

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

Present

Madam Justice Kashafa Hussain

Civil Revision No. 3973 of 2014

Abdul Kuddus Bepari and others

.....petitioners

-Versus-

BinNarayan Chandra Dutta

----- Opposite party

Mr. Md. Ali Reza, Advocate

----- For the petitioners

Mr. Humayun Kabir Sikder, Advocate

----- For the Opposite Party

Heard on: 21.10.2018, 06.11.2018,

12.11.2018, 13.11.2018 and

Judgment on 14.11.2018

Rule was issued calling upon the opposite party Nos. 4, 6-17 to show cause as to why the Judgment and decree dated 30.06.2010 passed by the learned Joint District Judge, 3rd Court, Barisal in Title Appeal No. 53 of 2007 dismissing the appeal and thereby affirming the judgment and decree dated 15.10.2006 passed by the learned Assistant Judge, Agailjhara, Barisal in Title Suit No. 76 of 1996 dismissing the suit on contest should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant petitioners as plaintiffs instituted Title Suit (opposite party Nos. 44-51) filed Title Suit No. 76 of 1996 as plaintiffs in the court of Assistant Judge, Agoiljara for declaration that the disputed decree described in 'Kha' schedule

of the plaint in respect of the property described in 'Ka' Schedule of the plaint is void, illegal and not binding upon the plaintiffs impleading the opposite parties as defendants.

The Trial Court upon hearing both sides pursuant to framing issues and adducing evidences etc dismissed the suit by its judgment and decree dated 15.10.2006. Upon being dissatisfied with the judgment and decree dated 15.10.2006 passed by the Trial Court the plaintiff as appellant, preferred Title Appeal No. 53 of 2007 in the court of District Judge which upon transfer was heard by the court of Joint District Judge , 3rd Court Barisal who upon hearing the parties dismissed the appeal by its judgment and decree dated 30.06.2010. Hence being aggrieved by the appellate court's judgment and decree dated 30.06.2010 affirming the Judgment and Decree passed by of the Trial Court the plaintiff appellant as petitioner preferred the civil revisional application which is before me for disposal.

Learned Advocate Mr. Md. Ali Reza appears on behalf of the petitioners while the Opposite Party is represented by learned Advocate Mr. Humayun Kabir Sikder.

Learned Advocate for the petitioner submits that the courts below erroneously arrived at their respective decisions upon misinterpretation of the law and misappreciation of facts and therefore caused serious damage to the interest of the petitioner resulting in miscarriage of justice. By way of his contentions he

first takes me to the judgment of the trial court wherefrom he points out that the trial court gave specific finding that the plaintiffs have title to the property. He further submits that the trial court upon adducing evidences and decisions came to the finding that the plaintiffs have title to the suit land. He continues that however the trial court merely on grounds of technicality erroneously dismissed the suit even though conversely it came to the finding that the plaintiffs have title to the property. He submits that the trial court in its concluding parts stated that:

“ডিক্রীভুক্ত সম্পূর্ণ সম্পত্তি বাদীর দাবী। তাই বাদীর এক্ষেত্রে
ডিক্রী রদ-রহিত প্রার্থনায় মোকদ্দমা করা আবশ্যিক ছিল।”

Regarding this observation of the trial court the learned Advocate submits that the trial court overlooked the fact that the petitioner also prayed for title in the suit. He submits that this suit has a history in as much that originally the instant petitioner as plaintiff filed Title Suit No. 242 of 2017 before the concerned court praying for declaration for title regarding the same land that is being dealt with at present. He submits that Title Suit No. 242 of 2017 suit was decreed in favour of the plaintiff and against which appeal was preferred in the concerned appellate court by the defendant in the suit as appellant and upon hearing the Appellate Court sent back the suit to the trial court on remand and which is the instant suit being renumbered as Title Suit No. 76 of 1996. He argues that the finding of the Trial that the

plaintiff did not pray for declaration of title is not correct. He next contends that the trial court also dismissed the suit on a ground that the schedule (Gha) land as in the plaint is unspecified and dismissed the suit upon observation that:

“এছাড়া বাদীর “গ” তফছিল ভূমি unspecified দেওয়ানী কার্যবিধি আইনের ৭ আদেমের ৩ বিধি মোতাবেক suit land না হওয়ায় এই মামলায় বাদীপক্ষ প্রতিকার পাইতে পারে না।”

He contends that the Trial Court dismissed the suit on mere ground of technicality given that the trial court in its findings stated that the plaintiff has title and possession to the property. He asserts that denying title and possession on mere ground of technicality is an illegality in itself and calls for interference. In support of his contentions that mere grounds of technicality cannot be grounds to deprive any person of his right of title, he cites a decision of our Apex Court in the case of Nur Mohammad Vs Kamla Khatun reported in 20 BLC (AD) 2015 page 205. He now takes me to the judgment of the appellate court and attempts to draw an analogy between that case and the instant case. He also contends that there are serious flaws in the findings and hence they came upon incorrect and unlawful decisions and therefore both the judgments ought to be set aside. He next submits that considering the facts and circumstances of the case it is fit case of remand and the matter ought to be sent back to the trial court on remand for fresh trial. In this context he

cites a decision of our Apex Court reported in the case of Nur Mohammad Vs Kamla Khatun reported in 20 BLC (AD) 2015 page 205. Regarding his earlier submissions that the trial court's finding that the plaintiff ought to have prayed for cancellation of the decree itself, he controverts the findings of the trial court upon citing a decision of our Apex Court in the case of Momtaz Begum Vs Md. Masud Khan reported in 52 DLR (AD) (2000) page 46 where our Apex Court held:

