

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)
CIVIL REVISION No. 1476 OF 2018.

Md. Nazrul Islam and others.

...Petitioners.

-Versus-

Amorendra Narayan and others.

....Opposite parties.

Mr. Saidul Alam Khan, Advocate

... For the petitioners

Mr. Surojit Bhattacharjee with

Mrs. Farhana Siraj Roonic with

Mr. Monishankar Sarkar, Advocates

... for the opposite party Nos. 1(a)-1(c)

Heard on: 23.11.2023,14.12.2023,19.02.2024.

Judgement on: 20.02.2024.

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon opposite party Nos. 1-4 to show cause as to why judgment and decree dated 29.03.2018 passed by learned Assistant Judge, Babugonj, Barishal in Title Suit No. 40 of 2008 decreeing the suit should not be set aside.

At the time of issuance of Rule the operation of the impugned judgment and decree was stayed for a period of 6 (six) months which was, subsequently, extended till disposal of the Rule.

Facts relevant, for the purpose of disposal of this Rule, are that opposite party Nos. 1-4 as plaintiffs instituted Title Suit No. 40 of 2008 under section 9 of the Specific Relief Act in the Court of Assistant Judge, Babugonj, Barishal against Hasan Ali Hawlader, the predecessor of the opposite parties, praying for a decree of recovery of khas possession in

respect of .03 acre land as described in schedule Kha of the plaint contending, *inter alia*, that .99 acre land of S.A Khatian No. 1200 was originally belonged to Bir Singh Narayan and others and S.A Khatian No. 1200 was prepared and finally published in their names. While they were owning and possessing the said land Kosim Uddin Mollah and others obtained a collusive compromise decree from 1st Court of Subordinate Judge, Barishal on 28.09.1974 in Title Suit No. 227 of 1974. The plaintiffs, thereafter, filed Title Suit No. 341 of 1974 praying for a decree of declaration of title to the suit land and another declaration that the compromise decree passed in Title Suit No. 227 of 1974 was collusive, inoperative and not binding upon them and in that suit they won up to the High Court Division. One Abdul Jabbar Howlader filed Title Suit No. 82 of 1994 through his wife Most. Halima Begum in which the plaintiffs filed written statement and said suit was dismissed on 13.07.2006. The defendant was possessing in an old building situated in the land of S.A Khatian No. 1102 as permissive possessor. Thereafter, the landlord of the land of S.A Khatian No. 1102 filed Title Suit No. 87 of 2000 in same Court for eviction of the defendant. Assuming that he would be defeated in Title Suit No. 87 of 2000 he left that premises situated in the land of S.A Khatian No. 1102 and forcibly entered into .03 acre suit land of plot Nos. 3337 and 3331 on 27.11.2007 and started to construct wall therein. Being learnt about the fact, the plaintiffs on 24.12.2007 went to the suit land and requested the defendant to vacate the land when he assured that he would vacate the land within two/three months but thereafter, he constructed a tin shed house therein. The plaintiffs on 24.05.2008, requested the defendant to

handover possession of the suit land to them but he refused and also threatened the lives of the plaintiffs.

One Bhudha Narayan purchased the suit land in auction from 2nd Munsif Court which was confirmed on 10.07.1960. Bhudha Narayan got possession through Court on 03.04.1962 and mutated his name in respect of the suit land on 26.12.1962 vide Mutation Case No. 3151 of 1962. So there was no reason to hold another auction and there was no reason to file Certificate Case No. 865/1969-1970 and in the said auction proceeding Bhudha Narayan had not been made as parties and no notice was served upon him. No auction was held on 03.12.1969 in the benami of Sunam Uddin nor said Sunam Uddin got possession on 25.12.1970. Since the defendant is illegal possessor, he is liable to be evicted from the suit land and as such, the suit.

