

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 444 of 2014

Khondokder Abdus Sabur and others

.....Petitioners.

-Versus-

Assistant Commissioner (Land),  
Batiaghata, Khulna and another

.....Opposite parties.

Mr. Md. Aminul Hoque, Advocate

.....For the petitioners.

Mrs. Shovana Banu, A.A.G.

.....For the opposite parties.

Heard and judgment on 2<sup>nd</sup> April, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party No.1-2 to show cause as to why the impugned judgment and decree dated 18.08.2013 passed by the Additional District Judge, Second Court, Khulna in Title Appeal No. 245 of 2010 affirming those dated 25.08.2010 passed by the Joint District Judge, 3<sup>rd</sup> Court, Khulna in

Title Suit No. 28 of 2006 dismissing the suit should not be set aside.

Petitioners as plaintiffs filed the above suit against the government for declaration of title.

Plaint case, in short, inter alia, is that Niamot Ullah @ Khondokar and Azibur Rahman alias Akbar Khunu alias Khondokar were the original owners of 1.80 acres of land of C.S. khatian No. 205, plot No. 16 of Mouza Mathavanga, police station Batiaghata, District-Khulna in equal share. Niamot Ullah died leaving behind Abdul Wahab, Abul Jabbar, Abdul Hamid, Md. Munur Ali and Abdul Mazid Khondokar as his legal heirs. Abdul Mazid died leaving behind only heirs Abdul Razzak Khondokar. S.A. record was prepared in the names of the aforesaid heirs of Niamot Ullah. S.A. record in respect of  $\frac{1}{2}$  of 1.08 acres of land was prepared in the name of Azibar alias Akbar Khunu alias Khondokar. Thereafter Abdul Jabbar died leaving behind plaintiff No.1, two daughters namely Laily Begum and Lina Begum and wife Karimun Nessa. Karimun Nessa died leaving behind the aforesaid one son and two daughters. Laily Begum died leaving behind plaintiff No.1 and 7. In the aforesaid way heirs of late

Abdul Jabbar became the owner of .1080 acres of land. S.A. recorded tenant Khondokar Abdul Himid died leaving behind the plaintiff Nos.8-14. Khondokar Fazlur Rahman died leaving behind the plaintiff Nos.15-17 and wife of Khondokar Monirul Islam died leaving behind plaintiff Nos.8-16. Khondokar Abdul Wahab died leaving behind plaintiff Nos.24-28, 28ka and 28 kha. Abdur Razzak Khondokar died leaving behind husband of plaintiff No. 29 and father of plaintiff Nos.30-32. Plaintiff No.33 got ownership over .0970 acres of land. Ajibor alias Akbar Khunu alias Khondakar died leaving behind the plaintiff Nos. 34-42. The predecessor of plaintiff Nos.34-42 was a police officer and he was in charge of the suit property. During latest survey the said police officer died and as such the aforesaid Ali Akbar was given responsibility to take steps for record. The plaintiff No.1 or aforesaid Ali Akbar would pay land tax to the government. The plaintiff No.1 paid taxes for the year 1392-1396 BS on 22.03.1990 and for the year 1396 BS on 12.09.1997 without any objection from the office of tahshildar. On 28.04.2006 the tahshildar refused to receive tax from the plaintiff No.1, on asking he informed the plaintiff No.1 that the suit land was recorded in the name of the

government. In the facts and circumstances the plaintiffs filed the suit for declaration of title over the suit property.

Suit was contested by the Defendant No.2 by filing written statement, denying the plaint case, alleging, inter alia, that plaintiffs have no right, title and possession over the suit land in 1.08 acres of land of S.A. khatian No. 280 and C.S. Khatian No. 250 and C.S. and S.A. plot No. 16, Mouza Mathabanga, Upazilla-Batiaghata, District-Khulna. The papers of the plaintiffs relating title and possession are fake, collusive and paper transaction only. Suit property rightly been recorded in the name of the Government. Suit is false and is liable to be dismissed with cost.

By the judgment and decree dated 25.08.2010 the Joint District Judge, 3<sup>rd</sup> Court, Khulna dismissed the suit on contest.

