

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.210 OF 2016

(Arising out of Civil Petition No.2265 of 2012)

(From the judgment and order dated the 12th January, 2012 passed by a Division Bench of the High Court Division in Civil Revision No.3177 of 2005)

Ashkar and others : . . . Appellants

-Versus-

Abul Khayer and others : . . . Respondents

For the Appellants : Mr. Qumrul Haque Siddique, Advocate
instructed by Ms. Hasina Akhter,
Advocate-on-Record

For the Respondents : Mr. Farroque Ahmed, Advocate
instructed by Mr. Nurul Islam Bhuiyan,
Advocate-on-Record

Date of Hearing : **The 30th day of August, 2022**

Date of Judgment : **The 31st day of August, 2022**

J U D G M E N T

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 12.01.2012 passed by a Division Bench of the High Court Division in Civil Revision No.3177 of 2005 discharging the Rule.

The relevant facts for disposal of the appeal are that, the present respondents and their predecessor as plaintiff instituted Title Suit No.8 of 2003 in the Court of Senior Assistant Judge, Narayangonj for correction of the deed, permanent injunction and also for a declaration that S.A. Record is wrong.

The case of the plaintiff, in short, is as follows:

- a) Joad Ali Saud and Nowab Ali Saud, Sons of Dengri Saud alias Degu Saud were the owner of .12 acre of land of C.S. Khatian No.91 of Plot No.925 and .20 acre of land of C.S. Khatian No.106 of Plot No.926 and thereby they were owner of .32 acres of land and same was correctly recorded in the C.S. Record;
- b) Joad Ali sold .12 acre of land from Plot No.925 and Nowab Ali sold .20 acre from C.S. Plot No.926 by a un-registered deed of sale in the year 1920 to Ari Charan Das and delivered possession to him;
- c) the said Joad Ali Saud and Kashem Ali Saud, Son of Nawab Ali sold of .24 acres of land from the said plot by a registered deed of sale dated 17.12.1939 in favour of three sons of Arai Charan namely, Fanindra Chandra Das, Dhiren, Horendra Chandra Das and Baluram Das handed over the possession of the same and their names were duly recorded in C.S. and R.S. Khatians; Ari Charan Das alias Avoy Charan Das died leaving behind above three sons and they were in possessing the same for more than 12 years without any disturbance from any quarter;
- d) Kashem Ali Saud and Joad Ali Saud duly registered the sale deed but the name of Kashem Ali was not written in the sale deed;

- e) the said sale deeds were destroyed by the fair of Hindu Muslim riot in the house of Ari Charan Das;
- f) Balaram Das got 12 acres and 20 acres of land of plot Nos.925 and 926 by way of amicable settlement among the three sons of Ari Charan;
- g) Balaram Das died leaving behind two Sons Provat Ranjan Das and Pria Charan Das and they were amicable settled the .32 acre of land in the name of Provat Ranjan Das and he was in possessing the same and the Provat Ranjan Das sold .12 acres of land from Plot No.925 of C.S. Khatian No.91, S.A. Khatian No.140 and .20 acres of land from Plot No.926 of C.S. Khatian No.106 vide registered deed No.5567 dated 24.06.1970 and handed over the possession to the plaintiff;
- h) Provat Ranjan was a witness to the deed of Monindra and Shofia Khaton and his name was also listed in the Voter List prepared on 07.12.1973 which proof that he was in Bangladesh after execution of the deed;
- i) the plaintiff is in possession of the suit land and defendants and their predecessor were not in possession and as such their names were not recorded in the S.A. and R.S. Khatian. The R.S. Khatian was recorded in the name of Provat Rajan;

- j) the plaintiff purchase .30 acres of land from defendant No.1 but the land possessed by the plaintiff does not correspond with the description of the deed and same was happened due to mistake of the vendor;
- k) the plaintiff on 14.04.1996 could know about the mistake and since the name of the grandfather of the defendant NO.2-7 has been recorded in the column showing possession and as the defendants are threatening the plaintiff to dispose, he was compelled to file the present suit.

