

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1633 OF 2002

In the matter of:

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

And

Md. Habib Ullah

... Petitioner

-Versus-

San Ullah and others

... Opposite parties

None appears

... For both the parties.

Heard and Judgment on 25.11.2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 19.11.2001 passed by the learned Additional District and Sessions Judge, 1st Court, Sylhet in Title Appeal No.119 of 1997 reversing the judgment and decree dated 28.04.1997 passed by the learned Senior Assistant Judge, Balagonj, Sylhet in Title Suit No.09 of 1996 should not be set aside should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for a decree for perpetual injunction for 1.75 acre land alleging that that above property belonged to Ismail and others who sold 1.14 acres

to the plaintiff by registered kabala deed dated 24.10.1980. Remaining 40 decimal land belonged to Arshad Ullah, Syed Ullah, Abdul Barik and Abdul Malik who sold the same to the plaintiff by registered kabala deed dated 24.10.1980 and Yousuf Ali the owner of remaining 30 decimal land sold the same to the plaintiff by a registered kabala deed dated 21.01.1981. Plaintiff is in peaceful possession in above land and in his name the record of right has been correctly prepared. The defendants threatened the plaintiff with dispossession from above land.

Defendant No.2 contested the suit by filing a written statement alleging that above property belonged to his grandfather Urfan Ullah and Zamir Uddin who acquired above property by inheritance. But in the settlement survey above land was erroneously recorded and the defendant purchased above land from several recorded tenants but no kabala deed was executed and registered. During the current survey defendants have got the draft khatian prepared in their names and also registered two kabala deeds dated 28.07.1996 and 01.08.1996.

At trial plaintiffs examined 7 witnesses and documents of the plaintiffs were marked as Exhibit No.1 series and the defendant examined 5 witnesses and his documents were marked as Exhibit Nos.'Ka'-'Kha' series.

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

Being aggrieved by above judgment and decree of the trial Court above defendant preferred Title Appeal No.119 of 1997 to the District Judge, Sylhet which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner or opposite parties when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

The plaintiff while giving evidence as PW1 reiterated his claims as set out in the plaint that Ismail was the owner and possessor of 1.14 acres land and Arshad Ullah and others were the owner of 40 decimal land and Yousuf Ali was owner and possessor of 32 decimal land and above owners transferred above land to the plaintiff by three registered kabala deeds dated 24.10.1980 and 02.01.1981. Above witness produced and proved above three kabala deeds which was marked as Exhibit No.1(Ka) and 1(Kha) respectively. But the plaintiffs did not mention in the plaint or in his evidence as PW1 as to the source of title of his above predecessors namely Ismail, Arshad Ullah and Eusuf Ali. Nor any mention has been made as to in which khatian names of above predecessors of the plaintiffs were recorded. Mere production of above

three registered kabala deeds without establishing the title of the executants of above kabala deeds does not establish the title of the recipients of above deeds .

It has been alleged in the plaint as well as in the evidence of above PW1 that the current khatian of the disputed land has been prepared in the name of the plaintiff. But no such khatian was produced and proved at trial and marked as an Exhibit nor a single piece of rent receipt was produced at trial showing that the plaintiffs are paying rent to the Government for above land.

It is well settled that in order to get a decree for perpetual injunction the plaintiff is required not only to prove his possession but he must prove that above possession is referable to a lawful claim of title. The plaintiff has miserably failed to prove his prima facie title in the disputed land by way of purchase by Exhibit No.1 series.

As far as the oral evidence of 7 witnesses are concerned on a detailed analysis of above oral evidence the learned Judge of the Court of Appeal below held that above evidence suffers from material contradictions and not reliance could be placed on above evidence.

On the other hand besides producing and proving their kabala deed of 1965 and examining 5 witnesses in support of their possession in above land the defendant has produced and proved the draft khatian No.1580 (Exhibit No.X) which shows that 2.3 acre land of the disputed jama was recorded primarily in the name of the defendant. It is true

that since above khatian was not finally published no reliance can be placed on the same but above draft khatian falsifies the claim of the plaintiff that current khatian was prepared in his name.

In above view of the materials on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of the materials on record rightly allowed the appeal and set aside the flawed judgment and decree of the trial Court and dismissed the suit which suffers from no illegality or infirmity justifying any interference of this Court.

I find no substance in this civil revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to costs.

Send down the lower Courts records immediately.