

Bench:
Mr. Justice Bhishmadev Chakrabortty
Civil Revision No. 1860 of 2003
with
Civil Revision No. 1834 of 2003
Shree Fatik Chandra Dutta and others
..... petitioners

-Versus-

People's Republic of Bangladesh
represented by Deputy Commissioner
and others
..... opposite parties

Mr. Surajit Bhattacharjee with
Mr. Monishankar Sarker, Advocates
.....for the petitioners
(in both the Rules)

Mr. Md. Saiful Islam Miajee , Assistant
Attorney General
.....for opposite party 1
(in both the Rules)

Mr. Chanchal Kumar Biswas, Advocate
.....for opposite parties
(op2 in the first Rule and ops 2-6, 8-11 in the second
one)

Judgment on 02.07.2025

The Rules have arisen out of the judgment and decrees passed in two appeals arising out of two suits heard analogously. The parties thereto are same and common question of fact and law are involved in both and as such these have heard together and are being disposed of by this judgment.

In Civil Revision 1860 of 2003 Rule was issued at the instance of the plaintiffs calling upon opposite parties 1 and 2 to show cause as

to why the judgment and decree of the Additional District Judge, Sunamganj passed on 15.01.2003 in Title Appeal 15 of 2000 (heard analogously with Title Appeal 14 of 2000) dismissing the appeal affirming the Judgment and decree of the Senior Assistant Judge, Chhatak, Sunamganj passed on 13.02.2000 in Title Suit 12 of 1992 (heard analogously with Title Suit 26 of 1994) dismissing the suit should not be set aside and and/or such other or further order or orders passed to this Court may seem fit and proper.

In Civil Revision No. 1834 of 2003 Rule was issued at the instance of defendants calling upon opposite parties 1-11 to show cause as to why the judgment and decree of the Additional District Judge, Sunamganj passed on 15.01.2003 in Title Appeal 14 of 2000 (heard analogously with Title Appeal 15 of 2000) dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Chhatak, Sunamganj passed on 13.02.2000 in Title Suit 26 of 1994 (heard analogously with Title Suit 12 of 1992) decreeing the suit should not be set aside and and/or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of the Rules, in brief, are that the plaintiffs in Title Suit 12 of 1992 (defendants of Title Suit 26 of 1994) instituted the suit stating that the suit land with other lands originally belonged to Rahamat Ullah Sheikh, Charan Ram Dutta, Sheikh Siraj, Sheikh Dilder, Sadhan Ram Ghosh, Ram Deb, Sheikh Sadi, Md.

Sheikh Amin Ullah, Sheikh Sanar, Md. Abjal and Sheikh Kajil Mamud. Charan Ram Dutta, plaintiffs' predecessor got the suit land about 100 years ago through amicable partition among the aforesaid owners. During his possession and enjoyment he died leaving behind 3 (three) sons Suresh Chandra, Satish Chandra and Khitish Chandra. Suresh Dutta died leaving behind his wife Subhasini Dutta. Satish Dutta died unmarried leaving behind his younger brother Khitish Dutta who died leaving behind the plaintiffs, his sons as heirs. Subhasini Dutta also died leaving behind the plaintiffs as heirs. The plaintiffs have been possessing suit land of schedule II through cultivation from long ago and thus accrued title therein by way of adverse possession also. The suit land is a part of the plaintiffs' homestead. The local Tahshilder disclosed for the first time in May, 1992 that the suit land has been recorded in the name of the government as a place of worship of hindu community. The aforesaid record prepared in the name of the defendant was baseless, fraudulent, collusive and without any basis. They took information about the wrong record of right in the name of the government on 09.06.1992. Such wrong record of right has created cloud on plaintiffs' title in the suit land and as such the suit for declaration of title simpliciter. The present plaintiffs as defendants 1-3 of Title Suit 26 of 1994 filed written statement stating similar facts prayed for dismissed of the suit for permanent injunction.

Defendants 1 and 2 filed two sets of written statements denying the statements made in the plaint. They contended there that the plaintiffs have got no right, title and interest in the suit land by way of inheritance. The genealogy claimed by the plaintiffs is false, fraudulent and collusive. SA plot 1566 of the *khatian* comprising an area of .64 acres shows that it is being used as place of worship of hindu community. The men of that community have been performing *puja* in that place under a *hijal* tree from way back. SA khatian has been correctly prepared in the name of the government as above. The plaintiffs have no right, title, interest and possession in the suit land and as such the suit would be liable to be dismissed with costs. Defendant 2 of this suit as plaintiff with other villagers instituted Title Suit 26 of 1994 in the representative character for permanent injunction against the plaintiff of this suit.

