

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
Chief Justice
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

CIVIL APPEAL NO.155 OF 2008

(From the judgment and order dated 10th July, 2006 passed by the High Court Division in Civil Revision No.738 of 2003)

Most. Nazma Begum and others Appellants

=VERSUS=

Plaintiff Muksed Ali being
dead his heirs:(1)Most Lutfun Respondents
Nahar and others

For the Appellants :Mr. Md. Mainul Islam,
Advocate, instructed by
Mrs. Sufia Khatun,
Advocate-on-Record

For Respondent Nos.1- :Mr. Md. Shofiqul Islam
5 Dhali, Advocate,
instructed by Mr. Md.
Ziaur Rahman, Advocate-
on-Record

For respondent Nos.6 :Not represented
and 7

Date of hearing :The 5th January, 2022

Judgment on :The 5th January, 2022

J U D G M E N T

MD. NURUZZAMAN, J:

This Civil Appeal, by leave, has arisen
out of the judgment and order dated 10.07.2006

passed by a Division Bench of the High Court Division in Civil Revision No.738 of 2003 discharging the Rule thereby affirming the judgment and decree dated 09.11.2002 passed by the learned Joint District Judge, Tangail in Title Suit No.3 of 2000 decreeing the suit.

Facts leading to filing this civil appeal, in short, are that:

Plaintiff Md. Muksed Ali, the predecessor of the present respondents, instituted the above suit for recovery of possession of the suit land measuring $9\frac{3}{4}$ decimals under section 9 of the Specific Relief Act on the averments that Jatindra Prasad Roy was the original owner of the suit land and also other land and the plaintiff became the owner of 1.62 acres of land of plot No.412 by way of settlement, purchase and exchange. Thereafter, he made a deed of exchange dated 18.04.1977 with the

defendant No.6 and also became the owner of 30 decimals of land of Plot No.412 and $4\frac{3}{4}$ decimals of land of another plot, then he constructed pucca tin shed building in the suit land in order to reside thereon but on 08.12.1994, the defendants Nos.1-5, along with others, forcibly dispossessed him therefrom. To settle the matter through shalish a mediation meeting was held, wherein shalishdars had found that the plaintiff was dispossessed from the suit land. Thus, the defendants were directed by the shalishdars to hand over the possession of the suit property to the plaintiff but the defendants did not abide by the same, hence the suit.

The appellants herein as the defendants Nos.1-5 contested the suit by filing written statement denying the material allegations made in the plaint contending, inter alia, that the

suit land originally belonged to Zamindar Zatintra Prasad Roy and Jahanara Begum, their predecessor, by settlement, got $27\frac{1}{2}$ decimals of land from Plot No.412 and Revisional Survey (R.S., in short) record was rightly prepared in her name and she died leaving behind her husband, the defendant No.6, sons, the defendant Nos.3-5 and daughter the defendant No.1; the defendant Nos.1 and 3-5 inherited $20\frac{5}{8}$ decimals of land left by their mother Jahanara Begum in suit plot No.412; the defendant No.4 transferred his $05\frac{25}{28}$ decimals of land to defendant No.2-Shahidul Islam Hesting by a registered deed of gift; another settlement holder transferred 14 decimals of land to the defendant No.3; the defendants constructed pacca tinshed building in the suit land and they have been residing therein with their

families; the defendants Nos.1 and 2 are the husband and wife and they got title over 8 $\frac{47}{56}$ decimals of land in the suit plot and they have been possessing the same by mutating their names in a separate holding. The plaintiff has not stated clearly how he became owner of 1.62 acres of land and further the plaintiff did not get 30 decimals of land from suit Plot No.412 and $4\frac{3}{4}$ decimals of land from other plots by way of exchange deed dated 18.04.1977 as the defendant No.6 was not entitled to exchange 30 decimals of land of said Jahanara Khatun and the plaintiff has no right, title, interest and possession in the suit land. Hence, the suit was liable to be dismissed with costs.

The trial Court decreed the suit by the judgment and decree dated 09.11.2002.

Feeling aggrieved by the judgment and decree dated 09.11.2002 passed by the trial

Court in Title Suit No.3 of 2000, the defendants-petitioners preferred Civil Revision No.738 of 2003 before the High Court Division and obtained Rule.

