

Present :

Mr. Justice Ashish Ranjan Das.

Civil Revision No. 2713 of 2007.

In the matter of:

Mrs. Asrafun Nessa and others

.....Petitioners

-Versus-

Didar Hossain and others.

.....Opposite parties.

Mr. Md. Nurul Amin, Advocate.

....For the petitioners.

Mr. Sirajur Rahman, Advocate

.....For the opposite parties

Heard on: 30.10.2019 and 17.11.2019

Judgment on: 25.11.2019

Ashish Ranjan Das, J:

By this civil revisional application under section 115(1) of the Code of Civil Procedure, the propriety of the judgment and decree dated 05.04.2007 and 10.04.2007 passed by the learned Additional District Judge, 2nd Court, Kushtia in Title Appeal No. 91 of 2000 affirming the judgment of dismissal dated 06.06.2000 passed by the learned Assistant Judge, Mirpur, Kushtia in Title Suit No.137

of 1994 has been called in question.

Facts relevant for disposal of the rule may be summarized as under:-

The 3.07 acres of land comprising of C.S. plot nos.938, 917/1, 1179 and 604 appertaining to C.S. Khatian No.46 under mouza Kachubaria, police station- Mirpur, District- Kushtia admittedly belonged to two brothers Alep Mondal and Fakir Mohammad Mondal at equal shares. Alep Mondal had no child and by way of registered deed of gift dated 14.11.1941 he made a gift of his share in favour of his wife Sohagi Nessa. However, S.A record was not prepared in her name and she for the purpose brought Title Suit No.444 of 1969 in the first Court of Munsif, Kushtia and got it decreed. Accordingly her name was recorded in the S.A. record. Thus, while in possession Sohagi Nessa sold 1.535 acres of land by way of 3 registered kabalas dated 28.03.1977 in favour of the plaintiff- petitioners and since then the plaintiffs have been owning and possessing their portion, however on 10.11.1994 the plaintiffs through certain sources came to learn that the defendants would

dispossess them of the suit land. Hence was this suit for permanent injunction.

The defendant nos. 1-8 contested the suit by filing written statement. Their case is that admittedly the suit properties belonged to two brothers; Alep Mondal and Fakir Mohammad Mondal at equal shares. It is also admitted that Alep Mondal had no child and left only widow Sohagi Nessa. Sohagi Nessa could somehow obtain a deed of gift as stated above which was not acted upon rather in the subsequent S.A. operation out of 8 annas share of Alep mondal, Sohagi nessa got her share of 2 annas only whereas the remaining portion was recorded in the name of the heirs of Alep Mondal's brothers i.e. defendants. Next the plaintiffs brought Title Suit No. 444 of 1969 and somehow got it decreed at the instance of the defendant-opposite parties. The matter went of Hon'ble Appellate Division in the form of Civil Appeal No. 14 of 1991 and their Lordships held that of course Sohagi Nessa had share in the suit property by her husband Alep Mondal but that was to the extent of 2 anas only and thus the decree awarding Sohagi

nessa for 8 anas share as stated above in Title Suit No. 444 of 1969 was reversed. However during pendency of the appeal arising out of Title Suit No. 444 of 1969 and the plaintiff- petitioners obtained the said 3(three) kabalas dated 28.03.1977.

Firstly, no title above the share of 2 anas accrued to the plaintiffs on the strength of those 3 kabalas of 1977. For the purpose on getting a decree upon permanent injunction number and plots has not been specified nor possession of the plaintiffs has been proved as per their construction.

The suit being Title Suit No.137 of 1994 filed on 17.11.1994 was initially dismissed on contest in the court below. In appeal as has been noted above and the judgment of dismissal passed by the learned Assistant Judge was affirmed. Hence is this civil revisional application.

I have gone through the materials annexed to the file including the revisional application and the L.C.R.

The learned advocate for the plaintiff petitioners concentrates on the point that in a suit for permanent

injunction the court has not to look into the title of the applicant rather proof of possession is required. The learned advocate for the defendant opposite parties argued that initially the suit disclosed no specific cause of action to get a decree of permanent injunction.

It is stated that since the defendants wanted to dispossess the plaintiffs, plaintiffs brought the suit for permanent injunction. But it is very much in the plaint that nobody for the defendants ever threatened plaintiffs physically or by any other way rather according to the plaint the plaintiffs came to know about the threat of dispossession from different persons, the words read as follows:-

*“বাদীগনকে নালিশী জমি হইতে জোরপূর্বক বেদখল করিবে বলিয়া
গত ১০/১১/১৯৯৪ ইং তারিখে লোক পরস্পর হুমকি দিতেছে।”*

I find obvious merit in the submission of the learned Advocate for the opposite party defendants that the cause of action as needed is nothing convincing in the plaint rather it appears that the suit was instituted days after the matter was finally decided by their Lordships in the

Appellate Division in C.A. No.44 of 1991.

Admittedly Sohagi Nessa had a share of 2 anas from her husband and that has been affirmed by the Hon'ble Appellate Division. If the kabalas of the plaintiffs are accepted to have been genuine in that case also title above 2 anas share did not pass from Sohaginessa in favour of the plaintiff petitioners. While the learned advocate for the plaintiff petitioners frankly admitted that the plaintiffs are not banking on their title rather their case is that since they are in possession they are entitled to protect their possession by way of permanent injunction, no question whether the deed of gift passed title in the suit land or not.

Now let me see how for the plaintiff petitioners' could prove their possession in evidence. It appears as the learned advocate for the opposite parties pointed out that since initially title suit no.444 of 1969 was defeated and the matter was contested upto Hon'ble Appellate Division. In the mean time both the R.S. and S.A. were prepared in the name of the plaintiffs which of course bears no value as the matter has been settled by the Hon'ble Appellate Division in

Civil Appeal No.14 of 1991.

Now as regards possession firstly as it transpires vivid enough that with the plaint is silent as to in what manner the plaintiff petitioners have been over the period possessing their share distributed in at least 4 plots. Rather P.W. 3 admitted that the defendants have their possession in the suit plots, it may be so simply because the defendants are also admittedly co-sharers and they might have had proportionate possession. But for the plaintiffs they had to specifically prove in evidence that they have been occupying a particular demarcated area for which they pray for injunction. But he did not as happen. Among the 4 P.Ws none including the P.W.1, specifically asserted the area or manner of possession. P.W.2 stated that the area of the plaintiffs are in a compact block which is a not the case neither of the plaint nor of other witnesses. P.W.2 further stated that in fact the plaintiffs never occupied the land, rather the plaintiffs have been possessing their share through bargaders. But this has not been the case of the plaint.

This being the situation the plaintiffs predecessors vendor Sohagi nessa had no share above the extent of 2 ana and that has been settled by the Hon'ble Apex Court, where as it appears from the plain reading of the plaint that

the plaintiff could not plea a convincing cause of action even in the plaint and the story of threat to possession somehow told in the plaint was not established in evidence and finally from evidence it could not be gathered as to in which area in what manner the plaintiff petitioner have been exercising their possession. This being the situation I do not hesitate to conclude that the learned courts below were not at fault in assessing evidences and arriving at a concurrent finding respecting the plaintiff petitioners is entitlement to a decree of permanent injunction.

As a result the Rule is discharged and the judgment and decree dated 05.04.2007 and 10.04.2007 passed by the learned Additional District Judge, 2nd Court, Kushtia in Title Appeal No. 91 of 2000 is hereby affirmed.

No order as to cost.

Send down the L.C. R at once.

Communicate the judgments and order to the courts below at once.

Justice Ashish Ranjan Das.