

In The Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 2413 of 2018

Abdul Jabbar Molla
Plaintiff-Respondent-Petitioner
Versus

Abdul Mannan Madbar and others
Defendants-Appellants-Opposite Parties

The Government of Bangladesh represented
by the Deputy Commissioner Shariatpur
and others
Defendants-Respondents-Opposite Parties

Mr. Md. Abdul Wadud Bhuiyan Senior Advocate
Mr. Md. Kamal Parvez, with
Mr. A.K.M.Jahangir Alam, Advocates
for the plaintiff-respondent-petitioner

Mr. Md. Mostofa , Senior Advocate
Ms. Sharmin Akter, with
Mr. Mohammad Masud Parvez, Advocates
for the defendants-appellants- opposite parties

Judgment on: 02.08.2022.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 07.06.2018 passed by the learned Additional District Judge, Shariatpur in Civil Appeal No. 78 of 2017 allowing the appeal and thereby reversing the Judgment and Decree dated 29.08.2017 passed by the learned Joint District Judge, 1st Court, Shariatpur in Title Suit No. 24 of 2013 decreeing the suit in part 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 plaintiff's Case in short, is that the scheduled land in question of District-Shariatpur Police Station-Palong, Mouza-Dhanuka, R.S. Khatian No.865, Plot No. 797 area 1.11 acres belonged to one Upendranath Pal and others. They owned another 43 decimal land of R.S. Khatian No. 74 in the same Mouza. R.S. tenant Jatish Chandra Pal sold his portion of land measuring 27 decimal to Upendranath Pal and thereby Upendranath Pal owned a total of 55 decimals land. Upon his death, his only son Harshnath Pal being only heir owned 55 decimal land and his name was duly recorded in S.A. Khatian being No. 723, Plot No. 797 and he gave Pattan to the plaintiff Abdul Jabbar Mollah in the year 1960 but Abdul Jabber Mollah did not pay rents and thus the said Harshnath Pal instituted a suit for rent being Rent Suit No. 137 of 1962 and that was dismissed on Solehnama by the parties and afterwards till now plaintiff Abdul Jabbar Mollah is in peaceful possession of the same for more than 50 years. But the defendant government inserted the suit land in No. 1 Khas khatian on 2.7.2013 and thereby the title of the plaintiff is affected and hence, the suit.

The defendant Nos. 1-3 contested the suit by filling written statements denying the claims of the plaintiff and stated that the said land was taken away by the Government through Jhalkathi

P.S. 24(12)-59 MLR-45 Case on 2.3.1960 and recorded at Khas khatian and took possession of the same. They claim that the documents produced by the plaintiff is forged thereby the suit is liable to be dismissed.

The opposite party No. 1 made an application to be added as defendant No. 4 and upon Court's Order he contested the suit as defendant No. 4 and in his written statement he stated that the suit land of Harshanath Pal was auction sold by Palong Certificate Court on 1962-63 Vide 318 PPM case and one Minhaz Uddin Bepary purchased the same, who later sold the same on 30.12.1964 vide Deed No. 4749 to Ekram Ali and on his death his 5 sons became owners of the same being heirs and after several sale between the heirs and others, the defendant No. 4 Abdul Mannan Matbar owned 59.5 decimal land and his name was recorded duly in the khatian and the plaintiff has not title in the suit land.

The Trial Court decreed the suit in part and the Appellate Court below reversed the decree of the Trial Court and hence the plaintiff as petitioner moved this application under section 115(1) of the Code of Civil Procedure before this Court and obtained the Rule.

Mr. Abdul Wadud Bhuiyan, the learned Senior Advocate for the plaintiff-respondent-petitioner, submits that the Appellate Court below without applying judicial mind reversed the decree of

the Trial Court. The original owners of the suit land were Upendra Nath, Lalit Mohon and Jatish Son of Bhagaban Paul, were in equal 4 Annas share. Nimalendu and Bimal sons of Shatish Chandra Paul were in rest 4 annas equal share i.e. 2 annas each. Out of that 1.11 acres of land in S.A. survey Harsha Nath Paul became owner in possession in 55 decimals of land in khatian No. 723, Plot No. 797 as recorded and in the same manner, rest 56 decimals of land was recorded in the name of Akram Ali Mollah in the said S.A. Khatian No. 722, Plot No. 797. The plaintiff-petitioner is in 55 decimals of land of S.A. Khatian No. 723. The plaintiff-petitioner claimed the suit land. The plaintiff-petitioner took oral settlement of the said 55 decimals of land from Harsha Nath Pal in 1960 in whose name S.A. record was published. Later on Harsah Nath Paul as petitioner for recovery of arrear land revenue instituted in the Court of Chikandi Munshef Rent Suit No.137 of 1962 in which the opposite party compromised with Harshanath Paul by paying arrear rents to him. The plaintiff exhibited 1(ka) the certified copy of S.A. Khatian No. 723, Exhibit-2 rent payment decree in the Rent Suit No. 137 of 1962, Exhibit-3 is the certified copy solehnama of said Rent Suit and Exhibit-5 is the Certified copy of Suit Register from which plaintiff-petitioners case has been proved to be true. He further submits that the suit property was admitted by wrongly recorded in Kha schedule of the vested property list which was

