

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISI inconvenience ON  
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

**Civil Revision No. 134 of 2003**

Professor Badrul Haider Chowdhury and  
others

.....petitioners

-Versus-

Md. Abdul Karim Chowdhury and another

..... Opposite parties

Mr. G.S. Huq, Advocate

..... For the petitioners

Mr. Khalilur Rahman with

Mr. Md. Rashidul Karim with

Mr. Junaed Hossen Khan, Advocates

..... For the Opposite Parties

Heard on: 24.07.2023, 31.07.2023,  
01.08.2023, 28.01.2024, 05.02.2024  
and

Judgment on 12.02.2024

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and decree dated 21.09.2002 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Lakshmipur in Title Appeal No. 148 of 2000 affirming the judgment and decree dated 10.10.2000 and 16.10.2000 respectively passed by Senior Assistant Judge, Ramgati in Title Suite No. 115 of 1997 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite party as plaintiff instituted Title Suit No. 115 of 1997 before the court of Senior Assistant Judge, Ramgati, Lakshmipur for permanent injunction inter alia with

other prayer impleading the instant petitioner as defendants in the suit. The trial court upon hearing both parties, adducing evidences, framed issues and taking deposition allowed the suit by its judgment and decree dated 16.10.2000. Being aggrieved by the judgment and decree dated 16.10.2000 passed by the trial court the defendants in the suit as appellant in the appeal filed Title Appeal No. 148 of 2000 which was heard by the Joint District Judge, First Court, Lakshmipur. After hearing the parties the appellate court dismissed the appeal by its judgment and decree dated 21.09.2002 and thereby affirmed the judgment of the trial court. Being aggrieved by the judgment and decree of the appellate court the defendant in the suit as petitioner filed a civil revisional application before this bench which is instantly before this bench of disposal.

The plaintiff's case in short is that one Nemaï Chandra and others were the original owners of 2.40 acres of land as contained in Diara Khatian No. 12. Nemaï sold .01  $\frac{3}{4}$  acres to Ali Haider vide kabala No. 13172 and the said purchaser sold .004/8 acres to plaintiff vide kabala 11025 dated 10.07.1985. Nemaï again sold .017/8 acres to Shawkat Ali vide kabala 13171, which he sold to plaintiff  $\frac{1}{2}$  vide kabala 4702 dated 24.10.84, but in the said deed the dag No. was entered as 2643 instead of 2644. Plaintiffs have been possessing the said purchased land by erecting shop and gave it let to tenant and rest remained vacant. The shop roof was blown away by cyclone in 1997 and thereafter

the whole land remained vacant and the land was recorded in draft Revision Khatian No. 2191 in the name of the plaintiff. On the other hand the defendant claimed title and possession of the suit land and arising the dispute the plaintiff filed one petition Case No. 67/97 under section 144 of Cr.P.C. on 10.04.1998 the defendants took away the shop from the suit land and against which the plaintiffs filed C.R. Case No. 61/98 which was pending.

That the defendants contested the suit by filing written statement agitating that Raj Chandan was the original owner, who died leaving Abani Mohan and Kunja Mohan. Kunja Mohan died leaving 2 sons Netai and Nemaï who sold .03 ½ acres to Julfiqur and others vide two kabalas. Abani got pre-emption case No. 51 and 52 of 1977. Abani died leaving Krishna Das and Ruhi Das who sold this .03 ½ acre to defendants vide sale deed 2670 dated 24.4.97 along with a hut of Ruhi thereupon and thus they are in possession having title. The land was given to let on 26.4.97 to one Morafatullah and the tenant and constructed a pucca sanitary latrine at one part of the suit land and the Cr. Case No. 67/97 was rejected.

The trial court framed issue, witnesses were examined by both sides and documents were produced as exhibits.

Although the matter appeared in the list for several days, initially when the matter was made as heard in part the learned Advocate for the petitioner however did not appear. Eventually

on 0.08.2023 the learned advocate for the petitioner prayed for time of two weeks and the matter was adjourned for two weeks. However subsequently after the period of adjournment the matter has been appearing regularly in the cause list but none appears for the petitioner. However, learned advocate Mr. Md. Khalilur Rahman appeared for the opposite parties.

Learned Advocate Mr. Md. Khalilur Rahman for the opposite parties submits that both courts below upon proper consideration of the records and evaluation of the evidences came upon their findings and therefore those need not be interfered with in revision. He submits that the courts concurrently found that the tenancy agreement on which the defendants were relying upon to prove that they are the owner of the suit premises and also claimed to have rented out the premises in tenancy, however both courts upon examination of evidence inter alia documentary evidence found that such tenancy agreement exhibit-Gha is a fraudulent document. He submits that the trial court gave specific findings that although the defendants claim that the so call tenancy agreement was on cartridge paper but the DW-2 Markatulla the so called tenant however in his deposition stated that he rented the shop by way of stamp paper. He submits that such inconsistency between the agreement produced by the defendants who claims to be owner and the contradictory statements of the DW-2 the so called tenant Markat in his oral evidence are adequate enough to prove that he

