

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.531 of 2015

Government of Bangladesh and others.

.....Petitioners.

-Versus-

Md. Isahak and another.

.....Opposite parties.

Mr. Md. Ensan Uddin Sheikh.D.A.G With

Mr. Mohammad Shafayet Zamil, A.A.G

With Mrs.Sohvana Banu, A.A.G

.....For the petitioners.

Mr. A.K. Rashedul Huq, Advocate.

.....For the Opposite parties.

Heard and Judgment on 14.03.2024.

A.K.M.Asaduzzaman,J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 26.08.2013 passed by the Special District Judge, Tangail in Title Appeal No. 177 of 2004 (Civil Appeal No. 177 of 2004) reversing those dated 08.06.2002 passed by the Assistant Judge, Gopalpur, Tangail in Other Class Suit No. 56 of 1988 dismissing the suit should not be set aside.

Opposite Party as plaintiffs filed Other Class Suit No. 56 of 1988 before the Court of Assistant Judge, Gopalpur, Tangail against the petitioners for declaration of title.

Plaint case in short, inter alia is that suit land measuring .08 decimals of land out of 3.53 acres of land from dag no. 721, R.S. khatian No. 1 and S.A. khatian No. 52 was belonged to the then land lord Rani Hemonta Kumari Debi Chowdhurani. Plaintiff took pattan of the said land from her and remaining in possession for more than 12 years upon paying rents to her and obtained dakhila. After making two tin shed room into the suit land, plaintiff lived there and possessing the same. Government took rent, taxes regularly from plaintiffs as tenants. During R.S. operation, suit property was wrongly recorded in the name of the Government as khash land. In the month of middle July, 1988, plaintiff came to know about the said wrong recording and then filed the suit on 21.09.1988.

Petitioners as defendants contested the suit by filing a written statement, denying the plaint case, stating, inter-alia that land measuring 3.53 decimals in C.S. khatian was belonged to the then land lord Rani Hemonta Kumari Debi Chowdhurani. After the promulgation of State Acquisition and Tenancy Act, when the

Jamindari was abolished in the year 1950, the property was acquired by the government as khash land. During S.A. operation, it was correctly been recorded in the name of the government. Plaintiff did neither have any title nor possession over the suit land. Suit was false and is liable to be dismissed with cost.

During trial following issues were framed in the suit-

- a. Whether the suit is maintainable in its present form ?
- b. Whether plaintiff has got title and possession into the suit property ?
- c. Whether the suit is barred by limitation?
- d. What relief or relieves plaintiffs are entitled to get?

By the judgment and decree dated 08.06.2002, trial court dismissed the suit.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 177 of 2004 before the Court of District Judge, Tangail, who by the impugned judgment and decree dated 26.08.2013 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiffs.

Challenging the said judgment and decree, defendant petitioners obtained the instant rule.

Mr. Mohammad Shafayet Zamil, the learned Assistant Attorney General appearing for the petitioners drawing my attention to the judgment of the trial court submits that plaintiff since failed to prove his taking pattan by producing any registered kabuliat before the court and accordingly trial court thus rightly found that plaintiff's story of taking pattan from the Jamindar was not proved and accordingly he dismissed the suit rightly. On the other hand Appellate Court failed to reverse the same on proper assessment of the evidence and most arbitrarily allowed the appeal and decreed the suit in favour of the plaintiff. The impugned judgment is thus not sustainable in law.

He further submits that suit property was admittedly belonged to Ex-Jamindar Rani Hemonta Kumari Debi Chowdhurani and after the abolition of Jamindaris, suit property was vested to the government in the year 1950. After promulgation of State Acquisition and Tenancy Act and government is now owning and possessing the said property and it has rightly been recorded in the name of the government in the

S.A. and R.S. khatian. Plaintiff did neither have any title nor possession over the suit land. Trial Court further rightly held that plaintiffs were very much aware about the recording of the khatians and accordingly suit was filed long thereafter beyond the period of law limitation and as such rightly dismissed the same, holding that suit is barred by limitation but the Appellate Court failed to appreciate the true aspect of this case and decreed the suit most illegally.

On the other hand, Mr. A.K. Rashedul Huq, the learned advocate appearing for the opposite parties submits that it is the consistent view of the Apex Court that mere knowing about the wrong recording, plaintiff is not entitled to file a suit for declaration of title and correction of the said recording, unless and until his right and title has been threatened on the basis of said wrong recording and accordingly, the instant suit, can not be said to be barred by limitation. The Appellate Court has thus rightly found the same and reversed the findings of the trial court.

He further submits that mere non submission of the registered deed of kabuliat is not sufficient enough to ignore the document of pattan as been submitted in support of the title of the

plaintiff given by the Ex-Jamindar, which was formally been proved by the P.W.4 and the trial court wrongly held that the document was forged and concocted one, arbitrarily. The Appellate Court being the last court of fact, has thus rightly found the title of the plaintiffs was proved by the deed of pattan (Exhibit No.1) and the document of paying rents to the Ex-Jamindar (Exhibit No. 2). Appellate Court further upon discussing the evidence on record found that plaintiffs are in possession in the suit land by paying rents to the government and defendant could not produce any evidence either to prove their contention that suit property was periferi of any hat bazaar named Konabari Hat, or been possessed by the government through any tenant and as such plaintiff has successfully able to prove his title and possession over the suit land. Appellate Court being the last court of fact decreed the suit in favour of the plaintiff.

