

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3145 of 2002.

In the matter of:

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

And

Government of Bangladesh,
represented by the Deputy
Commissioner, Feni

...Petitioner

-Versus-

Haji Nurul Haque and others

...opposite parties

Mr. Md. Mahfuzur Rahman, DAG with
Mr. Md. Moshihur Rahman, AAG with
Mr. Md. Mizanur Rahman, AAG

...For the petitioner

No one appears

..For the opposite parties

Heard on: 10.11.2024

Judgment on: 11.11.2024.

This rule was issued calling upon the opposite parties No.1-17 to show cause as to why the judgment and decree dated 18.11.2001 passed by the learned Joint District Judge, 2nd Court, Feni in Title Appeal No.27 of 2000 affirming the judgment and decree dated 14.11.1999 of the Assistant Judge, Parshuram, Feni in Title Suit No.18 of 1999 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 2.63 acres land as described in the "Ka" schedule to the plaint.

It was alleged that 2.93 acres land including above disputed land belonged to the Majaraja of Tripura and the same was accordingly recorded in C.S. khatian No.1. In the possession column of above C.S. khatian the names of seven predecessors of the plaintiffs, namely Chowdhury Gazi, Chand Gazi, Nona Gazi, Rahim Baksh, Rajjab Ali, Omed Ali and Md. Kabil were correctly recorded. Plaintiffs are the successive heirs of above 7 occupancy tenants of above C. S. khatian of the disputed property. 1.75 acres land appertaining to plot No.97 is a tank and 1.18 acres land of plot No.96 is adjacent to above tank where the dwelling houses of the plaintiffs are situated. Above land was erroneously recorded in S.A. khatian No.1 in the name of the government and on the basis of above erroneous record local Tosilder refused to accept rent.

The suit was contested by defendant Nos.1-3 by filing a joint written statement wherein they have

denied all material claims and allegations made in the plaint and alleged that above property was the khas property of the Majaraja of Tripura and accordingly the same was recorded in Khatian No.1 in the name of the government. Above tank and adjacent land was used by the general people of the locality for drinking and irrigation water and passage respectively. The names of the predecessors of the plaintiffs were not recorded in the possession Colum of C.S. khatian No.1. The plaintiffs do not have any title and possession in above land.

At trial plaintiffs examined five witnesses and documents produced and proved by the plaintiffs were marked as Exhibit No.1 series. On the other hand defendants examined one witness but did not produce and prove any document.

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.27 of 2000 to the District Judge, Feni which was heard by the learned Joint District Judge, 2nd Court

who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellants as petitioners moved to this court and obtained this rule.

Mr. Md. Moshihur Rahman learned Assistant Attorney General for the petitioner submits that admittedly the nature and character of the disputed property is a big tank and its adjacent land which belonged to Maharaja of Tripura. Above tank was excavated by the Maharaja of Tripura so that his tenants may get drinking and irrigation water and use above water for other domestic purposes. Adjacent land was used by the common people for passage and the same was correctly recorded in the name of the government in S.A. khatian No.1. The plaintiffs have claimed that their predecessors were the tenants under the Maharaja of Tripura but they could not mention the mode of above tenancy and the date of creation of above tenancy nor could prove above claim by legal evidence. As such the plaintiffs claim of title in above property remains not proved but the learned Judges of the courts below miserably failed to appreciate the evidence

on record correctly and the trial court most illegally decreed the suit and the learned Judge of the court of appeal below without an independent assessment of evidence on record most illegally 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 although the matter appeared in the list for hearing for several dates.

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

It is admitted that disputed 2.63 acres land comprising a big tank and adjacent land was owned by the Maharaja of Tripura and the same was rightly recorded in C.S. khatian No.1.

Plaintiffs claim that the names of their seven predecessors were recorded in the possession column of above C.S. khatian. But to substantiate above claims the plaintiff did not produce and prove above C.S. Khatian No.1 or a certified copy of the same. Plaintiff No.4 while giving evidence as P.W.1 produced an information slip of above C. S. khatian

No.1 but could not produce above C.S. khatian nor provided any explanation as to non production of above khatian. As such the claim of the petitioners that the names of their seven predecessors namely Chowdhury Gazi, Chand Gazi, Nona Gazi, Rahim Baksh, Rajjab Ali, Omed Ali and Md. Kabil were recorded as possessors in the possession colum of the C.S. khatian remains not proved.

As mentioned above the plaintiffs have admitted both in their plaint and in the evidence of P.W.1 that above property was the khas property of the Maharaja of Tripura. Khas property of Maharaja means the property in the direct possession of the Mahajara or landlord which was not given settlement by any means to any person.

There is no claim either in the plaint or in the evidence of P.Ws that at any point of time Maharaja of Tripura gave settlement of the disputed property to the predecessors of the plaintiffs. The plaintiff did not make out a case of title by adverse possession against the Maharaja of Tripura. As such the plaintiffs have miserably failed to establish any legal basis for their claim of title in the above tank and its adjacent land.

The plaintiffs have claimed title as the heirs of the persons whose names were recorded as the possessors in the C.S. khatian who had possession in 1.18 acre land of plot No.96. But the plaintiffs have claimed title for only 88 decimal land of above plot. In the plaint no explanation has been provided as to why the plaintiffs have abandoned their claim of title for remaining 30 decimal land of plot No.96. In his evidence as P.W.1 plaintiff No.4 has stated that in the S.A. khatian 30 decimal land of plot No.96 has been recorded as path or public way used by the common people. As such they do not claim above 30 decimal land and they have claimed 88 decimal land from plot No.96. But in the plaint the plaintiffs did not provide any boundary of disputed 88 decimal land of plot No.96. As such disputed 88 decimal land of plot No.96 remains unspecified and a decree for declaration of title cannot be passed in respect of such unspecified land.

It is admitted that in S.A. khatian No.1 above property has been recorded in the name of the government. The plaintiffs have challenged the legality and propriety of above S.A. khatian but

they did not produce and prove above the S. A. khatian or a certified copy of the same at trial.

In our country during period of British Colonial Rule the Maharajas or jomindars used to excavate tanks for the welfare of their subjects so that they may get water for drinking and other domestic purposes. Those tanks or water bodies remained in the khan khatian of the Maharajas or jomindars but used by the people at large. Since above property was not cultivable land those were not given settlement to the peasants nor any peasant was interested to take settlement of such property which was used by the common people.

In above view of the facts and circumstances of the case and evidence on record I hold that the plaintiffs have miserably failed to prove their lawful title and possession in the disputed property by legal evidence but the learned Judge of the court of appeal below failed to appreciate the legal value of the evidence on record and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial court which is not tenable in law.

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 18.11.2001 passed by the learned Joint District Judge, 2nd Court, Feni in Title Appeal No.27 of 2000 affirming the judgment and decree dated 14.11.1999 of the Assistant Judge, Parshuram, Feni in Title Suit No.18 of 1999 is set aside and above suit is dismissed on contest without any cost.

Let the lower courts' records be transmitted down at once.

Md. Kamrul Islam
A.B.O