

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 308 OF 2003

In the matter of:

An application under Section 115 of the Code of Civil Procedure.

And

Hiron Banu

... Petitioner

-Versus-

Md. Hasan Ali Prodhan and another

... Opposite parties

None appears

.... For the petitioner.

Mr. Sk. Sharifuddin, Advocate

.... For the opposite party No.1.

Heard and Judgment on 27.08.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 15.09.2002 passed by the learned Joint District Judge, Narayangonj in Title appeal No.88 of 1992 disallowing the appeal and affirming the judgment and decree dated 30.09.1992 passed by the learned Senior Assistant Judge, 2nd Court, Narayangonj in Title Suit No.87 of 1990 dismissing the suit should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title for 8 decimal land appertaining to plot

No.440 as described in the schedule to the plaint and for a decree of mandatory injunction for removal of pacca wall and signboard erected by the defendant in above land and for further declaration that registered kabala deed dated 18.11.1957 and 20.12.1984 (Exhibit-Kha and Gha respectively) are forged and ineffective documents and those are not binding upon the plaintiff.

It was alleged that 11 decimals land of plot No.440 belonged to Monai Matbbar and his three nephews and on amicable partition above land was possessed by Imam Uddin, Main Uddin and Rahim Uddin and pursuant to amicable settlement above land was possessed by Rahim Uddin alone who died leaving three sons namely Afiz Uddin, Mofiz Uddin and Yeaz Uddin and three daughters and by amicable partition Amiz Uddin alone possessed above land. Above Afiz Uddin died leaving four sons and three daughters and by amicable partition Almas Mollah a son of Afiz Uddin and husband of the plaintiff alone possessed above land. The Government acquired 4 decimal land of the disputed plot and Almas Mollah transferred disputed 8 decimals land to the plaintiff by a deed of Heba-bil-ewaz. Plaintiff was in possession in above land but during pendency of this suit the defendant forcibly dispossessed the plaintiff by erecting a pacca wall and signboard. Defendants claimed to have purchased above land from Musa Fakir

and Rabeya who were heirs of Afil Uddin by a registered deed kabala dated 18.11.1957 (Exhibit No.Ga) but above is a forged document.

Defendant No.1 contested the suit by filing written statement alleging that by exchange with the C.S. recorded tenants 11 decimals land of the disputed plot was owned and possessed by Afil Uddin who died leaving behind one son Musa and one daughter Rabeya who transferred above land to Chand Miah by registered kabala deed dated 18.11.1957 (Exhibit No.Kha) and above Chand Miah transferred above land to his son Md. Hasan Ali Prodhan by registered kabala deed dated 20.12.1984 (Exhibit No.Uma). The R.S. and S.A. Khatians of the suit land were correctly recorded in the names of above Chand Miah and defendant No.1 Md. Hasan Ali Prodhan. Plaintiff did not have any right, title and possession in the disputed land.

At trial plaintiff examined three witnesses and defendant No.1 examined four witnesses. Documents produced and proved by the plaintiff were marked as Exhibit No.1 and those of the defendants were marked as Exhibit Nos.Ka - Uma.

On consideration of the facts and circumstances of the case and materials on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree plaintiff preferred Title Appeal No.88 of 1992 to the District Judge, Narayangonj which was heard by the learned Joint District Judge, 1st Court, Narayangonj who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below the appellant as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule.

Mr. Sk. Sharifuddin, learned Advocate for the opposite party No.1 submits that plaintiff did not dispute the correctness of the C.S. Khatian of the disputed plot rather she has claimed title as a successive heir of the C.S. Khatian recorded tenant.

In C.S. Khatian No.320 it has been clearly stated that on the basis of exchange defendants predecessor Afil Uddin was in possession in 11 decimal land of disputed plot No.440. The S.A. and R.S. Khatian of the disputed plot have been recorded in the name of the father of the defendant Chand Miah and in the name of the defendant respectively. The plaintiff has admitted that the defendant is in possession in the disputed land by constructing a wall and erecting a signboard. On

consideration of above materials on record the Judges of the Courts below have concurrently found that the plaintiff did not have any lawful title and possession in the disputed land and in the absence of any claim of misreading or non-consideration of any evidence on record this Court cannot interfere with above concurrent findings of fact. The learned Joint District Judge has rightly on correct appreciation of materials on record dismissed the appeal which calls for no interference.

I have considered the submissions of learned Advocate for opposite party No.1 and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence on record.

It is admitted that plot No.440 comprising 11 decimals land was recorded in C.S. Khatian No.320 in the names of the predecessors of the plaintiff Monai Mattabar and others and 4 decimals land of above plot was subsequently acquired by the Government. It is also admitted that disputed 7 decimals land of above plot has been recorded in the name of Chand Miah, father of the defendant No.1 in S.A. Khatian No.640 and above land has been recorded in the relevant R.S. Khatian in the name of defendant No.1. By amendment of the plaint the plaintiff claimed that on 17.09.1990 defendant No.1 has forcibly dispossessed her

from the disputed land by constructing a pacca wall and erecting a signboard.

The husband of the plaintiff Almas Mollah gave evidence as PW1 and produced and proved a copy of the disputed C.S. Khatian No.320 which was marked as Exhibit No.1. It turns out from above C.S. Khatian that in the relevant column of the possession clear mention has been made that by way of exchange Afil Uddin, predecessor of defendant No.1 is in possession in 11 decimals land of disputed plot No.440.

Plaintiff did not provide any explanation as to above record nor claim that above entry in the C.S. Khatian was erroneous nor the plaintiff sought any relief against above entry in the disputed C.S. Khatian. There is no evidence on record to hold that above entry as to possession of the disputed land as made in the C.S. Khatian was erroneous or fraudulent which did not represent the correct position of the disputed land. The source of claim of title of the plaintiff is above C.S. Khatian and above entry in the C.S. Khatian shows that the claim of title of the plaintiff does not have any legal basis at all.

Chand Miah the father of the defendant has claimed to have purchased disputed land from heirs of above Afil Uddin by a registered kabala deed dated 18.11.1957 and he transferred above land to

defendant No.1 by registered kabala deed dated 20.12.1984. Defendant No.1 himself evidence in this suit as DW1 and he has produced and proved above mentioned two kabala deeds dated 18.11.1957 and 20.12.1984 which were marked as Exhibit Nos. Gha and Uma respectively. Admittedly the disputed land has been recorded in the relevant S.A. Khatian in the name of Chand Miah and in the relevant R.S. Khatian in the name of defendant No.1 on the basis of two kabala deeds.

As far as possession of the disputed land is concerned the plaintiff has admitted the possession of defendant No.1 but claimed that the defendant has forcibly dispossessed her from the above land on 17.09.1990. But the plaintiff could not prove by legal evidence above claim of her previous possession and subsequent dispossession from the disputed land. The plaintiff could not produce a single piece of documentary evidence in support of her possession in the disputed land nor she could adduce any consistence oral evidence of competent witness to prove that she was in peaceful possession in the above land before alleged forcible dispossession by the defendant.

On consideration of above facts and circumstances of the case and evidence on record the learned Judges of the Courts below concurrently found that the plaintiff was not in possession of the disputed land but

the same was in possession of defendant No.1 on the basis of his rightful title. Since above concurrent finds of fact arrived at by both the Courts below is based on legal evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

In above view of the facts and circumstances of the case and materials on record I am unable to find any substance in this application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to cost.

The order of status-quo granted at the time of issuance of the Rule is hereby recalled and vacated.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER