

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No.4721 of 2006

Md. Abul Kashem Ali .....petitioner

-Versus-

Md. Surutzzamal being dead his heirs:

1(a) Mst. Rahima Begum and others

..... opposite parties

Mr. Abul Kashem Sarker, Advocate

..... for the petitioner

Mr. SK Sharifuddin, Advocate

..... for opposite party 1

Judgment on 21.05.2024

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree of the Additional District Judge, Kurigram passed on 05.04.2006 in Other Class Appeal No.79 of 2004 dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Roumari, Kurigram passed on 07.09.2004 in Other Class Suit No.32 of 2003 dismissing the suit should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaintiff brought the suit praying for permanent injunction against the defendants in respect of the suit land as described in the schedule to the plaint. In the plaint the plaintiff claimed that his mother Mst. Nesavan Bibi took 2.66 acres of the suit land *pattan* from the recorded owner Bakku Barman and Ram Narayan Barman in 1355 BS. She erected a house in a part of the

suit land and used to possess the remaining part through cultivation. SA *khatian* was prepared wrongly in the name of defendants 2 and 3 for which his mother instituted Other Class Suit No.208 of 1984 against them and obtained an *ex parte* decree on 31.01.1994. Nesavan Bibi subsequently handed over the suit land to the plaintiff through a will dated 12.05.1997. The plaintiff has been owning and possessing of the same through cultivation. The defendants being armed with deadly weapons entered into suit land at about 10.00 am on 30.06.2003 to cut away *irri* paddy grown therein. He somehow resisted them and hence the suit for permanent injunction.

Defendant 1 contested the suit by filing written statement. In the statement he denied the facts stated in the plaint and further contended the plaintiff did not get decree in Title Suit No.208 of 1984. He used the name of Nesavan Bibi and instituted the suit which was dismissed. The suit land originally belonged to Ram Narayan who gave *pattan* of 1.91 acres to Asim Uddin and Khalil Uddin alias Alif Uddin. Khalil Uddin died leaving his only son Jalil Uddin alias Bullet Mahmood. RS *Khatian* 1132 has been prepared correctly in the names of Azim Uddin and Jalil Uddin. Jalil Uddin sold out .95 acres on 25.10.1977 to defendant 1 through a registered *kabala* who mutated his name and separated the *jama*. He paid rent to the concerned authority and *Diara*

*khatian* has been prepared in his name. The defendants are in possession of the suit land. The plaintiff instituted the suit on false statement and as such it would be dismissed.

On pleadings the trial Court framed 4 issues. During trial the plaintiff examined 2 witnesses and their documents were exhibits-1 and 2. The defendants also examined 2 witnesses and their documents were produced as exhibits-Ka-Chha. However, the trial Court dismissed the suit on contest against which the plaintiff preferred appeal before the District Judge. The Additional District Judge, Kurigram heard the said appeal on transfer and dismissed it affirming the judgment and decree passed by the trial Court. In this juncture, the plaintiff approached this Court and obtained this Rule.

Mr. Abul Kashem Sarkar, learned Advocate for the petitioner taking me thorough the judgments passed by the Courts below and other materials on record submits that the Courts below did not ascertained the possession of the parties over the suit land. The plaintiff by evidence of two witnesses proved his possession in the suit land. In a suit for permanent injunction the prime consideration is the possession of the claimant in the suit land and question of title can be seen incidentally. Here, the plaintiff proved his title over the suit land by exhibiting the judgment and decree passed in Other Class Suit No.208 of 1984 where title of

the mother of plaintiff has been established. Subsequently the plaintiff got the suit land through a registered will from her mother. Both the Courts below failed to scrutinize and assess the evidence of witnesses and thereby come an erroneous decision in dismissing the suit. The Rule, therefore, would be made absolute and the judgments passed by the Courts below should be set aside.

Mr. SK Sharifuddin, learned Advocate for opposite parties 1(a)-1(g) on the other hand opposes the Rule. He submits that the plaintiff failed to produce *pattannama* through which his mother alleged to have got the suit land from the original recorded owner. The schedule land of Title Suit No.208 of 1984 exhibit-Uma is not identical with the lands of the present suit. Therefore, the plaintiff has got no title in the suit land. The plaintiff further failed to prove his possession in the suit land. The date of threat of dispossession has not been proved by evidence. The defendants' documents support their possession in the suit land. The Court of appeal below although did not discuss the evidence of the parties elaborately but finally came to the correct conclusion and dismissed the appeal affirming the judgment and decree passed by the trial Court. The Rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record. The suit was filed for

permanent injunction. In a suit with such prayer the prime consideration is the exclusive possession of the claimant in the suit land. The question of title can be looked into there incidentally. On perusal of the judgments of the Courts below and evidence of the witnesses it is found that the plaintiff nowhere in the plaint stated that the defendants threatened him for dispossession. In the plaint as well as in the evidence of PW 1 it has been stated that on 30.06.2003 the defendant with their men equipped with deadly weapons entered into the suit land and tried to cut away paddy but the plaintiff somehow resisted them. In evidence PW2 did not utter a single word that the defendants with his men entered into suit land on the alleged day or tried to take over possession of the same. So the evidence of PWs 1 and 2 is not corroborative regarding act of steps of dispossession. Moreover, the documentary evidence of defendant 1 proves his possession in the suit land. He submitted the mutation *khatian* exhibit-Ka, *dakhila* exhibit-Ga and DCR exhibit-Gha and proved his possession. The oral evidence of the defendant is also convincing and proves his possession in the suit land. Even if, it is admitted that the mother of the plaintiff got a decree in Title Suit No.208 of 1984 in respect of the suit land but she cannot make a will for her entire land in favour of the plaintiff through exhibit-2 because the provisions of Muslim Law do not support a will of

such nature. Moreover, a probate case under the provisions of Succession Act is to be filed to legalize the will which was not done in this case. Therefore, I find title of the plaintiff in the suit land cloudy and not proved. The plaintiff failed to establish his *prima facie* title and exclusive possession in the suit land through evidence both oral and documentary. The Courts below correctly assessed the evidence of the parties and dismissed the suit. I find nothing to interfere with the judgments passed by the Courts below.

Therefore, this Rule bears no merit. Accordingly, it is discharged. No order as to costs. The judgments passed by the Courts below is affirmed.

The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Court records.