

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.1491 of 2013

*Kashem Biswas alias Kashem Christian
being dead his legal heirs*

Mycal Biswas and others.

.....Petitioners.

-Versus-

Tapash Christian alias Tapash

Biswas and others

.....Opposite parties.

Mr. BivashChandra Biswas Advocate.

.....For the petitioners.

Mrs. Suria Begum, Advocate With

Mr. Md. Saiful Islam, Advocate.

.....For the Opposite parties.

Heard and Judgment on 19.02.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 26.02.2013 passed by the Additional District Judge, 2nd Court, Jashore in Title Appeal No. 53 of 2010 affirming those dated 10.05.2010 passed by the Assistant Judge, Jhekorgachha, Jashore in Title Suit No. 13 of 2002 decreeing the suit should not be set aside.

Opposite party nos. 1-3 as plaintiff filed Title Suit No. 13 of 2002 before the Court of Assistant Judge, Jhekorgachha, Jashore against the petitioner and others for declaration of title and confirmation of possession.

Plaint Case in short inter-alia is that the land in question under C.S. khatian no. 272 belonged to Brojo Christian in 8 annas share and Anindriya and Anton Christian in 4 annas share each. By amicable arrangement Brojo Christian was in possession of 19 decimals at north side. Andriya Christian at south side for 9½ decimals and Anton Christian was in possession at middle portion of the suit plot for 9 ½ decimals. Brojo Christian died leaving two sons Rafayel and Powel Christian and they jama settled their share to Bholai and Budhai and the said land was recorded in S.A. khatian No. 345. Andriya died leaving behind two sons Javiar and Aoishi and they transferred their land to Anton Christian by kabala dated 15.03.1962 and as a result Anton acquired 19 decimals of land and he erected houses on that land and planted trees. At the time of S.A. record, Powel was entrusted to prepare the S.A. record but he managed to prepare the said land in to his name. Rafayel filed objection case under section 19(1) of the East Bengal State Acquisition and Tenancy Act. Bholai Christian transferred his 9 ½ decimals to Gyabiyel Saha, who thereafter

transferred it to defendant no. 2. Budhai Biswas transferred 06 decimals of land to Fakir Biswas and 03½ decimals to the defendant No. 2. Plaintiffs are the heirs of deceased Anton Christian. Defendant No. 7 entered forcibly into 04 decimals of land and constructed a katcha ghar and for the said Title Suit No. 9 of 1996 was filed and the same was dismissed on 14.07.1998 and thereafter defendant no. 7 removed his structure and further constructed houses on plot no. 857 and has been living thereon. Defendant has been in forcible possession on 04 decimals of land. Defendant no. 7 again filed Title Suit No. 59 of 1998 and the same has been dismissed on 15.10.2009. Since the defendant threatened the title and possession of the plaintiff, hence the suit.

Petitioners contested the suit as defendant nos. 1 and 7 by filing written statement denying the plaint case alleging, inter-alia, that the land in C.S. khatian No. 272 belonged to Broja Christian and Churamoni Christian in equal share and Churamoni died leaving behind two sons Andriya and Anton. Broja Christian died leaving sons Rafayel and Powel. Andriya died leaving behind Javiar and Aoishi. Anton Christian permitted Bholai and Budhai to live at northern portion of 19 decimals of the suit land. Anton died leaving behind Somas and he had no possession in the suit land. Rafayel died leaving defendant nos. 8-10. Powel died

leaving defendants nos. 6 and 7. By amicable arrangement defendant no. 7 got possession on south west corner of the suit land and has been living therein on constructing houses and planting various trees. These defendants filed Title Suit No. 09 of 1996 when the plaintiff claimed title and the said suit was dismissed for default. Powel Christian did not file objection case under section 19(1) of the State Acquisition and Tenancy Act. Suit is false and is liable to be dismissed with costs.

By the judgment and decree dated 10.05.2010 Assistant Judge, Jhekorgachha, Jashore decreed the suit.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 53 of 2010 before the Court of District Judge, Jashore, which was heard on transfer by the Court of Additional District Judge, 2nd Court, Jashore, who by the impugned judgment and decree dated 26.02.2013 dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved there against defendant-petitioner obtained the instant rule.

Mr. Bivash Chandra Biswas, the learned advocate appearing for the petitioners drawing my attention to the judgment of the court below submits that plaintiff wants a decree for title

and confirmation of possession upon narrating the fact that property of Broja Christian as inherited by his sons Rafael and Powel Christian was settled to Bholai and Budhai but this contention was not been proved by adducing any evidence even then trial court decreed the suit in favour of the plaintiff.

