

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1857 OF 2003

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Mridul Kumar Saha

... Petitioner

-Versus-

Subash Chandra Saha and others

... Opposite parties

Mr. Subrata Chowdhury with

Mr. Rabin Ch. Paul, Advocates

.... For the petitioner.

Mr. Taposh Kumar Datta with

Ms. Nashima Khan, Advocates

.... For the opposite party Nos.2 and 9.

Heard and Judgment on 17.07.2023.

On an application under Section 115(1) of the Code of Criminal Procedure this Rule was issued calling upon the opposite party Nos.1-13 to show cause as to why the impugned judgment and decree dated 20.01.2003 passed by the learned Joint District Judge, 2nd Court, Magura in Title Appeal No.72 of 2002 and affirming those dated 11.03.2002 passed by the Senior Assistant Judge, Sreepur, Magura in Title Suit No.14 of 1998 dismissing the suit should not be set aside and/or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title by adverse possession for $27\frac{3}{4}$ decimals land as described in schedule to the plaint.

It was alleged that above land belonged to Promothnath, Jogobandhu, Ranjit, Boloram, Fonindra, Norendra, Dhirendra and defendant Nos.3 and 5 and the plaintiff orally purchased above land from above owners in different years. Plaintiff purchased 6.50 decimal land from Promothnath in 1377 B.S. and 1.43 decimals land from Jogobondhu and Ranjit in 1390 B.S. and $1\frac{3}{4}$ decimals land from Boloram in 1391 B.S. and $10\frac{1}{2}$ decimals land from defendant Nos.3 and 5 in 1381 B.S. The plaintiff did not obtained any sale deed from above persons but plaintiff is in continuous and peaceful possession in above land for more than 12 years.

As far as land of Fanindra and Norendra is concerned above owners abandoned 7 decimal land and plaintiff is possessing the same peacefully and continuously for more than 12 years. Above possession has matured into a valid title by adverse possession.

Defendant Nos.1-5, 18 and 28 contested the suit by filing a joint written statement wherein they have denied all material claims and allegations made in the plaint and stated that the plaintiff is not an

inhabitant of the disputed mouza and he did not purchase any land nor he is in possession in any part of the disputed land. The plaintiff claims title on the basis of purchase but could not produce any sale deed. The plaintiff claims title by adverse possession but he did not mention the date when his alleged possession became adverse against the true owners and when the same matured into valid title. Nor any evidence was adduced at trial to substantiate above claim of title by adverse possession. The learned Joint District Judge has rightly and lawfully dismissed the appeal and affirmed the judgment and decree of the Trial Court which calls for no interference.

At trial plaintiff examined 4 witnesses and defendants examined 4 witnesses.

Documents produced and proved by the plaintiffs were marked as Exhibits No.1-5 and those of the defendants were marked as Exhibit Nos.A-D and E series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree the plaintiff filed Title Appeal to the District Judge, Magura which was heard by the learned Joint District Judge who dismissed the appeal.

Being aggrieved by above judgment and decree the plaintiff as petitioner moved to this Court and obtained this Rule.

Mr. Rabin Cha. Paul, learned Advocate for the petitioner submits that the plaintiff is in continuous and peaceful possession in disputed $24\frac{3}{4}$ decimal land for more than 12 years which gave plaintiff a valid title by adverse possession. The plaintiff went into possession of above land on the basis of oral purchase from the true owners. But the plaintiff could not obtain any sale deed. As far as 7 decimal land of Fanindra and Norendra is concerned the plaintiff is possessing the same as the owner and adversely against the true owners. As such above peaceful and uninterrupted and long possession of the plaintiff in $27\frac{3}{4}$ decimal land has matured into valid title. In support of above claim the plaintiff has adduced both oral and documentary evidence. But the learned Joint District Judge failed to appreciate the facts and circumstances of the case and evidence on record properly are most illegally dismissed the appeal and affirmed the flawed judgment and decree of the Trial Court which is not tenable in law.

On the other hand Mr. Tapon Kumar Datta, learned Advocate for the opposite party Nos.2 and 9 submits that the plaintiff has claimed title by adverse possession. But he did not mention the date of his entry

into the disputed property and when his above possession became adverse against the true owners and when the same matured into valid title. In the plaint the plaintiff claimed to have purchased the disputed property from several S.A. recorded tenants. But he could not even mention the exact date of his alleged purchase and the amount of the consideration money he paid for above land. On consideration of above evidence on record the learned Judges of both the Courts below have rightly and concurrently held that the plaintiff does not have any legal title and possession in the disputed land. Accordingly, the learned Joint District Judge rightly dismissed the appeal and affirmed the judgment and decree of the Trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above the plaintiff has claimed to have purchased $20\frac{3}{4}$ decimal land by way of purchase from Promothnath, Jogobondhu, Ranjit, Boloram, Direndra and defendant Nos.3 and 5. But the plaintiff could not mention the date of above purchase from as many as 7 rightful owners of the disputed land. No document of sale has been produced at trial although the value of each and every sale was more than Tk.100/- whose registration was legally compulsory. There is no mention in the plaint the date when the lawful entry of the plaintiff in

20.43 decimals land on the basis of purchase became adverse against the true owners and when above adverse possession matured into valid title.

The plaintiff has also claimed title in 7 decimal land of Fanindra and Norendra by adverse possession. But there is no mention of the date of his entry into above land or when above adverse possession matured into valid title.

The claim of title by adverse possession is a wild way for acquisition of title in immoveable property and the person who claim such title must prove strictly his alleged entry into the disputed property and when his possession became adverse against the lawful owners and the date when above adverse possession matured into valid title. A plaintiff must prove all above facts in Court by legal evidence. The plaintiff has examined as many as 4 witnesses but none of them has stated in their respective evidence as to when the adverse possession of the plaintiff in the disputed land started and when above possession matured into valid title.

On a correct analysis of the evidence on record the learned Senior Assistant Judge rightly held that the plaintiff failed to prove his possession in the disputed land as such no question arises of acquisition of title by adverse possession. On an independent assessment of the

materials on record the learned Joint District Judge has rightly dismissed the appeal and affirmed the lawful judgment and decree of the Trial Court which calls for no interference.

I am unable to find any substance in this Civil Revision and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged. The order of status-quo granted at the time of issuance of the Rule is hereby recall and vacated.

However, there is no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER