

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

Present:

Mr. Justice Muhammad Abdul Hafiz
Civil Revision No. 2051 of 2019

Md. Anwar Hossain
Plaintiff-Respondent- Petitioner

Versus

A. Quadir and others
Defendants-Appellants-Opposite Parties

Mr. Md. Akbor Hossain, Advocate
for the plaintiff-respondent- petitioner

Mr. Shahjahan Omar, Advocate with
Mr. Md. Asraful Islam, Advocate
for the defendants-appellants-opposite
parties

28.11.

Judgment on: 28.11.2023

This Rule was issued calling upon the opposite party Nos. 1-9 to show cause as to why the impugned Judgment and Decree dated 30.4.2019 passed by the learned Additional District Judge, Munshigonj in Title Appeal No. 53 of 2010 allowing the appeal and reversing the Judgment and Decree dated 15.2.2010 passed by the learned Assistant Judge, Sreenagar, Munshigonj in Title Suit No. 146 of 2004 decreeing 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 petitioner as plaintiff instituted Title Suit No. 146 of 2004 against the defendants-opposite parties before the Assistant Judge, Sreenagar Court, Munshigonj praying for declaration of title in the suit land and further declaration that the S.A. and R.S. Khatian in respect of the suit land is wrong.

The Case of the plaintiff, in short, is that Riazuddin Sheikh and Medani Sheikh were the original owners of 40 decimal of the suit land along with other land in total 1.53 acres of land in C.S Khatian No. 462. Their names were correctly recorded in C.S. Khatian No. 462. Riazuddin Sheikh possessed 20 decimal of land in C.S Plot No. 1363 and Medani Sheikh possessed 20 decimals of land in C.S. Plot No. 1363. Riazuddin Sheikh died leaving behind his two daughters namely (1) Tara Bhanu and (2) Jobeda Khatun as successors. They were peacefully possessing the said property. Thereafter Tara Bhanu died leaving behind her only one son Sirajuddin. On the other hand, Medani Sheikh died leaving behind his two daughters namely (1) Mirjan Nessa and (2) Solemon Nessa as successors. Both of them sold out 20 decimal of land to the plaintiff Anwar Hossain by way of sale deed No. 74 dated 05.1.2002 and handed over possession of the aforesaid land to the plaintiff Anwar Hossain. On 22.4.2004 Anwar Hossain went to the local Union Land Office for paying land development tax and

came to know the S.A. and R.S. Khatian of which wrongly recorded in the name of some unknown persons and hence the suit.

The defendant Nos. 18-23 and 29-31 contested the suit by filing a written statement denying all material allegations made in the plaint.

The Case of the defendant-opposite parties is that the suit having no cause of action, barred by limitation, bad for defect of parties and not maintainable in the present form. The defendants alleged on the other hand that the schedule property originally belonged to Rebot Nessa and Reshom Nessa Bibi, their names were correctly recorded in the S.A. Khatian. Rebot Nessa transferred her property to Hajera Khatun by way of Heba being deed No. 5178 dated 15.8.1962. Hajera Khatun became owner and had been possessing at that time. Thereafter she died leaving behind her four sons namely (1) Abdul Quadir (2) Abdul Majid (3) Abdur Rahim (4) Ruhul Amin and one daughter namely Fatema Khatun. Reshom Nessa transferred her property to Joynal Abedin by way of Heba deed being No. 3585 dated 20.7.1965. The defendants claimed that Abdul Gafur, Abdus Sattar and Abdul Zabbar were the owners of land of S.A. Khatian No. 441 but which is out of the schedule. Abdul Gafur sold out his property to Joynal Abedin by way of sale deed being No. 3592 dated 26.6.1974.