In due course, a Single Bench of the High Court Division, upon hearing the parties, discharged the Rule by the impugned judgment and order dated 10.07.2006

Feeling aggrieved by the impugned judgment and order dated 10.07.2006 passed by the High Court Division, the defendants as petitioners herein preferred Civil Petition For Leave to Appeal No.43 of 2007 before this Division and obtained leave, which gave rise to the instant appeal.

Mr. Md. Mainul Islam, the learned Advocate appearing on behalf of the appellants submits that the High Court Division fell in error in discharging the Rule as the plaintiff-

respondents failed to prove their dispossession from the suit land and the High Court Division also failed to consider that the area of the suit Plot No.412 was 4.35 acres and no partition ever taken place between the co-sharers of the said plot, they had/have been possessing and enjoying their shares without any partition and further the High Court Division misread and misconstrued the evidences of the respective parties particularly the evidence of plaintiff's witness No.1 (P.W., in short), the plaintiff No.1(Cha) to the effect that "আমি যে চৌহদ্দি বলিয়াছি উহার মধ্যে কত শতক জমি বলিতে পারিব না "।.....

"৮/১২/৯৪ তারিখ রাত ৯/১০ টার মধ্যে বাদীকে বেদখল করার সময় আশে পাশের অনেক লোকে দেখিয়াছে। আমি তাহাদের কাহারও নাম বলিতে পারিব না।" and P.W.2 Abdul Mannan in his cross-examination he stated that "আমি বেদখল করিতে দেখি নাই।" and P.W.3-Md. Shafiul Islam also stated that "বেদখল করিতে আমি নিজে দেখি নাই।" and further P.W.1, in her cross-examination

stated that "নালিশী জমির দক্ষিণে নাজিমের জমি। তাকে চিনি। নাজিম জানে যে নালিশী জমিতে কে গৃহ নির্মান করিয়াছে।" and above Nazim who examined himself as Defendant Witness No.2 (D.W., in short) in his cross examination he stated that "হেষ্টিং ১৯৯২-৯৩ সনে নালিশী জমির গৃহটি বর্ধিত করিয়াছে।" and the above evidence clearly proved that the defendants have been possessing the suit land long before 08-12-1994, the alleged date of dispossession, and the High Court Division also failed to appreciate Exhibits-A, A(2), the R.S. and Cadastral Survey (C.S. in short) record, which stand in the name of the predecessor of the present petitioners and also Exhibit-B, the mutation khatian, clearly proved that complicated question of title is involved in the present suit and thus, the High Court Division fell in error in affirming the judgment and decree passed by the trial Court. He further submits that the High Court Division

committed error of law in not considering that the suit under section 9 of the Specific Relief Act was not maintainable in law as the plaintiff failed to prove the factum of possession and dispossession in the suit land. He next submits that the High Court Division failed to consider and appreciate the pertinent fact that in suit plot No.412, the quantum of total land was 435 decimals and between the co-sharers of the suit plot partition was never took place and the co-sharers had been possessing and enjoying their respective shares without any partition. He finally submits that the High Court Division committed error in law in not considering that Jahanara Khatun, the predecessor of the defendants took patta of 27½ decimals of land of suit plot from Zamindar and R.S. record was prepared in her name and she died leaving defendants after inheriting their

shares, they have been possessing the suit land by mutating their names and the defendant No.6 had no right to exchange the suit land with the plaintiff as the same belonged to said Jahanara Khatun and serious complicated question of title is involved in respect of suit property but the High Court Division illegally discharging the Rule and affirming the judgment and decree of the trial Court and, as such, the impugned judgment and order of the High Court Division is liable to be set aside.

Mr. Md. Shofiqul Islam Dhali, the learned Advocate appearing on behalf of the respondent Nos.1-5 submits that the plaintiff-respondents filed the suit only for recovery of khas possession, under section 9 of the Specific Relief Act. The suit was filed within time and the P.Ws. were able to prove the plaintiff's continuous possession before dispossession

dated 08.12.1994 and it was also proved that the defendants dispossessed the plaintiff on 08.12.1994 forcefully, the finding of the trial Court about the plaintiff's possession and dispossession has been rightly maintained by the High Court Division. He further submits that the trial Court as well as the High Court Division found that the original owner Moksed Ali constructed the pacca tinshed building upon the suit land to reside therein before 08.12.1994. But on the midnight following 08.12.1994, the defendant Nos.1 and 2 entered into the house/suit property and dispossessed the plaintiff forcefully. He next submits that the defendants stated in paragraph No.14 of their written statements that they constructed pacca building upon the suit land after 03.01.1995. But D.W.1 stated in his cross examination that before 03.01.1995, there was