automatically released from the said list by an order of the Government which was admitted by the defendant No. 4 and facts admitted need not be proved as per Section 58 of the Evidence Act and the defendant-opposite party government falsely claimed that Harsha Nath Pauls' suit land was taken away by the Government by an Order dated 21.03.1960 in 24 (12) 60 MLR 45 Case of Sadar Police Station of Jalakathi District. But no paper and documents were submitted regarding the matter. Moreover, it is beyond the territorial jurisdiction of the instant District. The Appellate Court below without applying judicial mind illegally mentioned that the suit land was vested in the Government which plea has no fact to stand but the defendant opposite party government filed an Exhibit Ka-1, certified copy of LA Case No. 5 of 1987-88 in which S.A. Khatian No. 722 and 723 S.A. Plot No. 797 area of land 1.11 acres and out of that .46 decimals was acquired for Public Works Department Office which is other land other than the land of the plaintiff-petitioner and the plaintiff-petitioners' suit land is 55 decimals which is complete separate land outside land of the Public Works Department. The Trial Court rightly decided the matter while the Appellate Court below found the land of the petitioner's land separate land beyond the land covered by PWD Office yet the Appellate Court below illegally and wrongly held that the plaintiff petitioner's land was acquired

and as such this type of abrupt remark is not sustainable in law and liable to be set aside and according to section 103 of Evidence Act the burden of proof lies upon the party that he who says something he will prove it and naturally in the instant case the defendant No.4 (opposite party No. 1) case is that in Palong Certificate Court the suit land was sold in Auction vide Certificate Case No. PPM 318 of 1962-63 and one Minhaz Uddin Bepari purchased it. But the opposite party No.1 did not submit any document regarding the matter. But from Minhaz Uddin one Akram Ali purchased the suit land in 1964. But the defendant No. 4 (opposite party No.1) even did not submit the purchase document and as such his plea of purchased is false and fraudulent which does not require to be aid eloquently and further he claimed that he is the owner of 81 decimals of land including some other non-suit land. But out of that in his (opposite party No. 1) 64 decimals of land was recorded in BRS record. But in the submitted khatian record it is not clear that these properties are the property of suit land and also the opposite party No. 1 mentioned about some other land was contracted for purchase from one Shahabuddin and A. Rahman Radi but whether the suit land was included there it is not proved and further he challenged the validity of the documents of the petitioner. But he could not prove the documents of the plaintiff false and created by calling original of those documents or by

submitting original or other certified copy of those documents and as such the case those the opposite party No. 1 and other opposite parties are false and not correct. The vivid findings of the Trial Court was not specifically reversed by the Appellate Court below by elaborately discussing and giving reasons thereof and as such reversal of the decision of the Trial Court without discussing on this vital findings of the Trial Court, is bad in law resulting an error in the decision occasioning failure of justice as per decision of 50 DLR (AD) 52, 48 DLR (AD) 154, 14 BLD (AD) 229 and 8 BLC (AD) 77 and that plaintiff-petitioner is to prove his case as per 18 DLR old decision also. In this regard the plaintiff-petitioner by filing above mentioned documentary evidence of title documents and other ancillary documents beyond reasonably proved his case. It is sufficiently proved that the plaintiff-petitioner is the owner and in possession of .55 decimals of land out of 1.11 acres of land and rest property was taken away by the government-opposite parties which is not the suit land and as such, the suit land is specific and clear and no vagueness is existing thereon. The Public Works Department Office is situated thereon in 46 decimals and it itself is demarcated and separated and as such the suit is very much maintainable which was rightly decided by the Trial Court. But the learned Appellate Courts below circuted remark about the matter is not tenable in law and fact. He further submits that in a suit for

