

12 SCOB [2019] HCD

HIGH COURT DIVISION

Civil Revision No. 1749 of 2014.

Azadul Islam and others.

.....Defendant-Respondent-Petitioners.
-Vs-

Most. Asis Bewa and others.

...Plaintiff-Appellant-Opposite Parties.

Mr. Mohammad Jamiruddin Sircar with
Mr. A.H.M. Abdul Wahab, Advocates.
.....For the petitioners.

Mr. Bivash Chandra Biswas with
Mr. Mrinal Kanti Biswas, Advocates
.....For the Opposite Parties.

Heard on 31.01.2019, 03.03.2019,
05.03.2019, 05.03.2019, 06.03.2019
And
Judgment on 07.03.2019.

Present;

Mr. Justice Md. Rezaul Hasan.

**Declaration of Title and permanent injunction,
Lawful possession;**

I am also of opinion that, in a suit for permanent injunction, this Court should satisfy itself as regards the lawful nature of the plaintiffs' possession. In a suit for permanent injunction, the issue regarding title need not be and should not be conclusively decided, because the purpose of granting the relief of permanent injunction is to prevent forceful ouster of an apparently lawful occupant of the suit property, thereby disapproving the act of taking law into the defendants own hands. Nonetheless, the court should incidentally look into the title or other lawful basis of the plaintiffs acquiring and continuing in possession, to satisfy itself that the plaintiff is not an usurper or trespasser or a land grabber and that he has come in clean hands.

JUDGMENT

Md. Rezaul Hasan, J.

1. This Rule has been issued calling upon the opposite parties, to show cause as to why the impugned judgment and decree dated 12.02.2014 (decree signed on 17.02.2014), passed by the learned Additional District Judge, Gaibanda, in Other Appeal No.41 of 2013, allowing the appeal and reversing the judgment and decree dated 28.04.2013 (decree signed on 05.05.2013), passed by the learned Joint District Judge, 1st Court, Gaibanda, in Other Suit No.8 of 2003, should not be set-aside and/or pass such other order or orders passed as to this Court may seem fit and proper.

2. Facts, relevant for disposal of the Rule, in brief, are that one Most. Asia Khatun and others, as plaintiffs, filed Other Suit No. 20 of 2002, subsequently re-numbered as 8 of 2003, against Md. Azadul Islam and others, impleaded as defendants, with a prayer for declaration of title and permanent injunction, in respect of the schedule property. However, the plaintiffs have subsequently dropped the prayer as regards declaration of title in the suit property. Hence, the suit remains to be one for permanent injunction, and, evidently, the defendant did not challenge this amendment of the plaint.

3. Be that as it may, the defendants Nos. 6-8/11/13/20/24-26 have filed written statements and contested in the suit.

4. I have gone through the pleadings of the parties which need not be reproduced here.

5. The Trial Court, after hearing the parties and assessing the evidence on record, dismissed the suit by his judgment and decree dated 28.04.2013 (decree signed on 05.05.2013).

6. Against the said judgment and decree of the Trial Court, the plaintiff-appellant-opposite parties, preferred Other Appeal No.41 of 2013 (as appellants) before the District Judge, Gaibanda, which was heard by the learned Additional District Judge, Gaibanda, who being the Appellate Court, has passed the impugned judgment and decree, allowing the appeal by setting aside the judgment and decree of the trial court, vide judgment and decree dated 12.02.2014 (decree signed on 17.02.2014).

7. Being aggrieved by and dissatisfied with the judgment and decree of the Appellate Court, the Defendant-Respondent-Petitioners filed this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

8. Learned Senior Counsel Mr. Mohammad Jamiruddin Sircar with learned Advocate Mr. A.H.M. Abdul Wahab appeared for the petitioners. Mr. Sircar has placed the petition. He first of all submits that, the trial court having properly assessed the evidence on record, had come to the correct findings as regards the facts and circumstances of this case, which ought not to have been set aside by the appellate court. He also submits that, the trial court has rightly found that, the genology placed by the heirs of late Azizur Rahman (predecessor of the defendant) was not correct and that, the C.S. khatain No. 122 Ext. 1 does not support the plaintiff's case of taking grant (*patton*) from Kosir Uddin, who had the superior rent receiving interest in the suit property. He next submits that, the findings of the trial court has been wrongly set aside by the appellate court without applying the judicial mind or assessing the evidence on record. He, making reference to the judgment of the appellate court as well as to the C.S. khatain No. 1, also submits that the plaintiff could not prove their prima-facie title in the suit land in as much as Vomor Ali Sarker is entitled to get 59 decimals of land as per C.S. khatain, but the plaintiffs have made out a case of obtaining *kabuliat* for 90 decimals of land in the suit property, which is in excess of the land owned by Kosir Uddin, who was son of Vomor Ali Sarker. In support of his contention, he has referred a decision reported in 8 M.L.R. (AD) 2003, at page 41: between Sushil Kumar Paik and another -Vs- Harendra Nath Samadder and another. He further submits that, the plaintiffs have submitted certain documents purported to be the *kabuliat dakhila* in support of the alleged *kabuliat* to prove their title in the suit property, but the court cannot take the same into consideration, vide the decision reported in 51 D.L.R. (AD)(1999) 150: between Chandan Mondal @ Kushal Nath Mondal and others -Vs- Abdus Samad Talukder and others. But, the appellate court has totally ignored the law declared in the said decisios and thereby passed the impugned judgment and decree and has committed serious error of law in passing the impugned decision occasioning failure of justice and, therefore, the impugned judgment and decree passed by the appellate court are liable to be set aside and the judgment and decree passed by the trial court may be upheld, he prayed for.

