

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 250 of 1997

Ramshinath Gowala

Petitioner

-Versus-

Bangladesh, represented by the Deputy
Commissioner, Sylhet and others

Opposite parties

Mr. Jyotirmoy Narayan Deb, Advocate

...For the petitioner

Ms. Shahida Khatoon, with
Mr. Sovan Mahmud and
Ms. Khandaker Asma Hamid, AAGs

... For the opposite parties

Heard on 05.11.2024 and 26.11.2024

Judgment on: 03.12.2024

Plaintiff No. 3 is the petitioner of the instant civil revision. Present petitioner and others filed Title Suit No. 09 of 1978 impleading the government and Additional Deputy Commissioner (revenue), Sylhet as defendants in the Court of 1st Additional Subordinate Judge, Sylhet. The suit was decreed on contest, vide judgment and decree dated 15.05.1978 (decree signed on 12.08.1978).

The defendants filed Title Appeal No. 05 of 1979 which was allowed by the 3rd Court of Additional District Judge, Sylhet, vide judgment and decree dated 23.04.1995. Being aggrieved, the plaintiff No. 3 filed the instant revision and obtained Rule on 21.01.1997.

The plaintiffs filed the suit praying for declaration that the lands described in the schedule to the plaint and no share or part thereof are enemy, vested or non-resident property and that the defendants are not entitled to disturb the possession of the plaintiffs in the suit land with further prayer for permanent injunction restraining the defendants from interfering with the plaintiffs' possession in the same.

The case of the plaintiffs, in short, is that the suit land measuring an area of 30.14 acres out of 90.43 acres recorded in Khatian Nos. 529 and 143 of Mouza-Dharan and Mominchara under P.S. Fenchuganj, District-Sylhet originally belonged to Sahadeb Gowala who died leaving three sons, namely- Sudhir Gowala and Adhir Gowala (plaintiff Nos. 1 and 2) and Mahendra Gowala as his sole heirs. They got the suit land in equal share and had been possessing the same since then. Settlement record of rights were accordingly prepared in their names. Mahendra Gowala was of wandering mind. He wanted to sell his share inherited by him and asked his two brothers (plaintiff Nos. 1-2) to purchase the same. At that time plaintiff No. 3 (son-in-law of plaintiff No. 1), who was residing at Fultala Tea Estate under P.S. Kulaura, wanted to purchase

the share of Mahendra Gowala *i.e.* 30.14 acres of land and the price was fixed at Tk. 2,000. The plaintiff No. 3 paid Tk. 1,000/- to Mahendra on 28th Aswin, 1371 B.S. On the same date Mahendra executed a Shikritinama in favour of the plaintiff No. 3 and delivered possession of his share in favour of plaintiff No. 3. The parties agreed to execute and register the sale deed after obtaining necessary permission and acceptance of balance consideration money. After taking possession of the suit land the plaintiff No. 3 constructed a house on the said land and has been possessing and enjoying the same with the plaintiff Nos. 1-2. After applying for permission before the relevant authority for execution and registration of the sale deed Mahendra Gowala went to pilgrimage in Falgun 1371 B.S. and did not return. Subsequently, the plaintiff No. 3 got a notice on 26.06.76 from the defendant No. 2 demanding surrender of the possession of $\frac{1}{3}$ share of the schedule land claiming the same as vested property, failing which the plaintiffs would be evicted therefrom. Specific case of the plaintiffs is that the suit land is not enemy or vested property and there is no reason to treat the same as such.

The defendant No. 1 contested the suit by filing written statement stating, *inter alia*, that the suit is not maintainable and the same is barred by limitation and is bad for defect of parties and as such, the plaintiffs are not entitled to any relief. The specific case of the defendant No. 1 is that the suit land belonged to Sudhir Gowala,

Adhir Gowala (plaintiff Nos. 1-2) and Mahendra Gowala in equal share. Mahendra Gowala left this country for India about 11/12 years ago and became Indian National and as such $\frac{1}{3}$ share of the suit land became enemy property and vested to the government. The plaintiff Nos. 1-2 were found unauthorised occupants of the share of Indian National Mahendra Gowala and accordingly, they were served notice by the defendant No. 2 in V.P. Case No. 155/1975-76 to vacate the same. On receipt of the notice, they filed petition before the defendant No. 2 on 15.07.76 for filing objection but they did not appear and accordingly, the S.D.O. Sadar was requested to evict unauthorised occupants from the vested property. The further case of the defendant is that the Mahendra never sold the suit land or any part thereof to plaintiff No. 3 and he never executed any Shikritinama and accepted no money from him. The plaintiffs have filed the suit to illegally grab the valuable government property and as such, the suit is liable to be dismissed with cost.

The appellate Court below held that the Shikritinama was a forged document and it was never executed by Mahendra Gowala. The appellate Court dismissed the appeal. The trial Court, on the other hand, held that the Shikritinama has been proved. The trial Court decreed the suit.

It is recalled that plaintiffs did not pray for declaration of title in the suit land rather they prayed for the declaration that the suit property is not enemy or vested or non-resident property pursuant to the V.P. Case No. 155/1975-76.

In *Aroti Rani Paul vs. Sudarshan Kumar Paul and others*, 56 DLR (AD) 73, it is held that since the law of enemy property itself died with the repeal of Ordinance No. 1 of 1969 on 23.03.1974 no further vested property case can be started thereafter on the basis of the law which is already dead. The same view was taken in the case reported in 20 BLT (AD) 7. In this regard, this Court takes judicial notice of the fact that the suit property has not been mentioned in the gazette notification published by the government pursuant to Section 9 of the Arpito Sompotti Prottarpon Ain, 2001. The said gazette notification has been produced before us.

In the case in hand, admittedly the V.P. Case No. 155/1975-76 was initiated after 23.03.1974 and as such, the contesting defendant admitted the title of plaintiffs in the suit land but introduced a new case that since Mahendra (brother of plaintiff Nos. 1-2) left the country for India his $\frac{1}{3}$ share in the suit land has been vested in the government. Accordingly, V.P. Case No. 155/1975-76 was initiated and the impugned eviction notice was given in the said V.P. case. Judicial pronouncement has settled that after 23.03.1974, no V.P. case

can be initiated. Therefore, the V.P. case in question being barred by law, the eviction notice issued in the said V.P. case is also illegal. Therefore, the Rule succeeds.

In the result, the Rule is made absolute. The judgment and decree passed by the appellate Court below are set aside and those passed by the trial Court are upheld for the reasons discussed above.

Send down the L.C.R.