

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 9386 of 1991

Nurul Islam and others

...Petitioners

-Versus-

Arif Ullah and others

...Opposite Parties

No one appears for either of the parties

Judgment on 5.3.2012

This Rule at the instance of the plaintiff-respondents was issued on an application under section 115 of the Code of Civil Procedure calling in question the legality of judgment and order dated 29.9.1983 passed by the Subordinate Judge, Habiganj in Miscellaneous Appeal No.60 of 1980 allowing the same on setting aside order dated 26.2.1980 passed by the Munsif-in-charge, Fourth Court, Habiganj in Title Suit No.23 of 1979. By the said order the Munsif-in-charge granted temporary injunction in favour of the plaintiffs.

It appears from the order book that the Rule was issued on 26.2.1984 and initially it was numbered as Civil Revision No.24 of 1984. Subsequently it was renumbered with its present number possibly on transfer from Sylhet Bench, though the reason of such renumbering is not recorded. Today it is posted in the cause list and called for hearing, but no one appears for either of the parties. In view of its long pendency for more than twenty-eight years, it is taken up for disposal.

Facts relevant for disposal of the Rule, as it appears from the record, are that the petitioners instituted a suit for perpetual injunction for restraining the opposite parties from dispossessing them from the suit land and disturbing their peaceful possession over the same in any manner. Their case, in brief, is that they are the owners-in-possession of the suit land measuring 1.49 acres which consist of a tank and its bank. They possess the suit land by rearing fishes in the tank and growing paddy on its bank. Out of the said 1.49 acres of land, they purchased 1.22 acres from Bibekananda Kar and his co-sharers by a *kabala* dated 14.1.1971 and inherited .27 acres of land from their father Ayatullah, who had jote right in the suit land. The defendants, under false claim of title, threatened to dispossess them from the suit land, thus the cause of action for filing the suit for perpetual injunction arose. On the same averments, the plaintiffs filed an application for temporary injunction under Order XXXIX rule 1 of the Code.

Defendant Nos.1-6 (herein opposite party Nos.1-6) entered appearance and contested the application by filing a joint written objection denying the materials allegations made therein. They claimed title and possession in suit plot Nos. 262 and 263 by way of purchase from Dhirendra Chandra Kar and six others. The defendants also pointed out that the plaintiffsqalleged purchase of 1.22 acres of land was not concluded by any registered sale deed. Earlier they (plaintiffs) had instituted Title Suit No.108 of 1979 in the Fourth Court of Munsif, Habiganj for specific performance of contract, which was dismissed.

The Munsif-in-charge heard both the parties and allowed the application for temporary injunction by his order dated 26.2.1980. Against the said order, defendant Nos.1-6 filed Miscellaneous Appeal No.60 of 1980 before the District Judge, Sylhet on the grounds inter alia, that the plaintiffs have no right, title and possession in the suit land.

The Subordinate Judge, Habiganj ultimately heard the appeal and allowed the same on setting aside the order of temporary injunction by his judgment and order dated 29.9.1983. Challenging the said judgment and order, the plaintiff-respondents moved in this Court with the instant civil revision and obtained the present Rule with an order of statusquo.

I have gone through the revisional application, judgment and orders of the Courts below. It appears that the Munsif-in-charge referred to a *khatian* in respect of a portion of the suit land recorded in the name of the plaintiffs' father and an old *patta* of 1360 B. S., and thus found prima facie case and balance of convenience and inconvenience in favour of the plaintiffs. The Munsif-in-charge, however, observed that without local investigation it cannot be ascertained whether the said *patta* attracts the suit land.

On the other hand, the Subordinate Judge observed that the plaintiffs claimed their title and possession over the suit land by way of an unregistered *kabala*. The said *kabala* was not even produced before the Court. Admittedly the plaintiffs had filed Title Suit No.108 of 1979 for specific performance of contract in respect of 1.22 acres of the suit land, which was dismissed. The Subordinate Judge thus found that the

plaintiffs have not acquired any right and interest as yet in the suit land to the extent of 1.22 acres. Learned Judge also observed that there is nothing on record to show the plaintiffs' possession in the suit land and that the *patta* and *dakhilas* filed by the plaintiffs are spurious documents and further observed that the said *patta* does not relate to the suit land.

The alleged *patta* was of 1360 B.S which corresponds to 1954 A.C, when the C.S operation was completed everywhere in the country. It is not acceptable that the *patta* given at that time would be so indefinite that a local investigation would be necessary to ascertain the land described therein. No certified copy of the *khatian* has been annexed with the revisional application to assail the observation of the appellate Court.

The appellate Court on discussion of all the material points observed that there is nothing on record to show the plaintiffs' possession in the suit land and found no prima facie case in their favour. I do not find any illegality in the impugned judgment and order passed by the appellate Court and as such the Rule merits no consideration.

Accordingly the Rule is discharged. The order of status quo granted earlier at the time of issuance of Rule is vacated.

Communicate a copy of the judgment.