pacca building upon the suit land. The High Court Division correctly found the original plaintiff Moksed Ali constructed the pacca building upon the suit land before the so-called gift deed of defendant No.2 dated 03.01.1995. He finally submits that the defendants stated in their written statements that the defendant No.6 had no right, title and interest of 30 decimals of land of the suit property which attract the property of exchange deed No.2161 dated 18.04.1977. On the other hand, the D.W.1 stated in his examination-in-Chief that the defendant No.6 was the owner of more than 44 decimals of land of the suit plot. The written statements of the defendants and deposition of the D.W.1 is self-contradictory. Exhibit-1 (Salishnama) which was not denied by the defendants. Belayet Hossain Mia (defendant No.6), the predecessor of the other defendants

admitted before the Mediation Board that the tin shed building was constructed by the plaintiff Moksed Ali Mia. Belayet Hossain Mia further stated before the Mediation Board that he exchanged the suit property with Moksed Ali Mia who constructed the tinshed building thereon and they were in possession of the suit property; there was tin shed building before the deed of gift in favour of the defendant No.2. The defendant No.2 is the son-in-law of the defendant No.6-Belayet Hossain, defendant Nos.1, 3-5 are the sons and daughters of the defendant No.6. The defendant No.6 died after filing the written statements of the defendant Nos.1-5. The defendant No.6 did not file any written statement, he denied the defendants statements before the Mediation Board and, as such, the impugned judgment and order passed by the High Court Division is sustainable in law.

We have considered the submissions of the learned Advocates of the respective parties. We have gone through the materials on records with impugned judgment and order of the High Court Division.

It revealed from the materials on record that the trial Court vividly discussed the evidence as well as relevant papers how it's decreeing the suit. The High Court Division in affirming the decree of the trial Court discussed the materials on record as well as judgment of the trial Court. However, Leave was granted on the following submission of the learned Counsel for the petitioners which is quoted below:

"The learned counsel for the petitioner submitted that the High Court Division fell in error in discharging the Rule as the

plaintiff-respondents failed to prove their dispossession from the suit land and the High Court Division also failed to consider that the area of the suit Plot No.412 was 4.35 acres and no partition ever taken place between the co-sharers of the said plot, they had/have been possessing and enjoying their sharer without any partition and further the High Court Division misread and misconstrued the evidences of the respective parties particularly the evidence of P.W.1, the plaintiff No.1(Cha) to the effect:

“আমি যে চৌহদ্দি বলিয়াছি উহার মধ্যে কত শতক জমি বলিতে

পারিব না ”। “৮/১২/৯৪ তারিখ রাত ৯/১০ টার মধ্যে

বাদীকে বেদখল করার সময় আশে পাশের অনেক লোকে

দেখিয়াছে। আমি তাহাদের কাহারও নাম বলিতে পারিবনা।”

and P.W.2 Abdul Mannan in his cross-

examination stated that “আমি বেদখল করিতে

দেখি নাই।” and P.W.3-Md. Shafiul Islam

also stated that “বেদখল করিতে আমি নিজে দেখি

নাই।”

and further P.W.1, in her cross-

examination stated that

“নালিশী জমির দক্ষিণে নাজিমের জমি । তাকে চিনি। নাজিম

জানে যে নালিশী জমিতে কে গৃহ নির্মান করিয়াছে।”

and above Nazim who examined himself

as D.W.2, in his cross examination

stated that

“হেষ্টিং ১৯৯২-৯৩ সনে নালিশী জমির গৃহটি বর্ধিত করিয়াছে।”

and the above evidence clearly

proves that the defendants have been

possessing the suit land long before

08-12-1994, the alleged date of

dispossession, and the High Court Division also failed to appreciate Exhibits-A, A(2), the R.S. and C.S. record, which stand in the name of the predecessor of the present petitioners and also Exhibit-B, the mutation khatian, clearly proved that in the suit complicated question of title is involved in the present suit and thus, the High Court Division fell in error in affirming the judgment and decree passed by the trial Court."

