

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.1405 of 2002

Khorshed Alam being dead of his legal heirs Fazlul Hoque alias Kanchan and others.

.....Petitioners.

-Versus-

Mohammad Shahe Alam Sadhu and others.

.....Opposite parties.

Mr.Dider Alam Kollol, Advocate.

.....For the petitioners.

None appears.

.....For the Opposite parties.

Heard on 22.04.2024 and

judgment on 23.04.2024.

A.K.M.Asaduzzaman,J.

This Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the judgment and decree dated 06.11.2001 passed by the Joint District Judge, 1st Court, Bhola in Title Appeal No. 255 of 1979 reversing those dated 13.09.1979

passed by the then Munsif, Additional Court, Bhola in Title Suit No. 221 of 1979 decreeing the suit should not be set aside.

Petitioner as plaintiff filed Title Suit No. 221 of 1979 before the Court of the then Munsif, Additional Court, Bhola against the opposite parties for declaration of title and on the event of wrong recording of the S.A. khatian in the name of the defendants.

Plaint case in short inter alia is that the suit land measuring an area of 1.12 acres situated at Mouza Didarullah within P.S. Daulatkhan bearing C.S. khatian No. 280 total land of which was 19.74 acres and the C.S. khatian was splitted up into S.A. khatian Nos. 427, 620, 287 and 254 and one Fakir Mohammed was the original tenant and one Shamartaban was the owner of 4 gondas share, who died leaving behind husband Kalu Belari, one son Shamsul Huq and two daughters Mahernegar and Ayasha Khatoon and mother Ajrajan Bibi as her heirs. The heirs of Shamartaban settled 1.20 acres land of their shares with Hashmat shadu, who executed a kabuliyat in favour of the above heirs of Shamartaban on 28.05.1951 and also got 04 gondas share of Jalifa Khatoon by way of purchase. Hasmat Shadu being the owner of the suit land transferred 1.12 acres of land to the plaintiff by registered kabala

dated 21.11.1968 and the plaintiff is in exclusive possession of the suit land. C.S. khatian No. 280 being spiltted up .64 acres of land was recorded in the name of the predecessor of the plaintiff in S.A. khatian No. 427 and the rest 2.53 acres of land were recorded in the name of one Serajul Huq in S.A. khatian No. 620 and in the name of the defendant no. 1 in S.A. khatian No. 287 wrongly. Md. Serajul Huq by virtue of that wrong recording transferred lands of S.A. khatian No. 620 to defendant No. 1. Thus being the so called owner of khatian No. 280 defendant no. 1 threatened the plaintiff to dispossess from the suit land and hence the suit.

Defendant No. 1 contested the suit by filing written statement, denying the plaint case, alleging, inter alia, that Hasmat Ali Howlader was the owner of 1.30 acres of suit land by way of settlement, who transferred .40 acre of land to one Serajul Huq by registered kabala dated 8.6.53 and .80 acre by registered kabala dated 22.4.54 totaling 1.20 acres. Serajul Huq transferred .80 acre of his land to the wife of defendant no. 1 by registered kabala dated 2.9.72 and .40 acre to defendant no. 1 by registered kabala dated 01.12.73 thus defendant no. 1 and his wife being the owner of 1.20 acres of suit land by way of purchase, possessed the said

land and that Hasmat Howlader had no right, title and interest to transfer 1.12 acres of suit land to the plaintiff.

Learned the then Munsif, Additional Court, Bhola after hearing the parties and considering the evidences decreed the suit on contest by the judgment and decree dated 13.09.1979.

Challenging the said judgment and decree, defendants preferred Title Appeal No. 255 of 1999 before the Court of District Judge, Bhola, which was heard on transfer by the Court of Joint District Judge, 1st Court, Bhola, who by the impugned judgment and decree dated 06.11.2001 allowed the appeal and after reversing the judgment of the trial court dismissed the suit.

Challenging the said judgment and decree plaintiff-petitioner obtained the instant rule.

Mr. Dider Alom Kollol, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that trial court after having a invasive discussions on the evidence on record found that plaintiff has got valid title and possession over the suit land and accordingly decreed the suit in favour of the plaintiff. But on the other hand the Appellate Court without at all reversing properly the said judgment of the

trial court most arbitrarily held that the deed of plaintiff is later one of the deed of defendants and thereby plaintiff failed to prove his valid title and possession over the suit land and the said deed was not been acted upon properly.

He further submits that the Appellate Court giving a wrong impressions on the legal position and found that the suit was filed out of time, which is against the opinion as being formed by the Apex Court in a case of Abdul Hafez and another Vs. Lal Meah and others reported in 1988 BLD Page 497.

Learned advocate further submits that the Appellate Court without at all proper discussing the evidences on record as well as reversing the judgment of the trial court most arbitrarily held that plaintiff failed to prove his exclusive possession over the suit land. The impugned judgment is thus not tenable in law, which is liable to be set aside.

