

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 2503 OF 1997.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Moksed Ali.

...Defendant-appellant-petitioner.

-Versus –

Md. Abdul Majid Pramanik and others.

...Plaintiff- respondent-opposite parties.

No one appears.

..... For the petitioner.

Mr. Md. Sheikh Jalal Uddin, Advocate with

Mr. S.M. Obaidul Hoque, Advocate

..... For opposite party Nos. 1-2.

Mr. Abu Naser Swapan, Assistant Attorney General

..... For opposite party Nos. 3-5.

Heard on: 22.02.2024, 04.03.2024 and Judgment on 21.03.2024.

On an application of the petitioner Md. Moksed Ali under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 13.03.1997 (decree signed on 17.03.1997) passed by the learned Subordinate Judge, 2nd Court, Rajshahi, in Title Appeal No. 97 of 1995 affirming judgment and decree dated 29.03.1995 (decree signed on 04.04.1995) passed by the Senior Assistant Judge, Poba, Rajshahi in Other Class Suit No. 84 of 1993 dismissed the appeal and upholding the

judgment and decreed should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The matter was posted in the daily cause list on the couple of days with the names of the learned Advocates. Thereafter the learned Advocate of the petitioner appeared before this court and took adjournment but subsequently the learned Advocate did not appear before this court furthermore.

Facts necessary for disposal of the Rule, in short, is that the opposite party Nos. 1 and 2 as plaintiffs instituted Other Class Suit No. 84 of 1993/(Miscellaneous Case No. 84 of 1993) before the Senior Assistant Judge, Poba, Rajshahi for declaration of title of the suit land and for cancellation of the lease agreement of the plaintiff by the impugned order dated 02.07.1993 should be declared illegal, void and not binding upon the plaintiff stating-inter-alia that the petitioner filed an application before the Deputy Commissioner, Rajshahi for obtaining lease of the schedule land as landless people and accordingly the P.S. Case No. 460/12/89-90 was started and the Deputy Commissioner, Rajshahi leased out of the said land in favour of the plaintiff as a landless people. Subsequently the plaintiff executed a kabuliat by registered deed No. 6126 dated 11.06.1990 and also mutated their name and the concerned authority took rent from the plaintiff.

The further case is that on an application of the defendant No.4 the office of the Deputy Commissioner cancelled the said lease agreement of

the plaintiff by its order dated 02.07.1993. The plaintiff are in possession of the said suit land by installing sallow machine and cultivated the land, thus the plaintiff is constrained to file the present suit.

The suit was contested by the defendant Nos. 2-3 by filing written statements denying all the material assertion of the case.

The case of the defendants is that the authority decided to distribute the land among the landless people and accordingly published the notification. The defendant No.4 filed an application and accordingly the suit land was supposed to be leased out in favour of him. But the plaintiff cunningly with the help of some corrupted employers managed to obtain the lease and when the matter was brought before the defendant which was enquired by the enquiry committee and the Assistant Commissioner (land) after enquired of the same submitted the report that the plaintiff fraudulently obtained the aforesaid land instead of the defendant No.4 thus the concerned authority cancelled the lease agreement of the plaintiff by the impugned order dated 02.07.1993. The suit should liable to be dismissed.

Subsequently the defendant No.4 was added as party of suit and filed written statement stating that this defendant on the basis of P.S. Case No. 9/12/89-90 obtained 16 decimal of land of plot No. 311 and are in possession of the same land but subsequently came to know that the plaintiff with the help of the some corrupted staffs of the defendant Government obtained the land through P.S. Case No. 460/12/89-90 then

he filed an application before the Deputy Commissioner, Rajshahi and the Assistant Commissioner (land) enquired the matter and submitted his report then the defendant cancelled the said lease agreement of the plaintiff and the plaintiff are not in possession of the suit land and the suit should liable to be dismissed.

The trial court framed 3 (three) issues for consideration of the case.

At the trial both the sides adduced witnesses and also exhibited the documents.

The trial court after hearing the parties and considering the evidence on record decreed the suit by its judgment and decree dated 29.03.1995.

Against the said judgment and decree of the trial court the defendant Nos.1-3 did not prefer any appeal but the added defendant No.4 preferred Title Appeal No. 97 of 1995 before the learned District Judge, Rajshahi.

The appeal was heard by the learned Subordinate Judge, 2nd Court, Rajshahi who after hearing the parties and considering the evidence on record dismissed the appeal and thereby affirming the judgment and decree of the trial court by its judgment and decree dated 31.03.1997.

Being aggrieved by and dissatisfied with the impugned and decree of the courts below the added defendant No.4 preferred this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the Rule. However, the defendant Nos.1-3 the Government did

not file any revisional application challenging the impugned judgment and decree of the courts below.

Mr. S.M. Obaidul Haque, the learned Advocate along with Mr. Md. Sheikh Jalal Uddin, Advocate enter appeared on behalf of the opposite party Nos 1-2 through vokatnama to oppose the Rule.