declaration of title where main defendant-opposite parties and the Government agencies were impleaded as necessary parties who have been contesting in the suit as necessary and proper parties. But some other non-contesting and non-contentious parties who will not actually contest in the suit having no subsisting interest in the suit land are not necessarily to be impleaded as party and for not adding them as party the suit shall not be dismissed because the defendants also did not agitate the matter seriously in such a position where otherwise the plaintiff-petitioner proved his suit and also for proper adjudication of the suit their presence is not necessary or they will not be prejudiced and as such the Appellate Court below committed error in the decision where failure of justice will not occur for not impleading them as party and as such in an well proved case of the petitioner for this type of trifling matter the Appellate Court below should not have taken such harsh decision. The operative portion of the judgment of the Trial Court it is crystal clear that the suit was decreed for 55 decimals of land since rest 46 decimals is covered by PWD office. The learned Appellate Court below intentionally made is vague and unclear and as such the impugned judgment of the Appellate Court below is liable to be set aside and that the Appellate Courts' decision about not mutating the suit land is wrong that the suit land was on different time follow into crisis at the instance of the defendant-

opposite party for which the petitioner could not mutate the land. Some times the opposite party said that suit land is auction sold, some times said it is vested property and sometimes said it is fallen due land revenue and as such the petitioner could not mutate in proper times. Moreover, for not mutation title would not be defective as mutation does not confer title. But it only facilities for payment of rent by separating jama and as such if mutation is not done it does not harm title and that Trial Court elaborately and vividly discussed the evidence of 3 PWs and the evidences of only D.W. Government and also another private D.W. Trial Court found that the suit land was earlier nal land and now became tank and bank of the tank. The plaintiff-petitioner has ownership and possession in 55 decimals of land and in rest of the land Government PWD Office is situated. The suit land is thus, well demarcated and identified and as such rightly decreed by the Trial Court. But the Appellate Court below wrongly discussing the evidences upon perverse finding and not considering the material evidences of the petitioner illegally reversed the finding of the Trial Court thereby came to wrong decision and impugned decree is liable to be set aside and that even if it is found there the oral settlement has not been proved but in view of the long standing possession of this plaintiff, the plaintiff acquired indefeasible title to the suit land. He lastly in support of his contention has referred

the Case of Ramjan Khan Vs. Obaidul Huq reported in 28 DLR (AD) 61, Superintendent, PDB Vs. Madhumati Cinema 54 DLR (AD) 173 and Bangladesh Vs. Mrs. Shirely Anny Ansari 5 MLR (AD) 2000 329.

Mr. Md. Mostofa, the learned Senior Advocate for the opposite party No.1, submits that the suit land has been recorded in the name of the Government of Khas khatian but the plaintiff did not implead the Government of Bangladesh represented by the Deputy Commissioner, Shariatpur as party as such the suit is bad for defect of parties and that Harshanath Nath Pal obtained the suit land from his father Upendra Nath Pal and 55 decimals of land was recorded in the name of Harshanath Pal. In S.A. Khatian No. 723 bearing plot No. 793 claimed that Harshanath settled 55 decimals of land of S.A. Khatian No. 723 but did not mention the date of Pattan and rate of rent. He further submits that P.W.1 admitted in cross examination that B.R.S recorded has been published long ago. The land of plot No. 797 has been recorded in B.R.S plot No. 1071. In B.R.S settlement the name of defendant No. 4 (opposite party No. 1) has been recorded in B.R.S khatian No.518 in B.R.S plot No.1071. After final publication of B.R.S record suit in respect wrong record would be filed in Land Survey Tribunal under Section 145A of the State Acquisition and Tenancy Act. The learned Appellate Court below being the final Court of fact

discussed the evidence on record both oral and documentary evidence as per provision of Order 41 rule 31 of the Code of Civil Procedure and reversed the material findings of the Trial Court giving cogent ground and committed no error of law. The learned Appellate Court below found that the plaintiff document exhibits-2 and 3 that are Rent Suit No. 137 of 1962 and solehnama are suspicious documents and has given reasons in finding.

Heard the learned Advocates for both the parties and perused the record.

On perusal of the record it appears that the suit land is unspecified and the plaintiff's claim is in the suit land on the basis of Pattan in the year 1960 after S.A. record which is not believable.

Considering the facts and circumstances of the case I find no substance in the Rule rather I find substance in the submissions of the learned Advocate for the opposite party No. 1.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 07.06.2018 passed by the learned Additional District Judge, Shariatpur in Civil Appeal No. 78 of 2017 allowing the appeal and thereby reversing the Judgment and Decree dated 29.08.2017 passed by the learned Joint District Judge, 1st Court, Shariatpur in Title Suit No. 24 of 2013 is hereby upheld and confirmed.

The ad-interim order of status-quo passed at the time of issuance of the Rule is hereby vacated.

Send down the lower Court's records along with a copy of this Judgment to the concerned Courts below at once.