chandra Das and Mahim Chandra Das. Aforesaid 3 sons inherited the property measuring 3·5 decimals each. Digambar Das gifted his share to his nephew Monmohan Das son of Hukum Chandra Das by a Registered Deed of Gift No. 21086 dated 02.02.1953. Hukum Chandra Das died leaving 2 sons Monmohan Das and Nishi Kanta Das, another son of Sharan Das named Mohim Chandra Das died leaving only son Sankar Chandra Das who was untraceable for 60 years having no issue, consequently, according to

Hindu Law of inheritance his share devolved upon Monmohan Das and Nishi Kanta Das son of Hukum Chandra Das. Resultantly, Monmohan Das and Nishi Kanta Das acquired entire property of Sharan Kaibarta Das measuring $10\frac{1}{2}$ decimals. While they were in ejmali possession Monmohan Das gifted his share to his full brother Nishi Kanta Das, consequently, Nishi Kanta Das got entire $10\frac{1}{2}$ decimals land in the suit plot. While he was in possession by a Registered Deed No. 6167 dated 14.07.1956 transferred $10\frac{1}{2}$ sataks of land to Sree Nandalal Das, accordingly, S.A. Khatian No. 2319 stands recorded in his name. Subsequently, Nandalal Das died leaving 2 sons Jogesh and Ramesh, R.S. Khatian No. 3061 correctly recorded in their names. Thereafter, Jogesh Chandra transferred 3.25 decimals land from his share to one Mohananda Das by a Registered Deed No. 2541 dated 08.04.1989. Jogesh Chandra died leaving 3 sons defendant Nos. 1-3. In support of their such claim they filed deed of gift dated 02.02.1953 executed by Digambar Das in favour of Monmohan Das and the sale deed dated 14.07.1956 executed by Nishi Kanta Das in favour of Nandalal Das. C.S., S.A. and R.S.

khatians, rent receipts showing payment of rent, electricity bill showing payment of bill to the electricity authority.

He submits that trial court while dismissing the suit considered all those documents in its true perspectives and rightly found and observed that the plaintiffs though came with an unregistered sale deed dated 10.05.1944 claiming title in the suit property, but could not submit any other documents in support of their such claim rather they measurably failed to prove the unregistered sale deed by any evidence. He finally submits that the basis of claim of the plaintiffs is an unregistered sale deed on a white paper and said deed has not been proved in accordance with law either by producing oral evidence or by submitting any other papers supporting the unregistered deed like payment of rents, S.A. and R.S. khatians etc. But the appellate court while allowing the appeal utterly failed to give importance on the deed of the defendants of the years 1953, 1956 and 1989 and most unfortunately without any evidence in support of unregistered sale deed and marking the said deed as exhibits put unnecessary reliance and held that a deed valued at Tk. 94/- is not compulsorily registerable under Section 17 of the Registration Act and only on that finding allowed the appeal and

decreed the suit, as such, the judgment and decree of the appellate court is liable to be set aside.

Mr. Moinuddin Faruqui, learned Advocate appearing for the opposite-parties at the very outset submits that the appellate court rightly held that a deed valued at Tk. 94/- is not compulsorily registerable under the Registration Act. He submits that the defendants by filing a case before the Municipal Authority being No. 29 of 2005 admitted that the plaintiffs in possession of 4.5 decimals land, but they did not file any suit against the plaintiffs seeking recovery of possession of the suit property. He argued that the plaintiffs are in possession as admitted by the defendants. He submits that the defendants failed to prove that the plaintiffs dispossessed them on any date and failed to prove that the plaintiffs were not in possession on the basis of unregistered sale deed.