The defendant contested the suit by filing written statement contending, *inter alia*, that for default in payment of rent, Certificate Case No. 865/1969-70 was initiated by the Government in respect of the land of S.A Khatian No. 1200 and after serving notice under section 7 and .99 acre land including suit property was put to auction and the defendant purchased the same in auction on 03.12.1969 in the benam of Suman Uddin which was confirmed on 03.02.1970 and the defendant got possession of said land through Court on 26.12.1970 and vide Mutation Case No. 116 of 1971-72 the suit land was mutated in the name of Sunam Uddin and the defendant paid rents in the name of Sunam uddin and thereafter, constructed sami pacca building and tin shed building thereon and since then he is owning and possessing the suit land including other land. Said benamdar Sunam Uddin vide

registered *nadabi* deed No. 1125 dated 19.05.1991 relinquished his claim from the suit land.

Challenging the auction process and declaration of title to said land one Mozaffor Ali Miah filed Title Suit No. 28 of 1987 in which said Sunam Uddin (the benamder of the defendant) was impleaded as defendant No. 9 who filed written statement to contest the suit and after hearing both parties the trial Court dismissed the suit vide judgment and decree dated 28.05.1988 against which Mozaffor Ali Miah and others filed Title Appeal No. 112 of 1988 before the learned District Judge, Barishal which, on transfer, was heard by learned Additional District Judge, 1st Court, Barishal who, after hearing the parties, disallowed the appeal vide judgment and decree dated 24.10.1991. In said appeal the title and possession of the defendant has been established. Since the plaintiffs have or had no title to or possession in the suit property, question of dispossession by the defendant did not arise at all and as such, the suit is liable to be dismissed.

Both parties adduced evidence, oral and documentary, and the trial Court after considering the evidence and materials on record decreed the suit vide judgment and decree dated 29.03.2018 against which this revisional application has been filed by the heirs of the defendant and obtained the instant Rule and order of stay, as stated above.

The plaintiff-opposite parties have entered appearance by filing Voklatnama and also filed counter-affidavit.

Mr. Saidul Alam Khan, learned Advocate appearing for the petitioners submits that in a suit for possession under section 9 of the

Specific Relief Act the prime issues are to be decided whether the plaintiff before dispossession had any possession, whether he was dispossessed forcibly and whether the suit was filed within a period of 6 (six) months from the date of dispossession. Learned Advocate further submits that the plaintiffs could not prove possession before alleged dispossession and as such they are not entitled to any decree under section 9 of the Specific Relief Act. Learned Advocate further submits that the trial Court without deciding the issue of possession of the plaintiffs before dispossession only emphasized upon the issue of dispossession and illegally held that the plaintiffs were dispossessed by the defendant on 27.11.2007. Learned Advocate further submits that the suit was barred by limitation because of the fact that after alleged dispossession on 27.11.2007 the suit was filed on 06.08.2008 which is beyond six months from the date of dispossession. Learned Advocate further submits that though the plaintiffs claimed that after dispossession the defendant was permitted to stay in the suit premises but the plaintiffs could not prove by evidence the fact of permissive possession because the defendant was not a tenant under the plaintiffs and he was not holding over the property after expiry of tenancy period and as such, there was no question of juridical possession but the trial Court upon misconception of law and to save the limitation came to erroneous finding that the defendant was in juridical possession under the plaintiffs. Learned Advocate further submits that on the face of it the suit land is unspecified and undemarcated and as such, the plaintiffs are not entitled to any decree of recovery of khas possession in respect of an unspecified land in view of the provision under Order VII rule 3 of the Code of Civil Procedure. Learned Advocate finally submits that the

trial Court, upon misreading of evidence and misconception of law, illegally decreed the suit and as such, interference is called for by this Court. In support of his contention learned Advocate has referred to the case of Nazrul Islam (Bulbul) and others vs. Santi Rani Dupi and others 12 MLR (AD) 105.

As against the above contention, Mr. Surojit Bhattacharjee, learned Advocate appearing for the opposite party Nos. 1(a)-1(c) in support of the impugned judgment and decree submits that upon proper assessment of the evidence and materials on record the trial Court came to the right finding that the plaintiffs were forcibly dispossessed by the defendant on 27.11.2007 and after dispossession he was permissive possessor for some times and the suit was filed within six months from the date of refusal to vacate the suit premises and as such, the suit is not barred by limitation. Learned Advocate further submits that in earlier suit filed by the plaintiffs being Title Suit No. 341 of 1974 their right, title, interest and possession has been established up to the High Court Division in Civil Revision No. 77 of 1985 and the defendant could not prove legal possession in the suit property and as such, he is liable to be evicted. Learned Advocate finally submits that in a suit for recovery of possession under section 9 of the Specific Relief Act question of title is immaterial and that the plaintiffs could prove possession in the suit land before dispossession and as such, the trial Court committed no illegality in decreeing the suit and as such, interference is not called for by this Court.

I have heard the learned Advocates, perused the pleadings of the parties, the evidence adduced by them and other materials available on record. Though the learned Advocate for the petitioners raised a

question that the suit property is unspecified and undemarcated but the learned Advocate for the plaintiff opposite parties could not give any reply on this point. The plaintiffs claim that they are the owner of the suit land measuring .03 acre land along with other land by way of inheritance from Bir Singh and others. It has also claimed that on 27.11.2007 the defendant dispossessed the plaintiffs from the suit land for which they filed the suit on 06.08.2008 which is beyond six months from the date of dispossession and apparently barred by limitation. To save the limitation the plaintiffs claimed that after being dispossessed by the defendant on 27.11.2007, they allowed him to stay in the suit property as permissive possessor and thereafter, the defendant refused to hand over possession on 24.05.2008 and then filed the suit on 06.08.2008 and as such, the suit is not barred by limitation.

In a suit under section 9 of the Specific Relief Act three main issues are to be decided; whether before dispossession the plaintiff of the suit was in possession, whether the plaintiff was forcibly dispossessed by the defendant and whether the suit was filed within six months from the date of dispossession. This principle has been settled by our Apex Court in various cases.

Now I have to consider whether before dispossession the plaintiff was in possession of the suit land. On perusal of the impugned judgment it appears that the trial Court could not come to any specific finding that the plaintiffs were in possession before their dispossession but came to the conclusion that they were dispossessed by the defendant on 27.11.2007. From the materials on record it appears that the plaintiffs claimed title to and possession in the suit property through one Bir Singh and others and their names have been recorded

in S.A Khatian (Exhibit-5). The defendants also admitted the ownership and possession of Bir Singh and others and they also produced the S.A Khatian which was marked as Exhibit-Ga. It has been claimed in the plaint that one Koshim Uddin Mollah got a compromise decree against said Bir Singh and others in Title Suit No. 227 of 1974 vide judgment and decree dated 28.09.1974. Said judgment and decree were produced before the trial Court and were marked as Exhibits 1 and 1(Ka). On perusal of Exhibits 1 and 1(Ka), it appears that said title suit was initiated by Koshim Uddin Mollah against the predecessor of the present plaintiffs in respect of .99 acre land including the suit land of S.A Khatian No. 1200. Said compromise decree was challenged by the plaintiffs in Title Suit No. 341 of 1974 in 1st Court of Joint District Judge, Barishal and said suit was decreed vide judgment and decree dated 26.07.1994 (Exhibits 2 and 2ka). On perusal of the judgment passed in Civil Revision No. 77 of 1985 passed by the High Court Division it appears that the plaintiff No1 of this suit, Amarendara Narayan Basu, filed the said revisional application challenging judgment and decree dated 07.03.1985 passed in Title Appeal No. 25 of 1984 dismissing the appeal and affirming the judgment and decree passed by the learned Sub-ordinate Judge, Barishal dated 25.11.1983 in Title Suit No. 341 of 1974. The said judgment of the High Court Division passed in Civil Revision No. 77 of 1985 was produced by the plaintiffs and marked as Exhibit 3. On perusal of the judgment of the High Court Division dated 31.05.1989 it appears that the High Court Division did not decide title to and possession of the plaintiff of that suit in respect of the suit property. However, the High Court Division by said judgment set aside the judgment and decree of the appellate Court and trial Court and sent

