

11 SCOB [2019] HCD 109

HIGH COURT DIVISION

First Appeal No. 76 of 2012

Kamal Miah and others
.....appellants

Mr. Mohammad Ali Azam, Adv.
....For the appellants

Vs.

Lakkatura Tea Co. Ltd and others
.....respondents

Mr. A.K.M. Shamsul Haque, Adv.
...For the respondents

First Appeal No. 77 of 2012

Heard on 09.03.2015 and 10.03.2015

And

Nurul Ahmad and others
.....appellants

Judgment on 16.03.2015.

Vs.

Lakkatura Tea Co. Ltd and others
.....respondents

Present:

Mr. Justice Sharif Uddin Chaklader

And

Mr. Justice Khizir Ahmed Choudhury

It is settled proposition that Record of Right alone does not confer title but it has got presumptive value in favour of the person in whose name Record is prepared but again the presumption can be rebutted by showing cogent evidence and proof. As such any person can take recourse of law ventilating his grievance. If somebody's name is erroneously not inserted in the record, he can take recourse to the Court of law for appropriate declaration but his claim cannot be stifled taking aid of Section 52A of the Registration Act or 53C of the Transfer of Property Act. ... (Para 13)

A plaint can be rejected by taking recourse of Section 151 of the Code of Civil Procedure.

In the instant case the plaintiff has been able to made out distinct cause which should be adjudicated by the Court of law without having buried it at its inception and hence, inherent jurisdiction cannot be invoked here. ... (Para 14)

JUDGMENT

Khizir Ahmed Choudhury, J:

1. Both First Appeals Nos.76 of 2012 and 77 of 2012, having based on same facts and laws are taken up together and disposed of by this judgment.

2. First Appeal No.76 of 2012 has been preferred by the plaintiffs against the judgment and decree dated 14.11.2011 passed by learned Joint District Judge, 2nd Court, Sylhet in Title Suit Nos.215 of 2010 rejecting the plaint.

3. First Appeal No. 77 of 2012 has been preferred by the plaintiffs against the judgment and decree dated 14.11.2011 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Suit No. 284 of 2009 rejecting the same.

4. Facts relevant to Title Suit No.215 of 2010 in short, are that the erstwhile landlord Nando Kishon Dey inducted Gobindo Turi and Mohorir Sarder as nankar Tenants in the suit land. Proforman defendant Nos. 4 and 5 are heirs of those nankar tenants and while they have been owning and possessing of the suit land, they transferred the same in favour of the plaintiff vide registered deed of sale No.6534 dated 06.4.2010 and delivered possession thereof. While owning and possessing, plaintiffs undertook development work and went to the office of Assistant Commissioner (Land) for mutating their land and only then it has been revealed that the suit land has been wrongly recorded in the name of defendant Nos.1 and 2 in the record of right and upon further scrutiny found that although in the D.P. Khatian name of the predecessor of defendant nos. 4 and 5 have been noted but in the printed khatian it has been wrongly recorded in the name of defendant Nos.1-2 which clouded their clean title and hence, the instant suit.

5. Defendant No.3 Government of Bangladesh filed written statement denying the claim of the plaintiffs contending that the suit land has been recorded in the name of Lakkatura Tea Co. Ltd. within the survey settlement operation and they have been holding and possessing on payment of rent and as such prayed for dismissal of the suit.

6. Facts relevant to Title Suit No.284 of 2009 in short, are that the erstwhile landlord Nando Kishon Dey inducted Choiton Bhumij, Nodia Gudal and Sokra Mura, the predecessor-in-interest of Proforman defendant Nos. 4-7 as his nankar Tenants in the suit land and while they have been owning and possessing they died leaving proforma defendant Nos.4-7 as their heirs and subsequently defendant Nos.4-7 transferred the same in favour of the plaintiff vide registered deed of sale No.16443 dated 18.10.2009 and delivered possession thereof. The plaintiffs while owning and possessing undertook development work and went to the office of Assistant Commissioner (Land) for mutation and only then it has been revealed that the suit land has been wrongly recorded in the name of the defendant Nos.1 and 2 in the record of right and upon further scrutiny found that although in the D.P. Khatian name of the predecessors of defendant nos. 4-7 have been noted but in the printed khatian it has been wrongly recorded in defendants' name which clouded their clean title and hence, the suit.

7. Defendant No.3 Government of Bangladesh filed written statement denying the claim the plaintiffs contending that the suit land has been recorded in the name of Lakkatura Tea Co. Ltd. in the survey and settlement operation and they have been holding a possessing on payment of rent and as such prayed for dismissal of the suit.

