

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 2686 OF 2004**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Sree Rabindra Nath Mandal and other  
{(Petitioner No. 2, died leaving behind his  
legal heirs: 2(a)-2(d)}

--- Defendant-Respondent-Petitioners.

-Versus-

Jatindra Nath died leaving behind his legal  
heirs and others

--- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Abdur Rouf, Advocate

--- For the Defendant-Respondent-Petitioners.

Mr. Prabir Halder, Advocate

---For the Plaintiff-Appellant-Opposite Parties.

**Heard on: 19.07.2023, 24.07.2023,  
01.08.2023, 03.08.2023, 07.08.2023 and  
09.08.2023.**

**Judgment on: 09.08.2023.**

At the instance of the present defendant-respondent-petitioners, Sree Rabindra Nath Mandal and others (petitioner No. 2 deceased and substituted), this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1(Ka), 1(Kha), 1(Ga), 1(Uma), 2, 3, 4, 5, 7 and 10 to show cause as to

why the judgment and decree dated 11.07.2004 passed by the learned Additional District Judge, Court No. 2, Satkhira in the Title Appeal No. 133 of 2000 reversing the judgment and decree dated 03.04.2000 passed by the learned Assistant Judge, Kaliganj, Satkhira in the Title Suit No. 78 of 1992 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party, namely, Jatindra Nath being dead his legal heirs: 1(Ka)-1(Ja) and others as the plaintiffs filed the Title Suit No. 78 of 1992 in the court of the learned Assistant Judge, Kaliganj, Satkhira praying for declaration of title of the case land and confirmation of possession along with a prayer for a declaration of the certificate proceeding and the auction thereof are collusive and fraudulent. The plaint contains that the land measuring 1.55 acres out of the total land measuring 5.62 acres of C. S. Khatian No. 50, S. A. Khatian No. 41 at Mouza- Dariala, Police Station- Kaliganj, District- Satkhira described in the schedule of the plaint more precise originally belonged to Shyam Charan, Purna Charan and Sarada Charan in equal shares who purchased total land measuring 1.87 acres. Sharada Charan sold the land by a registered deed dated 25.09.1943 as a Benami of

Sailendra Nath to avoid Income Tax intentionally. After registration of the said original sale deed in Benami's share which was kept under his own custody and the vendee, namely, Ponchanon. In the meantime, Sarada Charan got the possession of the suit land. The plain reading of the deed it would be clearly stated as the Benami in the name of the above 3 brothers. The above-mentioned purchasers all are dead leaving behind plaintiff Nos. 1-3. Kalicharan died leaving behind the plaintiff No. 7 and the defendant Nos. 4-5 who went to India. However, Sailendra Nath died leaving behind defendant No. 6 as his only son as an owner. From which they were owned and possessed with the family arrangement with the defendant Nos. 1 and 7 by a Certificate Case No. 2300 of 86-87 was created/started in the year of 1943 in Benami of Sailendra Nath by the relation to avoid Income Tax. Ponchanon kept the Kabala in his custody by obtaining it from the sub-registry office. They remained in possession of the case land from Sarada Charan and had been possessing the same. Ponchanon died leaving behind plaintiff Nos. 1-3 as sons and Kalicharan died leaving behind plaintiff No. 7 and defendant Nos. 4-5. Sailendra Nath died leaving behind defendant No. 6. Thereafter, the land was recorded in their

names. Defendant No. 1. remained as revenue staff who started the Certificate Case No. 2300/86-87 by practicing fraud when the suit land was on auction for defaulting rent. Defendant Nos. 2 and 5 purchased the auction on 08.03.1989 and they came to know on 13.07.1992. On 27.08.1992 they threatened to dispossess the plaintiffs therefrom and the instant suit was filed on 03.09.1993 for title and confirmation of possession.

The present petitioners as the defendant Nos. 2, 5 and 8 contested the suit by filing a written statement contending, *inter alia*, that Sailendra Nath purchased the suit land with his own money on 25.09.1943 and Sailendra got possession thereof and S. A. Record was prepared in his name. He died leaving behind the defendant No. 6 as the only son who mutated the land in his own name and for defaulting rent there was a rent suit being Certificate Case No. 2300/86-87. From the said case the land was put on auction on 22.11.1988 and the defendant Nos. 2 and 5 purchased the land on auction and got the delivery of auction land on 18.03.1989. Sailendra Nath received the original Kabala Deed from the Subregistry Office and kept the same under his own custody and after his death his son the defendant No. 6 kept the original document in his custody. However, the present

plaintiff-opposite parties could get the original deed very tactfully to show Benami.

