

12 SCOB [2019] HCD

HIGH COURT DIVISION

Civil Revision No. 1436 of 2009

1. Monto Sheikh being dead his legal heirs:

1.(a) Taslima Begum (Wife) and others
..... Petitioners.

-Versus-

1. Ibrahim Miah being dead his legal heirs:

1.(a) Siarun Nessa (wife) and others
.....Opposite parties.

Mr. Md. Ali Reza, Advocate

.....For the petitioners

Mr. Sk. Akhtarul Islam, Advocate

.....For the opposite parties

Heard on: 22.5.18 & 23.5.2018

And

Judgment on: 31.05.2018

Present:

Mr. Justice F.R.M. Nazmul Ahasan

It is also settled that the defendants may have thousand of defect but it does not help the plaintiff to prove their case:

It appears that the plaintiff could not prove their case that they have any title in the suit land and also the possession. The main reasoning of this findings stated above that the basis of the title of the plaintiff is the settlement which was cancelled and the order of cancellation is in existence.
... (Para 38)

JUDGMENT

1. This Rule was issued calling upon the opposite party Nos.1-14 to show cause as to why the judgment and decree dated 18.11.2008 passed by the Additional District Judge, Gopalganj, in Title Appeal No.69 of 2004 affirming those dated 3.11.2004 passed by the Joint District Judge, 1st Court, Gopalganj in Title Suit No.54 of 2003 dismissed the suit should not be set aside.

2. Facts, relevant for disposal of the rule, in brief, are that the petitioner as plaintiff filed Title Suit No.102 of 2000 on 29.11.2000 in the Court of learned Assistant Judge, Kashiani, Gopalganj which was subsequently transferred to the learned Joint District Judge, 1st Court, Gopalganj and renumbered as Title Suit No.54 of 2003 and the suit was filed for declaration of title. It is stated in the plaint that the suit land appertaining to 37 Pignolia Mouza originally belonged to government in R.S. Khas Khatian No.1. Plaintiff Nos.1,2 and the predecessor of plaintiff Nos.3-7 took settlement from the government.

3. The predecessor of plaintiff Nos. 3-7 took settlement of 1.00 acre by kabuliyat dated 12.4.1974 from disputed Plot No. $\frac{49}{1701}$ in Miscellaneous Case No. $\frac{XII - 3464/72 - 73}{172/73 - 74}$ and he died leaving behind plaintiff Nos.3-7. Similarly plaintiff No.1 took settlement of .45 acre from disputed plot No. $\frac{49}{1701}$, .06 acre from plot No.958, .15 acre of land from plot no.959 measuring an area of .66 acre of land from plot no.959 measuring an area of .66 acre of land

through kabuliyat dated 02.8.1974 by Miscellaneous Case No. $\frac{XII-1296/72-73}{180/73-74}$. Plaintiff no.2 also took settlement of 1.00 acre of land from disputed plot No. $\frac{49}{1701}$ by kabuliyat dated 27.07.1974 Miscellaneous Case No. $\frac{XII-857/72-73}{175/73-75}$.

4. Thus plaintiffs obtained 2.66 acre of land and have been in possession for more than 12 years upon payment of rent. Defendants were never in possession in the suit land and they have no title. Defendants denied title of the plaintiffs on 16.11.2000. Hence the suit was filed for declaration of title.

5. On the other hand defendant Nos.1-7 and defendant Nos.8-14 contested the suit by filing separate written statements. The content of both the written statements almost similar are that some Tarok Chakdra, Sorot Chandra, Bhorot Chandra, Suroshibala Dashi in 8 anna of property and Poromananda Kapali and Taraprashanna Kapali another 8 anna owner and possession of the land. Poromananda Kapali and Taraprashanna Kapali sold their portion to Sharot Chandra Shinha, Varat Chandra Shinha and Tarok Chandra Shinha dated 16.3.1937 kabala no.792. Sukhendra Lal Mukharjee took pottion from that Sarot Chandra and others.

6. Thereafter, Sabed Ali Biswas and others took pottion from Sukhendra Lal Mukharjee. Being defaulter of paying rent. A rent suit was instituted against Sabed Ali and others by Sukehndra Lal Mukharjee which was ultimately disposed of in the terms of compromise and Sabed Ali got the land in question by the sole decree. This defendant Sobed Ali Biswas is the predecessor of the defendants. Subsequently, Sobed Ali Biswas got recognition of transfer of right from the government and took settlement of 28.2.1961 and S.A. Record was published in the name of government instead of Sobed Ali and thus the land in question was recorded in the Khas Khatian. The government or the plaintiff never possess of the suit land; the defendant from their predecessor have been owning and possessing the suit land. With the aforesaid contention the defendant prayed for disposed of the suit.

7. At the trial the learned Judge, framed as many as four issues about the maintainability, about cause of action, about title and possession of the suit land and whether the plaintiff can get a decree as claimed.

8. Both the parties adduced evidence and produced documents before the trial court which was duly marked as exhibit and after hearing the parties, the trial court dismissed the suit by the judgment and decree dated 3.11.2004, against that the plaintiff preferred Title Appeal No.69 of 2004 before the learned District Judge, Gopalganj on transferred it was heard by the learned Addition District Judge, Gopalponj who after hearing the parties also dismissed the appeal by his judgment and decree dated 18.11.2008.

9. Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the appellate court. The plaintiff appellent preferred revisional application before this court and obtained this rule and order of status-quo.

10. Mr. Ali Reza, the learned Advocate appearing for the plaintiff petitioner submits that both the court below upon misconception of law misconstrued the facts and circumstances of the case without proper appreciation of evidence on records and improperly dismissed the

suit of the plaintiffs and committed an error of law occasioning failure of justice. The learned Advocate for the petitioner submits that the plaintiff by adducing oral and documentary evidence prove the case but the trial court without proper discussion and consideration of the evidence on record and the exhibit wrongly held that the plaintiff could not prove their case. They have title and position of the suit land. The Appellate court also without proper discussion of the evidence on record independently and without discussion of the relevant issue wrongly and mechanically affirmed the judgment and decree passed by the Trial Court thus committed an error of law which occasioning failure of justice.

11. The learned Advocate for the petitioner submits that the plaintiff obtained settlement from the government in the year 1974 by different settlement cases and khatians were opened in their name and they have paid rent to the government and have been owning and possessing the same by dint of registered kabuliat. But the trial court wrongly found that the plaintiff could not produce any document in favour of their settlement.

12. On the other hand the appellate court also did not consider the title and document of the plaintiff i.e. registered kabuliat and the subsequent document which prove their possession in the suit land and wrongly affirmed the judgment passed by the trial court. Thus both the court below committed an error of law occasioning failure of justice. The learned advocate for the petitioner also submits that the defendants could not prove their title in the suit land and they also could not prove their possession as claimed in the written statement. But the trial court as well as the appellate court wrongly believed the document and exhibit by the defendant and found title and possession of the defendants erroneously.

13. Thus both the court below upon misreading of the evidence on record and non consideration of the documents produced by the plaintiff erroneously found that the plaintiff could not prove their title and possession of the suit land. On the other hand the defendants have title and possession in the suit land. Thus both the court below committed an error law in the decision occasioning failure of justice. The learned Advocate for the petitioner submits that the trial court believed the rent receipt produced by the defendants but the defendant did not produce those rent receipt of the khatian No.42 which is relevant to the khatian claimed by the defendants. Thus on the basis of wrong findings of facts the trial court as well as appellate court erroneously decided that the defendants are in possession of the suit land.