Abdus Sattar died leaving behind Aleya, Saleha, Safia and wife Rahima. The S.A. Khatian No. 441 has been converted into R.S. Khatian No. 142. Sheikh Emarat and Abdul Awal were the owners of 9 decimals land in the S.A. Khatian No. 440 and Plot No. 1363. S. A. Khatian No. 440 has been converted into R.S. Khatian No. 332. After death of Abdul Awal his successors defendant Nos. 18-22 became owners of his property. Abdul Zabbar and Abdur Rahim are peacefully possessing 53.50 decimals of land by way of amicable or oral partition. The plaintiff tried to dispossess the defendants from the said property.

The learned Assistant Judge, Sreenagar, Munshiganj after decreed the suit vide judgment and decree dated 15.2.2010. Against the aforesaid judgment and decree the defendants as appellants preferred Title Appeal No. 53 of 2010 before the learned District Judge, Munshigonj which was transferred before the learned Additional District Judge, Munshigong who allowed the appeal by his judgment and decree dated 30.4.2019 and thereby reversing the judgment and decree dated 15.2.2010 passed by the learned Assistant Judge, Sreenagar, Munshiganj in Title Suit No. 146 of 2004 and hence the plaintiff respondent as petitioner moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Md. Akbor Hossain, learned Advocate for the plaintiff-respondent- petitioner, submits that Riazuddin Sheikh and Medani Sheikh were the original owners of 40 decimals of land which was correctly recorded in the C.S. Khatian No. 462 and C.S. Plot No. 1363. They had been possessing the said 40 decimals of land in equal share, 20 decimals each. Medani Sheikh died leaving behind only 2 daughters namely 1. Mirjan Nessa and 2. Solemon Nessa as successors. While owning and possessing both of them sold out their entire 20 decimals of the suit land to the plaintiff Md. Anwar Hossain by way of registered sale deed being No. 74 on 05.01.2002 since then the plaintiff Md. Anwar Hossain has been owning and possessing the suit land peacefully till today. He further submits that Medani Sheikh father of Mirjan Nessa and Solemon Nessa was the C.S. recorded owner of the suit land. The C.S. record is the main and fundamental record of ownership from wherein the plaintiff has become owner of the suit land but the defendants could not prove their chain of title but failed to establish their connectivity of ownership and chain of title from C.S. record. He next submits that the plaintiff Md. Anwar Hossain as PW-1, clearly stated that “আমি মামলার বাদী । নালিশী সম্পত্তির মালিক ছিলেন মেদানী শেখ ও রেয়াজদ্দিন শেখ । তাদর নাম সি.এস ৪৬২ লিপি হয় । রিয়াজ উদ্দিন - শেখ ২ কন্যা তারা বানু এবং জাবেদা খাতুন কে রেখে মারা যায় । তারা বানু রিয়াজ উদ্দিন

শেখকে রেখে মারা যায়। আট আনা অংশের মালিক হয়। মেদানী শেখ ২ কন্যা মীরজান নেছা ও ছলমন নেছাকে রেখে মারা যায়। মেদানী শেখ আমার খালু। মেদানী শেখের পুত্র সন্তান ছিল না এবং তিনি আমাকে লালন পালন করেন। তিনি আমাকে তার সম্পত্তি দেয়ার অঙ্গীকার করেন। তারপর তিনি মারা যায়। মীরজান নেছা এবং ছলমন নেছা আমার বরাবর সাফ কবলা দলিল ২০ শতাংশ হস্তান্তর করে। আমি উক্ত সম্পত্তি খরিদ করে সীমানা চিহ্নিতভাবে দখল করছি।” In this respect the plaintiff clearly stated that he has been owning and possessing the suit land by way of registered purchased deed from the successors of the C.S. recorded owner Medani Sheikh. He next submits that P.W.2, Md. Emarot Sheikh, stated as witness that :- “আমি বাদী, বিবাদী, নালিশী ভূমি চিনি। ২০ শতাংশ সম্পত্তি নিয়ে মামলা হয়েছে। আনায়ার হোসেন সম্পত্তি ভোগ করেন।” He further stated that “তার খালুর নাম মাদানী শেখ তার ছেলে সন্তান ছিল না। সে আনায়ার হোসেন কে সম্পত্তি দিতে চায় সে জীবিত থাকায় দিতে না পারায় তার মেয়েরা সে সম্পত্তি আনায়ারকে দেয়। এখানে ঘর-বাড়ী, বাথরুম, রান্নাঘর আছে বাদীর। পরিবার পরিজন নিয়ে সে বাস করে। মাদানী শেখের মেয়েরা হস্তান্তর করেছে সে দলিল আমি স্বীকার করি।” It is crystal clear that the daughters of C.S. recorded owner Medani Sheikh sold out the suit land to the plaintiff Md. Anwar Hossain and since then he has been owning and possessing the suit land peacefully. He next submits that PW-3, Mirjan Nessa clearly stated in the examination that “বাদী, বিবাদী, নালিশী সম্পত্তি চিনি। মাদানী শেখ এর মালিক ছিল। মাদানী শেখ আমার পিতা, রিয়াজুদ্দিন আমার চাচা। তার পুত্র সন্তান ছিল না। সে আমার খালাতো ভাইকে (বাদী) পালন করে। জায়গা দিতে চায় তবে দিতে পারে

