

District: Pirojpur

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 3089 of 1991

In the matter of :

Assistant Custodian of Vested Property (Land
and Building), Pirojpur.

... Petitioner

-Versus-

Mohammad Akimuddin Howlader

...Opposite party

Ms. Rashida Alim Oeshi, D.A.G with
Mr. Md. Habibur Rahman Sarker,

...For the petitioner

No one appears

...For the opposite party

Judgment on: 18.11.2024

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 28.07.1986 passed by the Sub-ordinate Judge, Pirojpur in Title Appeal No. 172 of 1983 reversing those of dated 21.03.1983 passed by the Munsif, Second Court, Pirojpur in Title Suit No. 76 of 1981, dismissing the suit should not be set aside and/or such

other or further order or orders as to this Court may seem fit and proper.

The present opposite party No. 1 as plaintiff filed Title Suit No. 76 of 1981 in the Second Court of Munsif, Pirojpur for a declaration that the order dated 24.12.1979 passed in V.P. Case No. 250 of 1979(N) is illegal, void, in-effective, without jurisdiction and not binding upon the plaintiff. The case of the plaintiff as stated in the plaint briefly are that the suit property was originally belonged to the C.S. recorded tenant Gongga Charan Roy, Provat Charan Roy, Shib Das Roy and Kedarnath Roy in equal share. Kedarnath died leaving behind wife Birajmohini, who got life interest in Kedarnath's left 4(four) anas share. Thereafter, Birajmohini died leaving behind her husband's brother, Shib Das Roy. On the death of Shib Das Roy, the said 8 (eight) anas share was devolved upon Gongga Charan Roy and Provat Charan Roy and accordingly, Gongga Charan Roy and Provat Charan Roy acquired 8(eight) anas share each in the suit land. The further case of the plaintiff is that the suit land was put into auction for arrears

of rent by the Deputy Commissioner of Bakergonj in pursuant to Certificate Case No. 1274(N) of 1962-63 and the notices were duly served thereafter the plaintiff in the said auction purchased the suit property which was duly confirmed on 20.03.1964 and boynama was issued on 31.01.1966; the plaintiff was inducted into the possession on 11.10.1966 through Court. The plaintiff has been possessing the suit land on payment of rent to the Government. The defendant No. 1 declared the suit land as vested property without holding any proper enquiry and it has been enlisted as vested property in V.P. Case No. 250 of 1979 vide order dated 24.12.1979. Hence the suit.

Defendant No.1 contested the suit by filing written statement denying all the material averments made in the plaint contending, *inter-alia* that the recorded tenants Shib Das Roy and others left for India in the year 1960 and started living permanently therein and as such, the property has been enlisted as enemy property and thereafter vested property. The plaintiff in order to grab the property fraudulently created an ante-dated

certified copy of Certificate Case No. 1274 of 1962-63; the suit property was never put in auction for arrears of rent in the said certificate case. So the story of purchasing the suit land in pursuant to a certificate case was plotted only to grab the property. The plaintiff has no possession over the suit land and property has been legally declared as vested. The plaintiff has no cause of auction to bring the suit and the suit is barred under section 42 of the Specific Relief Act as it is not maintainable in its present form.

On the basis of the pleadings of both the parties, the following issues have been framed for adjudication of the suit:

- (i) Whether the suit is maintainable in its present form?
- (ii) Whether the suit is barred under section 42 of Specific Relief Act?
- (iii) Whether the suit is bad for defect of parties?
- (iv) Whether the plaintiff has any right title interest and possession in the suit land?
- (v) Whether the order passed in V.P Case No. 250 of 1979 is illegal, null, void, without jurisdiction and binding upon the plaintiff?
- (vi) Whether the plaintiff is entitled to get the reliefs as prayed for?

Learned Munsif after discussions of all the issues and dealing with the evidences and relevant laws dismissed the suit on contest by his judgment and decree dated 21.03.1983.

Having been aggrieved by the said judgment of learned Munsif, the plaintiff preferred Title Appeal No. 172 of 1983 before the District Judge, Pirojpur. On transfer the said appeal was heard by the Sub-ordinate Judge, Pirojpur and by his judgment and decree dated 28.07.1986 allowed the appeal reversed the judgment and decree dated 21.03.1983 passed by the Munsif, Second Court, Pirojpur in Title Suit No. 76 of 1981 and thereby decreed the suit.

On being aggrieved by and dissatisfied with the aforesaid judgment and decree of the Sub-ordinate Judge, Pirojpur dated 28.07.1986 the defendant No. 1 filed this revisional application and obtained the Rule in the year 1987.