Heard the learned Advocate of both the sides and perused the lower court's record and the impugned judgment.

Admittedly suit property was belonged to the then Jamindar Rani Hemonta Kumari Debi Chowdhurani of Patia Raj State. Plaintiffs claimed that by way of a pattan nama (Exhibit No.1),

plaintiff obtained the said property on 10 Magh 1352 B.S. and paid rents regularly to the Patika Raj State. In support of his contention plaintiff adduced pattan nama (Exhibit No. 1) and rent receipt dated 10.10.1955, 25.12.1952 and 10.11.1958, which were exhibited in court as Exhibit No. 02 series.

P.W.4 Foni Bhushan Chakrabarty proved the said pattan nama and rent receipt in court, who is a man of above 70 years. By examining him nothing contradictory was found from his mouth by the defendant.

P.W.1 Md. Ishaq Ali , P.W.2 Kazi Abdur Rashid, P.W.3 Abdus Samad deposed in court and proved the possession of the plaintiff of the suit land by erecting 02 tin shed thereon and living thereon by the plaintiff. Md. Khosh Ahmed was deposed in court as D.W.1 to prove the defendant's case, who is the Tahshildar of Gopalpur Land Office. He tried to asserted that

‘নালিশী ভূমি কোনা বাড়ী মৌজার ভূমি। সে:মে: খতিয়ান জানিনা আর ও আর ১ নং খতিয়ান। এ দাগে মোট জমি ৩ একর .৫৩ ডিং। এটা হাট শ্রেনীর ভূমি। কোনাবাড়ী হাট। এ জমিটি সাকুল্য হাট পেরীফেরী ভূক্ত। এটা সায়রাত মহলের রেজিস্টার। এ রেজিস্টারের ২৪ নং পৃষ্ঠায় নালিশী জমি হাট পেরীফেরী ভূক্ত মর্মে লিপি আছে। সরকার

প্রতি বতসর এই ভূমি ইজারা দেয়। বাংলা ১৩৯৯ সন হইতে ১৪০৮ সন পর্যন্ত ইজারা দেওয়ার বিষয় উক্ত রেজিস্ট্রারের ২৪ পৃষ্ঠায় লিপি আছে।
উক্ত রেজিস্ট্রারের ২৪ নং পাতায় সত্যায়িত কপি দাখিল দিলাম।’

In the written statement, defendant tried to say that

‘১০) প্রকৃত অবস্থা এই যে-

(ক) দাবী সংক্রান্ত আরজীর তপশীল বর্ণিত কোনাবাড়ী মৌজার
ডি:সে: ৪২ নং খতিয়ান ভূক্ত ৭২১ নং দাগের ৩.৫৩ শতাংশ ভূমি সি:
এস: রেকর্ডে সাবেক জমিদার রানী হেমন্ত কুমারী দেবী চৌধুরানীর
জোত ছিল। ১৯৫০ সনের বঙ্গীয় প্রজাস্বত্ব আইনের বিধান মতে জমিদারী
উচ্ছেদ হইলে একুইজিশন মূলে দাবীর ভূমি সরকার বাহাদুরে বর্তায়াছে।
বিগত এস.এ রেকর্ড প্রস্তুতকালে দাবীর ভূমি শুদ্ধভাবে ১নং খাস খতিয়ানে
কালেক্টরের রেকর্ড হইয়াছে। আর: এস: শুদ্ধ এবং প্রকৃত অবস্থার
পরিচায়ক বটে।’

According to the written statement government tried to say only that after the promulgation of State Acquisition and Tenancy Act, suit property was vested as a government on abolishing the Jamindary in the year 1950 and it was correctly been recorded in the S.A. and R.S. khatian in the name of the government but no where in written statement, it has been asserted that it was a

perifeir of Konabari Hat or it was leased out to anybody on behalf of the government. Exhibit-Ka Register No. 6(a) although speaks that suit land of plot No. 721 along with other land was shown as Kona Bari Hat and some person was shown thereon as a lessee under government but none of them has come forward to prove that property was at all a periferi in the Kona Bari Hat and leased out in any person by the government.

In the premises, government's story of acquisition the property as a vested property of the Ex-Jamindar, and being possessed by the lessee giving settlement to different persons are not being proved by any evidence, rather Appellate Court has rightly found that plaintiff obtained the suit property by way of pattan (Exhibit No-1) from the Ex-Jamindar Rani Hemonta Kumari Debi Chowdhurani and remaining in possession by paying rents (Exhibit No. 02 series) and the oral testimonies also corroborate the possession of the plaintiff in the suit land. Appellate Court being the last court of fact since after proper assessment of evidence on record come to a findings that plaintiff has successfully able to prove his title and possession and suit is not barred by limitation and the said judgment suffers from any

misreading and non reading of the evidence, I am of the opinion that the rule contains no merits to interfere with.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the Appellate Court is hereby affirmed.

Send down the L. C. Records and communicate the judgment to the court below at once.