To appreciate the above submissions, we have especially and categorically scrutinized the testimonies of the plaintiffs' and defendants' witnesses. On a careful scrutiny it transpires that those submissions are the some portion out of entire testimonies of the

witnesses. If we consider the entire evidence, then it would be easy to characterise that for this excerpted testimonies, the suit would not fail. Because, PWs in their evidences in a vivid manner described the total picture of dispossession. Thereafter, the manner of salishnama which was also exhibited without objection from the side of defendants, proved the light of the Mediation Board, not only the Salishnama was signed by the Salisders, the defendants also did not deny the signature of the Salisders. Defendants specific and distinctive failure to denial the salishnama in the written statement as well as in the evidence, the contents of salishnama would deem to be admitted as per provision of the Rule 5, Order VIII of the Code of Civil Procedure. Therefore, excerpted submissions of the learned

Counsel of the appellants found devoid of merit.

Both the High Court Division and the trial Court in its judgment opined that it's scanned the Exhibit No.1-the Salishnama and statement of Belayet Hossain Mia who is none but predecessor of the defendants i.e. father and father-in-law of Nazma and Hestings respectively. According to contents of salishnama it appears that Belayet Hossain Mia admitted in his statement that he had made exchanged land with Mokshed Mia by giving specific boundary of the exchanged land which he has given in exchange of his land. Mokshed Mia constructed tinshed and possessed the same since its construction.

On the other hand, defendants in the written statement ever claimed that they have constructed any tinshed building. However, they

claimed that they extended the building in the year 1994. It is divulged from the testimonies and cross-examination of the D.Ws. that they extended the building which was not constructed by them but the existing building of Mokshed Mia who is none but predecessor of the present plaintiffs who filed the suit. Furthermore, the defendants obtained the so called deed of gift of the year 1994. Therefore, it is crystal clear that before so called deed they extended the building which was constructed before they have the deed of gift. This is also not denied by them specifically in their written statement. From the above facts and discussions, it is abundantly clear that the plaintiffs had been able to prove their case of possession and dispossession by giving the cogent evidence i.e. salishnama and statement of Belayet Hossain Mia, the predecessor of the

defendants and by the testimonies of other P.Ws.

The defendants' case sought to establish that they have the title over the suit land cannot be decided in a suit for recovery of khas possession under section 9 of the Specific Relief Act. Such claims of title may claim in defendants. However, the settle maxim in this regard have been enunciated by this Division in the case of Abdur Rouf (Md) Vs. Abdul Hamid and others reported in 49 DLR (AD) 133, in the case of Yuakub Ali (Md) Vs. Md. Atiar Rahman and others reported in 4 BLC (AD) 149. Particularly, in this case, we do not find any reason, error of law and miscarriage of justice to interfere with the concurrent findings of fact.

It has been settled in the famous case of Srimati Bibhabati Devi Vs. Ramendra Narayan Roy

and Others (AIR 1947 PC 19) {Popularly known as Bhawal Raja's case} citing cases of Umrao Begum V. Irshad Husain (1894) L.R. 21 I.A.163; Kunwar Sanwal Singh V. Rani Satrupa Kunwar (1905) L.R. 33 I.A.53, 54 and Rani Srimati V. Khajendra Narayan Singh (1904) L.R. 31 I.A. 127, 131 Privy Council the then highest Court of appeal opined that if the appellants failed to show any miscarriage of justice, or the violation of any principle of law or procedure, therefore, see no reason for departing from the usual practice of this Board of declining to interfere with two concurrent findings on pure questions of fact.

As the successor of the highest Court this Division still maintains this principle in both civil as well as criminal jurisdiction.

This view has been affirmed in the case of Additional Deputy Commissioner (Rev.), Rangpur

and others-Vs- Amir Hossain and others reported in 14 ADC (2017) 774, in the case of Abu Taher and others-Vs-the State reported in 73 DLR (AD) (2021)9. We are, therefore, of the view that reassessment of evidences on pure question of facts is pointless.

Accordingly, the submissions advanced by the learned Counsel for the appellants found devoid of merit.

Hence, this appeal is dismissed. However, without any order as to costs.

C.J.

J.

J.

The 5th January, 2022
Hamid/B.R/*Words 3,015*