The learned Assistant Judge, Kaliganj, Satkhira heard the suit and considered all the evidence adduced and produced by the parties in the suit. Thereafter, he came to a conclusion to dismiss the suit by his judgment and decree dated 30.04.2000. Being aggrieved the present plaintiff-opposite parties as the appellants preferred the Title Appeal No. 133 of 2000 in the court of the learned District Judge, Satkhira which was subsequently transferred to the learned Additional District Judge, Court No. 2, Satkhira who after hearing the parties came to a conclusion to allow the appeal and thereby reversing the judgment and decree dated 30.04.2000 passed by the learned Assistant Judge, Kaliganj, Satkhira in the Title Suit No. 78 of 1992 by his judgment and decree dated 11.07.2004. This revisional application has been filed by the present defendant-petitioners challenging the legality of the impugned judgment of the learned appellate court below and this Rule was issued thereupon.

Mr. Md. Abdur Rouf, the learned Advocate appearing on behalf of the petitioners submits that the learned trial court dismissed the suit on the ground that the suit was not

maintainable due to cause of action and the plaintiffs have measurably failed to produce any scrap of paper in the Misc./Certificate Case No. 2300 of 86-87 for auction purchase and delivery of possession through court which resulted in an error in the decision occasioning a failure of justice, therefore, the learned appellate court below committed an error of law resulting in an error in the decision occasioning failure of justice by not holding that plaintiff-opposite parties cannot take advantage of the witness of the defense case rather it is the duty of the plaintiffs to prove their case but in the instant case the appellate court came to a wrong finding only on discussing the weak point of the defense case.

The learned Advocate further submits that although there is no elaborate discussion by the learned appellate court with reference to the evidence adduced by the PWs and the findings arrived at by the learned appellate court below are not based on material and evidence on record and the trial court made elaborate discussion with reference to the materials on record which has caused a miscarriage of justice, as such, the Rule should be made absolute.

The present Rule has been opposed by the present plaintiff-opposite parties.

Mr. Probir Halder, the learned Senior Advocate, appearing for the present plaintiff-opposite parties submits that the learned trial court failed to take into consideration that the original deed was under the custody of the opposite parties and there was no evidence to hand over possession after the auction purchase, as such, the auction purchase dated 19.02.1989 and handing over possession are false and fabricated, as such, the learned trial court committed an error as to the facts and circumstances of the case, whereas, the learned appellate court below could properly examine the documents and lawfully came to a conclusion to allow the appeal preferred by the present opposite parties as the plaintiffs and therefore, came to a lawful conclusion to decree the suit but the present petitioners obtained this Rule by misleading the court which is liable to be discharged.

The learned Advocate further submits that the alleged purchase deed dated 25.09.1943 was executed in the name of Sailendra Nath in order to avoid Income Tax, as such, the deed was a Benami transfer, therefore, the present plaintiff-opposite parties and their successors were entitled to get the title and

confirmation of possession on the basis of the said Benami deed as there was no auction sale of the suit property by any rent suit, thus, the learned appellate court below properly and lawfully passed the impugned judgment and decree in favour of the plaintiff-appellant-opposite parties.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the documents adduced and produced by the respective parties by way of depositions as PWs and DWs in the learned courts below which have been included in the lower courts records, it appears to me that the present opposite parties as the plaintiffs filed the title suit claiming right of title and confirmation of possession upon the suit land measuring 1.87 acres of land situated at Mouza-Dariala, J. L. No. 64, Former Khatian No. 50, S. A. Khatian No. 41, Several Dags, Police Station- Kaliganj, District- Satkhira. The plaintiffs claimed their entitlement on the basis of the registered deed dated 25.09.1943 which was executed in the sole



name of Sailendra but the purchaser money was given by the present plaintiff-opposite parties, as such, the property was purchased in Benami, therefore, their entitlement to the suit property.

On the other hand, the present defendant-petitioners claimed that the suit property was purchased by the registered deed dated 25.09.1943 which has been exhibited as Exhibit- 3 in the name of Sailendra Nath alone which was purchased at his own price money earned by his own labour. The said purchaser Sailendra has to keep the document in his own custody after registration with the concerned registry office, the then-District-Khulna/Satkhira. After his death, his son Bimol Kumar Bormon defendant No. 6 kept the original deed in his custody and tactfully got custody to show Benami but they did not make a property in the Benami. In view of the above 2 conflicting claims and counterclaim as to the suit land, I have carefully examined the document itself which has been exhibited as Exhibit- 3 which clearly shows that the deed was executed in the sole name of Sailendra Nath Borman which was sold by Sree Sharada Sarker.

