

*Present:*

*Mr. Justice A.K.M. Asaduzzaman.*

*Civil Revision No. 554 of 2007*

*With Civil Revision No. 555 of 2007*

*With Civil Revision No. 568 of 2007.*

*Abu Baker Siddiq and others.*

*.....Petitioners.*

*Versus-*

*Fazlul Haque being dead his legal heirs*

*Samsul Islam being dead his legal heirs*

*Most. Sadeka Khatun and others.*

*.....Opposite parties.*

*Ms. Seema Rani Das, Advocate.*

*-----For the petitioners.*

*Mr. Ahmed Nowshed Jamil, Advocate*

*-----For the opposite parties.*

*Heard and Judgment on 11.06.2024.*

A.K.M. Asaduzzaman, J.

03(three) suits being Title Suit No. 08 of 2001, Title Suit No. 09 of 2001 and Title Suit No. 25 of 1999 since were arisen out of the same suit land and between the same parties are heard together and disposed of by the single judgment dated 09.10.2003 by the Joint District Judge, 1<sup>st</sup> Court, Chuadanga and the appeal being Title Appeal No. 15 of 2004, Title Appeal No. 16 of 2004

and Title Appeal No. 17 of 2004 were heard and disposed of by a single judgment on 29.08.2006 by the Additional District Judge, 1<sup>st</sup> Court, Chuadanga.

Challenging the said judgment and decree the instant 03(three) revisional application was filed and the rule was obtained. The above 03(three) rules are heard together and disposed of by this single judgment.

Plaint case in short inter alia is that on 27.07.1997 the successor of Fazlul Haque, the predecessor of the opposite party Samsul Islam and others as plaintiffs filed 02(two) suits. One is Title Suit No. 122 of 1997 for permanent injunction over 4.16 acres of land in C.S. Khatian No. 49 of Mouza Boyra and on 7.53 acres of land in C.S. Khatian No. 106 of Kanaidanga Mouza before the Court of Joint District Judge, 1<sup>st</sup> Court, Chuadanga against the petitioner Abu Baker Siddiq and others and on the same date, he also filed another suit being Title Suit No. 123 of 1997 for recovery of possession on .49 acres of land of C.S. Plot No. 121 against the Abu Baker Siddiq and others. The said 02(two) suits subsequently re-numbered as Title Suit No. 08 of 2001 and 09 of 2001.

Thereafter on 10.10.1996 Abu Baker Siddiq and others, the present petitioner as plaintiff filed Title Suit No. 25 of 1999 before

the Court of the then Sub-Ordinate Judge, Chuadanga for declaration of title over 11.6 acres of land recorded in 02(two) separate C.S. Khatian of Mouza Boyra and Kanaidanga against the successor of said Fazlul Haque.

The said suits were contested by the respective defendants in the suit.

The facts as would be derived from the pleadings of the respective cases of the suit is that according to the successor of Fazlul Haque suit property was belonged to Nafar Chandra Pal Chowdhury, who was the land lord of the suit property. Defendants ancestor Raju Mandal, Fakir Chad Mondal and Rabbany Mondal were "Utbondi" occupancy tenants of 08 annas, 4 annas and 4 annas share respectively in the suit land. C.S. khatian was prepared into their names rightly. After the C.S. operation the said Utbondi tenats left the lands uncultivated and did not pay rents, accordingly said land lord Nefar Chandra Pal Chowdhury took the land in khash. The said land was subsequently been acquired by Medinipur Jamindari Company Limited and remaining in possession by way of Dolfurdi on 17 Kartik, 1354 B.S. Fazlul Haque took settlement 4.16 acres of land at an annual rent of Tk. 15 anna 2 and also took similar settlement of 7.53 acres of land of Mouza Kanaidanga on 21<sup>st</sup> Falgun, 1354

B.S. at an annual rent of Tk. 27 anna 6 and pie 6 and got possession on paying salamy to the company. Fazlul Haque was doctor, he possessed the suit land through his borgadar. S.A. khatian was prepared into his name. During war of liberation in 1971, Fazlul Haque was killed leaving behind his 7 sons, 01 widow and 03 daughters as his legal heirs, whose names were correctly been recorded in the R.S. khatian. They are possessing the suit land by cultivation through their borgadar. Fazlul Haque permitted the defendants Abu Baker Siddiq and others predecessor to reside on the land of plot no. 121 on erecting their house thereon. Thereafter they were asked to vacate the land of plot no. 121 but they refused as well as threatened the plaintiff to dispossess and as such the heirs of Fazlul Haque were compelled to institute this suit for khas possession as well as permanent injunction.

