

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2079 of 1994

Mohammad Manik Mollah
.....Petitioner

Versus
Sk. Jainuddin and others
.....Opposite Parties

Mr. Nasir Ahmed, Advocate for
Mr. Tufailur Rahman, Senior Advocate
.....For the Petitioner

No one appears
.....For the Opposite Parties

Judgment on 27.01.2026.

Md. Iqbal Kabir, J:

The Rule was obtained by the plaintiff-petitioner upon making a revision application under section 115 of the Code of Civil Procedure against the judgment and decree dated 26.02.1994 (decree signed on 05.03.1994) passed by the Subordinate Judge, First Court, Dhaka in Title Appeal No. 26 of 1988 setting aside the judgment dated 28.01.1988 and decree dated 07.03.1988 passed by the Assistant Judge, Nababganj, Dhaka in Title Suit No. 93 of 1984.

Short facts for disposal of the Rule are that one Nilmani Gope was the owner and possessor of the suit land by inheritance and purchase. His name was correctly recorded in the C.S. record. After his death, his only son, Raj Mohan Gope inherited the entire suit land and became its sole owner. Raj Mohan Gope possessed the land through different bargadars from time to time, including plaintiff No. 1. Raj Mohan Gope had a business of curd and ghee at Nischintapur/Ghose Para, Thakurgaon, Dinajpur. Even before the partition of India and after the partition in 1947, he permanently shifted his family there. He used to visit the suit land once or twice a year to collect crops from the bargadars. However, during the S.A. operation, the suit land was duly recorded in his name, and he regularly paid rent to the government-acquired estate. Raj Mohan Gope was married and his wife died before him. He had one son, Radhanath Ghose @ Gope, and two daughters, one of whom predeceased him. After he died in 1973 at Nischintapur, the suit land devolved upon his only surviving son, Radhanath Ghose @ Gope. During his lifetime, Raj Mohan Gope transferred 0.26 acres of land to plaintiff No. 2. He never resided at village Deuli under P.S. Birganj, Dinajpur, nor did he have any son named Nitya Gopal Gope. The alleged Nitya Gopal Gope never resided in or visited the locality and

was a fictitious person. After the death of Raj Mohan Gope, his son Radhanath Ghose @ Gope remained in exclusive possession of the suit land. While in such possession, he sold the suit land to plaintiff No. 1 by a registered kabala dated 9.08.1975 and delivered possession. Plaintiff No. 1 thereafter mutated his name and has been paying rent regularly. Since the purchase, the plaintiffs have peacefully possessed the suit land by cultivating Aus and Aman paddy with the knowledge of all concerned, including the defendants. The defendants are habitual land grabbers and have created false, collusive, and sham deeds without consideration. They claim to have purchased the land through seven deeds allegedly executed by one Nitya Gopal Gope in 1979, but as Raj Mohan Gope had no such son, those deeds are forged and void. The defendants have neither title nor possession over the suit land. Recently, the defendants threatened to dispossess the plaintiffs forcibly and to plough the land over the plaintiffs' standing crops. On 28.02.1980, they gave an actual threat of dispossession but failed due to the vigilance of the plaintiffs. As constant vigilance is not possible, the plaintiffs have been compelled to file this suit.

The defendants-opposite parties, by filing this written statement, denied all material allegations made in the plaint and contest the suit in its entirety. The suit, as framed, is not maintainable either in law or in fact and is liable to be dismissed. At the very outset, the defendants state that the suit is not maintainable due to a defect of parties and is barred under Section 42 of the Specific Relief Act, as well as by the principles of waiver, estoppel, acquiescence, and limitation. The plaintiffs have no right, title, or interest in respect of the suit land and have instituted the suit solely to harass the defendants. According to them, having not approached the Court with clean hands, the plaintiffs are not entitled to any equitable relief, including an injunction. The plaintiffs, if at all entitled, ought to have filed a suit for declaration of title and recovery of khas possession upon payment of proper court fees. As such, the present suit is liable to be dismissed with costs.

