

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 59 of 1997

Abdus Salam and others

...Petitioners

-Versus-

Government of Bangladesh represented by the
Deputy Commissioner, Moulvibazar and another

....Opposite parties

None

...For the petitioners

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

.....For the opposite parties

Heard on: 29.10.2024, 05.11.2024 and 26.11.2024

Judgment on: 04.12.2024

The instant Rule issued on 08.01.1997 is directed against the judgment and decree dated 29.06.1996 passed by the learned Additional District Judge, Moulvibazar in Title Appeal No. 106 of 1986 allowing the appeal and setting aside the judgment and decree dated 20.03.1986 (decree signed on 31.03.1986) passed by the learned Munsif, Baralekha, Moulvibazar in Title Suit No. 37 of 1984 decreeing the suit.

The plaintiffs are the petitioners. Defendant No. 1 is the Thana Nirbahi Officer, Baralekha, Moulvibazar and defendant No. 2 is Deputy Commissioner, Moulvibazar.

The plaintiffs filed the suit for declaration of title in the suit land and three shops constructed thereon by way of inheritance and further declaration that eviction notice dated 27.10.1977 issued by the defendant No. 1 is illegal and not binding upon them and for permanent injunction restraining the defendants from evicting the plaintiffs from the suit land and the shops constructed thereon and from interfering with the peaceful possession of the suit land by the plaintiffs. The defendant No. 2 contested the suit by filing written statement. The defendant did not examine any witness but cross-examined the PWs.

The case of the plaintiffs, in short, is that the suit land and other lands were owned by their predecessor Basir, Hanif and Hazir by dint of purchase on 11 Chaitra, 1270 BS. The nature of the suit land is chandina vitti which is situated in a bazar. The plaintiffs' predecessors constructed small shops on the suit land which have been inherited by the plaintiffs. The suit land is not a khas land. However, defendant No. 2 issued the eviction notice dated 27.10.1977 on the plaintiffs directing them to vacate the suit land treating the same as khas land.

The case of the contesting defendant No. 2 is that the nature of the suit land is hat bazar and the same was not included in the kabala dated 11 Chaitra, 1270 B.S.

The trial Court decreed the suit holding that the suit land is not situated in a hat or bazar as per definition of hat or bazar given in Section 2(12) of the State Acquisition and Tenancy Act, 1950 and as such, Section 20(2)(a) does not apply to the case.

The appellate Court below, on the other hand, allowed the appeal holding that the suit land and shops constructed thereon fall with the definition of hat or bazar and as such, the eviction notice was rightly issued. The appellate Court below further held that although the plaintiffs claimed title in the suit land by way of inheritance but nothing is stated in the plaint as to the chronology of chain of title regarding the devolvement of title in the land on the plaintiffs. Appeal Court observed, “বাদী পক্ষ মাং হাজিরের ওয়ারিশ হিসাবে নালিশী সম্পত্তিতে স্বত্ত্ব দাবী করিলেও তাহাদের সহিত উক্ত মাং হাজিরের কি সম্পর্ক ছিল বা উক্ত মাং হাজির মারা যাওয়ার পর কে বা কাহারো তাহার ওয়ারিশ ছিলেন সে সম্পর্কে বাদীপক্ষ আরজিতে কোন সুস্পষ্ট বক্তব্য রাখেন নাই। তদাবস্থায় মাং হাজিরের ওয়ারিশ হিসাবে বাদীগণ নালিশী সম্পত্তি পাইয়াছেন বলিয়া বাদীপক্ষ যে বক্তব্য রাখিতে চাহেন তাহা অস্পষ্ট এবং উক্ত অস্পষ্ট বক্তব্যের ভিত্তিতে বাদীগণ আদৌ উক্ত মাং হাজিরের ওয়ারিশ ছিলেন কিনা তাহা প্রমাণিত হয় না। ইহাছাড়া উভয় পক্ষের স্বীকার মতে নালিশী দাগের সম্পত্তি বিগত সরকারী জরিপ আমলে বাজার শ্রেণী হিসাবে রেকর্ড হইয়াছে।”

The trial Court did not address the issue as to chain of title of the plaintiffs in the suit land. It simply held that the suit land does not fall within the category of hat or bazar without referring to the evidence on record. The appeal Court, on the other hand, referred to the evidence of PW1 and PW2 and came to the conclusion that the suit land and shops situate in hat or bazar. On going through the materials on record this Court finds that the judgment and decree passed by the appellate Court is based on evidence on record and proper appreciation of facts and law. Therefore, the Rule fails.

In the result, the Rule is discharged. The judgment and decree of appellate Court below are affirmed.

Send down the L.C.R.