নাই । পরে আমরা দুই বোন তাকে দলিল করে দেই । দলিল নং -৭৪ ও মীরজান নামীয় স্বাক্ষর আমার । বাদী দখল আছে নালিশী ভূমির ।” it is crystal clear that Mirjan Nessa being one of the seller sold out of the suit land along with her sister to the plaintiff Anwar Hossain by way of registered deed No. 74 and handed over possession of the same and another seller Solemon Nessa died before taking witness in the suit hence she could not appear before the Court for giving witness. He next submits that PW- 4, Tajul Hossain, permanent copier, Sreenagar Sub Registry office who has been examined as witness that: “দলিল নং-৭৪, ভলিউম নং-৮, বুক নং-১, পৃষ্ঠা নং..... তাং- ০৫/০১/২০০২ দাতা মীরজান গং গ্রহীতা আনোয়ার হোসেন সাফ কবলা দলিল । দলিলের তফসিলের সাথে ভলিউমের মিল পাওয়া গেছ । এই সেই দলিল (প্র:চি:২)। ” – herein as to genuinity of the document of the plaintiff has been proved by the Srenagar Sub Registry office through calling for volume in the Court beyond any shadow of doubt. He next submits that DW-2, Anwar Hossain son of Romijuddin Sheikh clearly stated in the cross examination that : “বাদীর অংশে আঃ আজিজ । পূর্ব লোকমান, পিতাঃ আব্দুল হক, উত্তরঃ খোকন, দক্ষিণঃ জব্বার, রহিম ।” – herein he disclosed the butted and bounded (boundary) of the 20 decimals of the suit land of plaintiff Anwar Hossain who has been owning and possessing the same as yet. He next submits that DW-1 Abdur Rahim stated in the cross examination that “সি, এস রেকর্ডের মালিকদের থেকে এস, এ মালিকরা কিভাবে

মালিক হয় বলতে পারি না। রেকর্ড ভুল হয় নাই।” In this respect it is crystal clear that the defendants admitted the C.S. recorded owner Medani Sheikh from wherein they have failed to prove their chain of title of ownership at the same time. They admitted the ownership and chain of title of the plaintiff in the suit land beyond any reasonable of doubt. He next submits that C.S recorded owner Medani Shekh died leaving behind only two daughters as his successors and that has been proved and corroborated by the other independent witnesses but the defendant did not prove against the same. It was incumbent upon the defendant to prove but failed completely to prove their case. He next submits that the defendants did not deny in the examination and cross examination that Mirjan Nessa and Solemon Nessa are not daughters of C.S. recorded owner Medani Sheikh. So the defendant did not challenge those, which need not further to be challenged or proved and therefore it can be relied upon under Section 102 of the Evidence Act, 1872. In this respect the learned Advocate for the plaintiff-petitioner referred the case Ratan Kha Vs. The State reported in 40 DLR 186. He next submits that plaintiff Md. Anwar Hossain has been possessing and enjoying the suit land since 100 years back including his purchase through Saf kabala registered deed being No. 74 dated 05.01.2002 exclusively and peacefully which has been ascertained by the

