

Present

Mr. Justice Mohammad Ullah

Civil Revision No. 5568 of 2003

Mohd. Iqbal Hossain
... Defendant-appellant-petitioner

-Versus-

Mohammad Harun-or-Rashid being dead
his legal heirs:1(b) Md. Shahadat
Hossain and others
...Plaintiff-respondent-
opposite parties

Mr. Mohammad Osman, Advocate
... For the petitioner

Mr. Babul Akhter Chowdhury, Advocate
... For the opposite parties

Heard on : 21.06.2023, 07.08.2023,
30.08.2023, 08.10.2023, 10.10.2023,
16.10.2023 and 19.10.2023

Judgment on: 06.11.2023

On an application under section 115(1) of the Code of Civil Procedure, at the instance of the defendant No.11 appellant-petitioner, this Court, by an order dated 14.12.2003, issued a Rule calling upon the opposite party Nos.1-11 to show cause as to why the impugned judgment and decree dated 24.06.2003 passed by the learned Additional District Judge, 7th Court, Chattogram in Other Appeal No. 67 of 2000 dismissing the

appeal affirming the judgment and decree dated 06.01.2000 passed by the learned Assistant Judge, Rangunia, Chattogram in Other Suit No.66 of 1991 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the outset, it is to be noted here that the petitioner filed this revisional application, having produced a certified copy of the judgment and decree of the Trial Court dated 07.03.1994 inadvertently. However, when this mistake was brought to the notice of the petitioner, an application for correction was filed, annexing a photostate copy of the certified copy of the judgment and decree dated 06.01.2000 passed in Other Suit No.66 of 1991 which is being kept in the record.

The facts relevant to the disposal of the Rule are as follows:

The mother of the opposite party Nos.1-11, namely Latifa Khatun as plaintiff, on 11.07.1991, instituted Other Suit No.66 of 1991 in the Court of Senior Assistant Judge,

Rangunia, Chattogram (trial court) seeking a decree for declaration of title, khas possession, partition, and permanent injunction over the suit land as described in the schedule to the plaint.

The plaintiff's case, in short, is that Nittananda Barua was the C.S. recorded tenant. Land measuring 1.31 acres had been recorded to his name in C.S. Khatian No.10/11 (Exhibit-1). Nittananda Barua died, leaving three sons, Jamini, Ashini, and Romoni, as his legal heirs to inherit his property. Of them, Romoni died without issue. Jamini died, leaving a son, Pulin Chandra Barua, and a wife, Mohamaya. R.S. Khatian Nos.949 and 950 were prepared and published in the name of Ashini and Pulin Chandra Barua during the revisional survey. At that time, Pulin Chandra was minor. For the maintenance of minor son Pulin and repayment of the debt of Jamini, the mother of Pulin Mohamaya and Ashini sold the entire land (1.31 acres) to Annada Kumari by registered deed No.1667 dated 26.06.1928 (Exhibit-3) and handed over possession.

Annada Kumari died, leaving three sons, Ruhini, Prabhat, and Anadi. Anadi sold 13 decimals of land to plaintiff Latifa Khatun by registered deed No. 2853 dated 12.09.1947 (Exhibit-3-ka). Shochidananda and Nigobananda jointly sold $22\frac{1}{2}$ decimals of land to plaintiff Latifa Khatun by registered deed No.2284 dated 28.06.1947 (Exhibit-3-kha). Shochidananda again sold $9\frac{1}{3}$ decimals of land, including $2\frac{5}{6}$ decimals of non-suited land with a house, to plaintiff Latifa Khatun by registered deed No. 7878 dated 26.12.1979 (Exhibit-3-Gha). Ruhini, a son of Annada Kumari, gifted ten decimals of land to his wife Kusum Bala by an unregistered deed dated 04.10.1940 (Exhibit 7). Then, Kusum Bala sold the same to Latifa Khatun by registered deed No.4742 (Exhibit-3-Ga). Pulin, son of Jamini, when became sui juris, sold $8\frac{1}{2}$ decimals of land to plaintiff Latifa Khatun by registered deed No.6590 dated 30.12.1947 (Exhibit-3-uma).

