

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 4109 of 2007

Asad Miah and others petitioners

-Versus-

Altab Ali being dead his heirs Latita Banu and
others opposite parties

Mr. Mohiuddin Ahmed, Advocate

..... for the petitioners

Mr. Abida Gulrukh, Advocate

..... for opposite party 1

Judgment on 25.04.2024

In this rule opposite parties 1(Ka)-1(Yeo) were called upon to show cause as to why the judgment and decree of the Joint District Judge, Court No. 2, Kishoreganj passed on 20.03.2007 in Title Appeal No. 155 of 1996 dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Bajitpur, Kishoreganj passed on 22.06.1996 in Title Suit No. 27 of 1995 decreeing the suit should not set aside and/or such other or further order or orders passed to this Court may seem fit and proper .

Facts relevant for disposal of the Rule, in brief, are that the plaintiff instituted the suit in the aforesaid Court alleging, *inter alia*, that Pir Box and Mir Box were the CS recorded owners of the suit land. They had equal shares but erroneously the share of Pir Box was recorded as 4 annas 13 gandas 1 kara and 1 kranti instead of 5 annas 13 gandas 1 kara and 1 Kranti. Pir Box during his possession and

enjoyment died leaving behind his son Sabdar Ali. Sabdar Ali died leaving behind the plaintiff as heir who inherited Sabdar Ali's share. The plaintiff is in possession of the suit land but he has been possessing less share than he is entitled to. He requested the defendants to partition the suit land but they refused. Hence the suit for partition claiming *saham* to the extended of .2733 acres out of .82 acres as detailed in the schedule to the plaint.

Defendants 1 and 2 contested the suit by filing written statement denying the averments made in the plaint. They further contended that the land of Pir Box and Mir Box reverted to the superior land lord as khas land and the predecessor of the defendants took settlement of it from the land lord. The defendants have been enjoying and possessing the suit land by way of inheritance. The plaintiff has no title and possession over the suit and as such the suit would be dismissed.

The assistant Judge on pleadings framed 4 issues. During trial the plaintiff examined 2 witnesses while the defendants examined 3. The plaintiff produced document as exhibit 1 and the documents produced by the defendants were exhibits ka-gha(1). However, the trial Court finally decreed the suit in part allocating *saham* to the plaintiff for .24 acres. Being aggrieved by the defendants preferred appeal before the District Judge, Kishoreganj. The appeal was heard on transfer by the Joint District Judge, Court No. 2, Kishoreganj. The

transferee Court after hearing dismissed the appeal and affirmed the judgment and decree passed by the trial Court. In this juncture, the defendants approached this Court with the present revisional application upon which the rule has been issued.

Mr. Mohiuddin Ahmed, learned Advocate for the petitioners takes me through the judgments of the Courts below and submits that both the Courts below misdirected and misconstrued in their approach of the matter and thereby committed error of law resulting in an error in such decision occasioning failure of justice. The Courts below ought to have considered the definite case of the defendants and dismissed the suit because the plaintiff by producing the documentary evidence failed to prove right, title and possession over the suit land, and as such he is not entitled to get a decree for partition. In the premises above, the rule should be made absolute and the judgment and decree passed by the Courts below should be set aside.

Ms. Abida Gulrukh, learned Advocate for opposite party 1(Ka)-1(Yeo), on the other hand opposes the rule and supports judgment and decrees passed Courts below. She submits that the Courts below scrutinizing the evidence adduced by the parties and considering the documents produced found title and possession of the plaintiff in the suit land and consequently decreed the suit. There is no misreading and non consideration of evidence of the parties and as such the

judgment and decree passed Courts below may not be interfered with by this Court in revision.

I have considered the submissions of both the sides and gone through the materials on record.

It transpires that the plaintiff instituted the suit for partition claiming his share to the extent of .2733 acres out of .82 acres as described in the schedule to the plaint. In support of the plaintiff's case he produced CS khatian exhibit-1 to prove that the record has been prepared in the name of his predecessor Pir Box. In the plaint he claimed that Pir Box was entitled to 5 annas 13 gandas 1 kara and 1 kranti share but record was prepared in his name for 4 annas 13 gandas 1 kara and 1 kranti. The plaintiff is admittedly the sole heir of CS recorded tenant Pir Box and as such he will get the share of Pir Box by way of inheritance. The case of the defendants was that the land was declared as khas land of the superior land lord for nonpayment of rent and their predecessor took settlement of the land. The aforesaid case of the defendants has not been proved by oral and documentary evidence. The defendants failed to produce any paper in support of so called settlement. The documents produced by the defendants in no way attracts the suit land.

The trial Court on correct assessment of facts and law found plaintiff's title over the suit and allocated *saham* for 4 annas 13 gandas 1 kara and 1 kranti share equivalent to .24 acres as recorded in

his predecessor's name in CS khatian. It is well settled position of law that concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision unless there is gross misreading and non consideration of the evidence and materials on record. The learned Advocate for the petitioners failed to show any such misreading and non consideration of evidence for which the decision passed by the Courts below could have been otherwise.

In the premises above, I find no merit in this rule. Accordingly, the rule is discharged. However, there will be no order as to costs. The judgment and decree passed by the Courts below are hereby upheld. The order of stay stands vacated.

Communicate this judgment and send down the lower Court records.