The present appellants as defendants contested the suit by filing a written statement. In their written statement they denied the materials statements and averment made in the plaint. The case of the defendants, in short, is as follows:-

- a) Pagolia Mondal never owned and possessed 2.42 acre of land of C.S. Khatian No.106;
- b) Denguri Saud and Pagolia Mondal never sold .12 acres of land of plot No.925 under S.A. Khatian No.91 and .20 acres of land of plot No.926 of C.S. Khatian No.106 to Arai Charan Das;
- c) Monindra, Dherandra and Baluram never possessed the suit land as heirs of Arai Charan Das and their names have wrongly been recorded in the S.A. Khatian 14 and 162 along with the names of the real owner;

- d) Ari Charan Das had no right or title in the suit land so the question of getting the suit land by Baloram Das on amicable family partition does not arise;
- e) since Balorum had not title over the suit land the question of amicable settlement among his heirs does not arises and getting the suit land by Pravat Ranjan Das on amicable partition also does not arises;
- f) Provat Ranjan Das left Pakistan for India in 1964 during the time of Communal Riot and resides therein permanently. So the question of selling suit property by him to the plaintiff does not arises;
- g) the plaintiff in order to grave the suit property has created a false deed in the name of Provat Ranjan by forging signature and thumb impression inclusion with the deed writer and witnesses;
- h) the deed in question has been created by false personation and the plaintiff never got possession over the land plot No.925 and 926 and the boundary of the deed does not attract the land of plot No.925 and 926;
- i) Denguri saud was the owner of .12 acres of land of plot No.925 of Khatian No.91 and in the C.S. Khatian and his name was recorded in the Jote Column and name of Nabab Ali recorded in the column of possession;

- j) Deguri Saud died leaving behind three sons namely Joad Ali, Nawab Ali and Kashem Ali Saud; in the family amicable Settlement Joad Ali Saud got .12 acres of land of Plot No.925 in his saham along with the other land and in the S.A. Khatian it was recorded in his name along with his others co-sharer;
- k) after the death of Joad Ali defendant No.1-6 are in possession in the land by growing food grains;
- l) Nowab Ali was the under tenant of Pagulia Mandal in respect of .20 acres of land of Khatian No.106 and in the C.S. record the name of Pagulia Mandal was recorded in jote Column and Nawab Ali name was recorded as possessor;
- m) Nowab Ali died leaving behind one son Kashem Ali and two daughters, Fhalani and Maherjan and the land was converted into S.A. Khatian No.232 and as per the State Acquisition Tenancy Act, 1950 they became the tenant of the government;
- n) Phalani Bibi and Maherjan, daughter of Nowab Ali gift .10 acres of land to Chand Miah by a registered deed dated 01.07.1954 and the said Chand Mia mutated his name; after the death of Khashem Ali the defendants became owner of .10 acres of land of Plot No.926 and they are in possession the same by mutating their names;
- o) Chand Miah also gifted .10 acres of land in Plot No.926 to the defendant No.2,3 and 6 by a deed of

Heba-Bil-Awaj dated 20.05.1996 and they have possessing the same growing food grace.

The defendants have also filed an additional statement denying the statement made in the amended plaint and have stated that Baluram, Provat Ranjan, Prio Ranjan, Ajoy Chandra and Bidesh Chandra left the country for India after the communal riot in the year 1964 and recording the name of the Provat Ranjan in the R.S. Parcha incorrect and the statement of destroying the deed of 1939 during the time of communal riot also denied by the defendant and the denied the execution of the sale deed by Nowab Ali.

Before the trial Court, both parties adduced oral and documentary evidence and the learned Senior Assistant Judge, Narayangonj by its judgment and decree dated 28.09.2003 decreed the suit-in-part holding that plaintiff is the owner and possessor of .12 acres of land of C.S. Khatian No.91, S.A. Khatian No.150 of plot No.925 and passed an order of permanent injunction and also directed to correct the deed dated 24.06.1970.

Being aggrieved by the said judgment and decree the plaintiff preferred Title Appeal No.213 of 2003 in the Court of District Judge, Narayangonj.

Eventually, the appeal was heard by the learned Additional Sessions Judge, Narayangonj who by its judgment and decree dated 10.05.2005 allowed the appeal and decreed the suit in favour of the plaintiff.

It is pertinent to mention here that the defendants filed cross objection under order 41 rule 22 of the Code of Civil Procedure against the partial decree.

Feeling aggrieved by the judgment of the court of appeal below the defendants preferred Civil Revision No.3177 of 2005 before the High Court Division and the High Court Division by the impugned judgment and order dated 20.01.2012 discharged the Rule.

Thereafter, the defendant preferred civil petition for leave to appeal No.2265 of 2012 which gave rise this appeal.

Mr. Kamrul Haque Siddique, learned Advocate appearing for the appellants submits that the alleged sale deed, exhibit-10 contains the statements of the seller named in the deed, but the Court of Appeal as well as the High Court Division erred in law in contrary the alleged thumb impression of Kashem Ali Soud as statements of sale.

