

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Syed Mahmud Hossain, *Chief Justice*
Mr. Justice Hasan Foez Siddique
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

CIVIL APPEAL NO.190 OF 2011

(From the judgment and order dated 17.12.2009 passed by the High Court Division in Writ Petition No.6053 of 2008)

Government of Bangladesh, :Appellants
represented by the Secretary,
Ministry of Land, Bangladesh
Secretariat, Dhaka and others.

Versus

Sadeque Ahmed Nipu, son of late :Respondents
Mohiuddin Ahmed and another

For the appellant : Mr. Biswajit Deb Nath, Deputy
Attorney General, instructed by
Mr. Haridas Paul, Advocate-on-
Record.

For the respondent No.1 : Mr. Bivash Chandra Biswas,
Advocate-on-Record.

For the respondent No.2 : Not represented.

Date of hearing and judgment : **The 24th day of November, 2020.**

JUDGMENT

Obaidul Hassan, J. This civil appeal has arisen out of a petition for leave to appeal under Article 103 of the Constitution of the People's Republic of Bangladesh filed by the appellants against the judgment and order dated 17.12.2009 passed by the High Court Division in Writ Petition No.6053 of 2008 making the Rule absolute.

Facts necessary for the disposal of the appeal are that the respondent No. 1 as the writ petitioner filed Writ Petition No.6053

of 2008 before the High Court Division against the appellants seeking for a direction upon them to release his 11 decimals of land appertaining to SA Plots No.71 and 30 decimals of land appertaining to SA Plot No.66 both under SA Khatian No.112, No.88 Bagchar Mouza, under Police Station-Kotwali, District-Jessore from the list of vested property.

The writ-petitioner, herein respondent, stated *inter alia* that he is permanent citizen of Bangladesh and owner of 11 decimals of land appertaining to SA Plots No.71 and 30 decimals of land appertaining to SA Plot No.66 both under SA Khatian No.112, No.88 Bagchar Mouza, under Police Station-Kotwali, District-Jessore. The land belonged to one Sujayet Ali Kha, but it was wrongly recorded in the name of one Noni Gopal Das in SA Khatian No.112 under the same mouza. Challenging the wrong recording Sujayet Ali Kha instituted Title Suit No.587 of 1970 seeking declaration of his title in the said land impleading Noni Gopal Shah and the Assistant Custodian of Enemy Property, Jessore, the then Sub-Divisional Officer, Jessore as defendants. The said suit was decreed in favour of Sujayet Ali Kha by the judgment and decree dated 15.03.1971 passed by the learned Munsif, 3rd Court, Jessore. While Sujayet Ali Kha had been in possession of the said property died leaving behind his wife Anwara Khatun along with his three sons namely, Mohammad Ali, Swakat Ali and Jahangir and one daughter

Fatima Khatun as his heirs. The successors of said Sujayet Ali Kha by executing five kabalas dated 16.08.1998, 11.06.1998 and 07.06.1998 sold the said land to Nawab Ali, Momtaz Khanam, Zillur Rahman, Abul Kashem, Shahabuddin, Laila Afroz, Nazir Ahmed and Akram Hossain, who subsequently sold the same by executing four kabalas dated 16.07.2005, 28.02.2006, 06.03.2006 and 28.04.2006 to the writ petitioners-respondents and handed over possession to him and since then he has been enjoying and possessing the land in question. The said land also had been mutated in his name and he has been paying the rent and taxes regularly. The aforesaid vendors of the respondents before selling the said land to the respondents filed an application before the Additional Deputy Commissioner (Revenue), Jessore being VP Misc. Case No.98-Kot of 1997 with a prayer to release the said land from the list of vested property. The application was rejected on 11.07.1999 by the Additional Deputy Commissioner (Revenue), Jessore and he also referred the same to the learned advocate for the vested property to take necessary steps for getting the decree passed in Title Suit No.587 of 1970 set aside. The learned advocate gave opinion that the steps to be taken as asked for would be fruitless. Even then the Additional Deputy Commissioner (Revenue), Jessore by his order dated 29.03.2000 directed the local government pleader to file suit for setting aside the aforesaid judgment and decree. During 7(seven) years from the date of

purchase of the land in question by the writ-petitioners, no step was taken on behalf of the government to get the said decree set aside. As such, the respondent again on 16.04.2007 filed an application before the Additional Divisional Commissioner, Khulna to release the suit property from the list of vested property. On receipt of his such application, no action was taken by the Additional Divisional Commissioner. Thereafter, the respondent filed an application to the Member, Land Appeal Board on 24.05.2007, but he did not pass any order. The respondent also filed another application before the Chairman, Land Appeal Board on 15.08.2007 with similar prayer, but received no response. Thereafter, the respondents served a notice demanding justice through his learned advocate requesting the writ-respondents, herein appellants, to release property in question from the list of vested property, but did not get any response. In such circumstances, finding no other alternative the writ petitioners-respondents invoked the original jurisdiction of the High Court Division under Article 102 of the Constitution of the People's Republic of Bangladesh by filing writ petition and obtained Rule; that in a supplementary affidavit sworn on 26.04.2009 it was further stated that the writ petitioner-respondent also submitted an application dated 15.02.2009 before the Deputy Commissioner, Jessore praying for the release of the said property from the list of the vested property, but without any success.

Writ-respondent No.5, petitioner No.4 Additional Deputy Commissioner, Jessore contested the Rule by submitting affidavit-in-opposition stating, *inter alia*, that the writ-petitioner has the alternative forum to move the Tribunal constituted under অর্পিত সম্পত্তি প্রত্যারণ আইন, ২০০১ and, as such, the writ petition was not maintainable.