Although the matter is posted in the list for several days upon giving a written notice to the learned advocate of the opposite parties and finally posted today for delivering judgment but no one appears to oppose the rule.

Heard the learned Advocate and perused the impugned judgment and the L.C. Records.

This is a suit for simple declaration of title. Admittedly suit property was belonged to Hashmat Shadu, who obtained the same along with the other lands from the heirs of Shamartaban by way of taking several pattans. Plaintiff claimed that they have purchased 1.12 acres of land from Hashmat Shadu through registered sale deed dated 21.11.68 and remaining in possession thereon. Since the S.A. khatian has wrongly been prepared in the name of the defendants, the instant suit was filed. On the other hand defendants claimed that said Hashmat Shadu Howlader while being owner of the suit property after getting the same by way of settlement, transferred the same to Md. Serajul Huq by way of two separate sale deeds, one is of 08.06.53 and another is of 22.04.54 and thereafter Serajul Huq transferred the said property to the defendant and his wife by two registered sale deed one is of 02.09.72 and another is of 01.12.73.

Since the recording of S.A. khatian was wrong, plaintiff filed the suit. In order to substantiate the respective cases both the parties adduced evidences. Plaintiff submitted the documents of

settlement as being taken by the predecessor of the plaintiff as well as the registered sale deed of the year 1968 as being given by Hashmat Shadu in favour of the plaintiff and given the oral testimonies to prove the registered sale deed as well as 05 P.W.s to prove their possession in the suit property. On the other hand, defendants also placed his title deeds as well as oral testimonies to prove their possession of the suit property. Trial Court upon discussing the evidence on record found that the documents, through which defendant claimed their land is not identical as being land purchased by the admitted owner of Hashmat Shadu. Trial Court found that Hashmat Shadu has taken settlement verse land of paying different salamis, one was Tk. 3.00 per annum and another is of rental Tk. 8.00 per annum from the heirs of the Shamartaban and the title deed of the plaintiff's is of the year 1968 been attested and proved by way of the deed writer as well as the witnesses of the deed through P.W.4 and D.W.4 and thereby found that the plaintiff has got valid title over the suit land. On the contrary the Appellate Court being the last court of fact found that Hashmat Shadu since transferred his 1.12 acres of land to Serajul Huq long before the purchase deed of the plaintiff, the plaintiff purchased the suit land from a titleless person and the

deed was not been acted upon and finally held that defendants title deed is earlier than the plaintiff's deed and got valid title. But in fact, plaintiff purchased the suit land from Hashmat Ali Howlader straight but the defendants claimed that they purchased the suit land from Serajul Huq, who purchased the property from Hashmat Ali Howlader through registered deed of the year 1968. This creates a confusion. When the plaintiff's deed was being proved through the attesting witnesses of the deed as being found by the trial court and the deed of the defendants was not been proved at all through this way, rather defendants deeds are being registered later on the plaintiff's sale deed, the above findings of the Appellate Court is presumptive one and is not acceptable in law. Regarding the law of limitation, the Appellate Court found that suit was filed long after 06 years of the recording of the R.O.R khatians but the Apex Court in a case of Abdul Hafez and another Vs. Lal Meah and others reported in 1988 BLD Page 497 held that-

‘The plaintiff is not bound to institute a suit for declaration that the entry in the record of rights is wrong. He can wait and sue when invasion on his right is made.’

In the premises, the findings on the law of limitation as being held by the Appellate Court is not in consonant with the decision as being held by the Apex Court as such is not acceptable. Regarding the possession, upon going through the oral testimonies, it appears that P.W.5 Sadar Ali, who is the cultivator of the plaintiff tried to establish the fact that plaintiff is in possession through his Bhargadar Sadam Ali and all other P.W.s have supported him that plaintiff is in possession. On the contrary D.W.1 while deposing in court although claimed to possess the suit land but he failed to asserted the plot no. and the exact possession of the suit property and hence the Trial Court has rightly held that plaintiff is in possession of the suit property and defendants are not there in possession in the suit property. This findings of the Trial Court was not been properly considered by the Appellate Court and most arbitrarily held that plaintiff failed to prove his exclusive possession in the suit land and that in a suit for simple declaration of title, when plaintiff failed to prove his possession, he is not entitled to get a decree as prayed for. This findings is apparently a presumptive one and not acceptable in law.

Having given may anxious thought on the above facts and circumstances of the case, I am of the opinion that the Appellate Court totally failed to consider the true aspect of the case and allowed the appeal without reversing the findings of the trial court and thereby committed error of law in violating the mandatory provision of the law as mentioned under Order 41 Rule 31 of the Code of Civil Procedure and accordingly the judgment is not sustainable in law, which is liable to be set aside.

In that view of the matter, I find merits in this rule. Accordingly the Rule is made absolute, without any order as to costs. The judgment and decree passed by the Appellate Court is hereby set aside and the judgment of the trial court is hereby upheld.

Let the order of status-quo granted earlier by this court is hereby recalled and vacated.

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