

District-Laxmipur

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Civil Revision No. 4318 of 2015

Khairul Islam and others
..... Petitioners
Versus
Hafez Ahammad Mijiand others
.....Opposite parties

Mr.Md. Yamin Newaj Khan, Advocate
.....for petitioners
Ms.Mst. Umme Salma, Advocate
... for opposite parties

Present:

Mr. Justice Gobinda Chandra Tagore

Heard on: 26.05.2024, 27.05.2024, and
Judgment on: 28.05.2024.

1. In the Civil Revision, the Rule was issued calling upon opposite party Nos.1-10 to show cause as to why the judgment and decree dated 31.05.2015 passed by the learned Additional District Judge, Laxmipur in Title Appeal No.106 of 2002 dismissing the appeal and affirming the judgment and decree dated 28.09.2002 passed by the learned Joint District Judge, 1st Court, Laxmipur dismissing TitleSuit No.58 of 1999 should not be set aside and/or why such other or further order or orders as to this Court may seem fit and proper, shall not be passed.

Pending the hearing of the Rule, the parties were directed to maintain the *status quo* in respect of position and possession of the suit land initially for 6(six) months. Subsequently, the period of *status quo* was extended from time to time.

2. The petitioners, as plaintiffs, instituted Title Suit No. 58 of 1999 in the 1st Court of the learned Joint District Judge, Laxmipur, for a declaration of title to the property described in Schedule-Ka to the plaint and for a further declaration that Settlement Case No. 847 of 1988-89, granting settlement of 1.50 acres of land in favour of defendant Nos. 1 and 2; Settlement Case No. 848 of 1988-89, granting settlement of 1.50 acres of land in favour of defendant Nos. 7 and 8; Settlement Case No. 849 of 1988-89, granting settlement of 1.50 acres of land in favour of defendant Nos. 3 and 4; and Settlement Case No. 855 of 1988-89, granting settlement of 1.20 acres of land in favour of defendant Nos. 5 and 6, are illegal, fraudulent, inoperative, without authority, and not binding upon the suit property owned and possessed by the plaintiffs, as described in Schedule Ka to the plaint.
3. The plaintiffs' case, in short, is that the land covering an area of 4.61 acres described in Schedule-

Ka to the plaint belonged to the Government, represented by the Deputy Commissioner, Laxmipur, defendant No. 9. The Government, vide Settlement Case No. 284 of 1954-55, settled the said 4.61 acres of land in favour of Bosirullah, Hamid, Haider, and Shafiullah. Accordingly, MRR Khatian No. 1341 was prepared in their names, and they had been possessing their land upon payment of rent. Subsequently, a separate Khatian No. 1574 was prepared and published, and holding No. 1438 was also opened in their names. Hamid died, leaving behind plaintiff Nos. 1-7. The property of the deceased Bosirullah devolved on Shafiullah and Kader, who were the predecessors of plaintiff Nos. 8-9 and 11-17, respectively. Thus, plaintiff Nos. 11-17 got $57\frac{5}{8}$ decimals of land. Shafiullah got a total of $1.72\frac{7}{8}$ acres of land as the heir of Bosirullah as well as from his own share. Shafiullah died, leaving behind plaintiff Nos. 8-10. Haider exchanged $57\frac{5}{8}$ decimals of land with the land of his brother, plaintiff No. 18, and he also gifted the remaining $57\frac{5}{8}$ decimals of land by an instrument dated 01.10.1985 in favour of the Mosque, plaintiff No. 19. Defendant Nos. 9-10 fraudulently created Settlement Case Nos. 847 of 1988-89, 848 of 1988-89, 849 of 1988-89, and 855 of 1988-89 in favour of defendant Nos. 1-

8, who went to the suit land on 26.07.1999 to forcibly take over possession thereof but failed to do so due to resistance from the plaintiffs. The plaintiffs lost their settlement kabuliyat and relevant documents during the War of Liberation in 1971. Defendant No. 9 has no right to give settlement of the suit land in favour of defendant Nos. 1-8, as the suit land is under the ownership and possession of the plaintiffs. Thus, defendant Nos. 1-8 have no right, title, or interest in the suit land. Since there was no alluvion land vested in defendant No. 9 under section 86 of the State Acquisition and Tenancy Act, 1950 the alleged settlement created a cloud on the title of the plaintiffs. Hence, they filed the suit.

