

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 4720 of 2015**

**In the matter of:**

Md. Badsha Mia and another

Plaintiff-respondent-petitioners

-Versus-

Rushiya Begum and another

Defendant-appellant-opposite parties

Mr. Abdullah Al Mamun, Advocate

...For the petitioners

Mr. Sakib Mabud, Advocate

... For the opposite party No. 2

Heard on: 23.10.2024, 24.10.2024 and 30.10.2024

Judgment on: 07.11.2024

Present opposite parties as plaintiffs filed Title Suit No. 283 of 2007 impleading the present petitioners as defendants in the Court of Senior Assistant Judge, Sadar, Barishal praying for eviction of the defendants on the ground that they were permissive possessors of the suit land. The plaintiffs further prayed for recovery of khas possession of the suit land. The trial Court dismissed the suit on contest, vide judgment and decree dated 28.11.2013. The plaintiffs filed Title Appeal No. 102 of 2014 before the Court of the learned District

Judge, Barishal. The appeal was heard and disposed by the learned Additional District Judge, 2<sup>nd</sup> Court, Barishal, who, vide judgment and decree dated 01.10.2015 allowed the appeal and decreed the suit on contest. Thereafter, the defendants filed instant revision and obtained the Rule.

The Rule has been contested by the plaintiff-opposite parties.

The plaintiffs' case, in short, is that plaintiff No. 1 is the mother of the plaintiff No. 2. They separately obtained lease of 1 decimal of land each, total 2 decimals of land in a cluster village situated at Palaspur, cluster village No. 5, Barishal for 99 years from the government by executing separate kabuliyat on 12.12.1990. They obtained the possession of the respective plots on 30.12.1990. Thereafter, they erected home on the plots and started living there.

The husband of the plaintiff No. 1 became seriously ill which could not be treated in the said cluster village. He was required to be taken to Dhaka and other big cities for treatment. In the circumstances, the plaintiffs permitted the defendants to stay at the homes of the plaintiffs constructed on the leasehold plots to look after and maintain those. On 01.02.2004, the plaintiffs left the home for treatment of the husband of the plaintiff No. 1 and the defendants started staying there with the permission of the plaintiffs to look after the property. Eventually, the patient died on 22.08.2005. After

observing the religious rituals, the plaintiffs returned home situated at the cluster village on 12.10.2005 and asked the defendants to vacate the property. However, the defendants refused to vacate the same and hence, the suit for eviction and recovery of khas possession.

The defendants' case, as stated in the written statement, is that the plaintiff No. 1 sold the land (1 decimal) on 21.08.1991 by executing an unregistered sale deed to one Jahura Bibi and handed over the possession of the same to her. Jahura Bibi sold the land to one Keya Begum on 04.05.1993 by executing an unregistered sale deed. The defendant No. 2 purchased the land from Keya Begum on 16.11.2001 by executing an unregistered sale deed and since then he has been possessing of the same. Similarly, the plaintiff No. 2 (son of plaintiff No. 1) sold the land in question to one Nazimnessa on 07.09.1991, Nazimnessa sold the land to one Yunus Howlader on 15.12.1992 and finally, Yunus Howlader sold the land to the defendant No. 1 on 16.11.2001 and since then the defendant No. 1 has been possessing the same. All the transfers were documented but not registered. The defendants categorically denied the plaintiffs' case that they are permissive possessors of the land. Their specific case is that they own the land through adverse possession. It is further stated in the written statement that in respect of the dispute between the parties a local shalish was held and an award was given supporting the case of defendants.