Ms. Rashida Alim Oeshi, learned Deputy Attorney General appearing with Mr. Md. Habibur Rahman Sarker, learned

Assistant Attorney General for the petitioner and submits that the trial Court upon consideration of the pleadings of both the parties framed proper issues of law as well as facts. The issue No. 2 was, whether the suit is barred under section 42 of the Specific Relief Act, 1877 (In short the SR Act) or not and after considering the relevant provision of section 42 of the SR Act held that the suit is barred under section 42. It was also found by the trial Court that the original copy of the alleged 'Sale Certificate' has not been produced by the plaintiff to prove his case or the plaintiff did not take any initiative to call for the record to prove the said certificate case. It is also found that though the plaintiff claimed that Gonga Charan and Provat Charan Roy died within the country, but in his cross-examination, P.W. 1 admitted that he cannot say the exact date of death of the original recorded owners. He also disclosed in the cross that he has no knowledge about the auction which was held for how many years arrears rent and he could not submit any paper to show that the notices under section 7 of the Public Demand Recovery Act, 1913 was duly served upon the Gonga

Charan and Provat Charan. And in view of aforesaid findings of fact learned Munsif dismissed the suit. She continues to submit that but the Court of appeal below without controverting the aforesaid positive and specific findings of fact of the trial Court, illegally reversed the judgment and decree upon shifting the onus upon the defendants to disprove the plaintiff's case and thereby committed an error of law in the decision occasioning failure of justice. She further submits that under 42 of the Specific Relief Act, the plaintiff is not entitled to a simple declaration that the order dated 24.12.1979 passed in V.P. Case No. 250 of 1979 is null and void and not binding upon the plaintiff without first establishing his title or legal status over the suit land. Thus, the case of the plaintiff is hopelessly barred by section 42 of the Specific Relief Act.

In support of her submission, learned D.A.G cited the case of Ratan Chandra Dey and others Vs. Jinnator Nahar and others reported in 61 DLR(AD) 116 and the case of KM Zahirul Haque Vs. Shahida Khanam and others reported in 12 BLC(AD) 65.

Although, the Rule was issued on 05.02.1987 but no one on behalf of the plaintiff-opposite party appeared before this Court to contest the Rule.

Heard learned Deputy Attorney General for the petitioner, perused the revisional application; having gone through the Lower Courts' Record, the provision of law and cited judgments.

From the record, it appears that the trial Court came to a positive finding that the fact of Certificate Case No. 1274 of 1962-63 having not been proved by adducing adequate evidence and the plaintiff in his cross examination admitted that he had nothing to show that the notices under section 7 of the Public Demand Recovery Act was duly served and the trial Court also found that the plaintiff failed to produce the original copy of the sale certificate relates to Certificate Case No. 1274 of 1962-63, the basic document of his title and the plaintiff's witnesses failed to support the date and time of delivery of possession and on the basis of the aforesaid findings learned Munsif of the trial Court

came to the positive conclusion that the auction purchase in pursuant to the Certificate Case No. 1274 of 1962-63 having not been proved. The trial Court further found that the suit is barred under section 42 of the Specific Relief Act, 1877.

For better understanding, let us examine the provision of section 42, the said provision is reproduced herein below:

“42. Discretion of Court as to declaration of status or right- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration-Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.....

.....”

From the aforesaid provision, it appears that any person entitled to any legal character or to any right as to any property may institute a suit against any person denying and or interested to

deny his title or right to the said property and the Court may in its discretion by its verdict made a declaration that the plaintiff is entitled to the title or right to such property. In such proceedings, a person must establish that at the time of institution of the suit in declaratory form he had any legal character or status relates to the said suit property. No suit is maintainable under section 42 of the Specific Relief Act, unless the plaintiff is entitled to some legal character or to some legal right attached to the property and he is to sought for and thereby establish that he is entitled to such right. Without framing proper suit with proper prayer, the instant suit as has been filed by the plaintiff is hit by the provision of section 42 of the Specific Relief Act. In this regard reliance can be made on the judgment of Ratan Chandra Das and others Vs. Jinnator Nahar and others reported in 61 DLR(AD) 116 and the case of Sheoparsan Singh and Others Vs. Ramnandan Prashad Narayan Singh and Others reported in AIR (1916) (PC) 78.

The Court of appeal below without controverting the specific finding of fact of learned Munsif within the stipulation of

Order XLI, rule 31 of the Code of Civil Procedure came to a wrong decision reversing those of learned Munsif occasioning failure of justice, wrongly shifting the onus upon the defendants to prove or disprove the case of the plaintiff.

In the premise above, this Court do find merit in the Rule.

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

The judgment and decree dated 28.07.1986 passed by the Sub-ordinate Judge, Pirojpur in Title Appeal No. 172 of 1983 is hereby set aside and the judgment and decree dated 21.03.1983 passed by the Munsif, Second Court, Pirojpur in Title Suit No. 76 of 1981 is hereby restored.

Send down the Lower Courts' Record.

Communicate the judgment and order at once.