14. Learned Advocate for the petitioner also submits that both the court below upon misreading of the evidence did not consider that the defendants produced exhibit-1, 1(Kha) and 2 without showing any evidence of settlement claimed to have acquired by their predecessor on 28.2.1961 as well as the approval by Additional Deputy Commissioner on 31.5.1961. So, the title and possession on the basis of the aforesaid settlement which has been found by the court below are wrong findings of facts which may be set aside.

15. The learned for the petitioner lastly submits that the appellate court as the last of facts without proper discussion of the evidence on record and the exhibit mechanically affirmed the judgment of the trial court without flowing the provision of the order 31 rule 41 of the Code of Civil Procedure. Thus committed an error of law in the decision occasioning failure of justice.

16. On the other hand the learned Advocate Mr. Sheikh Akterul Islam, appearing for the opposite party submits that the trial court after proper perusal of the plaint and the written statement framed issued and discussed those issues elaborately and found that the plaintiff

could not prove their case by adducing oral and documentary evidence on record. The appellate court also affirmed the judgment and decree passed by the trial court upon proper consideration of the evidence on record and judgment and decree passed by the trial court. Thus the appellate court committed no error of law in the decision occasioning failure of justice.

17. Learned Advocate for the opposite party further submits that the plaintiff obtained kabuliat in the year 1974 which was subsequently cancelled by the government authority and without taking proper steps against those cancellation of kabuliat filed the suit for declaration of title and the plaintiff could not prove by adducing oral and documentary evidence that they have possession in the suit land. The trial court on consideration of the aforesaid facts and circumstances rightly dismissed the suit of the plaintiff and the appellate court also affirmed the judgment passed by the trial court.

18. The learned Advocate for the opposite party further submits that the present defendants are the successive heirs of Sobed Ali Biswas who obtained the suit land by way of settlement and also subsequently by way of compromise decree and the defendants in support of their possession produced rent receipt before the trial court and the trial court on consideration of the aforesaid documents which was marked exhibits found that the defendants have title and possession in the suit land. The appellate court also after proper discussion of the evidence on record and perusal of the exhibit found title and possession of the defendants.

19. Therefore, the concurrent findings of the facts arrived at by the court below that the plaintiff could not prove their case by adducing oral and documentary evidence should not be interfered with by the revisional court as there is no misreading and non consideration of the evidence on records in the judgment passed by the appellate court as the last courts of fact.

20. Heard the learned Advocate for both the parties and perused the revisional application and the impugned judgment passed by the trial court as well as the judgment and decree passed by the appellate court below and also the Lower Court's records including exhibits marked by both parties.

21. It appears from the record that the plaintiff filed the suit for declaration of title. The plaintiff case which was mentioned above that they have obtained the suit land by way of settlement cases in the year 1974.

22. On the other hand the defendants case is that they are in possession in the suit land. Since their predecessor Sabed Ali Biswas obtained the suit land along with the other property by way of settlement and resettlement in total their possession of 4.82 acre of land and after obtaining the suit land by the settlement case in the year 1961. The land was wrongly recorded in the name of the government and subsequently the plaintiff with some government officials collusively created the settlement case and subsequently it was cancelled by the governed authority so, the plaintiff have no title and possession in the suit land.

23. The trial Court on perusal of the settlement case with the registered kabuliat which is marked as exhibit found that the plaintiff though claim that after settlement the possession of the land was handed over to the plaintiff predecessor. But they could not produce any document in favour of the suit land as khas land of the government i.e. how the government took the land from the owner of P.S. record. The plaintiff did not make any statement in this

respect. So there is no proof of government legal ownership in the suit land by which the government settled the land to the plaintiff. The trial court while discussing the cases of the defendants found that Sobed Ali Biswas and others took potton from the C.S. recorded owners.

24. Thereafter, on non- payment of rent and a rent case was started being rent case No.851 of 56. It was disposed of on compromise and Sobed Ali obtained decree. So, according to exhibit-Gha i.e. the sole decree, the defendant predecessor had title and possession. The defendants took settlement on 28.2.1961 i.e. exhibit- Kha then the suit land was wrongly recorded in the government name at the time of S.A. survey and published in the name of government at the time of S.A. Khatian.

