

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 962 OF 2019

Md. Khalilur Rahman Baperi and others
Plaintiffs-Appellants-Petitioners
Versus

Ali Akbor @ Ali Akbor Bepari being dead his
heirs:

1(ka) Monir Hossain and others
Defendants-Respondents-Opposite Parties

No one appears
for the Plaintiffs-Appellants-Petitioners

Mr. Md. Iqbal Hossain, Advocate
for the Defendants-Respondents-Opposite
Parties.

Judgment on: 08.8.2023

This Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned judgment and decree dated 06.5.2018 passed by the learned Additional District Judge, 1st Court, Barishal in Title Appeal No. 135 of 2015 dismissing the appeal and thereby affirming judgment and decree dated 31.5.2015 passed by the learned Assistant Judge, Mehendigonj, Barishal in Title Suit No. 90 of 2000 dismissing the suit 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 petitioners as plaintiffs instituted title suit being Title Suit No. 90 of 2000 in the Court of learned Assistant Judge,

Mahendigonj, Barishal for declaration that the mutation order in favour of defendants opposite party Nos. 1-2 dated 20.12.1988 in Mutation Case No. 333(II) M 88/89 is illegal, collusive and not binding upon the plaintiffs-petitioners.

The case of the plaintiffs-petitioners, in short, is that the suit land described in the schedule (ka) of the plaint belongs to Abdul Khalek Matabbor who transferred the same in favour of the plaintiffs- petitioners through sub-kobla deed dated 29.6.1989 and handed over possession in their favour. The defendant Nos. 1-2 behind the knowledge of the plaintiffs-petitioners filed Mutation Case No. 333(II) M 88/89 and obtained impugned Kha schedule order illegally, therefore on the basis of their illegal Mutation, the defendants-respondent Nos. 1 and 2 claimed title to the suit land, hence, the suit.

The defendants opposite party Nos. 1-2 filed a joint written statement denying all material allegations made in the plaint and stating inter-alia that the suit land belonged to Maher Ali Bepery accordingly C. S. Khatian No. 135 was prepared in his name. At the time of R.S. and S.A. operation khatian Nos. 349 and 1123 respectively prepared in the name of Maher Ali, Dupai Bapery and Joinal Bapery through sub-kobla deed dated 14.7.1982. The heirs of recorded tenant Maher Ali transferred 8.50 decemals land through sub-kobla deed dated 04.6.1983 in favour of defendants

opposite party Nos. 1-2 Nur Begum and heirs of Maher Ali transferred 10 decimals land by way of Heba. Moreover, Muslim Uddin Kazi, Kashem Ali and Dhulay Bapery transferred the suit land in favour of the defendant. The defendants are owner and possession of the suit land measuring an area of 1.09 acres they mutated their names by the impugned mutation case is correct. It was further stated in their written statement that earlier the plaintiff filed title suit No. 73 of 1992 which was dismissed for default and for restoration of that suit Misc. Case No. 15 of 1995 has been filed and the same has also been rejected.

The learned Assistant Judge, Mehendigonj, Barisal dismissed the suit vide his judgment and decree dated 31.5.2015. Against the aforesaid judgment and decree the plaintiffs as appellants filed Title Appeal No. 135 of 2015 before the District Judge, Barishal which was transferred before the learned Additional District Judge, 1st Court, Barishal who dismissed the appeal on 06.5.2018 and thereby affirmed the judgment and decree dated 31.5.2015 passed by the learned Assistant Judge, Mehendigonj, Barisal in Title Suit No. 90 of 2000 and hence the plaintiffs-appellants as petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

No one appears on behalf of the petitioners to press the Rule.

