

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 4088 of 2015

Md. Moksed Ali being dead his heirs Saikat Alam
and others

... Petitioners

-Versus-

Bishakha Union Cooperative Multipurpose Society
represented by its Secretary Md. Shajanur Rahman
Shahin and others

... Opposite Parties

Mr. Mazedul Islam Patwary, Advocate

...for the petitioners

Mr. Md. Ariful Islam, Advocate

... for opposite party number 1

Judgment on 29.08.2024

This rule was issued on an application under Section 115 (1) of the Code of Civil Procedure challenging the judgment and decree dated 16.11.2015 (decree signed on 19.11.2015) passed by the Additional District Judge, First Court, Naogaon in Title Appeal Number 30 of 2010 dismissing the appeal on affirming those dated 02.02.2010 passed by the Assistant Judge, Atrai, Naogaon in Title Suit Number 40 of 2005 decreeing the suit.

At the time of issuance of the rule, operation of the impugned judgment and decree was stayed. Subsequently, on an application filed by opposite party number 1, an order of status-quo was passed by order dated 30.08.2016. Thereafter, both the orders were extended till disposal of the rule.

Facts relevant for disposal of the rule, are that opposite party number 1 as the sole plaintiff instituted the suit for declaration of title and recovery of possession on the averments, *inter alia*, that the plaintiff-society was established in 1948 under the Cooperative Society Act. On a resolution of the Society, it purchased the land as described in the schedule of the plaint from its lawful owners-in-possession by registered sale deed number 4345 dated 04.04.1963 for valuable consideration. The plaintiff-society mutated the record in its name and was possessing the suit land paying rent to the Revenue Office of the Government. Since the suit land was situated near to the local hat, the defendants despite having no title over the same, dispossessed him therefrom on 14.01.2001. In that event, the plaintiff initially instituted a suit for perpetual injunction. Subsequently, he withdrew from the suit with a permission to sue afresh and instituted the present suit for declaration of title and recovery of possession.

Defendants number 1-10, 12-20, 23-27, 29-32 and 34-36 contested the suit by filing written statement denying the material allegation of the plaint contending, *inter alia*, that the suit land was situated within the periphery of Shamashpara Hat. These defendants were owning and possessing their shops, store, hotel etcetera thereon for last fifty years within the knowledge of the plaintiff, and were paying rent to the Hat Committee. The plaintiff created documents and illegally claimed the land, which belonged to the Hat.

The Government of Bangladesh represented by the Deputy Commissioner, Naogaon being defendant number 38 filed a written statement denying the plaintiff's claim contending, *inter alia*, that the suit

land did not attract the land of Shamashpara Hat and the Government had no interest therein. Subsequently, the Government filed an amended written statement contending that the original owner left the suit land uncared and unmanaged. He also did not pay the rent against the suit land since long. As a result, the land would vest in the Government. However, the Government thereafter, did not contest the suit by giving evidence in support of the amended written statement.

On the aforesaid pleadings, the trial court framed the issues, namely, (1) whether the suit was maintainable in its present form, (2) whether the suit was barred by limitation, (3) whether there was any defect of party in the suit, (5) whether the plaintiff was entitled to a declaration of title and a decree for recovery of possession in his favour.

The trial court proceeded with trial of the suit, in course of which, the plaintiff examined its Secretary Sheikh Abdur Rafique as PW 1, who supported the plaintiff's case and adduced a bunch of documents in evidence including the original sale deed, rent receipt, CS, SA and RS records, resolution of the plaintiff-society for purchasing the land and some other documents, which were marked as Exhibits:1-7. Two other members of the plaintiff-society named Md. Zaherul Islam and Md. Azhar Ali Sarder and another local witness Md. Tajul Islam Chowdhury were examined as PWs 2, 3 and 4 respectively, where they supported the plaintiff's case.

On the other hand, defendant number 10 Abdus Satter himself deposed as DW 1 and two other local witnesses named A. Zabbar and A. Kader were examined as DWs 2 and 3, where they made oral statement in

support of the defendants' case, but did not exhibit any document in support of their claim, or that of the Government.

On conclusion of hearing, learned Assistant Judge decreed the suit by judgment and decree dated 02.02.2010 (decree signed on 11.02.2010). Being aggrieved, the contesting defendants preferred Title Appeal Number 30 of 2010 in the Court of District Judge, Naogaon. Learned Additional District Judge, First Court, Naogaon ultimately heard the appeal and dismissed the same on concurrent finding of facts by the impugned judgment and decree giving rise to the instant civil revision.

Mr. Mazedul Islam Patwary, learned advocate for the defendant-petitioners submits that admittedly they are in possession of the suit land since long within the knowledge of the plaintiff. They have their shops, stores, hotels etcetera which are only sources of their livelihood. The Courts below in decreeing the suit did consider their lawful possession in the suit premises and that the suit land was situated within the hat bazar, and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Mr. Md. Ariful Islam, learned advocate for opposite party number 1 on the other hand submits that the plaintiff proved his case by recording oral evidence in support of the plaint and by adducing the original sale deed, rent receipt and RS khatian in his name, C S khatian in the name of his vendor's predecessor, S A Khatian in the name of his vendor and resolution of the plaintiff-society for purchasing the suit land. On the other hand, the defendants failed to show any single piece of document to show that they had valid title or possession over the suit land, or that the suit

land fell in the hat bazar or in its periphery. The courts below on due consideration and assessment of evidence, arrived at concurrent finding of facts and decreed the suit in favour of the plaintiff.

I have considered the submissions of the learned Advocate and the judgment of the courts below. It appears that the then Secretary of plaintiff-society Sheikh Abdur Rafique deposed supporting the plaintiff's case and disclosed nothing adverse in cross-examination. He adduced the plaintiff's sale deed dated 04.04.1967 in original (Exhibit-1), R S Khatian of the suit land in the name of plaintiff (Exhibit-2), CS Khatian in the name of the predecessor of his vendor (Exhibit-3), S A Khatian in the name of his vendor, rent receipt showing payment of rent against the suit land by the plaintiff (Exhibit-4), and resolution of the plaintiff-society for purchasing the suit land (Exhibit-5) and some other documents in support of its case. In view of the said documentary evidences, which are legally considered to be better evidences than the oral evidence of DW 1, and the defendants' failure in producing any single piece of paper in support of their claim, the learned Assistant Judge rightly decreed the suit which has been affirmed by the learned Additional District Judge. I do not find any error of law resulting in an error in the decision occasioning failure of justice in the judgment and decree in question.

Accordingly, the rule is discharged. The orders of stay and status-quo passed earlier stand vacated.

Send down the records.