25. The defendants also claim that they have purchased the land from Sobed Ali along with other land and muted their name and paid rent to the government and they have produced documents exhibit-R and also produce rent receipt annexure-৫-series. The trial court found that the defendants made an objection against the settlement case of the plaintiff to the sub-divisional officer who by his order dated 02.07.1981 cancelled those three settlement cases of the plaintiff against which one Shamsul Huq and his brother made an objection which was also rejected. The defendant in support of their contention produced the office order dated 2.7.1981 exhibit-৬। The trial court also found that the defendant on 11.11.1986 also submitted exhibit-৭। office order of upazila revenue officer 2.4.2001 and all those documents prove that the settlement were cancelled by the government authority and without taking any steps against those cancellation the plaintiff filed the present suit with a different cause of action.

26. The trial court lastly found that in the latest survey record was prepared in the name of the defendants and in support of their contention they produced the Khatian No. 262 as exhibit-৮. The trial court also discussed the oral evidence of the P.W. 2 Ohiduzzaman Munshi, P.W.3 Abdul Kashem Talukder, P.W.4 Abdul Rashid Mollah and found that all of them are from the same village and they are interested witness.

27. The trial court considered the aforesaid evidence of the P.W. and found that plaintiff could not prove their title in the suit land as the settlement cases were cancelled by the government. So, the plaintiff have no title in the suit and from the defendants documents it appears that they are in possession in the suit land for long time. With the aforesaid discussion the trial court dismissed the suit of the plaintiff.

28. On the other hand the appellate court after discussion of the respective case of the parties found that the plaintiff have filed the settlement case in support of their claim which were cancelled subsequently by the government. On the other hand the defendant side claim their title and possession since 1961. Thereafter, auction sale, compromise decree and in support of the aforesaid title they have produced rent receipt which are the corroborative evidence of their title and possession, the appellate court also found that some of P.Ws. admitted the possession of the defendants in the suit land.

29. However, the appellate court found that the plaintiff also failed to prove the cause of action of the case so the plaintiff by any way could not prove their case that they have title and possession of the suit land. With the aforesaid findings and decision the appellate court affirmed the judgment and decree passed by the trial court.

30. The learned Advocate for the petitioner submits that though the judgment passed by both the courts below dismissing the suit upon concurrent findings of facts but those findings are not based on evidence on records.

31. The learned Advocate for the petitioner in support of his argument referred to a decision in the case of the Province of East Pakistan now Bangladesh Vs. Aaluddin Ahmed reported in 4 BCR (AD) 201 (1984) *“Suit for declaration of title to suit land –plaintiff was allotted 5 (five) acres of government khas land in 1958 approved by the Additional Collector and he was in possession of the same since then- In 1962 the Board of Revenue by an order dated 3.10.1962 cancelled the settlement- Trial Court dismissed the suit mainly on the ground that the plaintiff was not a bonafide cultivator and since the plaintiff did not come within the category of person to whom settlement could be given, such settlement was illegal, without jurisdiction and void ab initio and the same could not be binding against the government-HIGH COURT DIVISION held that the administrative control and power exercised by the Board of Revenue do not extend to cancellation of lease granted by a valid settlement and if the lessee had violated any terms of the lease, the government could proceed against him for the cancellation of his lease and his eviction from the land-High Court Division’s decision was upheld-”*.