Learned advocate further submits that in the absence of any corroborating evidence to the fact that plaintiff was dispossessed by the defendants from the suit land on 10.11.1998, the suit was not maintainable for wants of cause of action but both the courts below failed to consider this aspects of the case and decreed the suit arbitrarily in favour of the plaintiff.

Learned advocate further submits that admittedly defendants are the heirs of Powel Christian and a co-sharer and the property was admittedly been settled in favour of Bholai and Budhai but they were not made party in the suit. Unless and until a proper suit for partition by making the proper and necessary parties in the suit, the instant suit for simple declaration of title is not maintainable but the court below totally failed to consider this aspect of the case and decreed the suit most arbitrarily. The impugned judgment of the court below is thus not sustainable in law, which is liable to be set aside.

On the other hand Mrs. Suria Begum along with Mr. Md. Saiful Islam , the learned advocates appearing for the opposite parties drawing my attention to the deposition of D.W.1 submits that when the defendant admits the transfer the share of Javiar and Aoishi as being the successor of Andriya to Anton by the registered sale deed dated 15.03.1962 apparently admits the plaintiff's contention of settling the land of Rafayel and Powel Christian to Bholai and Budhai not the land of Churamoni Christian, the predecessor of Anton and Andriya. Thereby both the courts below disbelieved the defendant's contention.

Learned advocate further submits that plaintiffs are the heirs of Anton and claiming title, the share of the suit property and admittedly subsequently also owned the share of heirs of Andriya by way of registered sale deed, from the 19 ½ decimals of land, which has correctly been recorded in the khatian in the name of their predecessor not the land of Broja Christian or their successors but when the defendant, who is the son of Powel Christian is illegally dispossessed from 4 decimals of land, owned and possessed by the plaintiffs, which is not the property of Broja Christian. As such the courts below committed no illegality in awarding a decree in their favour. When the said findings of the court below contains no misreading and non reading of the

evidence, the concurrent judgment of the courts below contains no illegality, which can not be set aside and finally she prays that the rule contains no merit, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

Admittedly the suit property measuring 39 decimals of land was belonged to Broja Christian 08 annas share and Andriya and Anton together contains 08 annas share, sharing each 04 annas share. Broja Christian died leaving behind sons Rafayel and Powel Christian. Andriya died leaving behind his son Javiar and Aoishi. Rafayel and Powel Christian are the 02 sons of Broja Christian, who settled their land in .19 ½ decimals of land, according to the plaintiff to Bholai and Budhai, which defendant denied. According to them Bholai and Budhai got settlement the land from Churamoni Christian, the predecessor of Andriya and Anton. Plaintiff's further case is that Javiar and Aoishi transferred their .9½ decimals share of land to Anton by way of registered sale deed dated 15.03.1962, thereby the successor of the Anton, the plaintiff got the entire property of .19½ decimals of land. Thereafter the heirs of Anton acquired in total .19½ decimals of land by way of a successor as well as purchaser from Javiar and Aoishi, the heirs of Andriya. Since the defendants, who are the

heirs of Powel Christian, the son of Broja Christian since dispossessed the plaintiffs from 04 decimals of land and denied the title of the plaintiffs from the rest 15 decimals of land, plaintiff filed this suit. On the other hand defendant's contention is that Bholai and Budhai got settlement from Churamoni Christian not from Rafael and Powel Christian. Broja Christian died leaving behind 02 sons Rafael and Powel Christian. Defendants are the heirs of Powel Christian and owning and possessing the suit property according to their share and remaining in possession thereon.

In view of the above fact of the respective parties dispute in the instant case arises as to whom Bholai and Budhai obtained settlement. If they took settlement from Churamoni Christian, plaintiff's has got no case but it is proved that they got settlement from Rafayel and Powel Christian, defendant has got no case. In the suit no one produced any document to prove the contention that from whom Bholai and Budhai got settlement of land. S.A. khatian no. 345 as has been exhibited in court by plaintiff as Exhibit no. 2 proved that they got settlement .19½ decimals of land from plot no. 1310, which has not been denied by the defendant. That means their taking settlement has been proved by the recording of S.A. khatian no. 345. According to the plaintiff

Javiar and Aoishi, the 02 sons of Andriya transferred their share i.e. .9 ½ decimals of land to Anton by way of registered sale deed dated 15.03.1962. D.W.1 Manual Kashem, by deposing in court admits the said transfer. Thereby it has been admitted that after the death of Churamoni Christian, his share was inherited by Andriaya and Anton and heirs of Andriya i.e. Javiar and Aoishi transferred their share measuring .9½ decimals of land in favour of the Anton, the predecessor of the plaintiff. That means the property of Churamoni Christian was not been ever settled to anybody rather his share in the property was intact and subsequently been inherited by his successor Javiar and Aoishi and his another son Anton. Thereby the plaintiff's contention that property of Churamoni Christian was finally been owned and possessed by the heirs of Anton, the plaintiff by way of inheritance as well as purchase from Javiar and Aoishi through admission of D.W.1 and also it has been proved that Bholai and Budhai got settlement the property of Rafayel and Powel Christian and thereby defendants, who are claimed to be successor of Powel Christian, inheret nothing from their predecessor. Accordingly their possession in the suit property is nothing but a trespasser and illegal.