Mr. Md. Iqbal Hossain, learned Advocate appearing for the defendants-opposite parties, submits that admittedly the plaintiffs-petitioners have purchased the suit land from one Abdul Khaled Matabbar by a deed dated 29.6.1989 and filed a title suit being Title Suit No. 73 of 1992 for declaration of title by impleading the said vendor as defendant and the said suit is dismissed for default and accordingly the plaintiffs-petitioners filed a Miscellaneous Case being No. 16 of 1995 for restoration of the said suit and the same was also dismissed by the learned Court and the said order is still enforceable. The learned Trial Court correctly found in his judgment that “বাদীপক্ষ দলিলমূলে বিরোধীয় জমির মালিক হলেও দলিল দাতার বিরুদ্ধে খরিদা স্বত্ব থাকা মর্মে ২৫/৮/১৯৯২ খ্রিষ্টাব্দ তারিখে ঘোষনামূলক ডিক্রির প্রতিকারে দেওয়ানী ৭৩/১৯৯২ নম্বর মামলা করেন, যে দীর্ঘদিন চলার পরে ১৯৯৮ সালে তদ্বীরের অভাবে খারিজ হয়, যাতে বাদীর স্বত্ব পুরোপুরিভাবে প্রতিষ্ঠিত হয়নি। বিবাদীপক্ষের ২০/১২/১৯৮৮ খ্রিষ্টাব্দ তারিখে মিউটেশন মোকদ্দমার আদেশ প্রদানকালে বাদীপক্ষ কোন আবশ্যকীয় পক্ষ ছিলেন না, যে কারণে তাদেরকে নোটিশ প্রদান করা হয়নি। যাতে বাদীপক্ষের ক্ষতিগ্রস্ত হওয়ার কোন কারন উদ্ভব হয়নি। এছাড়া বাদীপক্ষ যে আদেশকে চ্যালেঞ্জ করে দেওয়ানী আদালতে প্রতিকার প্রার্থী হয়েছে তার কোন জাবেদা নকল দখিল করেননি। আইনের বিধান হলো বাদী যে আদেশ বা ডিক্রী বা দলিলকে চ্যালেঞ্জ করবে অবশ্যই তা প্রদর্শনী হিসেবে চিহ্নিত হতে হবে। ” and dismissed the suit which is affirmed by the learned Appellate Court below and there is no

error of law nor miss-reading, non-reading and non-consideration of the evidences of record and hence the Rule is liable to be discharged. He further submits that it is admitted by the P.W. 1 that the contesting defendants-opposite parties are co-sharers in the suit land as well as they have some other portions of the suit land and erected dwelling house in the suit land and are enjoying and possessing the same peacefully by paying rents and by mutating their names and said P.W. 1 admits in his cross that “১ ও ২ নং বিবাদীর নালিশী জমায় ২টি ঘর আছে এবং বাগান পুকুর ও নাল জমি আছে। ঐ জমিতে তারা মিউটেশন করিয়াছে।” and the learned Court below concurrently observed in their judgment and decree that the plaintiffs-petitioners have no right, title, interest and possession in the suit land and accordingly dismissed the suit by the impugned judgment and decree. He lastly submits that the plaintiffs-petitioners are failed to produce or adduce any oral and documentary evidences before the learned Court below to substantiate their own case even if their so-called ownership along with the possession could not be proved anyway, on the other land the plaintiffs-petitioners themselves admitted and the defendants-opposite parties are the co-sharers as well as purchaser in the suit jote and enjoying and possessing the same since along by mutating their own names and as such the instant Rule liable to be discharged.

Heard the learned Advocate for the defendants-opposite parties and perused the record.

It appears from the record that the plaintiffs-petitioners failed to produce or adduce any oral or documentary evidences before the Courts below to substantiate their own case, even if their so-called ownership along with the possession could not be proved anyway. Both the Courts below upon perusing the material evidence on record came to concurrent finding of fact that the plaintiffs have not been able to prove their case by adducing evidences. There is no misreading or non-consideration of evidence by the Courts below and the plaintiffs-petitioners could not point out any misreading and non-consideration of evidence on record, and thus this Court cannot interfere with the concurrent findings of facts. I find no substance in the Rule, rather I find substance in the submissions of the learned Advocate for the plaintiffs-opposite parties.

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

The impugned judgment and decree dated 06.5.2018 passed by the learned Additional District Judge, 1st Court, Barishal in Title Appeal No. 135 of 2015 dismissing the appeal and thereby affirming judgment and decree dated 31.5.2015 passed by the

learned Assistant Judge, Mehendigonj, Barishal in Title Suit No. 90 of 2000 dismissing the suit is hereby upheld.

Send down the lower Courts record with a copy of the Judgment to the Courts below at once.