

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice S.M. Masud Hossain Dolon

Civil Revision No. 2715 of 2014

Md. Abdul Baki and others
... Plaintiff-petitioners.

-Versus-

Md. Abdul Awal being dead his heirs 1(a)
Fatema Begum and others.
..... Defendant-opposite parties.

Mr. Md. Momtazuddin Munna with
Mr. Md. Akramul Islam, Advocate
..... for the petitioners.

Miss. Syeda Nasrin with
Mr. Md Razu Howlader Palash with
Mr. Bibek Chandra with
Mr. Anwar Hossain with
Mr. Md Golam Kibria with
Ms. Jannat Peya, Advocates
..... for the opposite parties.

**Heard on: 08.05.2024, 09.05.2024,
12.05.2024, 15.05.2024.**

Judgment on: 16.05.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.05.2014 passed by the learned Joint District Judge, 2nd Court, Sherpur in Other Appeal No. 92 of 2011 allowed the appeal and reversed those dated 07.04.2011 passed by the learned Assistant Judge, Nakla, Sherpur in Other Class Suit No. 14 of 2009 should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of the Rule, are that the petitioners as plaintiffs filed Other Class Suit No. 14 of 2009 in the Court of Assistant Judge, Nakla, Sherpur against the defendants for permanent injunction stating, inter alia, that the original owner and possessor of 15.12 acres of land appertaining to CS khatian No. 144 was Pagaru Sheikh and Akber Ali in equal share of each. Akber Ali died leaving behind the predecessors of the plaintiffs and defendants namely Shahed Ali, Ashiran and Alguni and accordingly ROR Khatian No. 367 was prepared in the name of Shahed Ali and others but wrongly ROR Khatian was not prepared in the name of Ashiran and Alguni which could not destroy the title of them. On 30.08.1975 Ashiran and Al-Guni transferred 1.00 acres of land to the plaintiff No. 1, defendant No. 1 and four other persons including 6 persons by way of Heba-bil Ewaj. Al-Guni transferred her rest portion of share to 6(six) persons namely Nurul Islam, Ruhul Amin and others. Shahed Ali died leaving behind the plaintiff No. 1, the defendant No. 1, Nurul Islam, Ruhul Amin as his four sons, five daughters and defendant No. 1 as his legal heirs. On amicable partition the plaintiff No. 1 became owner of 18 shatak, the defendant No. 1 got 18 shatak, Nurul Islam and Ruhul Amin got 19 Shatak each in such plot No. 213 Nurul Islam sold 19 Shatak to the plaintiff No. 1 on 11.10.1993 by registered deed of sale. The defendant No. 1 transferred 18 shatak of the suit plot to the defendant Nos. 2 & 3 by registered sale deed dated 14.02.2004. Thus the plaintiffs being

owners and possessors got their name mutated and paid development tax. The defendants threatened the plaintiffs to dispossess them. Hence the case.

The defendant Nos. 1 and 2 by filing written statement contested the suit and denied the material allegations stating, inter alia, that though 15.12 acres of land including suit land recorded in the name of Pagaru Sheikh and Akbar Ali during C.S. operation on an equal share but the entire land fell in the Shaham of Akbar Ali being owner of 8.07 acres of land who died leaving behind three sons and three daughters. As heirs each son got $178 \frac{2}{3}$ Shatak and each daughter $89 \frac{1}{3}$ Shatak of the case land. Ashiron and Al-Goni cannot transfer 2.15 acres of land by two registered deed to the plaintiffs. The plaintiffs have not been possessing the suit land. In order to grudge filed this case and need to be dismissed the suit.

The learned Assistant Judge, Nakla, Sherpur after scrutinized oral and documentary evidences had submitted by the parties in support of their respective claims decreed the suit. Against which defendants opposite parties filed Other Class Appeal No. 92 of 2011 before the learned District Judge, Sherpur who transferred the same to the court of learned Joint District Judge, 2nd Court, Sherpur for disposal. The learned Joint District Judge, 2nd Court, Sherpur after hearing the parties allowed the appeal and set-aside the judgment and decree had passed by the learned Assistant Judge, Nakla, Sherpur

against which the plaintiff petitioners filed the instant Revisional application and obtained Rule.