In such a way, plaintiff Latifa Khatun purchased $22\frac{1}{2}$ decimals (by exhibit-3-ga) + 13 (by exhibit-3 ka) + $9\frac{1}{3}$ decimals (by exhibit-3-gha) + 10 decimals (by exhibit-3-ga) and $8\frac{1}{2}$ decimals of land (by exhibit-3-uma), i.e., in total 63.25 decimals. However, due to formidable circumstances, she was compelled to purchase 8 decimals of land from Pulin, son of Jamini (by exhibit-3 uma). The plaintiff further claimed that the defendant Nos.1-15 are permissive possessor. The plaintiff asked defendant Nos.1-15 to vacate the possession of the house in favour of her.

One Moulavi Rakim Uddin claimed that he purchased 27 decimals of land from Pulin and Mohamaya by registered deed No.2013 dated 08.02.1938 (Exhibit-ga). Said Moulavi Rakim Uddin filed Miscellaneous Case No.129 of 1939 in the then Munsif, South Raoujan Court for separation of Joma under section 88 of the Bengal Tenancy Act. In the miscellaneous case, R.S. recorded tenant Annada Kumari's son was also made party. The said

Miscellaneous Case No.129 of 1939 was dismissed on 06.02.1940.

Draft Publication of B.S. khatian Nos. 836 and 941 were correctly prepared and published in the plaintiff's name. But B.S. final khatian was wrongly published in the name of defendant Nos.1-35. Hamidul Haque was the permissive possessor of the plaintiff in R.S. plot No.934. Taking advantage of such permissive possession, Hamidul Haque, at the instigation of his brother-in-law, Aminul Haque, managed to prepare B.S. Khatian in the name of defendant nos. 1-35. In fact, there was no reason for publishing the B.S. Khatian finally in the name of Hamidul Haque or Aminul Haque, as they have had no right, title, or interest over the property. Defendants claimed the suit land through registered patta deed No.3763 dated 13.09.1952, which was allegedly executed by one Tagendra Lal. But the defendants never became the owner of the suit land by way of said Patta. The alleged patta deed is a forged document and by it no title to the

defendants or their predecessors was passed. The defendant Nos.1-25, disclosed that Moulavi Rakim Uddin, on 18.08.1943, executed a patta in favour of Hamidul Haque and Aminul Haque. But Moulavi Rakim Uddin had no right, title, or interest over the suit land for executing Patta. The predecessor of defendant Nos.1-25 never possessed the suit land by an alleged forged patta deed. When the defendants denied the plaintiff's right, title, and interest over the suit land, the plaintiff was compelled to file the suit.

Defendant Nos.6,11 and 19 contested the suit by filing a written statement denying the material averment made in the plaint, contending *inter alia* that Pulin Chandra Barua and Ashini Kumar were the owner of land recorded in R.S. Khatian No.949 and Pulin Chandra Barua were the owner of land under R.S. Khatian No.950. Pulin Chandra Barua sold $32\frac{1}{2}$ decimals of land and house to Moulavi Rakim Uddin by registered deed dated 08.02.1938 (Exhibit-ga). Moulavi Rakim Uddin transferred $32\frac{1}{2}$ decimals of land to

Hamidul Haque and Aminul Haque by registered Patta dated 08.12.1942 (Exhibit-uma). Hamidul Haque and Aminul Haque executed a kabuliyat in favour of Moulavi Rakim Uddin on the same day on 08.12.1942 (Exhibit-cha).

Ashini agreed to sell the land to Rakim Uddin, having received consideration money from him and handed over the possession of the same. Subsequently, after the death of Ashini, his legal heirs executed a deed of transfer in favour of Aminul Haque. The registered deed dated 26.06.1928 (Exhibit-3) by which the plaintiff claimed title is a benami transaction. B.S. record was rightly prepared and published in the name of the defendants' predecessor, and as such, the suit is liable to be dismissed.

In order to prove the respective cases, the plaintiff and the defendants examined seven witnesses for each.

The Trial Court on 07.03.1994 decreed the suit on contest against the defendants Nos.6,11 and 19 and ex-parte against the rest.

Against this, the contesting defendants preferred an appeal before the appellate Court, wherein the appeal was allowed. The appellate Court sent the suit back on remand for a fresh trial.

The Trial Court, having considered the evidence on record decreed the suit on 06.01.2000, on contest against the defendant Nos.6,11 and 19 and ex-parte against the rest.

