

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1896 of 2002.

In the matter of:

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

And

Abul Lais @ Abul Haris and others

...Petitioners

-Versus-

Aklus Ali and others

...opposite parties

Mr. Md. Faruque Ahmed, Advocates

...For the petitioners

No one appears

...For the opposite parties

Heard on 28.10.2024

Judgment on 29.10.2024.

This rule was issued calling upon the opposite party Nos.1-13 to show cause as to why the judgment and decree dated 20.11.2001 decree signed on 27.11.2001 passed by the learned Additional District Judge, 1st court, Sylhet in Title Appeal No.44 of 1996 dismissing the appeal and affirming the judgment and decree dated 08.01.1996 decree signed on 15.01.1996 passed by the learned Assistant Judge, Beani Bazar, Sylhet in Title Suit No.95 of 1995 decreeing the suit should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration of title for 6.41 acres land alleging that 7.6 acres land including above disputed land was purchased by Ismail predecessor of defendants No.1 and 2, plaintiff No.3 and his father Rustom Ali by separate registered kobla deeds long before the S.A. survey and they were in possession in above land. In 1951 plaintiffs transferred 75 decimal land to defendant Nos.9 and 10 by registered kobla deed and delivered possession. Plaintiffs are in possession in the disputed land by way of cultivation. But in the S. A. khatian defendants fraudulently recorded 7.61 decimal land in their name including above disputed land. Defendants did not have any lawful title and possession in above land. On the basis of above erroneous record defendants denied title of the plaintiffs.

Defendant Nos.2-8 contested the suit by filing a joint written statement alleging that above property belonged to Raj Gobindho Roy which was acquired by Rupkini Kanto and others by inheritance who transferred the same to Ismail by registered kobla deed dated 03.04.1902 (Exhibit No.Ka 2). Above Ismail transferred some land by a registered kobla deed dated 23.09.1912 (Exhibit No.Ka 1). Defendants

inherited the disputed property as heirs of above Ismail. The heirs of above Samorto Banu transferred above land to the defendants by a registered kobla deed. Accordingly the defendants become owned and possessed in total 7.61 acres land and the relevant S.A. khatian was correctly recorded in their names and they are in possession in above land. The document of the plaintiffs do not attract the disputed land at all.

At trial plaintiffs and defendants examined four witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit No.1 series and those of the defendant were marked as Exhibit No.Ka series.

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

Being aggrieved by above judgment and decree of the trial court defendants preferred Title Appeal No.44 of 1996 to the District Judge, Sylhet which was heard by learned Additional District Judge who dismissed the appeal and upheld the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above respondents as

petitioners moved to this court and obtained this rule.

Mr. Md. Faruque Ahmed learned Advocate for the petitioners submits that plaintiffs claim title in the disputed land on the basis of purchase by Sobdor from Skeikh Sarup by registered kobla deed dated 15 Boishak, 1297 and above document was marked as Exhibit No.1. The plaintiff also produced and proved three other kobla deeds dated ২রা পৌষ, ১৩৯৭, ৮ আষাঢ়, ১৩৪২, and ২রা পৌষ, ১৩৪৪ which were marked as Exhibit No.1 (Kha) and 1 (Ga). Above documents do not contain plot number and khatian number or even boundary of the land transferred by those documents and the lands were described merely by mentioning of taluk of Raj Gobindra Roy. It has been alleged by the defendants in the written statement and evidence that the land of above documents do not attract the disputed land of this suit. Mr. Samendra Kumar was appointed advocate commissioner for relay and identification of above land and ascertain whether the land of above documents corresponds to the land of this suit. Above Advocate Commissioner submitted a report alleging that the land of register kobla deed dated ১৫ই বৈশাখ, ১৯৯৭ (Exhibit No.1) do not attract the suit land. As far as the land of remaining other documents are

concerned the Advocate Commissioner stated that above lands correspondence the suit land and he identified above land on the basis of showing by the plaintiff. Against above report of the Advocate Commissioner the defendants submitted a written objection but the plaintiffs did not examine above Advocate Commissioner as a witness nor the defendants got an opportunity to cross examine above Advocate Commissioner. But the learned Judge of the trial court decreed the suit and the learned judge of the court of appeal below dismissed the appeal relying on the above Advocate Commissioner's report. Learned Advocate further submits that the suit was barred by Order 7 Rule 3 of the Code of Civil Procedure for non specification of the disputed land. P.W. Akius Ali admitted in cross examination that the disputed land originally belonged to Raj Gohindra Roy but he could not provide a description as to how they acquired the disputed property from above jamindar. As far as possession in the disputed land is concerned he stated that 100 plaintiffs jointly possesses the disputed land but he could not say which plaintiff possesses what portion of the disputed land nor he can mention the plot number and khatian number. This suit was filed by only three plaintiffs not by