I have examined the deed in question which does not contain any words as to the others including the plaintiffs in

order to claim the deed as a Benami transaction. In a Benami transaction, there are some settled principles to identify a document as Benami including the custody, source of income, purpose of making a deed Benami and original papers relating to the land and possession of the land among others. The above conditions do not prove that the plaintiff could prove the deed as a Benami transaction by providing evidence. In particular, the deed itself clearly shows the title of the defendant-petitioners but the learned appellate court below committed an error of law and misconceived the deed itself as the vital evidence or ownership of Sailendra and his successor alone. However, the learned trial court came to a conclusion lawfully to dismiss the suit on the finding which reads as follows:

...“অন্যদিকে উত্তরদায়ক বিবাদী পক্ষ দাবী করেন যে, নালিশী জমি শৈ-লন নিজ অ-র্থ ও স্বার্থে খরিদ ক-র ভোগ দখলকার থা-কন। তার মৃত্যুর পর পুত্র বিমল ওয়া-রশ হিসা-ব ভোগ দখল করা কালীন খাজনা বাকী পড়-ল নাঃ জমি নিলাম হয় ২৩০০/৮৬-৮৭ মিস কেস মূ-ল। এবং রবীন্দ্র ও আঃ ওহাব সেই নীলাম খরিদ ক-রন। বিবাদীপক্ষ তা-দর দাবীর সমর্থ-ন সংশ্লিষ্ট নীলা-মর বয়নামা প্রদঃ খ ও দখলনামা প্রদঃ খ(১) আদাল-ত দাখিল ক-র-ছন। প্রদঃ খ হ-ত দেখা যা-চ্ছ নালিশী জমি বাবদ ২৩০০/৮৬-৮৭ মিস কেস মূ-ল নীলাম হয় এবং আদালত কর্তৃক ১৯/০২/১৯৮৯ তারিখ নিলাম বহাল হয়। প্রদঃ খ(১) হ-ত দেখা যা-চ্ছ আদালত কর্তৃক নিলাম হবার পর নাঃ জমির দখল নিলাম খরিদদার ওহাব ও রবীন্দ্র বরাবর গত

১৮/০৩/৮৯ ইং তাং দখল প্রদান করা হয়। এছাড়াও ২৩০০/৮৬-৮৭ নিলাম কে-সর মূল নথী হ-তও দেখা যায় আদালত কর্তৃক যথাযথ নিয়ম অনুযায়ী নিলাম ডাকা হয় এবং স-র্বাচ্চ ডাককারী রবীন্দ্র ও আঃ ওহাব বরাবর নিলাম প্রদান করা হয় এবং তা-দর বরাবর আদালত কর্তৃক নাঃ জমির দখল হস্তান্তর করা হয়।”...

On the other hand, the learned appellate court below came to a wrongful conclusion on the basis of the following findings and observations:

...“that the plaintiffs were possessing the case land. Also, he deposed that the plaintiffs have been possessing the case land. In the light of evidence & the production of the original Kabala from the custody of the plaintiffs it appears that the plaintiffs purchased the case land from Sarada Charan in the Benami of Sailendra Nath Barmon got possession of the case land and received the original Kabala from the Sub-Registry Office & have been possessing the same in assertion of their own right since September 25/1943. Writ of delivery of possession Ext. Kha(I) exposes the fact that on March 18/1989, Sheikh Ansar Ali (the process server). Tulsi Sardar (the flagman) &

Dhirendra Nath Rishi (the dram beater) delivered possession of the land of the jote in the possession of the auction purchasers.”...

In view of the above 2 conflicting decisions regarding the vital document, which is exhibited as Exhibit- “3” and also Exhibit- “Kha” regarding the certificate case on auction, I am of the opinion that this is not a proper case of Benami transaction as the evidence clearly produced by the defendant-petitioner and the plaintiff-opposite parties regarding the entitlement of the suit land of the defendant-petitioners as the deed clearly shows in a sole name of Sailendra Nath which was subsequently inherited by his successors and there was an auction on default of the Khajna, as such, the learned appellate court below committed an error of law by reversing the judgment and decree passed by the learned trial court by dismissing the suit filed by the plaintiff-opposite parties.

On the basis of the above discussions and consideration of the evidence contained in the lower court records and the other documents, I am of the opinion that this is a proper case for making the Rule absolute.

Accordingly, I find merit in the Rule.

In the result, the Rule is hereby made absolute.

The judgment and decree dated 11.07.2004 passed by the learned Additional District Judge, Court No. 2, Satkhira in the Title Appeal No. 133 of 2000 is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree dated 11.07.2004 passed by the learned Additional District Judge, Court No. 2, Satkhira in the Title Appeal No. 133 of 2000 is hereby recalled and vacated.

The judgment and decree dated 30.04.2000 passed by the learned Assistant Judge, Kaliganj, Satkhira in the Title Suit No. 78 of 1992 is hereby upheld.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.