

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 4336 of 1999

Government of Bangladesh

... Petitioner

-Versus-

Sree Tapon Kumar Mitra and others

... Opposite Parties

Mr. Shah Md. Khasruzzaman, Advocate

... for the petitioner

Mr. Sarwar Ahmed with Mr. Sudhandu Kumar
Biswas Advocates

... for opposite party No.1

Judgment on 20.11.2011

This Rule at the instance of defendant-respondent was issued to examine the legality of judgment and decree dated 3.3.1999 passed by the Subordinate Judge (now Joint District Judge), First Court, Satkhira in Title Appeal No.223 of 1991 allowing the same and reversing those dated 27.8.1991 passed by the Assistant Judge, Kalarua, Satkhira in Title Suit No.127 of 1989. The Assistant Judge dismissed the suit instituted by opposite party No.1 for declaration of title with a further declaration that enlistment of the suit land as vested property was illegal.

Material facts of the plaint are that the suit land originally belonged to one Chandra Kumar Gan, Provash Chandra Gan and two others. While in peaceful possession and enjoyment of the same, the said Chandra Kumar died leaving behind his four sons namely Nishi, Ridoy, Moni and Foni

Bhushan. The said Provash Chandra died leaving behind his sons Ohi, Bhupati, Kool and Binoy Bhushan. The said heirs of Chandra Kumar Gan and Provash Chandra Gan transferred the suit land by way of settlement through three separate checks to the plaintiff's father on 1st Baishakh, 1359 and handed over the possession thereof in his favour. He took settlement of the land in the name of his minor son, the plaintiff. Since then he (plaintiff) has been enjoying and possessing the suit land. As the plaintiff was a minor during preparation of R.O.R (S.A) khatian, he could not approach the officials with necessary paper and documents for publication of record duly in his name. In the result, the suit land was wrongly recorded in names of its previous owners. The Tahsildar of local land office for the first time disclosed on 24.11.1989 that the suit land had vested in Government as a vested property and threatened the plaintiff to dispossess him therefrom. Thus the cause of action for filing the suit arose.

The Government contested the suit by filling a written statement contending *inter alia*, that the names of the original tenants in the suit land were correctly recorded in S.A. khatian. They had left for India before 1965 and started residing there permanently, for which their land was treated initially as enemy property and subsequently as vested property in accordance with law. The heirs of the original tenants did not transfer any land on 1st Baishakh, 1359 to plaintiff's father. The papers and documents whatsoever filed by the plaintiff were forged and created.

The learned Assistant Judge, after conclusion of trial, dismissed the suit by his judgment and decree dated 27.8.1991. Against the said judgment and decree, the plaintiff preferred Title Appeal No.223 of 1991 in the Court of District Judge, Satkhira, which was subsequently transferred to the First Court of Subordinate Judge, Satkhira for hearing and disposal. The learned Subordinate Judge heard the appeal and allowed the same by his judgment and decree dated 3.3.1999, which has been impugned in the instant civil revision.

Mr. Shah Md. Khasruzzaman, learned Advocate appearing for the petitioner submits that the plaintiff miserably failed to prove his title in the suit land by producing the checks, on which he claimed his title. Although he produced five private rent receipts, did not prove and exhibit the same and as such the trial Court rightly dismissed the suit, but the lower appellate Court without reversing the findings of the trial Court, allowed the appeal on weakness of the defendant and thereby committed error of law.

On the other hand Mr. Sudhendu Kumar Biswas, learned Advocate appearing with leave of the Court for opposite party No.1 submits that the plaintiff has been in possession over the suit land for more than twelve years, he has produced as many as eleven Government rent receipts in addition to five private rent receipts, which were thirty years old documents having presumption of genuineness under section 90 of the Evidence Act. The lower appellate Court being the last Court of fact correctly assessed the

evidence on records and rightly passed the judgment and decree, which does not call for any interference by this Court.

I have gone through the pleadings, meticulously examined the private rent receipts and evidence on records to see whether there is any non-consideration of evidence. It appears that the Government denied authenticity of the documents filed by plaintiff (see paragraph-13 of its written statement and evidence of D.W.1). The plaintiff (P.W.1) in course of his deposition though referred to the private rent receipts to have been produced, did not prove and exhibit the same. The Government rent receipts in names of the heirs of original tenants were filed, but those were also not proved and exhibited. It is also not clear from either the plaint or deposition of P.W.1 as to how the plaintiff got those Government rent receipts in his possession. When the rent receipts are not proved and exhibited, question of presumption of genuineness under section 90 of the Evidence Act would not arise. The plaintiff claimed his title over the suit land on the basis of settlement by three checks, at the same time he cannot claim the land by way of adverse possession. Therefore, I do not find any substance in the submissions of Mr. Shudandu Kumar Biswas, learned Advocate for the opposite party.