The case of the plaintiffs in Title Suit 12 of 1992 is the case of defendants 1-3 in Title Suit 26 of 1994 and the case of the plaintiffs in Title Suit 26 of 1994 is the case of the defendants in Title Suit 12 of 1992. The Assistant Judge tried both the suits analogously. Plaintiffs of title suit of 12 of 1992 and defendants 1-3 of title suit 26 of 1994 were treated as the plaintiffs (here also) in the suits and defendants 1 and 2 of title suit 12 of 1992 and the plaintiffs of title suit 26 of 1994 were treated as defendants (here also) of the suits.

On pleadings the Assistant Judge framed 6 issues to adjudicate the matter in dispute. In the trial, the plaintiffs examined 8 witnesses and their documents were exhibits 1-6. On the other hand, defendant 1 examined 1 witness and defendant 2 examined 4 witnesses and produced their documents exhibits *ka* and *ka-1* series respectively. However, the Assistant Judge dismissed Title Suit 12 of 1992 filed by the present petitioners and decreed the Title Suit 26 of 1994 of the defendants deciding all the materials issues against the plaintiffs.

Being aggrieved by the petitioners as appellants preferred two separate appeals before the District Judge, Sunamganj. The Additional District Judge heard both the appeals analogously on transfer and dismissed those affirming the judgments passed by the trial Court which prompted the petitioners to approach this Court with the revisional applications upon which the Rules were issued.

Mr. Monishankar Sarkar, learned Advocate for Mr. Surajit Bhattacharjee, learned Advocate for the petitioners in both the Rules submits that the plaintiffs claimed the suit land by way of inheritance from their forefathers. The chain of genealogy is unbroken and complete. Since the previous record of rights were prepared in the name of the plaintiffs' predecessor, therefore, the preparation of subsequent SA *khatian* in the name of the government as a place of worship of hindu community is erroneous. The defendant government accrued no title in the suit land on the basis of such erroneous record

of right. The plaintiffs examined witnesses and produced necessary documents in support of their title in the suit land but both the Courts below without considering the materials on record dismissed the suit for declaration of title and decreed the suit for permanent injunction which are required to be interfered with by this Court. The Rules, therefore, would be made absolute.

Mr. Md. Saiful Islam Miajee, learned Assistant Attorney General for opposite party 1 in both the Rules on the other hand opposes the Rules and supports the judgments passed by the Courts below. He submits that concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision. The Rules, therefore, would be discharged.

Mr. Chanchal Kumar Biswas, learned Advocate for opposite party 2 in Civil Revision 1860 of 2003 and opposite parties 2-6 and 8-11 in Civil Revision 1834 of 2003, on the other hand opposes the Rules and supports the judgments passed by the Courts below. He submits that the plaintiffs failed to prove their right, title and possession over .64 acres of suit land described in schedule 2 to the plaint. These opposite parties instituted Title Suit 26 of 1994 in the representative character for permanent injunction against the plaintiffs as per the provisions of Order 1 Rule 8 of the Code of Civil Procedure. In evidence they proved that the suit land has been being used as a place of worship of the hindu community. SA *khatian*

prepared in the name of the government proves the aforesaid fact that this community has been performing *puja* under a *hijal* tree situated in the suit land. The record has been prepared correctly in the name of the government showing the aforesaid position. Both the Courts below entering into every four corners of the cases dismissed the suit filed by the plaintiffs and decreed the suit filed by the defendants. There is nothing to interfere with the judgments passed by the Courts below. The Rules, therefore, would be discharged.

I have considered the submissions of all the sides, gone through the materials on record and grounds taken in the revisional applications. It is found that the plaintiff-petitioners have sought declaration of title in the suit land claiming the land by way of inheritance from their forefathers and by purchase. They further claimed the land by way of adverse possession. It is well settled position of law that a claimant cannot sought declaration of title in a suit land in both the ways, *i.e.* by way of purchase and inheritance and by adverse possession. Here the petitioners made alternative claim on the suit land by way of adverse possession which is not sustainable in law. The witnesses of the plaintiffs by oral and documentary evidence failed to prove that the suit land was owned, held and possessed by their predecessors or they purchased it. On the other hand, the witnesses of the defendants proved that the hindu community of the villagers have been possessing the suit land as a place of their worship

from way back. The evidence of witnesses proves that as per possession of the defendant-villagers as above the SA *khatian* exhibit- 'Ka' has been prepared in the name of the defendant correctly. It is well settled by our Apex Court in numerous cases that concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision unless the petitioners can show misreading of evidence and non-consideration of other materials on record for which the decision taken by the Courts below could have been otherwise. The petitioners failed to make out any case like that and no ground has been taken in the revisional application to that effect.

Therefore, I find no merit in these Rules. Accordingly, the Rules are discharged. No order as to costs. The judgments passed by the Courts below are hereby affirmed. The orders of *status quo* stand vacated.

Communicate this judgment and send down the lower Court records.