4. Defendant Nos. 1-8 and 9-10 contested the suit by filing separate written statements denying the material allegations and claims made in the plaint. The case of defendant Nos. 1-8, in short, is that the Government was the owner in possession of KM Plot Nos. 8791, 8792, 8793, 8802, 8809, 8810, 8811, and 8812. Subsequently, in the Petty Survey, the said land was recorded in the Khas Khatian in the name of the Government. Defendant Nos. 1-2 took permanent settlement of 1.50 acres of land vide Settlement Case No. 847 of 1988-89. Accordingly, they executed a

kabuliyat in favour of the Government, and thereafter, Mutation Khatian No. 1366 was prepared in their names vide Mutation Miscellaneous Case No. 146 of 1990-91. Accordingly, they have been possessing their land upon payment of rent and development taxes to the Government. Defendant Nos. 3-4 also took the settlement of 1.50 acres of land vide Settlement Case No. 849 of 1988-89, and accordingly, Mutation Khatian No. 1367 was prepared in their names. Defendant Nos. 5-6 also took the settlement of 1.20 acres of land vide Settlement Case No. 855 of 1988-89, and they also got Mutation Khatian No. 1376 prepared. Similarly, defendant Nos. 7-8 took the settlement of 1.50 acres of land vide Settlement Case No. 848 of 1988-89 and got Mutation Khatian No. 1368 opened in their names, and thus, all defendant Nos. 1-8 have been possessing and enjoying their land upon payment of rent and development taxes to the Government. Recently, 1.34 acres of land were wrongly recorded in the name of one Akkas, but the same was corrected vide Objection Case No. 428. Accordingly, 55 decimals of land were also wrongly recorded in the name of the Government. Accordingly, defendant Nos. 1, 3, and 7 filed Objection Case No. 424, while against the same record, the plaintiffs filed Objection Case No. 2300. Both the

Objection Cases were heard analogously, and ultimately, the Objection Case of the defendants was allowed, and the Objection Case of the plaintiffs was rejected. Accordingly, D.P. Khatian No. 4374 was prepared in respect of the said 1.34 acres of land in the names of defendant Nos. 1, 3, and 7, and D.P. Khatian No. 4383 was also prepared in the names of defendant Nos. 1, 3, and 7 in respect of the said 55 decimals of land. On the other hand, D.P. Khatian No. 4220 was recorded in the names of defendant Nos. 5 and 6 in respect of their land, but against such D.P. Khatians, the plaintiffs did not raise any objection. Accordingly, defendant Nos. 1-8 are the owners in possession of 5.70 acres of land vide the said four Settlement Cases, and thus, the plaintiffs have no right, title, or possession in the suit land. Hence, the suit is liable to be dismissed.

5. During the trial, the plaintiffs examined three witnesses, and on the other hand, defendants Nos. 1-8 also examined three witnesses. Both parties adduced documentary evidence in support of their respective cases, which were marked as exhibits.
6. After hearing both parties, the Trial Court, by the judgment and decree dated 28 September 2002, dismissed the suit.

7. Against the judgment and decree passed by the Trial Court, the plaintiffs preferred Title Appeal No. 106 of 2002 in the Court of the Learned District Judge, Laxmipur. The appeal was transferred to the Court of the Learned Additional District Judge, Laxmipur for its disposal. The Court of Appeal below, after hearing both parties, by the judgment and decree dated 31.05.2015, dismissed the appeal and thereby affirmed the judgment and decree of the Trial Court.
8. Against the judgment and decree of the Court of Appeal below, the plaintiff-appellants, as petitioners, filed the instant Civil Revision and obtained the Rule and the interim order of *status quo*.
9. Having placed the Civil Revision, Mr. Md. Yamin Newaj Khan, learned Advocate for the petitioners, submits that the predecessor of the plaintiffs acquired the suit land via Settlement Case No. 284 of 1954-55, and as such, the Government had no legal authority to settle the same land in favour of the defendants. Consequently, both the Courts below committed errors of law, resulting in errors in the decree and occasioning a failure of justice. The learned Advocate further submits that since the Government cannot settle the suit land without cancelling the settlement granted in favour of the plaintiffs, the subsequent