“The plaintiff-respondents after having obtained a declaration as to the illegal and fraudulent character of the impugned kabala deed and also a declaration of their title to the suit land do not need any cancellation of the impugned deed, they not being parties to the impugned kabala deed.”

He concludes his submission upon assertion that both the judgments of the courts below respectively have been incorrectly given on the merits also, therefore those are not sustainable and the judgments ought to be set aside and the Rule be made absolute for ends of justice.

On the other hand learned Advocate for the opposite party submits that the court below did not commit any illegality in arriving at their findings and the judgments being correctly given

on the merits of the case those call for no interference and the Rule may be discharged for ends of justice.

At one stage of his submissions upon a query from this court the learned counsel for the opposite parties concedes that there are some serious flaws in the findings of the appellate court as appears from the record. He concedes that this case is a fit case for remand and this matter may be sent on remand to the appellate court and the appellate court should rehear the matter.

Heard the learned Advocates, perused the materials on record including both the judgments of the courts below, that of the Trial Court and Appellate Court respectively. Truly enough, it appears from its judgment that the Trial Court has categorically found in favour of the plaintiffs pertaining to Title. Nevertheless the Trial Court dismissed the suit and consequently denied relief to the plaintiffs on mere technical grounds. In the context of the Trial Court's dismissing the suit on grounds of technicality only, he cites a decision of our Apex Court in the case of Nur Mohammad Vs Kamla Khatun reported in 20 BLC (AD)2015 page 205 where in it was held:

Remand- A party should not suffer nor be deprived of valuable property of mere mistake in the schedule of the plaint.

It is revealed from the records that contrary to the Trial Court's finding the petitioner had originally in this suit

pertaining to the same schedule prayed for declaration of title. By way of addressing the incorrectness of the trial court's finding to the effect that to obtain a decree in their favour the plaintiff ought to have prayed for cancellation of decree specifically, I have perused the judgment of the Apex Court in the case of Momtaz Begum Vs Md. Masud Khan reported in 52 DLR (AD) (2000) page 46. The principle held therein by our Apex Court is that in such case prayer for cancellation of deed is not mandatory. However, from the judgment I have found in that case the instrument was a deed and was not a decree. In the decision in the case of Nur Mohammad Vs Kamla Khatun reported in 20 BLC (AD)(2015) page 205 our Apex court held:

A party should not suffer nor be deprived of valuable property for mere mistake in the schedule of the plaint.

In agreement with the judgment of the Apex Court which is binding on me I am inclined to draw analogy with the principle held in the decision with the case before me and in such a scenario I am inclined to hold that it is a fit case on remand and ought to be sent back to the Trial Court. Regarding the appellate court's findings it appears that the court absolutely misread the trial court's finding. Strangely enough it appears that the appellate court in its concluding part held that:

নিম্ন আদালত নালিশী জমিতে বাদীর বায়াগনের স্বত্ব-স্বার্থ সম্পর্কে যথাযথ দালিলিক প্রমান দাখিল না থাকায় তাহাদের হস্তান্তরযোগ্য স্বত্ব থাকা এবং বাদীগন হস্তান্তর স্বত্ব-স্বার্থ অর্জন করার দাবী যথাযথভাবে প্রমান হয় নাই মমে যে সিদ্ধান্ত প্রদান করিয়াছেন তাহা সঠিক ও যথাযথ।

It is clear that the appellate court outrageously overlooked and misread the trial court findings and consequently came upon an absurd finding. It is clear from the Trial court's judgment as to relying on the depositions and evidences that the trial court gave specific findings in favour of the plaintiffs' title, but dismissed the suit on mere grounds of technicality. However considering the facts and circumstances in the case I am of the finding that this matter ought to be heard afresh by the trail court and I am inclined to send it back on remand to the trial court.

In the result the Rule is disposed of and the Judgment and decree dated 30.06.2010 passed by the learned Joint District Judge, 3rd Court, Barisal in Title Appeal No. 53 of 2007 dismissing the appeal and thereby affirming the judgment and decree dated 15.10.2006 passed by the learned Assistant Judge, Agailjhara, Barisal in Title Suit No. 76 of 1996 is hereby set aside with direction that the case be sent back on remand and with further direction that the case be restored to its original file and number and it is also directed that the trial court may hear and dispose of the matter within the earliest possible time

preferably within 6(six) months of receiving this judgment and order.

Order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the lower Court records at once.

Communicate the order at once.

Shokat (A.B.O)