The Trial Court declared the title of the plaintiff. It allocated a share (saham) of $27\frac{1}{4}$ decimals of land to the plaintiff and held that the legal heirs of Annada Kumari would get a share (saham) for the remaining $1.3\frac{3}{4}$ acres of land.

The Trial Court directed defendant Nos.26-37 to partition amicably within 60(sixty) days; otherwise, the plaintiff would be entitled to get saham through the Court.

The Trial Court also directed the defendant Nos.1-25 to demolish and remove

the structures of 16 X 10 yards and 40 X 30 yards and handed over possession thereof in favour of the plaintiff; in default, the plaintiff would get the property through the process of the Court.

Against the judgment and decree of the trial court, the contesting defendants Nos.6 and 11 filed Other Appeal No.67 of 2000.

The appellate Court, having heard the parties and considering the materials on record, dismissed the appeal on contest against the contesting respondents and thereby affirmed the trial court's judgment and decree.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the appellate Court dated 24.06.2003, defendant No.11, as petitioner, moved this Court and obtained Rule as stated above.

Mr. Mohammad Osman, the learned Advocate for the petitioner, submits that the plaintiff failed to prove that Hamidul Haque was a permissive possessor under the plaintiff. The plaintiff filed the suit for recovery of khas possession to an

unspecified land, and as such, a decree for recovery of khas possession was passed erroneously. The learned Advocate again submits that the legal necessity for selling the suit land by Mohamaya on behalf of the minor son Pulin and for repayment of the loan of Ashini as has been claimed by the plaintiff has not been proved in this case. A Hindu widow cannot transfer her property without legal necessity, and as such, the plaintiff, by subsequent transfer pursuant to a registered deed dated 28.06.1947 (Exhibit-3-Kha), acquired no title in the suit land. The learned Advocate next submits that no property of Pulin was transferred fraudulently, and as such, his name is rightly recorded in R.S. Khatian. The learned Advocate again submits that if the minor son Pulin's property was transferred by Exhibit-3, there was no reason to purchase $8\frac{1}{2}$ decimals of land from him by the plaintiff through Exhibit-3 uma. The learned Advocate again submits that the Pulin sold 27 decimals of land to Moulavi Rakim Uddin, the predecessor of the defendants by

registered deed dated 08.02.1938 (Exhibit-ga) who transferred $32\frac{1}{2}$ decimals of land to Hamidul Haque and Aminul Haque, the predecessor of the contesting defendants by Patta dated 08.12.1942 (Exhibit-uma) who have been possessing the land for over 12 years and acquired adverse possession in the suit land. The learned Advocate again submits that the suit was not filed within 12 years from the alleged dispossession, and as such, it is barred by law of limitation. The learned Advocate next submits the plaintiff filed the suit claiming partition against proforma-defendant Nos.35-37 in order to deprive the contesting defendants. The learned Advocate again submits that the courts below committed an error of law resulting in an error in the decision occasioning failure of justice, holding that the defendants were defeated in the proceeding of Miscellaneous Case No.129 of 1939. But the said proceeding was initiated for sub-division of the land only, by which right, title, and interest over the suit land of the defendants had not been decided.

The learned Advocate finally submits that the High Court Division can interfere with the concurrent finding of facts arrived at by the courts below if those findings are perverse, misreading, and do not consider the material evidence on record. With this submission, the learned Advocate prays to make the Rule absolute.

Mr. Babul Akhter Chowdhury, the learned Advocate for defendant-opposite party Nos.1-11, at the outset, submits that Mohamaya, being the widow of Jamini and the legal guardian of her minor son Pulin Chandra Barua, transferred the entire land, including the suit land for legal necessity of the minor son complying with the legal formalities of section 38 of the Transfer of the property Act to the predecessor of the plaintiff Annada Kumari. As a result, the minor, Pulin Chandra Barua, did not claim the land at any stage. So, the claim of the contesting defendants' petitioner that Mohamaya had no right to transfer the property is not tenable in law, and, as such, the Rule is liable to be discharged.