The suit land, along with other properties, originally belonged to Nilmoni Gope, a raiyat, whose name was duly recorded in the C.S. Khatian, and who regularly paid rent to the concerned authority. Upon his death, his only son, Raimohan Ghose, inherited the property and remained in peaceful possession thereof. Raimohan Ghose subsequently died, leaving behind two sons, namely Radha Nath Ghose and Nittyta Gopal Ghose, who inherited the property in equal shares. Nittyta Gopal Gope, during his lifetime and while in peaceful possession of his share, exercised his right, title, and interest over the suit land

through bargadars i.e., defendant Nos. 1-4 and duly paid rent to the appropriate authority. Thereafter, by seven registered deeds dated 21.06.1979, Nitya Gopal Gope lawfully transferred 136 decimals of land to the defendants and delivered possession. Since the purchase, the defendants have been in peaceful, continuous, and exclusive possession of the land and have been cultivating the same by themselves. The defendants mutated their names in the office of the concerned Revenue Officer at Dohar and Nawabganj, Dhaka, and have been regularly paying rent to the government authority. In the current year, the defendants cultivated jute and paddy on the suit land and, in the preceding year, also harvested jute therefrom. Contrary to the false assertions made by the plaintiffs, Nitya Gopal Gope is still alive and resides at village Deuli, P.S. Birganj, District Dinajpur, as evidenced by certificates issued by the local Union Parishad. The plaintiffs have deliberately and maliciously denied his existence with the intent to grab the entire property left by Raimohan Ghose. The plaintiffs are admittedly not in possession of the suit land. Therefore, their prayer for injunction is wholly misconceived and liable to be rejected. Plaintiff No. 1 had earlier attempted to purchase the suit land from Nitya Gopal Gope at a lower price, but upon refusal, the plaintiffs, with ill motive, purchased the entire property from one son of Raimohan Ghose. Plaintiff No. 1 also lodged a false complaint before the local Chairman alleging unlawful harvesting of jute by the defendants, which led to a salish being held in the Chairman's office in the presence of local leaders. After hearing both parties, it was resolved that the plaintiffs would be entitled only to the 8 annas share of Radha Nath Ghose, while the defendants would retain the 8 annas share of Nitya Gopal Gope. Being dissatisfied with the said decision, the plaintiffs have instituted the present suit by suppressing material facts. Accordingly, the plaintiffs are not entitled to any relief whatsoever, and the suit is liable to be dismissed.

Upon hearing the parties, the learned Trial Court vide its judgment dated 28.01.1988 and decree dated 07.03.1988 decreed the suit for permanent injunction.

Being aggrieved and dissatisfied with the judgment and decree passed by the Assistant Judge, Nawabganj, Dhaka, in Title Suit No. 93 of 1984, the defendant-opposite party filed Title Appeal No. 26 of 1998 before the District Judge, Dhaka. However, having heard the appeal, the Court vide its judgment and decree dated 26.02.1994 allowed the appeal and thereby, set aside the judgment and decree passed by the Assistant Judge, Nawabganj, in Title Suit No. 93 of 1984.

Being aggrieved by and dissatisfied with the aforesaid appellate judgment and decree dated 26.02.1994 passed by the Subordinate Judge, First Court, Dhaka in Title Appeal No. 26 of 1988 setting aside the judgment and decree passed by the Assistant Judge, Nawabganj Upozilla Court, Dhaka in Title Suit No. 93 of 1984. The present petitioner filed this revisional application and obtained the instant Rule.

Mr. Nasir Ahmed, learned Advocate for the petitioner, submits that the plaintiff-petitioner proved his exclusive possession of the suit land by producing both documentary and oral evidence before the Trial Court. Upon proper consideration of those documents and the depositions of the witnesses, the Trial Court rightly decreed the suit. However, the appellate Court reversed the said judgment and decree without considering the evidence on record properly.

He further submits that although the defendants claimed that Rai Mohon Gope had another son named Nithya Gopal Gope, they failed to produce any reliable evidence in support of the alleged claim. They also did not produce the alleged Nithya Gopal Gope before the Trial Court. Moreover, the statements made by D.W-1 and D.W-4 regarding the whereabouts of Nithya Gopal Gope are contradictory, despite their claim that they purchased the suit land from him.