four Settlement Cases are liable to be declared as having been initiated illegally, without lawful authority, and are, therefore, inoperative. Accordingly, they are not binding upon the plaintiffs concerning the suit land. However, both the Courts below, without considering this material evidence on record, illegally dismissed the suit, thereby committing errors of law that resulted in errors in the decree and occasioned a failure of justice. The learned Advocate lastly submits that both the Courts below failed to consider that in furtherance of the settlement via Settlement Case No. 284 of 1954-55, the MRR Khatian No. 1341 was prepared in the name of the predecessor of the plaintiffs. Accordingly, the subsequent record of rights also ought to have been prepared and finally published in the names of the plaintiffs or their predecessors. However, both the Courts below, without considering the MRR Khatian, arrived at an erroneous decision, resulting in an error in the decree and occasioning a failure of justice. Hence, the Rule should be made absolute.

10. On the other hand, Ms. Umme Salma, learned Advocate for the defendant-respondent-opposite parties, submits that both the courts below concurrently found that the plaintiffs could not prove the existence of the

alleged Settlement Case No. 284 of 1954-55. As such, the MRR Khatian was wrongly prepared in the name of the predecessor of the plaintiffs, as there was no basis for preparing the MRR Khatian in the name of the predecessor of the plaintiffs. The learned advocate also submits that since the plaintiffs could not prove the basis of MRR Khatian, it was rightly recorded in the Khas Khatian in the name of the Government. Subsequently, the Government settled the suit land via the Suit Settlement Cases in favour of the defendants. Thus, there being no legal infirmity in the judgment and decree of affirmance, the Rule is liable to be discharged.

- 11.** I have reviewed the Civil Revision along with the records of the Courts below and heard the learned Advocates from both sides.
- 12.** Admittedly, 4.61 acres of land described in Schedule-Ka to the plaint originally belonged to the Government. As per the plaintiffs' case, the suit land was settled in favour of their predecessors, namely Bosirullah, Hamid, Haider, and Shafiullah, and accordingly, MRR Khatian No. 1341 was prepared in their names. On the other hand, it is the case of the defendants, including the Government, that the suit land was never settled in favour of the predecessors

of the plaintiffs, and accordingly, the MRR Khatian was wrongly prepared in their names.

- 13.** Since the quantum of the suit land is 4.61 acres, it could not be settled without any registered document, as per the provisions of section 12 of the Bengal Tenancy Act. Since the State Acquisition and Tenancy Act came into force in the district of Noakhali only on 14.04.1956, under the Act, no such land can be settled without any registered document. However, the plaintiffs could not produce any document relating to the alleged Settlement Case No. 284 of 1954-55. Even with reference to the Settlement Case, they could not produce any rent receipts or any receipts of premium in support of such settlement. Accordingly, both the Courts below rightly found that the plaintiffs failed to prove the alleged settlement vide Settlement Case No. 284 of 1954-55 in favour of the predecessor of the plaintiffs.
- 14.** Given the facts, both the courts below rightly found that the preparation of MRR Khatian No. 1341 in the name of the predecessor of the plaintiffs had no basis, and accordingly, it was wrongly prepared in their names. The plaintiffs have also not claimed any title by adverse possession, as they have failed to prove their settlement vide Settlement Case No. 284 of

1954-55. Since the plaintiffs could not prove the basis for the preparation of MRR Khatian, the latest BRS Khatian was not prepared in their names; rather, it was prepared in the names of the defendants, who obtained the suit land along with some other land through the four suit Settlement Cases. Because of the facts and circumstances, the learned advocate for the petitioners could not identify any misreading of material evidence on record by the courts below in passing the judgment and decree of affirmance.

15. In such facts and circumstances, I do not find any legal infirmity in the judgment and decree of affirmance passed by the Courts below. Accordingly, I do not find any merit in the Rule.
16. Hence, the Rule is discharged. The interim order of *status quo* is hereby recalled and vacated.
17. However, there would be no order regarding costs.
18. Send down the records of the courts below immediately.