

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3883 of 2006

Mst. Mariom Begum and others

..... Petitioners.

-Versus-

Dudh Mia being dead his legal heirs 1(a)

Md. Sahid and others

.....Opposite parties.

None appears.

.....For the petitioners.

Mr. H.M. Borhan, Advocate with

Mr. Ahmed Nowshad Jamil, Advocate

.....For the Opposite parties

Heard and judgment on 25th April, 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 21.06.2006 passed by the Joint District Judge, 3rd Court, Comilla in Title Appeal No. 228 of 1999 affirming those dated 30.09.1999 passed

by the Assistant Judge, Daudkandi, Comilla in Title Suit No. 23 of 1996 decreeing the suit should not be set aside.

Opposite party Nos. 1-4 instituted Title Suit No. 23 of 1996 before the Court of Assistant Judge, Daudkandi, Comilla against the petitioner for declaration of title.

Plaint case in short, inter alia, is that the suit land originally belonged to one Md. Sadhun, who died leaving behind his wife Nekjan and 3 sons namely Kamaruddin, Mukter, Harai and accordingly C.S. khatian No.53 was prepared in their names correctly. Thereafter Nekjan died leaving behind her 3 sons namely Kamaruddin, Mukter and Harai. In this way Kamaruddin, Mukter and Harai became owner and possessor in the suit land. In family agreement Mukter and Harai got the non- suited land and Kamaruddin got the suit land and being owner in possession their respective land, Mukter died leaving behind his son, the defendant No.8 and Harai died leaving behind his 5 sons name Nowab Ali, Habiz, A.Gani, Cherag Ali and Hazrat Ali, the defendant No. 12. Thereafter Cherag Ali died leaving behind his 4 brothers. Abdul Gani died leaving behind the defendant Nos.9-11 as his heirs. Nowab Ali died leaving behind the defendant Nos.13 and 14, and

Habiz Uddin died leaving behind the defendant Nos. 15 to 17 as their heirs. Kamaruddin being owner in possession the suit 2nd scheduled land along with non- suited land died leaving behind his 2 sons named Kalai and Sekandar, who got the suit and scheduled land and had been possessing the said land by constructing houses and by executing a pond since before 60 years. In family arrangement Kalai got the Eastern 37 decimals of land and Sekandar got the western 37 decimals of land. Which were separated by separate boundary. Thereafter Kalai died leaving behind the plaintiffs and Sekandar died leaving behind the defendant nos.1 to 4 as their legal heirs. But subsequently the defendant Nos. 8/9-12 and 15 claimed the suit land and as a result the defendant Nos.1 to 4 and Asia Khatun purchased .14 decimals of land from the suit plot vide safkabala deed No.295 dated 15.01.94 from the defendant Nos.9-12 and 15 and the defendant nos. 1 to 3 purchased 09 decimals of land from the suit plot vide safkabala deed dated 4.12.95 and the defendant Nos.1 to 4 purchased 11 decimals of land from the suit plot on the same date by separate safkabala deed from the defendant No.8. Then Asia Khatun died leaving behind her 3 sons, the defendant Nos.1 to 3.

The plaintiffs became owner and possessor in 20 decimals of land by way of inheritance and got 7 decimals of land by way of purchase vide Safkabala deed No.294 dated 15.01.94 and got 9 decimals of land by way of purchase vide Safkabala deed no.5731 dated 4.12.95 in total 36 decimals of land and the defendants got 20 decimals of land by way of inheritance and got 18 decimals of land by way of purchase and have been possessing their respective land. In this way the plaintiffs got the 3rd schedule land out of the 2nd schedule land and have been possessing the said land as their home estate. There are 4 tin shade house, 3 kitchen and other houses and a pond in the suit 3rd schedule land. The defendants are title less and possession less in respect of the 3rd schedule land. But the S.A. Khatian No.55 has been prepared in the name of the defendants instead of the plaintiffs wrongly, which becomes knowledge to the plaintiffs on 26.01.96. The defendants claim title over the suit land lastly on 20.01.96 and as a result the plaintiffs constrained to file the instant suit for declaration of their title.