100. There is no explanation as to how 100 plaintiffs possess the disputed land.

Undisputedly S.A. khatian of the disputed land has been prepared in the name of the defendant and they produced rent receipts showing payment of rent to the government. Plaintiff's witnesses have also admitted possession of the defendants in the southern part of the disputed land. Since the plaintiffs could not prove their possession in the disputed land by legal evidence this simple suit for declaration of title was not tenable in law. But the learned Judges of the courts below have miserably failed to appreciate above facts and circumstances of the case and evidence on record and most illegally learned Assistant Judge decreed the suit and the learned Additional District Judge erroneously dismissed the appeal and affirmed the flawed judgment and decree of the trial court which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this revision although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

At the very outset it needs to be mentioned that the disputed land of this suit has not been specified in the schedule to the plaint. The plaintiffs has claimed title in 6.41 acres land out of 7.16 acres of khatian No.27/32 and plot of $\frac{1175}{1301}$. In the plaint the plaintiffs have provided a boundary of above 7.16 acres land but they did not provide any boundary of disputed 6.41 acres land.

As such above suit was liable to be dismissed on the ground of non specification of the disputed land.

The plaintiffs did not provide description of the original ownership of the disputed land and their genology or chain of title in the plaint. It has been stated that long before the land survey predecessors of the defendants and plaintiffs acquired the disputed land by several registered kobla deeds without mentioning who was the original owners and the number and date of the kobla deeds and parties to above deeds. The plaint suffers from lack of clarity and specific statement as to the source and manner or mode of acquisition of title in the disputed land by the plaintiffs.

P.W.1 Akius Ali has admitted in his cross examination that disputed property originally belonged to jomindar Raj Gobindra Roy. There is no

description as to how plaintiffs alleged predecessors acquired title in above land from above Raj Gobindra Roy.

The plaintiffs have produced and proved three registered kobla deeds dated ১৫ বৈশাখ, ১২৯৭, ২রা বৈশাখ, ১৩১৮, ৮ই আষাঢ়, ১৩৪২ and ২রা পৌষ, ১৩৪৪ and above documents were marked as Exhibit Nos.1(ka), 1(kha) and 1 (ga) respectively. It turns out from above deeds that those deeds do not describe the land by mentioning khatian number, plot number or boundary. All above documents have merely mentioned that the land belongs to the Taluk Raj Gobindra Roy. It has been claimed by the defendants that above documents do not attract the disputed land of this suit. The learned Judge of the trial court appointed Mr. Somindra Kumar Roy as an Advocate Commissioner for rely of land of above documents in order to identify and determine whether the disputed land of this suit corresponds to land of above documents. Above Advocate Commissioner submitted a report stating that the land of registered kobla deed dated ১৫ই বৈশাখ, ১৩৯৭ (Exhibit No.1) does not corresponds the land of this suit. As far as the land of others three registered kobla deeds are concerned the Advocate Commissioner stated that he identified above land at the showing of the plaintiffs.

Against above report of the Advocate Commissioner the defendant submitted a written objection. But above Advocate Commissioner did not give evidence at trial in support of his report and subjected himself to cross examination by the defendants. As such above Advocate Commissioner report did not attain the status of a piece of legal evidence. The learned Judges of the courts below committed serious illegality in accepting above Advocate Commissioner report as legal evidence and erroneously held on the basis of above report that the land of Exhibit Nos.1(ka), 1(kha) and 1 (ga) corresponds to the land of this suit which is illegal and not tenable in law.

The plaintiffs have miserably failed to prove by legal evidence that their predecessors acquired title in the disputed land by purchase by above mentioned registered kobla deeds (Exhibit No.1 series). On the other hand defendants have clearly stated that on the demise of Raj Gobindra Roy his property was inherited by his three sons and others who transferred the same to Ismail predecessor of the defendants by registered kobla deed dated 03.04.1902.

D.W.1 Abul Lais produced and proved above document at trial which was marked as Exhibit

No.Ka. It is admitted that on the basis of above documents S.A. khatian of the disputed land was prepared in the name of the defendants. Above D.W.1 produced and proved rent receipts showing that the defendants paid rent of above land to the government.

On consideration of above materials on record I hold that the plaintiffs could not prove their lawful title and possession in the disputed land but the defendants have succeeded to prove their lawful title as well as possession in the disputed land by mutually corroborative oral evidence of four D.Ws and the documentary evidence as mentioned above. But the learned Judges of both the courts below failed to appreciate above legal evidence on record properly and most illegally learned Assistant Judge decreed the suit and the learned Additional District Judge upheld above illegal judgment and decree of the trial court which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The judgment and decree dated 20.11.2001 passed by the learned Additional District Judge, 1st court, Sylhet in Title Appeal No.44 of 1996 dismissing the appeal and affirming the judgment and decree dated 08.01.1996 passed by the learned Assistant Judge, Beani Bazar, Sylhet in Title Suit No.95 of 1995 is set aside and above suit is dismissed on contest without any cost.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.