8. Defendant Nos.1 and 2 by filing applications on 01.03.2011 in both the suits under Order VII Rule 11 of the Code of Civil Procedure stated that the present suit is barred under Section 52A of the Registration Act as well as Section 53A of the Transfer of Property Act and prayed for rejecting the plaint. Learned Joint District Judge, 2nd Court, Sylhet upon hearing rejected the plaint vide order dated 14.11.2011 holding that the plaintiffs claim of title are on the basis deed of sale dated 06.4.2010 and as the name of their vendors having not mentioned in record of right, they acquired no title in the suit land and as such the suit is barred under Section 53C of the Transfer of Property Act as well as 52A of the Registration Act. He further held that the kabala has been registered bypassing legal process without

having any khatian in the name of the vendor and as such the plaintiff cannot get any relief as per law.

9. Mr. Mohammad Ali Azam, the learned advocate appearing on behalf of the appellants submits that in rejecting the plaintiff statements made in the plaint are to be looked into the Court is not permitted to travel beyond the plaint to read out ground to reject the plaint. He further submits that on perusal of the plaint it is crystal clear that the plaintiffs have made out a claim of their title over the suit land by virtue of purchase and hence they are entitled to maintain the instant suit as their title have been clouded by wrong record of right.

10. Mr. Ali Azam, the learned advocate has referred being the case of Bangladesh Jatiya Sambaya Shilpa Samithy Ltd. –vs- Shan Hosiery, Proprietor Md. Abu Taleb and others reported in 10 BLC (AD) 8 wherein it has been held that ***“In deciding the question as to whether a plaint is liable to be rejected the Court is always required to peruse the plaint only and Court is not permitted to travel beyond the plaint to dig out grounds to reject the plaint which is a settled principle of law as has been rightly found by the High Court Division”***.

11. Mr. A.K.M. Shamsul Haque, the learned advocate appearing on behalf of the respondents, submits that the learned Joint District Judge, 2nd Court, Sylhet rightly passed the impugned judgment and order relying upon section 52A of the Registration Act of the Registration Act and 53c of the Transfer of Property Act and as such the plaintiffs are not entitled to get any relief.

12. It appears that the learned Joint District Judge, 2nd Court, Sylhet relied upon under Section 52A of the Registration Act in rejecting the plaint but 52A of the Registration Act to impose a duty upon Registration Officer not to register any instrument unless latest khatian is attached therewith. But in the case in hand concerned Sub- Registrar allowed the vendor to do the registration work which prima facie signifies that on being satisfied he allowed the registration work.

13. Section 53C stipulates that without khatian of Immovable property no person shall be able to transfer any property. It is settled proposition that Record of Right alone does not confer title but it has got presumptive value in favour of the person in whose name Record is prepared but again the presumption can be rebutted by showing cogent evidence and proof. As such any person can take recourse of law ventilating his grievance. If somebody’s name is erroneously not inserted in the record, he can take recourse to the Court of law for appropriate declaration but his claim cannot be stifled taking aid of Section 52A of the Registration Act or 53C of the Transfer of Property Act.

14. Apart from this a plaint can be rejected by taking recourse of Section 151 of the Code of Civil Procedure. In the case of Abdul Jalil and others –vs- Islamic Bank Bangladesh Ltd and others reported in 53 DLR (AD) 12 wherein it has been held that: ***“ As the ultimate result of the suit is as clear as day light such a suit should be buried at its inception so that no further time is consumed in a fruitless litigation. As the ultimate result of the suit is as clear as day light such a suit should be properly buried at its inception so that no further time is consumed in a fruitless litigation, when the ultimate result is clear, the plaintiffs can not be allowed to re-open the same matter afresh after losing upto the Appellate Division. This is merely a gambling in litigation which can not be allowed. The High Court Division thoroughly considered every aspect, of the matter and rightly found that the***

present suit is barred by law.” In the aforesaid case, plaintiffs earlier filed a title suit and lost upto Appellate Division. But subsequently they again initiated a title suit with almost same prayer and as such their lordships held that in the self same subject matter fresh suit cannot be allowed to proceed and by invoking inherent jurisdiction held that such suit should be buried at its inception. But in the instant case the plaintiff has been able to made out distinct cause which should be adjudicated by the Court of law without having buried it at its inception and hence, inherent jurisdiction cannot be invoked here.

15. Considering the facts and circumstances and relevant provision of law we hold that the learned Joint District Judge, 2nd Court, Sylhet committed error in rejecting the plaint and hence the judgment and order dated 14.11.2011 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Suit Nos.215 of 2010 and Title Suit No.284 of 2009 rejecting the plaint are set aside.

16. We find merit in these appeals.

17. In the result, both the appeals are allowed without any order as to costs.

18. Let a copy of this judgment along with lower Court’s record be sent to the concerned Court at once.