Petitioner as defendant No.1-4 contested the suit by filing written statement denying the plaint case alleging, inter alia, that the suit land along with non-suited originally belonged to one

Sadhu, who died leaving behind his 5 sons namely Kamaruddin, Bakter, Ekter, Mokter, Harai, 2 daughters namely Amirjan and Zamirjan and his wife Nekjan. C. S. Khatian No.53 was prepared in the name of Kamaruddin, Mukter, Harai and Nekjan according to the knowledge and consent of the other heirs of Sadhu. In family arrangement Amirjan and Zamirjan got the entire 74 decimals of land from the suit plot in equal share and being owner in possession the said land, Amirjan gifted her 37 decimals of land to her brothers son Easin, vide gift deed no.1036 dated 22.02.1933 and Zamirjan gifted her 37 decimals of land to her brothers son Sekandar Ali, the predecessor of the defendants vide gift deed no.1776 dated 10.04.33 and delivered possession. Sekandar Ali being owner in possession in 37 decimals of land his brother Kalai requested him to give some portion of land to make homestead newly and in this circumstances, they made a bantannama deed on 18.12.39, which was registered on 21.12.39 along with Easin, who was the owner and possessor of the rest 37 decimals of land. According to that bantannama deed, Sekandar and Kalai got 37 decimals of land jointly and Easin got the rest 37 decimals of land. Thereafter in family arrangement Sekandar got .18½ decimals of

land in the Western side and Kalai got .18½ decimals of land in the Eastern side and make their homestead. Thereafter Easin sold his 37 decimals of land to Sekandar Ali vide safkabala deed no.6491 dated 19.12.44 and delivered possession. In this way Sekandar Ali got .55½ decimals of land and being owner in possession the same died leaving behind his 4 sons namely Sadat Ali, Abid Ali, Safar Ali, Mantaz Uddin and a daughter namely Ambia Khatun Thereafter Sadat Ali died leaving behind his son namely Nurul Islam and 2 daughters namely Safia Khatun and Hosena Khatun. In family arrangement, the defendant nos.1 to 4 got that .55½ decimals of land. It is to be mentioned that non suited C.S. Khatian No.49 was also not prepared in the name of Amirjan and Zamirjan but they sold .63 decimals of land from the plot No.118 along with their brother Ekter jointly to Ashrab Ali Syed Ali and Ali Hossain vide Safkabala deed No.5938 dated 01.11.28 which proves the ownership of Amirjan and Zamirjan from their father. The plaintiffs did not make party all the co-sharers of the suit S.A. Khatian and as such the suit is bad for defect of parties and liable to be dismissed.

By the judgment and decree dated 30.09.1999, the Assistant Judge decreed the suit on contest.

Challenging the said judgment and decree, defendant petitioner preferred Title Appeal No. 228 of 1999 before the Court of District Judge, Cumilla, which was heard on transfer by the Joint District Judge, 3rd Court, Comilla, who by the impugned judgment and decree dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Although the matter is posted in the list by mentioning the name of the lawyer of the petitioner and also posted today for delivery of judgment but no one appears to press the rule.

However the learned advocate Mr. H.M. Borhan, appearing for the opposite party drawing my attention to the judgment of the court below submits that since the S.A. khatian was wrongly been recorded, plaintiff filed this suit for declaration of title. Both the courts below concurrently found that plaintiff has got valid title and possession over the suit land. On the other hand, defendant

contention to the effect that Shadhu Malik has got two sisters Amirjan and Zamirjan and from them defendant obtained their entire property not been proved by any evidence as well as defendant claim of holding the entire suit land is not proved through the Advocate Commissioner who held local inspection of the suit land duly appeal and accordingly both the court below concurrently found that plaintiff is in possession in the suit land as valid title holder of the suit land and accordingly suit was decreed by the court below. Since the court below contains no illegality in the judgment by way of non-reading or misreading of the evidence, rule contains no merits, it may be discharged.

Heard the learned advocate and perused the lower court record and the impugned judgment.

Admittedly suit property was belonged to Md. Shadhu Malik. According to the plaintiff, he died leaving behind widow Nekjan and 3 sons Komoruddin, Mukter and Harai. Komoruddin died leaving behind 2 sons Kalai and Sekandar. Plaintiffs is the heirs of Kalai and defendants are the heirs of Sekandar. Plaintiffs claimed that after the death of their father, plaintiff inherited the suit property and remaining in possession but during S.A.

operation it was wrongly been recorded and as such plaintiff filed this suit. On the other hand, defendants claimed that Shadhu Malik has through 2 daughters Amirjan and Zamirjan along with his wife and sons. On a family arrangement Amirjan and Zamirjan got the entire 74 decimals of land from the suit plot. Amirjan gifted her 37 decimals of land to her brothers son Easin, vide gift deed No. 1036 dated 22.02.1933 and Zamirjan gifted her 37 decimals of land to her brothers son Sekandar Ali, predecessor of the defendants vide gift deed No. 1776 dated 10.04.33 and delivered possession in the suit land to Sekandar Ali. There was a bantannama amongst the heirs on 21.12.1939, through which Sekandar and Kalai got 37 decimals of land jointly and Easin got rest 37 decimals of land. Subsequently Sekandar got .18½ decimals of land in the Western Side and Kalai got .18½ decimals of land in the Eastern side on an amicable settlement, on which they made their homestead. Thereafter Easin sold his 37 decimals of land to Sekandar Ali vide registered kabala deed dated 19.12.44. Thereby Sekandar Ali got .55½ decimals of land and died leaving behind the defendant. Plaintiffs are not entitled to get as per their claim in the suit land and suit property has rightly

been recorded in the khatian. The suit is false and is liable to be dismissed with cost.