The learned Advocate submits further that after the transfer of the total land, including the suit land in 1928 by Exhibit-3, the alleged transfer dated 08.02.1938 by Exhibit-ga in favour of Moulavi Rakim Uddin is not tenable in law as the total land of admitted record tenant Nittananda Barua already sold in 1928. The learned Advocate again submits that by dint of deed dated 08.02.1938, Moulavi Rakim Uddin tried to sub-division the holding in Miscellaneous Case No.129 of 1939. But the said miscellaneous case was dismissed by the then Munsif, Rangunia, Chattogram. The learned Advocate submits further that the contesting defendants were the permissive possessors under the plaintiff; they have no legal or actual possession in the land in question. As such, both the courts below rightly decreed the suit against those defendants. The learned Advocate submits further that when the contesting defendants tried to disturb the plaintiff's right, title, and possession in the suit land, she filed the suit within the law of limitation. The

learned Advocate next submits that the concurrent finding of facts arrived at by the courts below need not be interfered with by the revisional Court as those findings are not perverse or otherwise shaken. The learned Advocate again submits that the permissive possessor cannot claim adverse possession over the land in question, and as such, both the courts below rightly decreed the suit in favour of the plaintiff.

The learned Advocate submits further that P.W. 1 is supported by P.W. 2, 3, and 4 about oral approval to stay in the disputed land to the petitioner, but the petitioner failed to refute the deposition of the plaintiff's side.

I have heard the learned Advocates from both sides and have perused the materials on record, including the plaint, written statement, and the evidence on record.

It appears that Nittananda Barua was the admitted C.S. recorded tenant for 1.31 acres of land recorded in his name in C.S. Khatian No. 11/10 (Exhibit-1). The plaintiff claimed that at the death of admitted owner

Nittananda Barua, his property was inherited by his three sons, Jamini, Ashini, and Romoni. Among them, Romoni died without issue. Jamini also died, leaving only a minor son, Pulin, and a wife, Mohamaya.

Exhibit-3 shows that Mohamaya, being the widow of Jamini and the legal guardian of minor son Pulin, and Ashini, a son of Nittananda Barua, jointly sold total land to Annada Kumari by registered deed dated 26.06.1928 (Exhibit-3).

On scrutiny of the veracity of Exhibit 3, the registered deed dated 26.06.1928, it appears that Mohamaya sold the property for the livelihood and maintenance of her minor son, Pulin. Exhibit 3 contains the legal necessity for selling the land of minor Pulin.

A Hindu widow shall indeed have only a lifetime interest in a property left by her deceased husband. In 1928, Pulin was a minor. He did not acquire title as a minor over the land left by his father, Jamini. Only Mohamaya, being the widow and wife of Jamini, was entitled to possess and enjoy

the property up to his lifetime. So, the claim of the defendant petitioner that Mohamaya had no right to transfer the property has no leg to stand as from the statement of the transfer deed Exhibit-3 shows that there is a clear recital the means of securing the basic necessity of life of minor Pulin to sell the property.

Moreover, at any stage, Pulin, having attained the majority, never claimed that Mohamaya transferred his property illegally without any legal necessity. Whether Mohamaya sold the land in question to Annada Kumari in 1928 by exhibit-3 legally or not can only be questioned by the minor Pulin after attained majority. But in the instant case, I do not find that Pulin raised such a question.

The plaintiff claimed title over the land in question through Annada Kumari, who got the land by exhibit 3 in 1928. The defendants claimed their title from Moulavi Rakim Uddin, who allegedly purchased 27 decimals of land from Pulin Chandra Barua by registered deed dated 08.02.1938 (exhibit-

ga). The contesting defendant further claimed that Hamidul Haque and Aminul Haque got $32\frac{1}{2}$ decimals of land by registered patta deed dated 08.02.1942 (exhibit-uma) from Moulavi Rakim Uddin they also executed a registered kabuliat in favour of the Moulavi Rakim Uddin on the same day on 08.12.1942 (exhibit-cha).

In such facts and circumstances, the question that survives for determination is whether the transfer dated 26.06.1928 made by Mohamaya, a widow of Jamini, and Ashini, a son of admitted tenant Nittananda Barua, is valid or whether the registered deed of Moulavi Rakim Uddin dated 08.02.1938 is correct by which the contested defendants claimed title. The property sold by Mohamaya and Ashini by Exhibit 3 was found genuine, and the transfer was made for the legal necessity of the minor son Pulin. Hence, the subsequent transfer after about ten years by Pulin in favour of Moulavi Rakim Uddin, the predecessor, in interest of the contesting defendants has no legal force.