According to the Abu Baker Siddiq and others, the defendant of the suit in Title Suit No. 08 of 2001 and Title Suit No. 09 of 2001 as well as the plaintiff of Title Suit No. 25 of 1999, admittedly Raj Mondal, Fakir Chad Mondal and Rabbani Mondal were the C.S. recorded tenants to the extent of 8 annas, 4 annas and 4 annas share respectively each of the suit land under the landlord Nefar Chandra Pal Chowdhury. The interest of Nefar

Chandra Pal Chowdhury was subsequently transferred to the Medenipur Jamindari Company Limited to whom the C.S. recorded tenant also paid rent and remaining in possession. On plot no. 121 of Boyra Mouza, defendant-petitioner have pakka house, where they live with family. On C.S. Plot No. 217 along with some other non suited lands, defendant-petitioner dug a pond and cultured fish thereon and on the rest of the lands they possessed the same by cultivation. C.S. recorded tenant Raju Mondal died leaving behind only son Akil Mondal, who died leaving behind only son Rahim Mondal. Rabbani Mondal died leaving behind one brother Fakir Chand Mondal and one daughter Jayeda Khatun. Rahim Mondal died leaving behind 5 sons, 7 daughters and 1 widow. Fazlul Haque was the relative of Fakir Chand Mondal. Said Fazlul Haque was brought up in the house of Fakir Chand Mondal and became the doctor on the full assistance of Fakir Chand Mondal. Since he was literate man and was entrusted to record the S.A. khatian into his name to the Fazlul Haque but who fraudulently recorded the S.A. Khatian into his name. After the death of Fazlul Haque, defendnat-petitioner entrusted Nurul Islam, the son of Fazlul Haque to get the suit land recorded into their names in R.S. Khatian but in collusion of the Surveyor said Nurul Islam recorded the R.S. khatian in the name of heirs of Fazlul Haque. Thus 02(two) khatians were wrongly

been recorded and thus they prayed for dismissal of the suit filed by the heirs of Fazlul Haque and also prayed for a decree in a suit filed by defendant-petitioners Abu Baker Siddiq and others in Title Suit No. 25 of 1999.

By the judgment and decree dated 09.10.2003, Joint District Judge, 1<sup>st</sup> Court, Chuadanga decreed the suit being Title Suit No. 25 of 1999 and dismissed the other 02(two) suits being Title Suit No. 08 of 2001 and Title Suit No. 09 of 2001.

Challenging the said judgment and decree, 03(three) appeals were preferred by Samsul Islam and others being Title Appeal No. 15 of 2004, Title Appeal No. 16 of 2004 and Title Appeal No. 17 of 2004 before the Court of District Judge, which were heard analogously on transfer by the Additional District Judge, 1<sup>st</sup> Court, Chuadanga, who by the impugned judgment and decree dated 29.08.2006 allowed all the appeals after reversing the judgment of the trial court, which is under challenged in the instant 03(three) rules.

Mrs. Seema Rani Das, the learned advocate appearing for the petitioners drawing my attention to the judgment of the trial court submits that Samsul Islam and others, plaintiffs of Title Suit No. 08 of 2001 and Title Suit No. 09 of 2001 as a defendant of Title Suit No. 25 of 1999 failed to establish their case that suit

property was at all ever been surrendered or abandonment by the C.S. recorded tenant, the predecessor of Abu Baker Siddiq and others by producing any documents orally or evidence and that a C.S. recorded tenants were only an "Utbondi" tenants and could not acquire any valid title over the suit land. More so, the story of taking settlement by dolfurdi was also not been proved by any evidence. Moreover, the possession of the heirs of a C.S. recorded tenants, the plaintiffs of Title Suit No. 25 of 1999 as the successive heirs of C.S. recorded tenants as being admitted by the plaintiff witness, also proved that suit as being instituted by Samsul Islam and others was not been proved, rather the Title Suit being No. 25 of 1999 has got valid ground to pass a decree of right title even on admission by the other side, accordingly trial court rightly dismissed the Title Suit No. 08 of 2001 and Title Suit No. 09 of 2001 and decreed the Title Suit No. 25 of 1999. But the Appellate Court totally failed to reverse the said findings of the trial court properly while allowing the appeal. In support of her submission, the learned advocate has cited a decision in the case of Most. Gola Bewa and others Vs. Md. Abdur Rashid and others reported in 4MLR(AD)(1999)page420. The impugned judgment is thus not sustainable in law, which is liable to be set aside and all the rules may be made absolute.

On the other hand, Mr. Ahmed Nowshed Jamil, the learned advocate appearing for the opposite parties submits that the Appellate Court being the last court of fact has rightly found that C.S. recorded tenants, the predecessor of the Abu Baker Siddiq and others were an utbondi tenant and after the expire of 01(one) year, they did not acquire any valid title over the suit land. Moreover, the Appellate Court has rightly found that the heirs of Fazlul Haque, the plaintiff has successfully able to prove by producing exhibit M and N, that Fazlul Haque has validly and legally taken settlement of the suit land from the Company and their names have correctly been recorded in the S.A. and R.S. khatian. The impugned judgment since thus contains no illegality, Rule may be discharged.