Being aggrieved thereagainst, petitioner preferred Title Appeal No. 245 of 2010 before the Court of District Judge, Khulna, which was heard on transfer by the Additional District Judge, 2<sup>nd</sup> Court, Khulna, who by the impugned judgment and decree dated 18.08.2013 dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved thereby plaintiff petitioner obtained the instant rule.

Mr. Md. Aminul Hoque, the learned advocate appearing for the petitioner drawing my attention to the lower court records submits that in order to prove the plaintiff title, plaintiff has adduced a number of documentary evidences and also adduced himself as P.W.1 and in order to prove the possession over the suit land of the plaintiffs, their borgader, P.W.2 examined in court but the court below only upon discussing the evidence of P.W.2, who is nothing but a witness of the possession held that plaintiffs failed to prove his title in the suit land and accordingly dismissed the suit most arbitrarily. The judgment suffers from misreading as well as non-reading of the evidence, he thus prays for setting aside the said judgment and for making the rule absolute.

Mrs. Shovana Banu, the learned Assistant Attorney General appearing for the opposite party on the other hand, although opposes the rule and submits that the recording of khatians contains no illegality and both the courts below concurrently since found plaintiff failed to prove his title of the suit land dismissed

the suit on contest rightly. The rule contains no merits accordingly it may be discharged.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

This is a suit for declaration of title. Plaintiff contention is that plaintiff is the successive heirs of C.S. and S.A. recorded tenant. During the R.S. operation land measuring .97 acres of land in S.A. plot No. 16 under S.A. Khatian No. 280 since recorded as plot No. 15 under khatian No.1 in the name of the government, plaintiff filed the suit. Government contention is that land measuring .96 acres out of total land 1.08 acre in S.A. plot No. 16 under khatian No. 280 has recorded as plot No.15 under khatian No.1 in the name of the government. Plaintiff since did not have right title over the suit property it has rightly been recorded in the name of the government. In order to prove the plaintiffs title and possession of the suit land, plaintiff adduced a number of documents, which are exhibited in court as Ext.1, C.S. khatian No. 205, Ext. 2, the registered deed of sale dated 03.04.1990, Ext. 3(series), the rent receipts of paying rents to the government, Ext.4, the information slip dated 28.05.2006 and examined one

Khondoker Abdus Sobur as P.W.1 and one Thakur Daroga P.W.2 a borgader of the plaintiffs to prove his possession of the plaintiff. On the other hand one Md. Kamruzzaman examined himself as a D.W.1 on behalf of the defendant No.2 and submitted the photocopy of R.S. khatian as Ext.ka (which is the disputed khatian) although the defendant try to establish the fact that plaintiffs all documents are false and paper transaction but in order to substantiate this contention they have not adduced any evidence. On the contrary in order to establish their title a number of witnesses including the rent receipts of paying rent to the government were adduced by the plaintiffs. In support of their contention that plaintiffs are possessing the suit land by way of cultivator, P.W.2 was examined in court. Surprising to notice that neither of the court below has ever discussed those in the judgment while deciding the suit. Mainly, the court below taking into consideration the evidence of P.W.2 a cultivator, who is the evidence of possession, disbelieved the contention of the plaintiff and dismissed the suit most arbitrarily. D.W.2 is nothing but a evidence of possession as cultivator. Obviously he has got no idea about the title of the suit land. But the court below upon

misguided themselves considering the evidence of P.W.2 held that the plaintiff totally failed to prove his title.

However since both the court below did not consider the evidences adduced in this case. I am of the opinion that this is a fit case to send back on remand to the trial court to decide the suit afresh.

I thus find merits in this rule.

In the result, the rule is made absolute. The judgment and decree passed by the court below are hereby set aside and the suit is sent back on remand to the trial court to decide the suit afresh.

The Trial Court is hereby directed to decide the suit expeditiously as early as possible preferably within a period of 6(six) months giving an opportunity to both the parties to adduce further evidence if so desire.

The order of status-quo granted earlier is hereby recalled and vacated.

Send down the L.C.R along with the judgment to the courts below at once.