D.W.2 Anwar Hossain by replying to the cross examination the boundary of the suit that has been proved beyond shadow of doubt by the D.W. 2 specifically. He next submits that the learned Trial Court by examining all the documents produced by the parties passed the Judgment and decree rightly and correctly but the Appellate Court below without assessing and weighing the documents and witness of the plaintiff passed the impugned Judgment and decree capriciously and whimsically and as such the Judgment and decree of the Appellate Court below is liable to be set aside for the ends of justice. He next submits that the learned Appellate Court below as final Court of fact failed to consider that the plaintiff successfully proved the case by adducing and producing sufficient oral and documentary evidence in support of his case as such the judgment and decree of the Appellate Court below is liable to be set aside for the ends of justice. He next submits that the Appellate Court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree and reversing the judgment and decree passed by the learned Trial Court, in as much as the defendants-opposite parties failed to prove their case and as such judgment and decree of the Appellate Court below is liable to be set aside for the ends of justice. He next submits that the learned

Appellate Court below did not apply its judicial mind in the facts and circumstances of the case and the materials on record and thereby committed an error of law resulting in an error in the decision occasioning failure of justice and as such the impugned judgment and decree passed by the Court of Appeal below is liable to be set aside for the ends of justice. He lastly submits that the Court of Appeal below has committed serious error of law in reversing the Judgment and decree of the Trial Court without considering the long possession for 100 years back of the plaintiff in the suit land on the basis of the registered purchase deed as well as since C.S. recorded owner Medani Sheikh and along with other documents, without assessing and weighing materials on record in favour of the plaintiff which is not permissible and tenable in the eye of law and in the present case, as such the impugned judgment and decree of the Appellate Court below is liable to be set aside for the ends of justice.

Mr. Shahjahan Omar, learned Advocate appearing with Mr. Md. Asraful Islam learned Advocate for the defendants-appellants-opposite parties, submits that the plaintiff could not prove his title by adducing the original copy of the title deed and any document to satisfy with the Court that Mosammat Mirjan Nessa and Mosammad Soleman Nessa are the true daughters. In this regard