32. On the other hand the learned Advocate for the opposite party referred to a decision in the case of Milksar Ali Dewan (Md.) and others Vs. Dares Ali Mondal and others reported in 13 MLR 105 *Specific Relief Act, 1877, Section 42 – Suit for declaration of title on the basis of pattan taken through amalnama from the Ex-land lord – Title and possession of the plaintiff found well established and as such the suit is decreed by the appellate court which the High Court Division and the Appellate Division affirmed.*

33. And also in the case of Md. Mozaffer Rahman and others Vs. Government of Bangladesh and another reported in 15 MLR 170 (AD) 2010 *Specific Relief Act, 1877-Section 39- Suit for declaration of title in the absence of satisfactory proof thereof is not maintainable- In the instant case the plaintiffs could not prove their title to the suit land by producing documentary evidence as well as oral evidence. The trial court dismissed the suit on specific finding which the court of Appeal, High Court Division and the Appellate Division held perfectly justified.* And also in the case of Mohar Ali Bhuiyan Vs. Michir Ali Bhuiyan and others reported in 15 MLR (AD) 501 (2010) *Code of Civil Procedure, 1908-Section 115- Concurrent findings of facts arrived at by the trial court as well as the appellate court are binding upon the revisional court- unless there is a case of misreading or non-consideration of material evidence on record, the concurrent findings of the trial court as well as the appellate court are binding upon the revisional court. The High Court Division affirmed the decision of the court of appeal below with the apex court found nothing wrong to interfere.*

34. I have gone through the judgment of both the court’s below and the exhibit on record. It appears that the plaintiffs have filed a suit for declaration of title and it is the settled principal of law that the plaintiff has to prove their case by adducing oral and documentary evidence.

35. From the evidence on record it appears that the plaintiffs obtained settlement from the government by three settlement cases in the year 1974. From the evidence on record it appears that those three settlement cases were cancelled by the government authority. The learned Advocate for the petitioner relying on the decision submits that the sub-divisional

officer has no authority to cancel the settlement case. But it appears from the plaint as well as the evidence from the plaintiff side some of them challenged those but all of them never challenged those decision in an appropriate forum.

36. So, the order of cancellation was affected from the time of cancellation and the plaintiff have filed the present suit for declaration of title. So, the basis of their title was not in existence. The another aspect of the case is that the trial court elaborately discussed the evidence of the P.Ws. and found that they could not prove their possession by adducing oral and documentary evidence.

37. On the other hand the learned advocate made some argument in respect of believing the exhibit of the defendants side. It is also settled that the defendants may have thousand of defect but it does not help the plaintiff to prove their case. From the whole pleading or of the exhibits produced by the defendants it appears that the defendants were possession in the suit land either by way of compromise decree or settlement from government. Question may be raised in this regard whether they have proved their chain of title and document. But admittedly they are in possession though they have put in rent receipt mentioning old khatian No.42 but it is not proved that those rent receipts are forged or created.

38. Moreover, the defendant side when made objection about the settlement of the plaintiff and when it was cancelled in that order of cancellation the authority recognized settlement case of the defendant and that document was marked as exhibit before the trial court. So, from the whole discussion of the evidence and exhibit of the parties it appears that the plaintiff could not prove their case that they have any title in the suit land and also the possession. The main reasoning of this findings stated above that the basis of the title of the plaintiff is the settlement which was cancelled and the order of cancellation is in existence.

39. So, the trial court rightly dismissed the suit of the plaintiff. The appellate court though did not discuss the issue elaborately yet affirmed the judgment and decree passed by the trial court with some findings regarding settlement case of the plaintiff and the subsequent cancellation of those settlement case and also discussed the evidence of the plaintiff side by which the appellate court found that plaintiff could not prove their case. So, the decision taken by the appellate court is not wrong.

40. From the discussion made above and the facts and circumstances of the case. I do not find any error of law in the decision taken by the courts below which are concurrent in nature and no interference is called for.

41. Thus the Rule fails.

42. In the result, the rule is discharged. The judgment and decree passed by the appellate court affirming the judgment and decree passed by the trial court is hereby upheld.

43. The order of status-quo granted earlier is hereby vacated.

44. Send a copy of the judgment and order of this court to the court below at once.
Send down the L.C. records at once.