The trial Court scrutinized the evidence on record and observed that clause 13 of the settlement deed (exhibit-3) by which the suit land was settled for 99 years in favour of the plaintiffs by the government puts a bar on the lessee (plaintiffs) to transfer the settled land in any manner. The trial Court further observed that the defendants did not produce the unregistered sale deeds purported to have been executed by the plaintiffs in favour of the 1<sup>st</sup> purchaser and unregistered sale deeds executed by the 1<sup>st</sup> purchaser in favour of the 2<sup>nd</sup> purchaser. The defendants purchased the suit land from the 2<sup>nd</sup> purchaser through an unregistered sale deed which was produced before the Court as documentary evidence. However, the trial Court did not consider the said documentary evidence for the reason that the settlement deed (exhibit-3) prohibits such transfer of the land and the alleged transfer of the land to the defendants by an unregistered sale deed was a void transaction. The trial Court further observed that the plaintiffs have title in the suit land based on the 99 years settlement deed (exhibit-3).

Be that as it may, the trial Court dismissed the suit holding that the defendants had been possessing the suit land since 2001 that is for 10/12 years and that the defendants had not dispossessed the plaintiffs from the suit land and that the defendants were not permissive possessors of the same.

The instant suit was filed on 28.11.2007. It is categorically stated in the written statement that the defendants were given the

possession of the suit land by the alleged 2<sup>nd</sup> purchaser on 16.11.2001. The appellate Court below rightly pointed out that the finding of the trial Court in respect of duration of possession of the suit land by the defendants is palpably wrong. The appellate Court below rightly held that the case of the defendants was not proved. The appellate Court on assessments of both oral and documentary evidence on record found that the defendants are permissive possessors of the suit land. The appellate Court further held that the defendants had no right, title and interest in the suit land and as such, they are liable to be evicted. I have perused the evidence of record. The finding of the appellate Court is based on proper appreciation of the evidence.

Now, I turn to the award given in the local shalish. The award is an exhibited document. The trial Court relied on the award and held that the plaintiffs leased out the suit land in favour of the defendants which supports the defence case. I have perused the award. The shalish was held on 02.03.2008 during pendency of the suit. The award was given on 20.03.2008. The shalish was not held under the Arbitration Act, 2001 rather it was a local shalish. The award concludes, “অতএব সিদ্ধান্ত হইল যে পক্ষদ্বয় যার যার অবস্থানে থাকিবেন ১ম পক্ষগণ (defendants) উক্ত সম্পত্তিতে বাসবাস করিয়া আসিতেছেন সেভাবেই অবস্থান করিবেন। ২য় পক্ষগণ (plaintiffs) তাহার মামলার ফলাফলের জন্য অপেক্ষা করিবেন এবং বিভক্ত আদালতের নির্দেশ মানিয়া নিবেন। কোনো পক্ষ নিজেদের মধ্যে উক্ত সম্পত্তির ব্যাপারে অহেতুক ঝগড়া মারামারিতে লিপ্ত হইবেন না।” The award in question cannot be considered as

a piece of legal evidence since it does not have any evidentiary value for the reasons stated earlier.

The learned Advocate appearing for the defendant-petitioners submits that the plaintiffs did not pray for declaration of title and as such, the suit is not maintainable. In reply, the learned Advocate appearing for the plaintiff-opposite parties refers to the case of *Sreemati Priti Rani Chakraborty and others vs. J.M. Sen Institute*, IV ADC 37 and submits that the suit in its present form and manner without seeking declaration as to title is maintainable.

In the instant case, the title of the plaintiffs is not disputed by the defendants. Their case is that they are not permissive possessors of the suit land, rather they purchased it which has been disproved. Therefore, in my view, there is no necessity to seek declaration of title by the plaintiffs. The case cited by the learned Advocate appearing for the plaintiffs lays support to this proposition of law.

The upshot of the above discussions is that the plaintiffs have right, title and interest in suit land. The defendants occupied the suit land as permissive possessors. Later on, the plaintiffs withdrew the said permission and asked the defendants to vacate the land which they refused. The defendants' case of purchase and/or adverse possession has been disproved. Therefore, the defendants have

become unauthorised occupants of the suit land and are liable to be evicted from the same.

In view of the foregoing discussions, this Court does not find merit in the Rule.

In the result, the Rule is discharged. The judgment and decree passed by the appellate Court below is affirmed.

Send down the L.C.R.