

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice
Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.301 OF 2019.

(From the judgment and decree dated 02.02.2017 passed by the High Court Division in Civil Revision No.946 of 2000)

Md. Isaq Biswas and others : Appellants.

=Versus=

Abdus Samad Sheikh alias Abdul Respondents.
Hossain being dead his heirs:
1(a)Rashida Begum and others.

For the Appellants : Mr.Md. Nurul Amin, Senior
Advocate, instructed by Mr.
Zainul Abedin, Advocate-on-
Record.

For the respondents: Mr. Garib Newaz,
Advocate, instructed by
Mr. Syed Mahbubar Rahman,
Advocate-on-Record.

Date of hearing & judgment : 07.06.2023

J U D G M E N T

Hasan Foez Siddique, C.J: This appeal is directed against the judgment and order dated 02.02.2017 passed by the High Court Division in Civil Revision No.946 of 2000 reversing the judgment and decree dated 02.02.1999 passed by the learned Joint District Judge Artha Rin Adalat, Faridpur in Title Appeal No.243 of 1992 reversing those dated 07.09.1992 passed by the

learned Assistant Judge, Alfadanga, Faridpur in Title Suit No.62 of 1985.

The relevant facts, for the disposal of this appeal, are that Shafiuddin and another instituted aforesaid suit for declaration of their title and recovery of khas possession stating that the land as described in the schedule to the plaint belonged to Maizuddin who died leaving behind one son, Plaintiff No.1 and widow the plaintiff No.2 as his heirs. The plaintiffs, constructing dwelling homestead in .17 acre of land of plot No.187, had been residing therein. The defendants forcibly dispossessed the plaintiffs on 25.10.1985. The plaintiffs came to know that S.A. record of right in respect of the suit land was wrongly prepared in the names of the defendants. Hence, was the suit.

The defendant No.1 contested the suit contending that the landlords of the disputed joma were Nagendra Roy Mukhopadhyaya and others and tenant was Maizuddin. Maizuddin defaulted to pay the rent. Thus, the landlords, instituting a Rent Suit, got decree and took over the said property in his possession executing the said decree. Thereafter, Baser Mollah, predecessor-

in-interest of the defendant, took settlement of the said land from the landlords and took over possession of the same. S.A. record was prepared in the name of the plaintiff No.1. Accordingly, the defendant filed objection case which was allowed. This defendant has been possessing the suit land for more than 12 years. The suit should be dismissed.

The trial Court, on consideration of the evidence on record, dismissed the suit. The plaintiffs preferred appeal, which was allowed by the appellate Court.

Then the defendant filed civil revisional application in the High Court Division and obtained Rule. The High Court Division by the impugned judgment and order made the said Rule absolute. Against the aforesaid judgment and order of the High Court division, appellants have preferred this appeal upon getting leave.

Mr. Md. Nurul Amin, learned Senior Counsel appearing for the appellants, submits that the plaintiffs are the successive heirs of C.S. recorded tenants and they were in possession of the suit land till the date of dispossession on 25.10.1985 and the plaintiffs, by adducing sufficient evidences, proved their title and

possession and, thereafter, date of dispossession. He submits that the last Court of facts upon proper appreciation of the evidence on record, found plaintiffs' title, possession and their dispossession in the suit land, the High court Division erred in law in setting aside the well reasoned judgment of the appellate Court. He further submits that the defendants claimed that the suit land was sold in auction and the landlords auction purchased the same and took over the possession of the same, thereafter settled the suit land to the predecessor-in-interest of the contesting defendants but they hopelessly failed to prove the story of alleged auction and their allegedly settlement, the High Court Division upon improper consideration of the evidence adduced by the parties erroneously dismissed the suit.

Mr. Garib Newaz, learned Advocate appearing for the respondents, submits that it is the duty of the plaintiffs to prove their own case to get the decree and their possession in the suit land till the date of dispossession, the High Court Division upon proper appreciation of the materials on record, rightly reversed the

judgment and decree of the appellate Court. He further submits since the plaintiffs failed to prove their possession till the date of their dispossession, the trial Court as well as the revisional Court upon proper appreciation of the evidence on record, came to the conclusion that the plaintiffs suit was barred by limitation.

Admittedly, Moizuddin was C.S. recorded tenant. The plaintiffs' case is that they are the successive heirs of the said Moizuddin and had been possessing the suit land till the date of their dispossession dated 25.10.1985. At the initial stage, S.A. record-of-rights was prepared in their names but finally it was published in the name of contesting defendants. It was their case that the plaintiff No.1 who is P.W.1 was minor at the time of preparation of record-of-rights and the contesting defendant was his close relative and after the death of his father, they started to live in the house of the defendants. Taking opportunity of his minority, the defendant forcedly dispossessed the plaintiff from the suit land.

It appears from the materials on record that earlier before the publication of S.A. operation, a Miscellaneous Case for correction

of record-of-rights was filed which was disposed of on contest. Finally S.A. record-of-rights was prepared and published in the name of defendant No.1. On perusal of the judgment of the trial Court it appears that the Trial Court considered the oral and documentary evidence adduced by the parties and came to the conclusion that the plaintiffs have failed to prove their possession till their alleged date of dispossession from the suit land. It further held that the suit was barred by limitation. While drawing conclusion as to the possession of the plaintiffs till their dispossession, the first Court of fact considered the evidence adduced by the parties vividly but from the judgment and decree of the appellate Court it appears that the appellate Court, without taking into consideration of the evidence as quoted by the trial Court, abruptly reversed the finding as to the possession of the plaintiffs till their dispossession from the suit land. The revisional Court reversed the finding as to the possession and dispossession arrived at the appellate Court holding that the conclusion arrived at by the last Court of fact is not based on evidence. In the plaint, the plaintiffs stated that they were dispossessed by

the defendant on 25.10.1985 from the suit land, plaintiff No.1 was examined as P.W.1 who in his evidence did not utter a word about the alleged date of dispossession. Similarly their another witness P.W.2 has also said nothing about the date of dispossession of the plaintiffs from the same. We have also gone through the judgment of the Courts below it appears to us that the conclusion arrived at by the High Court Division is correct.

The appellate Court mainly relied upon the weakness of the case of the defendants that they have failed to prove of the story auction sale and their alleged settlement but in order to get a decree for recovery of possession along with prayer for declaration of title the weakness of the defendants case cannot be a ground for getting decree the plaintiffs, particularly, when the plaintiffs failed to prove their possession in the suit land till their dispossession.

In such view of the matter, we do not find any substance in the instant appeal.

Thus, the appeal is dismissed.

C.J.

J.

The 7th June, 2023.

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