In the absence of mentioning any specific date of dispossession by the plaintiffs it can be easily presumed that the plaintiffs are in possession of the suit property from the time of their predecessor on the basis of unregistered sale deed dated 10.05.1944. He submits that record of right is not document of title, because of wrong recording of S.A. and R.S. khatians in the name of defendant

No. 4 and predecessor of defendant Nos. 1-3 in S.A. khatian, title of the plaintiffs have become clouded, consequently, they filed the suit for declaration of title seeking relief against the wrong record. The trial court failed to appreciate that a deed valued at Tk. 94/- is not compulsorily registerable under the Registration Act, but the appellate court while allowing the appeal and decreeing the suit rightly held that the deed of the year 1944 valued at Tk. 94/- is not compulsorily registerable under the Registration Act. Because of finding possession of the plaintiffs supported by an unregistered deed the appellate court rightly decreed the suit and there is no illegality at all.

Finally he submits that the plaintiff is ready to pay stamp duty if the court direct them under the facts and circumstances of the case and for non-payment of stamp duty the deed in question at best can be treated impounding not illegal or void.

Heard the learned Advocates of both the sides, have gone through the revision application, plaint in suit, written statement, amendments thereto, evidences both oral and documentary and the impugned judgment and decree passed by both the courts below.

Admittedly, the suit property in question originally belonged to one Sharan Kaibarta Das to the extent of 8 annas measuring 10·50 decimals. The plaintiffs in suit claim that Sharan Kaibarta Das by an unregistered sale deed dated 10.05.1944 sold 7·25 decimals of land to father of the plaintiffs named Sree Nikhil Das. Said unregistered deed has not been taken into evidence by marking the same as exhibit by the trial court as well as by the appellate court, but in both the judgments, the courts below discussed about the legality and validity of the said unregistered deed dated 10.05.1944. So, claim of the plaintiffs is absolutely dependent on the said unregistered sale deed dated 10.05.1944. Said deed of the plaintiffs was written on a cartridge paper showing transfer of 7·24 decimals land out of $10\frac{1}{2}$ decimals by Sharan Kaibarta Das. Plaintiff No. 2 Nirmal Kanti Das deposed as P.W.1 who in his chief stated that his father Nikhil Das purchased the property by unregistered deed dated 10.05.1944 from Sharan Kaibarta Das and submitted the same before the court. P.W.2 Nitai Das did not even uttered a single word regarding said unregistered sale deed, but he only deposed in respect of possession of the plaintiffs. P.W.3 also did not utter a single word about the sale

deed, but he stated only in respect of possession of the plaintiffs. In this situation when an unregistered deed is challenged by other party the plaintiffs ought to have proved the same by producing attesting witnesses or scribe or any other witnesses having knowledge about the said deed. The plaintiffs though claimed that their father purchased the property by the said unregistered deed in the year 1944 but could not prove the same in accordance with law, as such, they did not acquire title in the suit property by the said unregistered sale deed dated 10.05.1944.

Apart from this, had the property was purchased by their father Nikhil Chandra Das in the year 1944, he ought to have paid rents to the Jaminder before SAT Act came into force and thereafter, to the government, but in the instant case nothing could produce by the plaintiffs to substantiate their claim by any evidence both oral and documentary. From the face of the unregistered sale deed dated 10.05.1944, it appears that the same has been written on a cartridge paper showing attesting witnesses namely Mohini Das and Nibaran Das who were illiterate and put their thumbs on the deed and one Shankar Das son of Mahim Chandra, but none of the attesting

witnesses were produced before the trial court to prove the said unregistered deed. From the face of the deed, it appears that the thumb impression of 2 attesting witnesses is very recent and the writing on the old papers also seems to be recently written. Said deed, in one hand has not been proved by adducing any evidence both oral and documentary and on the face of the same it appears that the deed has been written on a plain cartridge paper without any stamp. On the other hand, the defendants stated that Sharan Kaibarta Das died leaving 3 sons Hukum Chandra Das, Digambar and Mahim. Hukum Chandra died leaving 2 sons Monmohan Das and Nishi Kanda Das. Digambar Das gifted his share measuring 3·5 decimals to his nephew Monmohan Das by a registered deed of Gift No. 21086 dated 02.02.1953. Mahim Chandra Das died leaving son Sankar Chandra Das who was not traceable for 60 years, consequently, his share devolved upon two cousins, Monmohan Das and Nishi Kanta Das. Said Monmohan Das and Nishi Kanta Das acquired entire title of Sharan Kaibarta Das measuring 10·5 decimals by inheritance and purchase. Thereafter, Monmohan Das gifted his share to his full brother Nishi Kanta Das. Nishi Kanta Das while in