He also submits that the learned appellate court erred in holding that the plaintiff failed to prove that Radha Nath Gope was the only son of Rai Mohon Gope. In fact, the plaintiff produced a Chairman's certificate dated 02.09.1979 issued by Union Parishad, which was marked as Exhibit-6. The said certificate clearly states that there is no person named Nithya Gopal Ghose alias Gope within Shibrampur Union Parishad, thereby establishing that Radha Nath Gope is the sole son of Rai Mohon Gope.

It is pertinent to note that this is a long-pending Rule. By this time, 30 years have elapsed, and no one taken the initiative for its disposal. However, no one appears to contest the Rule on behalf of the defendant-opposite parties while it appears in the list for hearing.

However, this Court carefully examined the impugned judgment and order, along with all relevant documents annexed to the application and records. Indeed, the defendants produced several documentary exhibits, including nationality certificates of Nitai Gopal Gope and related documents, certified copies of deeds, rent receipts, and khatians, which were duly submitted before the Court. The defendants' witnesses D.W-1 to D.W-4 also gave oral evidence.

From the record, it appears that plaintiff No. 1 filed a complaint to the local Chairman alleging that the defendants unlawfully harvested jute from the suit land. Therefore, salish was held at the Chairman's office in the presence of local leaders. Wherein it was observed that since Raimohan Ghose left two sons, the plaintiffs would be entitled to the 8 annas share of Radha Nath Gope, and the defendants would be entitled to the 8 annas share of Nitya Gopal Gope.

Upon examination, it appears that D.W-1 deposed that the plaintiffs possess half of the suit property through Nitai Gopal, son of Rai Mohan Gope. D.W-2 did not depose anything regarding the plaintiffs' possession of the suit land; he merely testified about the heirs of Rai Mohan Gope. D.W-3 and D.W-4, both elderly witnesses, categorically stated that Rai Mohan Gope had two sons and that the plaintiffs and defendants had been jointly cultivating the suit land in equal shares. They further deposed that the defendants subsequently purchased their share by registered deeds several years ago. Their testimony remained unshaken during cross-examination. On the other hand, the plaintiffs' witnesses failed to prove exclusive possession over the suit land. P.W-6 admitted that he did not clearly know the number of sons of Rai Mohan Gope and only heard about the purchase and sale of the land from both sides. His evidence, therefore, did not support the plaintiffs' case and rather indirectly supported the defendants. P.W-5 also admitted that the defendants were in possession after purchasing the land.

Although the plaintiffs produced a deed dated 09.08.1975 and some documents, those documents did not prove their exclusive possession over the entire suit land. The khatian was recorded in the name of Rai Mohan Gope, but the plaintiffs failed to prove that their predecessor was the sole heir of Rai Mohan Gope. No satisfactory evidence was produced to establish exclusive title or exclusive possession of the plaintiffs. In this case, the plaintiff does not have the suit property at the time of filing the suit, and the title of the property is disputed. Injunction, being a relief to protect existing possession, a person out of possession has other relief. Thus suit for injunction cannot be used to bypass appropriate substantive relief.

Indeed, the defendants successfully proved that they purchased and own half of the suit land from Nitai Gopal, son of Rai Mohan Gope. The witnesses also admitted that the defendants own half of the land. Therefore, the plaintiffs could not prove that they have exclusive ownership or exclusive possession over the entire suit property. Since both parties are claiming title to the same

land, the land has not been partitioned, and the plaintiffs failed to prove exclusive possession, the suit in its present form is not maintainable.

From the discussions made hereinabove, we do not find any reason to disagree with the findings given in the impugned judgment and order passed by the Appellate Court below. The impugned judgment and order suffer from no illegality or infirmity that calls for no interference by this Court. Thus, the Rule having no merit fails.

Accordingly, the Rule is discharged without any order as to cost.

The impugned judgment and decree dated 26.02.1994 (decree having been signed on 05.03.1994) passed by the Subordinate Judge, First Court, Dhaka in Title Appeal No. 26 of 1988 setting aside the judgment dated 28.01.1988 and decree dated 07.03.1988 passed by the Assistant Judge, Nababganj, Dhaka in Title Suit No. 93 of 1984 is hereby maintained.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.