However, Mr. Abu Naser Swapon, the learned Assistant Attorney General represented on behalf of the opposite party Nos. 3-5 submits that the plaintiff committing fraud illegally obtained the lease order and accordingly the executed a registered kabuliat. He further submits that when the matter was brought before the concerned authority then the authority formed an enquiry committee and the enquiry committee after enquired of the matter submitted report that the plaintiff on committing fraud and with the help of some corrupted staffs of the defendant-Government obtained the lease agreement thus the concerned authority cancelled the said lease agreement of the plaintiff. He further submits that the plaintiff ought to have challenged the same to the higher authority of the defendant Nos.1-3 but without invoking the said jurisdiction they purposely filed this suit and obtained the decree. He further submits that since the plaintiff obtained the lease agreement by committing fraud and fraud vitiates everything and thus the judgment of the courts below is error in law resulting in an error in the decision occasioning failure of justice.

The learned Advocate of the petitioner appeared before the court only a single day when the matter was posted in the daily cause list as heard in part and took adjournment but did not appear furthermore.

I have perused the impugned judgment of the courts below, the papers and documents as available on the record.

It appears that the trial court after consideration of the facts and circumstances of the case took view that the plaintiff by adducing sufficient evidence succeed to prove his case that the concerned authority gave him lease of the aforesaid schedule land and thereafter the plaintiff executed the registered agreement and also found that though the defendant claimed that the plaintiff was not a landless people but considering the exhibit filed by the plaintiff took view that the plaintiff has only 48 decimal of land and since the circular No. 1/1394 dated 01.07.1987 states that who has land less than 50 decimal being a landless people and since the plaintiff has no more than 50 decimal of land and such he was a landless people and accordingly decreed the suit.

The appellate court also after considering the evidence on record upheld the said judgment of the trial court.

It appears that the lease agreement of the plaintiff was cancelled by the defendant Nos.1-3 but the defendant Nos.1-3 did not prefer any appeal challenging the impugned judgment and decree of the trial court.

It also appears that the Government defendant Nos.1-3 also did not file any revisional application challenging the impugned judgment and decree of the courts below.

I have examined the exhibited documents filed by the parties and it appears that the plaintiff executed a registered kabuliat being No. 6126 dated 11.06.1990 wherein the "e`e`" number was mentioned as 467/12/89-90 dated 31.12.1989 and "R jv cÖmK mK 07(g) Z vi :

!0 ! ""0" and in the said lease agreement it is found that Mr. Bikash Chowdhury the Additional District Magistrate (Rev), Rajshahi put his signature on 11.04.1990 in the said lease agreement which is Exhibit-1.

It also appears from the Exhibits-2, 3 and 3-Ka that the plaintiff mutated his name and also paid the rents to the concerned authority of the Government. But it appears from Exhibit-Ka-2 filed by the defendant No.4 that the allotment in favour of the plaintiff was cancelled in the Case No. 85/13/19(S.A. Sakha) that the lease of the plaintiff was cancelled by the order dated 21.06.1993.

It appears that both the courts after consideration of the facts and circumstances of the case concurrently found that without hearing the plaintiff the defendant Government cancelled the lease agreement of the plaintiff.

It also appears that the plaintiff also executed a registered kabuliat deed being deed No. 6126 dated 11.06.1990 and which was accepted by the concerned authority putting the signature and receiving the rents and

the plaintiff obtained a separated khatian through Mutation Case No. 47/9/89-1991 and also paying rents to the Government. In support of the same the plaintiffs produced the same as Exhibit-2 and 3 series.

Considering the facts and circumstances of the case it is my view that the plaintiff made agreement with the defendant Nos.1-3 and obtained the land and since the plaintiff executed registered kabuliat. If the Government authority desire to cancel the registered documents then the proper procedure of section 39 of the Specific Relief Act, should be applicable but the concerned authority without taking proper step by the administrative order cancelled the same which does not permit in law.

Considering the aforesaid facts and circumstances of the case since both the courts after elaborate discussions of the evidence on record concurrently found that the plaintiff is in possession of the suit land and concurrent findings of the facts cannot be interfered with in revisional application if no misreading of the evidence on record. In so many cases it has been settled that the concurrent findings of facts should not be interfered with if no misreading and misappropriation of facts and evidence on record. This proposition supported by the decision of the case of Amanatullah –vs. Ali Mohammad Bhuiyan and others, reported in 2 BLC (AD)-134, and the case of Mozher Sowdagar –Vs. M. Zahirul Alam and others, reported in 40 DLR(AD)-62.

Having considered the facts and circumstances of the case, it is my view that the courts below rightly passed the impugned judgment which should not be interfered with, thus I find no merit in the Rule.

In the result the Rule is discharged without any order as to cost. The impugned judgment and decree dated 13.03.1997 passed by the learned Subordinate Judge, 2nd Court, Rajshahi, in Title Appeal No. 97 of 1995 affirming the judgment and decree dated 29.03.1995 passed by the Senior Assistant Judge, Poba, Rajshahi in Other Class Suit No. 84 of 1993 is hereby upheld.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the lower court's record at once.

M.R.