possession sold entire 10·5 decimals of land to one Nandalal Das by a Registered Deed No. 6167 dated 14.07.1956 (Exhibit-Gha). Nandalal Das died leaving 2 sons Jogesh and Romesh, that is, predecessor of defendant Nos. 1-3 and defendant No. 4. Jogesh transferred 3·25 decimals land from his share to one Mohananda Das by a Registered Deed No. 2541 dated 08.04.1989. The defendants in support of their claim filed true copy of deed of Gift No. 21086 dated 02.02.1953, original Deed No. 6167 dated 14.07.1956 and Deed No. 2541 dated 08.04.1989 in court. Also filed C.S. Khatian No. 2171, S.A. Khatian No. 2319 and R.S. Khatian No. 3061.

All those documents right from C.S. Khatian upto R.S. Khatian proves chain of title of the defendants and they paid rents to the government and also could prove that on a part of the land they have houses, in support of which they submitted electricity bill showing payment of the same. The plaintiffs claim that Sharan Kaibarta Das died issueless but such contention of the plaintiffs could not prove by any evidence rather the defendants could able to show that Sharan Kaibarta Das died leaving 3 sons as appearing from Deed of Gift No. 21086 dated 02.02.1953 and Deed No. 6167

dated 14.07.1956. Had the father of plaintiffs Nikhil Chandra Das purchased the property from Sharan Kaibarta Das in the year 1944, because of wrong recording of S.A. and R.S. Khatians in the name of the defendants' predecessor, he ought to have claimed the property during his life time and filed suit against the defendants like Title Suit No. 79 of 1993 filed by Nikhil Das against the government for other non-suited property and from plaint in Title Suit No. 79 of 1993, it appears that father of the plaintiff Nikhil Chandra Das was not illiterate. He signed the plaint as Sree Nikhil Das which proved that he was alliterate person and he was aware of his right and filed the suit against the government. The alleged unregistered sale deed dated 10.05.1944 never saw the light of the day, on the other hand, the deed of the year 1953 and deed of the year 1956, S.A. khatian and R.S. khatian, payment of rents amply established that the property was inherited by 3 sons of Sharan Kaibarta Das. Subsequently, they transferred the property by the aforesaid deed and among them the deed dated 14.07.1956 is original one which is more than 30 years old having protection of Section 90 of the Evidence Act. The trial court while dismissing the suit rightly observed that where the defendants could able to submit the deed of the years 1953

and 1956 in original and S.A. and R.S. khatians coupled with the deed of sale, there is no earthly reason to believe that Sharan Kaibarta Das transferred 7.25 decimals of land to Nikhil Chandra Das in the year 1944 by an unregistered sale deed.

Had Nikhil Chandra Das purchased the property from Sharan Kaibarta Das by the unregistered deed dated 10.05.1944, S.A. khatian and R.S. khatian ought to have been recorded in the name of Nikhil Chandra Das and he ought to have paid rents to the government. But in the absence of any such document only an unregistered deed of the year 1944 on a white paper is not at all believable as the plaintiffs utterly failed to prove the same by any evidence. Therefore, I find that the trial court rightly dismissed the suit and the appellate court only on the ground of valuation of the deed at Tk. 94/- and not compulsorily registerable under the Registration Act allowed the appeal, but failed to find that the plaintiffs could not prove the said deed and produce any evidence contrary to the deed of the year 1953 and 1956, S.A. khatian and R.S. khatian, as such, committed illegality in law allowing the appeal calling for interference by this Court.

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 *stay* granted at the time of issuance of the Rule stands vacated.

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