the P.W. 1 in his deposition stated that “আমার খালু মাদানী শেখ, মাদানী শেখ ৫০ বছর আগে মারা গেছেন” and P.W. 3 who is a so called daughter namely Mirjan Nessa in her deposition stated that “বাবা মারা গেছে ৭-৮ বছর আগে” which creates serious doubt death of said Medani Sheikh as well as Mirjaan Nessa to be a successor of Medani Sheikh and accordingly the learned Appellate Court being last facts finding Court rightly observed that “উল্লেখ্য অত্র মামলার বাদী তাহার মালিকনার সমর্থনে প্রদর্শনী-২ চিহ্নিত ৭৪নং দলিলটির সহি মোহরী দাখিল করিয়াছেন এবং উক্ত দলিলের বালাম তলব করিয়া উহার অস্তিত্ব প্রমাণ করিয়াছেন। কিন্তু বাদী তাহার মালিকানার সমর্থনে প্রদর্শনী-২ চিহ্নিত দলিলের মূল কপি কেন দাখিল করিতে পারেন নাই বা করেন নাই বা মূল দলিলটি কোথায় সে বিষয়ে আরজীতে কোনরূপ ব্যাখ্যা প্রদান করেন নাই। বাদীর দাবীকৃত মালিকানার মূল দলিলটি বাদীর হেফাজত হইতে আদালতে উপস্থাপন হওয়া স্বাভাবিক। কিন্তু বাদী মূল দলিলটি দাখিল করেন নাই এবং সেই বিষয়ে আরজীতে কোন ব্যাখ্যা প্রদান করেন নাই, যাহা সন্দেহের সৃষ্টি করে।” and the Appellate Court below further observed that “সর্বোপরি বাদীর ভেডারদয় এর পিতা সি, এস মালিক মাদানী শেখ এই মর্মে বাদী কোন দলিলাদী, জন্ম নিবন্ধন সনদপত্র বা তাহাদের জাতীয় পরিচয়পত্র সাক্ষ্য হিসাবে উপস্থাপন করেন নাই। যাহার ফলে বাদীর ভেডারদয় মাদানী শেখের কন্যা হিসাবে নালিশী ভূমিতে ওয়ারিশ উক্ত দাবী বাদী প্রমাণ করিতে ব্যর্থ হইয়াছে। এমতাবস্থায় অত্র মোকদ্দমার বাদীপদের উপস্থাপিত এবং দাখিলীয় দালিলিক এবং মৌখিক সাক্ষ্য সমূহ পর্যালোচনায় দেখা যায় যে, বাদীপক্ষ নালিশী তফসিল বর্ণিত ভূমিতে তাহার দাবীকৃত ভেডারদের স্বত্ত্ব, স্বার্থ বিদ্যমান থাকার দাবী প্রমাণ করিতে ব্যর্থ হইয়াছেন।” He further submits that the P.W. 1 claimed that age of the said Mirjan Nesa

above 80 years on the other hand the said Mirjan Nesa as P.W. 3 claimed that her age is 60 years, so it is created serious doubt reliability of the witnesses and the basis of the doubtful witness the plaintiff case is not sustainable. He next submits that the P.W. 3 Mirjan Nesa who claimed daughter of C.S. recorded tenant Madani Sheikh but at time of cores examination said P.W.-3 failed to remember her father's name which proved that the said P.W. 3 is not the original daughter or successor of the C.S recorded tenant Madani Sheikh. He then submits that as per Section 81 and 82 (8) of the Chapter 5 of the State Acquisition and Tenancy Act, those tenants names will be recorded in the S.A. Khatian and subsequent R.S. Khatian according to Section 17, 18 and 144 they will be treated as owner of the land. In this suit the names of predecessors of the defendants has been recorded in the S.A. Khatian and R.S. Khatian rightly as such the defendants are the real owner of the suit land. He next submits that according to Section 101 of the Evidence Act, 1872 which states that "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person." He who asserts must prove and in this suit the plaintiff-petitioner claimed that his

vendors are daughters of said Medani Sheikh and accordingly the burden of proofs lies upon him but he utterly failed to do so. So, the presumption of the learned Appellate Court below on the plaintiff failed to prove his right and title in the suit land is completely right. In support of his above contentions, he has referred the case of Md. Maimuddin Sarder Vs Md. Abdul Kalam Biswas and another reported in 39 DLR (AD) 237 and Bangladesh Vs Israil Ali and others reported in 1981 BLD (AD) 371. In the aforesaid two cases their Lordships of the Appellate Division observed that the plaintiff in order to succeed must establish his own case and the weakness of the defendant's case is no ground for passing a decree in favour of the plaintiff. He next submits that the plaintiff failed to prove his exclusive possession in the suit land moreover the plaintiff and the P.W. 2 clearly stated that the defendants are in possession in the suit land. The Plaintiff as P.W. 1 in his deposition stated as follows “সম্পত্তি ভাগ বাটোয়ারা হয়নি। এজমালিতে আছে। কোন মাফ জোখ হয়নি। সিএস পর্চা থেকেই নালিশী সম্পত্তি ভাগ-বন্টন ছাড়াই রয়েছে। P.W.2 in his deposition stated that “দলিল হওয়ার পরে সম্পত্তি নিয়ে মাফ-জোখ হয় নাই। বিবাদীরা ২৫ শতাংশের বেশী অংশে দখলে আছে। বিবাদীরা চিরস্থায়ী নিষেধাজ্ঞার মামলার রায় ডিএন পোয়েছে সেখানে আমি প্রতিদ্বন্দ্বিতা করি-----
----- নালিশী দাগের সম্পত্তি দাবী করি আপাততঃ আমরা এজমালিতে আছি” On the other hand the defendants- opposite parties filed Title Suit being