In the plaint the plaintiff has categorically stated that

‘শরীকগনের সহিত আপোষ বন্টন সূত্রে নালিশী দাগের জমি মধ্যে সর্ব উত্তর পার্শ্ব হইতে ১৯ শতক জমিতে ব্রজ খৃষ্টান এবং সর্ব দক্ষিন পার্শ্ব হইতে ০৯- ১/২ শতক জমিতে আন্দ্রিয় খৃষ্টান ও তদলাগোয়া উত্তর পার্শ্ব হইতে ০৯- ১/২ শতক জমিতে আন্তন খৃষ্টান স্বত্ববান ও দখলকার হইলেন এবং থাকেন।’

In the plaint it has been further stated that

‘ঐ অবস্থা চলাকালে উক্ত ব্রজ খৃষ্টান ২ পুত্র রাফায়েল ও পাউল খৃষ্টানকে ওয়ারেশ রাখিয়া মারা যান। তদবধি রাফায়েল ও পাউল খৃষ্টান নালিশী দাগের জমি মধ্যে উত্তর পার্শ্ব হইতে ১৯ শতক জমিতে স্বত্ববান ও দখলকার হইলেন এবং থাকেন।’

And by making a sketch map in the schedule of the plaint the property has been shown with the respective possession accordingly.

In the plaint it has been further stated that

‘৭নং বিবাদী বর্তমান জরিপ রেকর্ডের বিরুদ্ধে ৩১ ধারা অবধি আপত্তি কেস করিয়া বাদীগনের নিকট পরাজিত হইয়াছেন। ইহাতে ক্রোধান্বিত হইয়া ও বাদীগন নালিশী মৌজায় স্থায়ীভাবে না থাকার সুযোগ গ্রহণে ৭ নং বিবাদী নিতান্ত গায়ের জোরে ও বে-আইনী মতে নালিশী দাগের জমি মধ্যে দক্ষিন পার্শ্ব হইতে ১৯ শতক জমি মধ্যে দক্ষিন পশ্চিম কোণ হইতে ০৮ শতক জমিতে গত ইং ০১/০৪/১৯৯৬ তারিখে

অনুপ্রবেশ করিয়া তথায় মাটির পোতা বিশিষ্ট, টিনের ছাউনি যুক্ত চাচের বেড়া ঘেরা দোচলা কুড়ে ঘর নির্মান করিয়া বসবাস শুরু করেন।’

Thus plaintiffs tried to say that defendant no. 7 encroached 4 decimals of land of the plaintiff, which is situated in the southern side, which has owned and possessed by the Andriya and Anton and subsequently owned by the plaintiffs. Defendant no. 7 is the son of Powel Christian, they are now possessing the land, which is on the share of Andriya and Anton not from the portion where their predecessor Powel or Rafayel got as per the khatian. All P.Ws while deposing in court in a voice established the fact that the defendant no. 7 are now possessing 04 decimals of land, which has owned and possessed by the plaintiff's predecessor. If it is taken to be true that defendants are the heirs as well as a successor of Broja Christian but they are now in possession, which is owned by the successor of the Andriya and Anton. Courts below while decreeing the suit has found he is illegally occupying the land of Andriya and Anton. When there is nothing to be denied on the plaintiff's contention that Broja Christian and his successors got .19½ decimals of land from the northern side of plot no. 1310 and Andriya and Anton got .19½ decimals of land from southern portion of plot no. 1310 and accordingly the defendants who is the successors of Powel Christian is found to be

in possession on the land from the southern portion of plot no. 1310, which is obviously not been owned on amicable settlement by their predecessor and accordingly defendants possession in the schedule land is nothing but a illegal trespasser. Courts below thus found the plaintiff's contention has been proved on admission from D.W.1 and thus decreed the suit in favour of the plaintiff concurrently.

Upon going through the records and perusing the evidence and the impugned judgment, I find there is nothing to show any misreading or non reading of the evidence in the impugned judgment for which this court got any reason to interfere with in the said concurrent judgment of the court below.

Regard being had to the above law, facts and circumstances of the case, I do not find any grounds to interfere in this rule. Accordingly the rule devoids any merits for consideration.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the Court below is hereby affirmed.

Send down the L.C.R. and communicate the judgment to the court below at once.