Mr. Md. Akramul Islam, the learned Advocate for the petitioners submits that the plaintiffs proved the case by produced all documentary and oral evidences in respect of the suit land and the learned trial court rightly passed the impugned judgment and decree. But learned lower appellant Court without discussed any material evidences and considered them passed the impugned judgment and decree and as such the appellant court committed error of law resulting in an error in the decision occasioning failure of justice. He further submits that the mutation Khatian and rent receipts are ample support the claim of possession along with other oral and documentary evidence but appellate court without sound and cogent reasoning's dismissed the judgment and decree had passed by the learned trial court.

On the otherhand Miss Syeda Nasrin, the learned Advocate on behalf of the opposite parties submits that the learned Appellate Court after considered the case of the contested parties and considered the materials on record allowed the miscellaneous appeal. She further submits that the learned trial court ignored the vital objection raised in the written statement that said Asiran and Alguni had another sister namely Aheron Nessa and said Asiran and Alguni transferred land beyond their entitlement. The trial court itself

admitted that the suit involved complicated question of title which is to be determined in partition suit but the trial court still decreed the suit without applied his judicial mind and without putting much effort to adjudicate this case and as such this case is not tenable in the eye of law. She further submits that in disguise of filing this suit for permanent injunction, the plaintiffs wanted to deprive the other co-sharers of their right and title to the ejmali property. If the plaintiffs had clean hand and bonafide intention, they could file suit for partition, but they did not do that. As such, the Rule is liable to be discharged for ends of justice.

In view of the above submissions of the learned Advocates for both the sides, I have perused both the courts records, judgments and decrees passed by the learned Trial Court and that of Appellate court. After careful examination of the evidences and other materials on record it appears that in a suit for permanent injunction, the plaintiff is under legal obligation to prove the possession, specific boundaries of land, and in their bia deeds over the suit land by adducing evidence in support of his claim. PW1 in his deposition made contradictory statements regarding the nature of this suit and also about the possession in the suit land. The PW1 in one place of his deposition stated that it is a suit for recovery of khas possession, and in another place he stated that he was not sure what the suit is about. On the other hand, there is nothing in record to show that the land was ever

partitioned amongst the co-shares by way of heritable or purchase. I have perused the record that before filed this suit the plaintiffs-petitioners had filed another suit (other class suit No. 102 of 2007) for permanent injunction, which was withdrawn by them in ground of material defects. After withdrawal of the same, the plaintiffs filed the instant suit against the same defendants, but surprisingly, provided a different set of chain of title and also changed the schedule of the land thereof, which makes it more unsure about the specific possession of the plaintiffs in the suit land. The trial court decreed the suit on the basis of mutation (DCR) in favor of the plaintiffs, but this mutation does not contain the specific description of land by way of created separate and different khatian or mutation khatian in the names of the plaintiffs.

If anybody is aggrieved by such exclusive possession of a portion of joint land he can files partition suit for his remedy but so long that is not done then the possession of the co-sharer of the specific land must be respected, subject to the determination of their question of title. It also transpires in cross examination of DW 1 that Title Suit No. 260 of 2009 is filed for partition of suit land.

We have carefully perused chain of title and the excessive land sold/ transferred by Asiran and Aluni the learned Joint District Judge correctly observed that the property is apparently ejmali in nature

and the plaintiffs failed to prove their exclusive possession and there is no specific threat of dispossession of them.

The learned Joint District Judge rightly observed that the plaintiffs could not prove their exclusive possession in the suit land by oral and documentary evidence.

In such view of the matter, I do not find any illegality in the impugned judgment and decree passed by the learned Appellate Court.

In view of the discussion made above, I do not find any merit in this Rule.

Accordingly, the Rule is discharged.

The order of status-quo granted earlier by this court is here by vacated.

Send down the L.C.R along with a copy of this judgment to the concerned court for information and necessary action.