No. 104 of 2004 against the plaintiff for permanent injunction and the said suit was decreed on 20.3.2006. In this regard he has referred to the case of Tayed Ali Vs Abdul Khaleque and others reported in 43 DLR (AD) 87 the Hon'ble Court observed that "since plaintiffs suit was not maintainable as they filed a mere declaratory suit in respect of unspecified as well as undivided portion of the land and as such even if any adjudication is made as regard the relief sought as to the decree obtained in Title Suit No. 206 of 1976 would be of no purpose since in the absence of seeking consequential relief of recovered of possession mere declaration of title as regard the land described in the schedule 'Ga' cannot be allowed' and in this case the plaintiff filed the suit undivided portion of land as stated above therefore the suit for only declaration is not maintainable in the present from. The plaintiff filed the suit for declaration of title and to declare the S.A. and R.S. Khatian are wrong in respect of the suit land which is possession on Ejmali as stated by him and P.W. 2 it here may be mentioned that the title deed of being No. 74 dated 05.1.2002 there is no butted and boundary in the schedule of the suit land which clearly proved that at time of sale of plaintiff's vendors were not in possession entirely. Moreover, the vendor of the plaintiff sold out the schedule land in the year 2002 but a long time before S.A. and

R.S. Khatian was prepared but no action was taken by the vendors against those records rather transferred to the plaintiff and as such the plaintiff-petitioner failed to prove title and possession in the suit land. In support of his submissions he has referred to the case of Shahadat Ali Darji and Others Vs Karimuddin Mullick and Others reported in 2 BSCD 161 and the Hon'ble Court observed that "The suit was for declaration of title simplisciter. The possession of the plaintiff having been challenged suit is hit by Section 42 of the Specific Relief Act and the Trial Court acted in excess of its jurisdiction in finding possession with the plaintiff on shifting evidence" and therefore the Rule is liable to be discharged.

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

The plaintiff claimed that he purchased the suit land from Mirjan Nessa and Soleman Nessa who were the daughters of C.S. recorded owner Medani Sheikh. Soleman Nessa was not examined and Mirjan Nessa was examined as P.W.3. In cross examination this witness failed to remember her father's name which proves that the said P.W. 3 Mirjan Nessa is not the original daughter of Medani Sheikh. This witness then stated in her deposition "বাবা মারা গেছে ৭-৮ বছর আগে ।" On the other hand P.W.1 who is cousin of

P.W.3 and also plaintiff stated in his deposition “আমার খালু মাদানী শেখ, মাদানী শেখ ৫০ বছর আগে মারা গেছে।” which creates serious doubt death of said Medani Sheikh as well as Mirjan Nessa to be a successor of Medani Sheikh. The decision referred by the plaintiff-petitioner is not applicable in this case.

Considering the facts and circumstances of the Case, I find no substance in this Rule rather I find substance in the submissions of the learned Advocate for the defendants-opposite parties.

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

The impugned Judgment and Decree dated 30.4.2019 passed by the learned Additional District Judge, Munshigonj in Title Appeal No. 53 of 2010 allowing the appeal and thereby reversing the Judgment and Decree dated 15.2.2010 passed by the learned Assistant Judge, Sreenagar, Munshigonj in Title Suit No. 146 of 2004 decreeing the suit is hereby up-held.

The order of status-quo granted earlier by this Court is hereby vacated.

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