The court below upon given a vivid description on the documents submitted by both the parties as well as considering the evidences on record concurrently found that defendant could not prove by adducing any evidence that Shadhu Malik died leaving behind two daughters Amirjan and Zamirjan, along with his sons and wife as mentioned by the plaintiffs, thereby the claim of acquiring the property from them by way of gift and subsequent transfer are not been proved or acted upon. Moreover upon the oral evidences, court below found that the plaintiffs are in possession over the suit land as claimed by them. In appeal there was a local inspection as been held by an Advocate Commissioner. One Md. Abdul Matin was appointed as an Advocate Commissioner, who submitted a report in court, which was exhibited in court as Ext.Ka.

During investigation the following points were asked to enquire about:-

"১। নালিশী উত্তর কৃষ্ণপুর মৌজার সি,এস, ৫৩নং খতিয়ান ভুক্ত নালিশী ৪০৫ দাগের ভূমিতে কয় টি খন্ড আছে এবং উত্তর, ৪০৫ দাগের ভূমির আকৃতি ও প্রকৃতি কিরূপ।

২। নালিশী ৪০৫ দাগের ভূমিতে বসত বাড়ী আছে কিনা এবং কোন গৃহাদী আছে কিনা। যদি গৃহাদী থাকে উত্তর গৃহ গুলতে কে কে বাস করে তাহাদের নাম ও ঠিকানা।

৩। নালিশী ৪০৫ দাগের ভূমিতে যদি বসত বাড়ী থাকিয়া থাকে তবে উত্তর বসত বাড়ী কয় খন্ডে বিভক্ত এবং কয় খন্ডে বিভক্ত এবং ইহার পরিমান কত।

৪। নালিশী ৩য় তপছিলের ভূমি আকৃতি ও প্রকৃতি ও চৌহদ্দী নির্ধারণ ক্রমে রিপোর্ট প্রদান করিতে হইবে।"

The Advocate Commissioner after inquiry gave the following report that:

"১নং প্রশ্নের উত্তর-

নালিশী উত্তর কৃষ্ণপুর মৌজার অন্তর্গত আলমপুর গ্রামে অবস্থিত সেঃ মেঃ ৪০৫ দাগের ভূমি ৪ খন্ডে বিভক্ত। উত্তর ৪০৫ দাগের অবস্থিত ও প্রকৃতি হচ্ছে আমার কৃত নকশার ও চিঠার ১ ও ৩ নং চিঠা দাগের ভূমি বসতবাড়ী ২ খন্ডে বিভক্ত আমার কৃত নকশার ও চিঠা ২ ও ৪ নং চিঠা

দাগের ভূমি চারা ভিত্তি যা ২খন্ডে বিভক্ত। নালিশী ৪০৫ দাগটি আমার কৃত নকশায় - ৫-৬, ৬- ৬A, ৬A-৭, ৭-৮, ৮-৯, ৯-৫, ৯-১০, ১০-১১, ১১-১২ ও ১২-৭ নং নকশার দ্বারা বেষ্টিত হয়।

২নং প্রশ্নের উত্তর-

নালিশী উত্তর কৃষ্ণপুর মৌজার অন্তর্গত আলমপুর গ্রামে অবস্থিত সেঃ মেঃ ৪০৫ দাগ, আমারকৃত নকশায় ও চিঠার ১ ও ৩ নং চিঠা দাগের ভূমি বসত বাড়ী, উক্ত বসত বাড়ীতে কতগুলো গৃহ বিদ্যমান আছে। উক্ত গৃহগুলো আমার কৃত নকশায় A. B. C. D. E. F. G. H. I. ও J চিহ্ন দ্বারা প্রদর্শিত হইল। A চিহ্নিত গৃহটির দৈর্ঘ্য ১৯"-৬" এবং প্রস্থ ১৮"-৬" দোচালা টিনের ঘর উক্ত গৃহটির মধ্যে মমতাজ উদ্দিন বসবাস করে। I গৃহটি দোচালা ছনের ঘর যার দৈর্ঘ্য ৯"-০ এবং প্রস্থ ৫"-০" উক্ত গৃহটি মমতাজ উদ্দিনের পাকের ঘর। B, চিহ্নিত গৃহটির দৈর্ঘ্য ১৭"-০" এবং প্রস্থ ১২"-০" চৌচালা টিনের ঘর উক্ত গৃহটির মধ্যে আবিদ আলী বাস করে। J গৃহটি ছনের ঘর যার দৈর্ঘ্য ৭"-০" প্রস্থ ৫"-০" উক্ত গৃহটি আবিদ আলীর পাকের ঘর, C চিহ্নিত গৃহটির দৈর্ঘ্য ২৭"-০" এবং প্রস্থ ২২"-০" দোচালা টিনের ঘর উক্ত গৃহটির মধ্যে দুধমিয়া বাস করে। H চিহ্নিত গৃহটি দুধমিয়ার পাকঘর যার দৈর্ঘ্য ৭"-০" প্রস্থ ৬"-০", D চিহ্নিত গৃহটির দৈর্ঘ্য ১৫"-০" এবং প্রস্থ ১৫"-০" দোচালা টিনের ঘর উত্তর গৃহটির মধ্যে মিরাজ মিয়ার বসবাস করে, G চিহ্নিত গৃহটির দৈর্ঘ্য