the suit back on remand to the learned Sub-ordinate Judge for rehearing and for writing out a proper judgment. There is no material on record to show whether the plaintiffs of this suit have challenged the said judgment of the High Court Division before the Appellate Division or the Title Suit being No. 341 of 1974 has been disposed of in the meantime. The plaintiffs could not adduce any other document to show as to how they acquired title to the suit land or got possession therein. On the other hand, the defendants claimed title to .99 acre land including the suit land through a certificate proceeding being Certificate Case No. 865 of 1969-70 by which the suit property was sold in auction and was purchased by one Sunam Uddin on 03.12.1969 who also got delivery of possession of the entire land on 26.12.1970 and thereafter, he mutated his name vide Mutation Case No. 116/71-72 and paid rents to the Government. The warrant of delivery of possession has been produced before the trial Court and marked as Exhibit Ka. Moreover, on perusal of Exhibit 5 = Exhibit-Ga, it appears that this is an abstract of an S.A Khatian and it has been noted that earlier the name of one Baddhu Narayan was recorded in the S.A Khatian with reference to Case No. 3151/1962-63 dated 26.12.1962 and there is another note wherein it has mentioned that the name of Sunam Uddin Howlader was recorded in the S.A Khatian vide Mutation Case No. 116/71-72 dated 03.05.1972. On perusal of Exhibit Gha series and Uma, it appears that the defendants paid rent in respect of total .99 acre land of S.A Khatian No. 1200 from 1379 B.S to 1390 B.S. On perusal of judgment and decree dated 28.05.1988 and judgment and decree dated 24.10.1999 [Exhibits Cha, Cha(1), Chha (3)] it appears that one Mozaffor Ali challenged the auction of Sunam Uddin Bapari in Title Suit No. 28 of 1987 and the suit

was dismissed on contest with Sunam Uddin and in appeal being Title Appeal No. 112 of 1988 said Mozaffor lost. On perusal of the judgments and decrees passed in Title Suit No. 28 of 1987 and Title Appeal No. 112 of 1988 it appears that the trial Court while dismissing the suit gave specific finding that Sunam Uddin (defendant No. 9) got possession of .99 acre land on 03.02.1973 through Court and he paid rents to the Government after mutating his name in the concerned Revenue Office and the plaintiff of that suit (Mojaffor Ali) had no right, title or interest in the suit property. On perusal of Exhibit Chha(3), it appears that in Title Appeal No. 112 of 1988 the court of appeal affirmed the findings and decision of the trial Court and dismissed the appeal.

Against the said judgment and decree of the appellate Court passed in Title Appeal No. 112 of 1988 said Mojaffor Ali or the predecessor of the plaintiffs did not file any revision before any higher forum. Moreover, the plaintiffs of this suit after knowing the fact of said judgment and decree passed in Title Appeal no. 112 of 1988 from the assertion of the written statement of the suit did not challenge the said judgment and decree before any Court of law. So, from the materials on record it is clear that the defendant through his benamdar has been possessing the suit land since 26.12.1970, the date of delivery of possession given by the Court in the said certificate proceeding. The plaintiffs by way of any evidence or material could not prove that they got possession of the suit land before the alleged dispossession by the defendant on 27.11.2007. From the documents which have been produced by the plaintiffs, it appears that they have only produced the proceedings of the civil suits along with Civil Revision No. 77 of 1985 by which they could not get any fruit to establish their title or possession

in the suit property. Since the plaintiffs could not establish their possession before the alleged dispossession, the question of dispossession by the defendant from the suit land does not arise at all. By oral evidence, the plaintiffs tried to make out a case that they have been dispossessed on 27.11.2007.