It further appears that the trial Court arrived at definite findings on the issues framed and thereby dismissed the suit on the grounds amongst other that at the time of alleged settlement, the plaintiff was a minor having no knowledge about the same. P.W.2 Sree Chitta Ranjan was neither the

signatory of the private rent receipts nor any witness to issuance of the same and therefore, he was not a competent witness to prove those rent receipts; that the evidence of P.W.1, 2 and 3 regarding the plaintiff's possession in the suit land was contradictory. They also failed to prove as to how the plaintiff possessed the suit land after the alleged settlement.

In passing the aforesaid judgment, learned trial Judge relied on the case of Ajufannessa alias Aji Bibi and others Vs. Safar Miah and others reported in 30 DLR (SC) 41, wherein their Lordships of the Appellate Division observed:

“18.... a private document cannot be taken notice of and marked as an Exhibit without any formal proof, unless the requirement of such proof is waived by the opposing party. The marking of the said document as an exhibit may however, give rise to a belief that it bears the writing or signature of a person, as has been deposed to by the witness who proved the said document. The question as to whether the document is a genuine one or it represents the true state of affairs is a question of fact which is to be decided by the Court concerned in the light of the facts and circumstances of the case. There is no legal presumption which the Court is bound to make in respect of such a document. There may be cases where the law requires that the contents of particular document shall be presumed to be correct unless they are rebutted by the adducing evidence by a party, who disputes their correctness, as has been provided in Section 103B of the Bengal Tenancy Act and Section 144 A of the State Acquisition

the Government-defendant failed to produce any scrap of paper in support of its claim. It is a well settled principle of law that the plaintiff is to prove his own case. The defendant's failure to prove its case will not help the plaintiff in any way.

In the present case plaintiff claimed settlement of the suit land from its original tenants on 1st Baishakh, 1359 (Bangla) and instituted the instant suit on 30.11.1989 A.D. [16 Agrahayan 1396 (Bangla)]. During this long period he or his father did not mutate the record in his name or pay any rent in favour of the Government, which substantially impairs the credibility of his case. He claimed settlement of the suit land by three separate checks (see paragraphs-2, 3 and 4 of the plaint), but failed to produce and prove the checks, by which his father allegedly took settlement of the land in his name. P.W.2 Chitta Ranjan stated in his evidence that he was present at the time of settlement, which is of no use without production of the checks. The private rent receipts though were produced, not proved and marked as exhibits, as already mentioned.

The plaintiff has adduced in evidence only three C.S Khatians as Exhibits-1, 1(1), and 1(2); two S.A. Khatians as Exhibits-2 and 2(1) and one R.S Khatian as Exhibit-2(2). In the said C.S. Khatians, the names of Chandra Kumar Gan or Provash Chandra Gan were not mentioned as Zaminders, but tenants under the Zaminders. So it is not clear as to how their (Chandra Kumar Gan or Provash Chandra Gan's) heirs and successors were competent to give settlement of the land in favour of the plaintiff. Neither

the S.A nor R.S khatian is in the name of plaintiff. He (plaintiff) pleaded that at the time of preparation of R.O.R (S.A.) Khatian, he was a minor and could not approach the official for recording the same in his name. In his evidence he stated that his father died after 2/1 year of publication of S.A. record. There is no reasonable explanation about what prevented him from approaching the officials at the time of R.S. operation or thereafter to mutate the record in his name. There is no single piece of documentary evidence in support of his (plaintiff's) case. Moreover, he has hopelessly failed to prove the settlement of the land by producing the three checks and adducing the same in evidence, upon which he claimed his title. Since the plaintiff has failed to prove his title over the suit land, he has no *locus standi* to challenge the vested character of the suit land. Under the circumstance the issue whether the suit land is vested, is kept open.

In view of the above, I find substance in submissions of the Advocate for the petitioner. The impugned judgment and decree of the lower appellate Court should not sustain in law.

Accordingly, the Rule is made absolute. The judgment and decree dated 3.3.1999 passed by the Subordinate Judge, First Court, Satkhira in Title Appeal No.223 of 1991 is hereby set aside and those dated 27.8.1991 passed by the Assistant Judge, Kalaura, Satkhira in Title Suit No.127 of 1989 is restored.

Send down the lower Court records.