

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.391 of 1991

Sekender Ali.

.....Petitioner.

-Versus-

Golam Mostafa and others.

.....Opposite parties.

Ms. Tasmia Prodhan, Advocte.

.....For the petitioner.

Mr. Md. Enamul Haque, Adv.

.....For the Opposite party Nos. 1-6.

Heard and Judgment on 21.05.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the plaintiff-respondents-opposite parties to show cause as to why judgment and decree dated 13.09.1990 passed by the District Judge, Nawabganj in Title Appeal No. 108 of 1985 affirming those dated 30.08.1984 passed by the then Subordinate Judge, Nawabganj in Other Class Suit No. 30 of 1983 decreeing the suit should not be set aside.

Opposite party as plaintiff filed Other Class Suit No. 30 of 1983 before the Court of then Subordinate Judge, Nawabganj for declaration of title and for further declaration that recording of R.S. khatian is wrong.

Plaint Case in short inter-alia, is that, suit land was belonged to the ex-landlord as their khas land. They settled the suit land including other lands to Abdul Jabbar, the grandfather of the plaintiffs in the year 1352 B.S. Abdul Jabbar paid salami and got possession. He died leaving behind the plaintiffs as his heirs. The name of the heirs of Abdul Jabbar were recorded in the S.A. khatian and they paid rent to the Govt. for the suit land and got rent receipt. R.S. record was also prepared in the name of the plaintiffs. Subsequently on appeal it was finally published in the name of the defendants and on the basis of that R.S. record, the defendants claim title over the suit land on 13.03.1976. Their claim and the R.S. records in the name of the defendants have clouded the title of the plaintiff. He instituted this suit for title.

Petitioner as defendant contested the suit by filing written statements, denying the plaint case alleging, inter-alia, that admittedly the suit land was belonged to Medinpur Zamindari Company Estate. Defendant-petitioner got this suit land from the said Estate by way of settlement in 1352 B.S. Since that settlement, this defendant-petitioner has been possessing the suit land. Landlords executed a Fordi and also granted Dakhila in favour of the petitioner. His further case is that the name of the defendant petitioner has also been recorded in the R.S. khatian and

he paid rent regularly to the Government and got rent receipt. Plaintiff suit is false and is liable to be dismissed with cost.

By the judgment and decree dated 30.08.1984, the then Subordinate Judge, Nawabganj decreed the suit.

Challenging the said judgment and decree, defendant-petitioner preferred Title Appeal No. 108 of 1985 before the Court of District Judge, Nawabganj, who by the impugned judgment and decree dated 13.09.1990 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree defendant-petitioner obtained the instant rule.

Ms. Tasmia Prodhan, the learned advocate appearing for the petitioner drawing my attention to the deposition of P.W.3 Abul Hossain submits that when the plaintiff's witness admitted the possession of the defendant Sekendar Ali in the suit land and both the courts below found the same, even then upon a presumptive assertion courts below wrongly held that defendant's witness, as a whole established their possession into the suit land and thereby decreed the suit in favour of the plaintiff. When the plaintiff's witness admits the possession of the defendant into the suit land, the instant suit for declaration of title is barred under section 42 of

the Specific Relief Act and both the courts below failed to consider this aspect of this case and decreed the suit most illegally. The impugned judgment is thus not sustainable in law, which is liable to be set aside and the suit may be dismissed.

Mr. Md. Enamul Haque, the learned advocate appearing for the opposite parties drawing my attention to the judgment of the court below submits that plaintiff has successfully able to prove his taking pattan from the Ex. Zamindar by calling the record of the Seresta, which is called Kachha Book of the land lord from the custody of the government through P.W. 4, which is exhibited in court as Exhibit No. 6 and thereby able to prove his basis of title to the suit land. Taking into consideration the same along with the recording of S.A. khatian and the payment of rent to the government together with oral testimonies, courts below concurrently found that plaintiff got possession over the suit land and thus decreed the suit rightly in favour of the plaintiff. On the other hand, the defendant since could not prove any basis of his story of taking settlement of the suit land by their predecessor from the Ex. Land lord and the evidence of P.W. 3 on possession is a misquotation of evidence of possession and thus concurrently decreed the suit rightly. Judgment of the courts below thus since

contains no error of law, Rule contains no merits, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a suit for simple declaration of title. Since R.S. khatian was wrongly been recorded in the name of the defendant, Plaintiff instituted this suit. Both the parties claimed that suit property, which was belonged to Ex. Zamindar been settled in their favour by the Ex. Zamindar. Both parties adduced evidences in support of their respective cases. Plaintiff tried to prove his settlement by bringing the Kachha Book of the Land Lord from the custody of the government through P.W.4, wherein it is apparent the name of the plaintiff's predecessor there as a settlement holder from the Ex. Zamindar. Recording of the Plaintiffs name in the S.A. khatian No. 86 (Exhibit No. -5) also been proved through the register (Exhibit No. 7), which was called in court by the plaintiff. On the other hand Court found that Hukum Nama (Exhibit -Ka), which was filed by the defendant in support of their contention of taking pattan from the Ex. Zamindar is not the valid document of Fordi as been claimed by the defendant rather it was obtained after the establishment of Pakistan in the year 1950, when the Zamindari was not there.

Moreover, this document was alleged to be written and signed by one Mojammel but in the absence of any signature on the said Fardi (Exhibit- Ka) by any person named Mojammel, the Courts below gave its reliance that this document do not bear any valid title of the defendants in the suit land. Moreover, non recording of S.A. khatian into the name of the defendant also do not corroborate the defendant's story of taking pattan from the Ex. Jamindar. Courts below considered possession giving reliance upon the evidences of the plaintiff and found that plaintiffs are in possession into suit land. Learned advocate appearing for the petitioner drawing my attention to the deposition of the P.W.3 Abdul Hossain submits that plaintiff's witness admits in his deposition that Sekendar Ali defendant admittedly is in possession into the suit land. The recording of R.S. khatian is the prove of possession, which has rightly been recorded in the name of the defendants and hence plaintiff instituted this suit for correction of the R.S. khatian, which was also been corroborate the possession of the defendants as being asserted by the P.W.3 Abul Hossain. The courts below failed to consider this aspect of the case. When the defendant admittedly in possession, as been admitted by the P.W.3 as well as through recording their name in the R.S. khatian, the instant suit for a simple declaration of title apparently barred by under section 42 of the Specific Relief Act.

Regard being had to the above law, facts and circumstances of the case, I am of the opinion that both the courts below practically failed to understand the nature and character of the suit as well as failed to assess the proper evidence on record and decreed the suit in favour of the plaintiff most arbitrarily. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

In that view of the matter, I find merits in this rule. Accordingly the Rule is made absolute without any order as to costs. The judgment and decree passed by the courts below are hereby set aside.

Send down the L.C.Records and communicate the judgment to the court below at once.