The contesting defendants alleged that exhibit-3 registered deed dated 26.06.1928 had not been acted upon, and pursuant to the said deed, Annada Kumari, the predecessor interest of the plaintiff, had not acquired any title. According to the contesting defendants, the only reason is that said transfer was made illegally without any legal necessity.

I have already examined the registered deed dated 26.06.1928 (exhibit-3), which discloses the legal necessity for selling the property of minor Pulin by his mother Mohamaya. There cannot be any dispute; so far, it relates to the property sold by Ashini a son of admitted tenant Nittananda Barua in favour of Annada Kumari. Ashini being a son of admitted owner Nittananda Barua, inherited the property from his father, who sold the same to Annada Kumari with Mohamaya by exhibit-3. The contesting defendants further claimed that the R.S. record was prepared in the name of Pulin, and the subsequent B.S. record was prepared

and published in the name of the predecessor of the contesting defendants.

It is the settled principle that the record does not create or destroy the title of a valid property owner.

So, no one can claim title over the land with any wrong recording.

During the hearing, the learned Advocate for the defendant No.11 petitioner herein raised a question that if the property of the minor was transferred by her mother Mohamaya in 1928 by exhibit-3, what was the reason to purchase $8\frac{1}{2}$ decimals of land by the plaintiff Latifa khatun by exhibit-3-uma a registered deed dated 30.12.1947 from Pulin.

I have drawn the attention of the learned Advocate for the plaintiff to this question, who submits that in formidable circumstances and to cure certain problems in the locality, the plaintiff was compelled to purchase $8\frac{1}{2}$ decimals of land from Pulin. But she did not claim said land, and the

trial court did not give saham to the plaintiff for those land.

The plaintiff filed suit claiming a total of $54\frac{5}{6}$ decimals of land. By virtue of exhibit-3-ka registered deed dated 12.09.1947, $22\frac{1}{2}$ decimals of land, by exhibit-3 kha, registered deed dated 26.06.1947, $9\frac{1}{3}$ decimals of land, by exhibit-3-gha, registered deed dated 26.11.1979, 10 decimals of land, by exhibit-ga registered deed dated 10.10.1947, and by exhibit-3 uma registered deed dated 13.12.1947 by which Pulin sold $8\frac{1}{2}$ decimals of land to plaintiff Latifa Khatun.

But the trial court, having considered the material evidence on record, declared the title of the plaintiff over the $27\frac{1}{4}$ decimals of land out of schedule $54\frac{5}{6}$ decimals.

Both the courts below found that after the transfer of the total land, including the suit land in 1928 by exhibit-3 in favour

of Annada Kumari by Mohamaya and Ashini, there is no scope to transfer the same land to Moulavi Rakim Uddin by Pulin in 1938 by exhibit-gha.

Exhibit-gha registered deed dated 08.02.1938 shows that Pulin sold 27 decimals of land to Moulavi Rakim Uddin. In the facts and circumstances of the case in hand, Pulin cannot transfer any quantum of the land of his father Jamini to Moulavi Rakim Uddin without challenging the transfer made in 1928 by exhibit-3-ka by her mother Mohamaya and uncle Ashini to Annanda Kumari, the predecessor in interest of the plaintiff.

I have already found that Pulin never raised any dispute over the transfer made by her mother and Ashini in 1928 by exhibit 3. So, the transfer by exhibit-3 ka keeping alive Pulin cannot subsequently sell any quantum of property to Moulavi Rakim Uddin.

The defendants have miserably failed to show they have been in possession of the land in question for more than 12 years and thereby acquired title in the suit land by adverse possession. On the contrary,

Mohamaya transferred the property as a legal guardian of her minor son Pulin by complying with the formalities of section 28 of the Transfer of Property Act, 1882, to the plaintiff's predecessor.

The concurrent finding of facts arrived at by the courts below need not be interfered with by this revisional Court if those findings are not perverse or otherwise shaken.

In the instant case, I do not find any perversity with the findings and decision of the courts below.

So, the Rule obtained by defendant No.11 having no merit is liable to be discharged.

Accordingly, the Rule is discharged.

However, there will be no order regarding cost.

Let a copy of the judgment and the lower Court records be transmitted to the Court concerned.