Even for arguments sake it is considered that the defendant dispossessed the plaintiff's on 27.11.2007 in that case also the suit is barred by limitation because of the fact that the suit has been filed beyond the period of six months from the date of alleged dispossession. The plaintiffs have tried to save the period of limitation stating that after dispossession, they allowed the defendant to stay in the suit property. This is an absurd proposition. The trial Court, it appears that, believed the contention of the plaintiffs that they gave permission to the defendant to stay in the suit premises after they have been forcefully dispossessed by the defendant and the trial Court termed it as juridical possession.

Juridical possession means a *de-jure* possession which means that a person is legally entered into possession for a limited period but he is holding over in the possession by any reason whatsoever. For example, a tenant may be in possession through his landlord for a limited period as per tenancy agreement and if the tenancy agreement ends, he may be a defaulter in payment of rent but he may retains in the premises without paying rents. Such type of tenant can be considered as a possessor by holding over or a *de-jure* possessor or juridical possessor. The plaintiffs are not claiming that the defendant has legally entered into the suit premises for a limited period but thereafter, remained in the possession after the expiry of said period. Accordingly, it cannot be

considered that the defendant is in a position of juridical possessor. The plaintiffs clearly stated that the defendant forcibly dispossessed them on 27.11.2007. So, the plea of the plaintiffs that they allowed the defendant to stay in the suit property after the alleged dispossession cannot be considered as juridical possession and the period of such possession cannot save the limitation of filing the suit under section 9 of the Specific Relief Act. Accordingly, the suit is clearly barred by limitation. It appears that the trial Court, upon misconception of law, came to the wrong finding that the defendant's possession was juridical and illegally came to the conclusion that the suit is not barred by limitation.

The learned Advocate for the petitioners contended that the suit property is unspecified and undemarcated and as such, the plaintiffs are not entitled to any decree of recovery of khas possession. On perusal of the plaint, it appears that the plaintiffs sought for recovery of khas possession of .03 acre land of out of .10 acre land of S.A Khatian No. 1200. Admittedly, S.A Khatian No. 1200 contains .99 acre land and the plaintiffs stated that .10 acre land consists of Hal Plot Nos. 3331 and 3337 without mentioning any quantum of land against each plot. The plaintiff prayed for recovery of Khas possession in respect of .03 acre land without giving any boundary or sketch map to identify the suit land.

Under provision of Order VII rule 3 of the Code of Civil Procedure the plaintiff shall give clear description of the suit land in the plaint sufficient to identify the same. In the case of *Kanchon Mollik and others vs. Saleha Begum and others* 22 BLC (AD) 254 it is held that since the plaint does not properly identify the suit land and no boundaries are

mentioned in the schedule to the plaint nor any sketch map appended thereto which might assist in identifying the suit land there is no alternative but for the parties to establish their claim in a suit for partition. In 42 DLR 437, the High Court Division expressed the view that no Court can pass decree for unspecified land. Above view also finds support in the cases reported in 73 DLR (AD) 111, 18 BLC (AD) 139 and 27 BLD (AD) 8. Since on the face of it, the suit land is unspecified and unidentifiable, the plaintiffs are not entitled to get any decree of recovery of khas possession under section 9 of the Specific Relief Act.

Considering the facts and circumstances of the case and relevant provisions of law I am of the view that the trial Court, upon misreading and misconstruction of evidence as well as misconception of law decreed the suit which is liable to be set aside. In that view of the matter I find merit in this Rule.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned judgment and decree dated 29.03.2018 passed by the learned Assistant Judge, Babugonj, Barishal in Title Suit No. 40 of 2008 decreeing the suit is set aside. Consequently, Title Suit No. 40 of 2008 is dismissed.

The order of stay granted earlier by this Court is hereby vacated.

Send down the L.C.R along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)