9. Mr. Bivash Chandra Biswas along with Mr. Mrinal Kanti Biswas, learned Advocates appeared for the opposite parties. Mr. Bivash Chandra Biswas, on the contrary, submits that, this is a case for permanent injunction in which the question of proof of title does not at all arise. The learned Advocate submits that, the question of title may be looked into incidentally in a suit for permanent injunction. He submits that, the plaintiffs have filed R.S. khatian No. 147 showing 16 annas lands in the suit plot No. 796 and 830/1685, comprising 98 decimals of land, and the said khatian is in the name of predecessor of the plaintiffs, but the other side (defendants) did not challenge the said khatians and the presumption of the validity of the said khatians remains un-rebutted and this proves the prima-facie basis of the plaintiff's acquiring and remaining possession of the suit land. He next submits that, the schedule "Ka" to the plaint correctly described the land shown in the S.A. khatian No. 147 of Mouza Mouza Sathalia, P.S. Saghata, under District- Gaibanda. He further submits that, the plaintiffs have proved their case by adducing P.W. 1, who has deposed in support of the plaintiff's case and proved the documentary evidence including aforesaid khatian, to support their prima-facie case regarding the plaintiff's lawful possession in the suit land. P.W. 1 was then corroborated by P.Ws. 2 and 3. He next submits, the defendants did not cross examine these P.W. Nos. 2 and 3, nor did the defendants adduce any witness to prove their positive case. He also submits that, the appellate court has pointed out all these aspects of this case and has rightly passed the impugned judgment and decree, which calls for no interference by this revisional Court. In support of his contention, he has referred to the decisions reported in 1986 B.L.D. (HCD) 155: between Pasharuddin Mir -Vs- Ismail Mir and others, 4 B.L.D. (AD)(1984) 285 :between Manindar Nath Sen Sarma -Vs- Bangladesh, 9 B.L.D. (HCD) (1989) 368: between Sheikh Ahmed and others -Vs- Abdul Alim and also the decision reported in 56 D.L.R. (AD)(2004) 53: between Government of Bangladesh, represented by the Additional Deputy Commissioner, Gazipur -Vs- AKM Abdul Hye and others. In these decisions, referred to above, the superior Court has confirmed the presumption of the validity attached to R.S. khatain as per section 144A of the State Acquisition and Tenancy Act, 1950, and also held that, failure to prove the title in a case for permanent injunction will not disentitle the plaintiff to get permanent injunction, if they prove their exclusive possession in the suit property. He proceeds on that, the impugned judgment and decree passed by the appellate court suffers from no illegality or from any other lacuna, whatsoever, and this Rule has no merit and the same may be discharged.

10. I have heard the learned Advocates for both sides, perused the application for revision, lower Court's record as well as the judgment of both the Courts below and other materials in the record.

11. This is a case for permanent injunction, in which the question of declaration of title does not at all arise, though the question of title should be looked into incidentally, to satisfy the court about the basis of the lawful possession of the plaintiff (as opposed to the possession of a trespasser or land grabber).

12. I find that, R.S. khatian No. 147, shows 16 annas lands of the suit plot No. 796 and 830/1685, comprises 98 decimals of land, and that the said khatian is in the name of predecessors of the plaintiffs, but the other side (defendants) did not challenge the legality or correctness of the same and the presumption of the validity of these khatian remains un-rebutted. The schedule "Ka" to the plaint has correctly described the land shown in the S.A. khatian No. 147 of Mouza Mouza Sathalia, P.S. Saghata under District- Gaibanda.

13. I also find that, the plaintiffs have proved their case by adducing P.W. 1, who has deposed in support of the plaintiff's case and proved the documentary evidence including aforesaid khatians to support their prima-facie case regarding their lawful possession in the suit land and he was corroborated by P.Ws. 2 and 3, but the defendants did not cross examine these P.W. Nos. 2 and 3, nor did they adduce witness to prove their positive case.

14. I also find that, the appellate court has pointed out and discussed all these aspects of this case and has rightly passed the impugned judgment and decree, which call for no interference by this revisional Court.

15. I am also of opinion that, in a suit for permanent injunction, this Court should satisfy itself as regards the lawful nature of the plaintiffs' possession. In a suit for permanent injunction, the issue regarding title need not be and should not be conclusively decided, because the purpose of granting the relief of permanent injunction is to prevent forceful ouster of an apparently lawful occupant of the suit property, thereby disapproving the act of taking law into the defendants own hands. Nonetheless, the court should incidentally look into the title or other lawful basis of the plaintiffs acquiring and continuing in possession, to satisfy itself that the plaintiff is not an usurper or trespasser or a land grabber and that he has come in clean hands. Therefore, decree in a suit for permanent injunction will not operate as res-judicata, in a subsequent suit, so far as the issue of title is concerned.

16. With these findings and observations, I find that, the impugned judgment and decree passed by the appellate court suffers from no illegality, nor from any other lacuna whatsoever, and this Rule has no merit and the same should be discharged.

ORDER

17. In the result, the Rule is discharged.

18. The impugned judgment and decree dated 12.02.2014 (decree signed on 17.02.2014), passed by the learned Additional District Judge, Gaibanda, in Other Appeal No.41 of 2013 is hereby upheld.

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

20. No costs.

21. Let a copy of this judgment along with the Lower Court's Record be sent down to the concerned Courts at once.