He further submits that the predecessor of the defendant namely Kashem Ali was not executant in the deed in question of the plaintiff namely Exhibit-10 and the trial Court upon proper consideration of the said Exhibit arrived at a finding that “ইং ১৭/০৩/৩৯ তারিখের সই মছুরী নকল দলিলে সম্পাদনকারী হিসেবে জওয়াদ আলীর নাম আছে এবং দলিলে কাশেম আলীর স্বাক্ষর আছে কিন্তু সম্পাদনকারী হিসেবে তাহার নাম নাই।” and the plaintiff neither in the appellate stage nor in the revisional stage has ever claimed that in the original deed the name of Kashem Ali was there as executant and certified copy is wrong, the

High Court Division erred in law by making out of third case by observing that “প্রকৃতপক্ষে উক্ত দলিলটি জোয়াদ আলী সাউদ ও কাশেম আলী সাউদ সম্পাদন করিয়াছেন, কিন্তু যে কোন কারণেই কউক উক্ত প্রদর্শনকৃত সেই মছুরী নকলটিতে, যাহা বাদী পক্ষে প্রদর্শনী-১০ রূপে চিহ্নিত করা হইয়াছে। তাহাতে কাশেম আলীর নামটি অন্তর্ভুক্ত হয় নাই।”

Mr. Faruq Ahmed, learned Advocate appearing for the plaintiff respondent submits that the appellate court and as well as the High Court Division on consideration of the materials on record construed exhibit-10 in its correct prospective on application of the principle of construction of statutes and documents and did not make out a 3rd case as advanced by the appellants and within the parameter of the rule of construction both the appellate court and the High Court Division found the deed to have been executed Joad Ali Soud and Kashem Ali Soud and thereby all right, title and interest in the land in suit passed on to Baluram Das and his 2 brothers and thus, the appeal is liable to be dismissed.

We have heard the learned Advocates for the respective parties, perused the judgment of the High Court Division as well as the courts below and other materials in particular the plaint, written statement and evidence adduced by the respective parties.

In the instant case the whole crux is whether the plaintiff's predecessors had acquired any right, title, interest and possession in the suit property by virtue of exhibit-10 the alleged deed dated 17.12.39, in other words whether Kashem Ali was the one of the executants of the said deed.

It is undeniable fact that in the above certified copy of the deed, in the column of executants' name of Kashem Ali has not been mentioned though his signature has been appeared. Exhibit No.10 is a certified copy of the alleged deed, which is secondary evidence. The defendants have claimed that said deed was forged one as Kashem Ali never executed the said deed. The plaintiff did not take any steps to prove the said secondary evidence by recalling the original 'balam book' (volume) from the concerned Registrar's Office in order to prove the execution of the deed by Kashem Ali and thus, the High Court Division as well as the court of appeal below committed error of law holding that by virtue of said deed the plaintiff's predecessor had acquired right, title and interest in the suit property, and that in the deed being No.5567 dated 24.06.1970, exhibit-5 executed by Provat Ranjan in favour of the plaintiff the plot Nos. have wrongly been written as 25 and 26 instead of 925 and 926.

In the case of Abdul Quddus Matabbar vs. Yousuf Ali Bayati and others, reported in 14 BLC(AD) Page-132 this Division has held that:

"The High Court Division it appears reversed the findings of the appellate Court and the trial court without adverting to the reasonings given by the court of Appeal which is final court of fact. The High Court Division also found fault with the courts below for not taking into evidence the certified copies of the kabuliyats alleged to have been executed by the predecessors of the plaintiffs, although the originals were neither produced nor called for nor the volume from the Registrar's Office was called for. The High Court Division further held that certified copies of the kabuliyats, the originals of which were not called or nor

produced were admissible in evidence as public documents. We are constrained to observe that the findings of the High Court Division are not at all based on the materials on record regarding title and possession of the plaintiffs in the suit land and the findings of the High Court Division that the certified copies of the kabuliyats without calling for, the originals or the volume from the office of the Registrar is admissible in evidence, is not the correct proposition of law.” (Underlines supplied)

In view of the above proposition, we are of the view that exhibit-10, is not admissible in evidence and that cannot be said to be a valid and legal document.

Further, it transpires from the evidence that the plaintiff failed to prove his exclusive possession in the suit property. The suit land is not properly specified. The suit was filed for permanent injunction also besides correction of deed, declaration of title. A decree of permanent injunction cannot be passed on a vague and unspecified land.

In view of the above, we find merit in the appeal.

Accordingly, the appeal is allowed.

The judgment and order dated 12.01.2012 passed by the High Court Division is hereby set aside and the suit is dismissed.

C.J.

J.

J.