was not a genuine tenant and produced collusory documents to support the false claim of the defendants. He submits and points out that the courts also found that the defendant's claim that they rented out the suit land along with shop but in the agreement exhibit-Gha it is clearly written that the suit land is vacant land. He submits that such repeated contradictory and inconsistent claims of the defendants are adequate enough to prove that they have no title and possession in the suit land. He points out to the admission of the DW-1 wherein the DW-1 admitted in his cross examination of Nemai's share being sold to Ali Haider on 01.07.2022 and also by another kabala deed. He submits that it is clear that the plaintiffs source of their title and the predecessor in interest is Ali Haider and the plaintiffs chronologically show that he purchased the registered kabala deed from his predecessor in interest. He submits that although the defendants threaten dispossessing the plaintiffs from the suit land by claiming false title but however the defendants in the suit never challenged the veracity or genuineness of the registration of the kabala deed. He argues that therefore since the kabala deeds produced by the plaintiffs are also genuine kabala deed in the absence of any evidence to the contradictory and the defendants could not prove the allegations against the plaintiffs therefore it is clear that the plaintiffs have title and possession in the suit land. He submits that it is also clear that exhibit-1 series the Diara khatian is also in the name of the plaintiffs and the defendants did not take any

steps to object against such Diara khatian and which is admitted. He next submits that the appellate court made observation that the DW-4 Gofran admits to the suit land being a vacant land. He continues that conversely the defendants originally claim that there was chapra Ghor (ছাপড়া ঘর) in the suit land.

He submits that the courts upon proper examination relied on the plaintiff's claim that the original shop was destroyed by the cyclone in 1997 and upon subsequent attempt to repair the shop the plaintiffs were being threatened by the defendant petitioners and therefore subsequently filed a suit for permanent injunction. He asserts that the courts also correctly relied on the plaintiff's claim that the mistake of the number in the deed was a genuine deed. He points out to the oral evidences of the PWs and submits that there is no marked inconsistency in the evidence of the PWs and those are more or less consistent and corroborative of the plaintiff's title and possession. He contends that in the face of concurrents finding of the courts on the factual matters based on evidence those do not need any interference and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocate for the opposite parties, also perused the application and materials. Admittedly the MRR khatian was produced by the plaintiffs and Diara Khatian also prepared in the name of the plaintiff (exhibit-1 series). There is nothing on record to show that the defendants ever took any steps to object against such M.R.R Khatian and Diara khatian. It

is my considered view that if the defendants have title and possession in the suit land they would have taken some step if they found that the plaintiffs are not the real owner and they are claiming title. The plaintiff's claim his source of title through Nemaï Chandra who was the admitted owner followed by Ali Haider and Showkat Ali. In support of title the plaintiff produced several kabala deeds which were all produced as exhibits. Although the defendants claim that the plaintiffs do not have title and possession in the suit land in their written statement but however they did not challenge the veracity of the deeds.

The defendants are basically relying on a tenancy agreement to show that they were in possession through tenancy. Such tenancy agreement was produced as exhibit- Gha, I have examined the specific findings of the courts. Both courts concurrently made observation upon scrutiny into the tenancy agreement that the document is collusive and fraudulent and not a genuine tenancy agreement. Moreover I have also examined the oral evidences of the some of the DWs. It appears that the defendants claim that the tenancy agreement (exhibit-Gha) was on cartridge paper. However the so called tenant DW-2 Markatulla in his deposition stated that he rented the shop upon agreement on stamp paper. I am in agreement with the observations of the courts that such inconsistent statements between the so called tenant and the original statement of the defendants is evidence that the claim of tenancy is a false claim

only to dislodge and deprive the plaintiff of their valid title and possession. The DW-3 the attesting witness also claimed that the so called tenancy agreement was on stamp paper. On the face of such contradictory positions, I am of the considered view that the courts correctly opined that the document is a colorable and transaction only.

It also appears that the defendants claim to have rented out the suit land along with the shop but however in the agreement (exhibit-Gha) it is clearly written that the premises is vacant land. Moreover the DW-4 also admits in his oral evidences that there is no house on the suit land. Therefore such inconsistent statements and relying upon a false tenancy agreement facilitates to establish the fact that the defendants are unlawfully trying to harass the petitioners and attempting to misappropriate the suit land which lawfully belong to the plaintiffs.

I have examined the concurrent finding of the courts below and I have also examined the appellate court's observation on the plaintiff's claim of the shop being destroyed by the cyclone in 1997 and subsequently upon their attempt to repair the shop that they were being threatened of dispossession by the petitioner. I am of the considered view that the plaintiffs claim of shop being destroyed by the cyclone in 1997 may be relied upon. As stated above the plaintiff claims his title through Nema Chandra followed by subsequent registered kabala deeds. These kabala deeds could not at any stage proved to be invalid



documents. Therefore the courts correctly relied on the claim of the plaintiffs and also correctly relied on the veracity and genuineness of the kabala deeds. I have also examined the deposition of the PWs and I do not find any marked inconsistency in the evidence of the PWs which are more or less consistent and corroborative of the plaintiffs claim to title and possession.

Under the facts and circumstances and foregoing discussions and upon evaluation of the evidences, I am of the considered view that the plaintiff succeeded in proving his case and there is no reason to interfere with the judgments of the courts below. I do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to costs.

The order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Record at once.

Communicate the order at once.

**Shokat (B.O)**