৯"-০" এবং প্রস্থ ৭"-০" উক্ত গৃহটি মিরাজ মিয়ার পাক ঘর। E চিহ্নিত গৃহটির দৈর্ঘ্য ২২"-০" এবং প্রস্থ ১৯"-০" চৌচালা টিনের ঘর, উক্ত গৃহের মধ্যে আঃ রশিদ বসবাস করে। F চিহ্নিত গৃহটির দৈর্ঘ্য ৮"-০" এবং প্রস্থ ৫"-০" দোচালা ছনের ঘর উক্ত ঘরটি আঃ রশিদের রান্না ঘর।

৩নং প্রশ্নের উত্তর-

নালিশী ৪০৫ দাগে বসত বাড়ী আছে। নালিশী উত্তর কৃষ্ণপুর মৌজার অন্তর্গত আলমপুর গ্রামে অবস্থিত সেঃ মেঃ ৪০৫ দাগ আমার কৃত নকশার ও চিঠার ১ ও ৩ এবং চিঠা দাগের ভূমি বসত বাড়ী হয়। উক্ত বসত বাড়ী দুই খণ্ডে বিভক্ত যা আমার কৃত নকশার ও চিঠার ১ ও ৩ নং চিঠা দাগের ভূমি। যাহার পরিমাণ $৩৯ \frac{৬}{১০}$ শতক। যা আমার কৃত নকশায় ৬-৬A, ৬A-৭, ৭-৮, ৮-৬, ৮-১১, ১২-৭ নং স্টেশন দ্বারা বেষ্টিত হয়। আমার কৃত নকশার ও চিঠার ২ ও ৪ নং দাগের ভূমি চারা ভিটি উক্ত চারা ভিটির পরিমাণ ৫-৬, ৬-৮, ৮-৯, ৯-৫, ৯-১০, ১০-১১, ১১-৮ নং স্টেশন দ্বারা বেষ্টিত।

৪নং প্রশ্নের উত্তর-

দরখাস্তে উল্লেখিত ৩য় তপছিলের ভূমির আকৃতি ও প্রকৃতি হচ্ছে বসত বাড়ী ও চারা ভিটি। দরখাস্তে উল্লেখিত চৌহদ্দী দ্বারা আকৃষ্ট কৃত

নালিশী ওয় তপছিলের ভূমি সেঃ মেঃ ৪০৫ দাগের ভূমি যাহা আমার কৃত নকশার ও চিঠার ১ ও ২ নং চিঠা দাগের ভূমি হয়। উক্ত ভূমির পরিমাণ ৩৭ শতক। নালিশী ওয় তপছিলোক্ত ভূমি আমার কৃত নকসায় ৫-৬, ৬-৬A, ৬A-৭, ৭-৮, ৮-৯, ৯-৫নং স্টেশন দ্বারা বেষ্টিত, ওয় তপছিলোক্ত ভূমির।"

Upon perusal of the said report, it appears that Advocate Commissioner has clearly found that in the suit land in plot No.405, which was demarked by way of boundaries as mentioned by the Advocate Commissioner report, both the plaintiffs and defendants are residing in their respective portions, with having their dwelling hut there as been claimed by the plaintiff in the plaint. Consequently the appellate court being the last court of fact, has found that plaintiff has successfully able to prove his possession in the suit property as claim by him.

The above all facts of this case contains no misreading or non-reading on the evidences thereby the concurrent judgment contains no illegality, which calls for any interference by this court.

Accordingly I find no merits in the rule.

In the result, the Rule is discharged. The judgment and decree passed by the court below are hereby affirmed and the suit is decreed.

The order of stay granted earlier is hereby recalled and vacated.

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