Heard the learned advocate of both the sides and perused the impugned judgment and the lower court' record.

In the 03(three) suits main question is to be decided that whether the property in question was being surrendered by the C.S. recorded tenant, the predecessor of the Abu Baker Siddiq and others, the plaintiffs of Title Suit No. 25 of 1999 in favour of the ex-landlord and subsequently taken settlement by Fazlul Haque or not. Admittedly the Abu Baker Siddiq and others are the successive heirs of C.S. recorded tenant. Witness Samsul Islam



while deposing in court in Title Suit No. 25 of 1999 as well as in the other suit has admits that

‘সি.এস. ১২১ দাগে বাড়ী ঘড়ের উল্লেখ আছে। এই বাড়ীতে ফকির চাদ মন্ডল বাস করতেন জানি। ফকির চাদ মৃত্যুর পর তার সন্তানেরা এই বাড়ীতে বাস করত ঠিক।’

This Fakir Chand is the C.S. recorded tenant and his heirs are the present petitioner before this court.

Wazed Ali while deposing on behalf of defendant in Title Suit No. 25 of 1999 as D.W.5 and to support the case of heirs of Fazlul Haque also admits the similar version and said that

‘ফকির চাদ যে বাড়ীতে বাস করত খোকার ছেলেরা সেই বাড়ীতে বাস করে ঠিক।’

And further admits that

‘পুকুর, বাড়ী, আবুবকর দিং দখল করেছে-----কানাইডাংগা মৌজা জমি আবুবকর দিং দখল করে ঠিক।’

Thus it has been proved by way of admission that C.S. recorded tenant Fakir Chand and his successors are all alone in the suit premises. Noticing the same, the trial court has rightly found that the question of surrender the suit property by the C.S. recorded tenant in favour of the ex-landlord is not proved rather it

has been proved by way of admission. Moreover, the story of surrendering the said property by the C.S. and S.A. recorded tenant was not been proved by any other evidences.

Now question remains whether the heirs of Fazlul Haque, the plaintiffs of other 02(two) suits has able to prove their story of taking settlement of the suit land by Fazlul Haque from the Company. 02(two) documents, which are the dolfurdi as being asked to be given by Medenipur Jamindari Company in favour of the Fazlul Haque dated 17<sup>th</sup> Kartik 1354 B.S. for taking settlement of property measuring 4.16 acres of land of Kanaidanga Mouza and another dolfurdi dated 21<sup>st</sup> Falgun, 1354 B.S. of Boyra Mouza were produced in court but not by the plaintiffs rather it was placed in court by one Wazed Ali (D.W.5) in Title Suit No. 25 of 1999, who is the Chairman of Nitipota Union, which is marked in court as exhibit M. This document was neither been produced in court through proper custodian, nor proved through any person, either who written the said Fordi or proved the same from volume. Noticing the matter that this document was even not been signed by P.O. of the concern office, this unproved document can not carry any valid title in favour of the Fazlul Haque. Since the story of taking settlement by Fazlul Haque through dolfurdi was not proved in court, Trial Court disbelieved the story of the heirs of

the Fazlul Haque and thereby declined to pass a decree in their favour in that (02(two) suits. Noticing the case that plaintiff's title and possession over the suit land by the heirs of C.S. recorded tenant been admitted by the defendant as well as plaintiff of other 02(two) suits, trial Court decreed the Title Suit No. 25 of 1999 in favour of the plaintiffs. On the contrary, Appellate Court upon misquotation from the judgment of the trial court wrongly held that trial court failed to understand that the said documents of taking settlement since was laminated subsequently and was unable to put the signature of the concern court and marked exhibited thereon, which is not the actual observations and findings of the trial court. Trial Court did not disbelieve the document on the ground that it was not been marked exhibited as well as not been signed by the concern court, while exhibiting in court rather it was disbelieved on the ground that it was not been signed by the P.O of the concern office as well as not been proved in court through the valid custodian of the document.

Regard being had to the above law and facts and circumstance of the case, I am of the opinion that Appellate Court committed illegality in allowing the appeal on not properly reversing the judgment of the trial court. Accordingly the impugned judgment is not a proper judgment of reversal under

Order 41 Rule 31 of the Code of Civil Procedure, which are liable to be set aside. This observations also get reliance upon the decision cited by the learned advocate of the petitioner in 4MLR(AD)(1999)page420.

In that view of the matter, I find merit in these rules.

Accordingly all 03(three) rules are made absolute and the judgment and decree passed by the Appellate Court is hereby set aside and decree passed by the trial court is hereby restored and affirmed.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

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