A Division Bench of the High Court Division by its judgment and order dated 17.02.2009 made the Rule absolute and directed the respondents to release the property of the writ-petitioners from the list of vested property within one month from the date of receipt of the copy of the judgment.

In the above scenario, the appellants preferred Civil Petition for Leave to Appeal No.671 of 2010 challenging the judgment/decision dated 17.12.2009 passed by the High Court Division in Writ Petition No.6053 of 2008 making the Rule absolute. Upon hearing the learned Advocates for the contending parties, this Division, granted leave to appeal.

Mr. Biswajit Deb Nath, learned Deputy Attorney General, appearing for the appellants has taken us through the judgment and order dated 17.12.2009 passed by the High Court Division in Writ Petition No.6053 of 2008, relevant provisions of the অর্পিত সম্পত্তি প্রত্যারণ আইন, ২০১১, the materials on record and submits that the High Court Division failed to appreciate that the respondents have not acquired any right over the disputed property for

releasing the same from the list of vested property. The ex-parte decree dated 15.03.1971 passed by the Court of Munsif, 3rd Court, Jessore in Title Suit No.587 of 1970 is not binding upon the appellants to release the disputed property from the list of vested property, which was enlisted in 1968. He also submits that the respondents having alternative forum to move the Tribunal constituted under the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ for return of the land, the writ not being maintainable the High Court Division erred in law in entertaining the same and making the Rule absolute. He again submits that serious disputed question of title relating to immovable property having been involved, the writ petition not being maintainable the High Court Division erred in law in making the Rule absolute sitting in a writ jurisdiction under Article 102 of the Constitution of the People's Republic of Bangladesh.

Mr. Bivash Chandra Biswas, learned advocate-on-record appearing on behalf of the respondent No.1, submits that the decree passed in Title Suit No.587 of 1970 is still in existence and as the government was party in that suit in that case the applicant without setting aside the judgment and decree passed in Title Suit No.587 of 1970 cannot claim that the property is vested property. He also submits that the plaintiff has been possessing the property in question and the same has been mutated in his name in the government seresta. The writ-petitioner-respondent No.1

paid rent to the government and in that view of the matter it can be said that the government has accepted the tenancy right of the writ-petitioner by taking rent from him. He again submits that the government (writ-respondent) could not prove that the SA recorded tenant left the then East Pakistan to India and since a competent Civil Court has passed the decree of declaration of title in favour of Sujayet Ali Kha, then the appellant herein cannot claim that the suit land is vested property, and, as such, the appeal is liable to be dismissed.

We have considered the submissions of the learned advocates appearing on behalf of the parties concerned, perused the impugned judgment and order passed by the High Court Division and other connected papers on record. From the evidence on record it appears that the Appellate Division granted civil petition for leave to appeal to consider only two matters, which have been quoted hereunder:

“I. Whether the High Court Division failed to consider that the respondents had not acquired any right over the disputed property for releasing the same from the list of vested property.

II. Whether the High Court Division failed to appreciate that the ex-parte decree dated 15.03.1971 passed by the Court of Munsiff, 3rd Court, Jessore in Title Suit No.587 of 1970 is not binding upon the petitioners to release the disputed property from the list of vested property which was enlisted in 1968.”

Now question arises regarding the rights of the respondents over the disputed property. The respondent claimed that he is a permanent citizen of Bangladesh and owner of 11 decimals of land appertaining to SA Plots No.71 and 30 decimals of land appertaining to SA Plot No.66 both under SA Khatian No.112, No.88 Bagchar Mouza, under Police Station-Kotwali, District-Jessore. The vendors of the writ-petitioner-respondent purchased the land in question from the heirs of Sujayet Ali Kha. So, according to the deposition of the respondents, the recorded owner of the disputed land was Sujayet Ali Kha, who got corrected record-of-rights in his name by virtue of judgment and decree dated 15.03.1971 passed in Title Suit No.587 of 1970.

Seeing the said order dated 15.03.1971 claimed by the writ petitioners-respondents to have been passed by the learned 3rd Munsif, Jessore we became suspicious and accordingly, the Registrar, Supreme Court of Bangladesh (Appellate Division) was asked to take detail information regarding the passing of aforesaid order in Title Suit No.587 of 1970. The Registrar by sending letter to the learned District Judge, Jashore asked him to let this Court know through him (Registrar) about Title Suit No.587 of 1970 and to submit a report. Accordingly, on reply the learned District Judge, Jashore sent a report to the Registrar and a copy of the same was placed before us from the office.

From the materials on record i.e. the report forwarded by Mr. Md. Ikhtiarul Islam Mallick, Senior District Judge, Jashore, it appears that no judgment or decree was passed in the month of March after 1st March, 1971. It was stated in the report that “.....অত্র রেকর্ড রুমে রক্ষিত হাইকোর্ট ফরম নং (আর)৩২(তেরিজ) দৃষ্টে দেখা যায়, যশোর ৩য় মুন্সেফী আদালতে ১৯৭১ সালের মার্চ মাসের ০১ তারিখে ৩(তিন)টি দেওয়ানী মোকদমা নিষ্পত্তি অন্তে মহাফেজ খানায় সংরক্ষণের জন্য রক্ষিত হইয়াছে।

প্রকাশ থাকে যে, ১৯৭১ সালের মার্চ মাসের ০১ তারিখের পরে ঐ মাসে আর কোন মোকদমা সংশ্লিষ্ট আদালত হইতে অত্র মহাফেজ খানায় সংরক্ষণের জন্য প্রেরণ করা হয় নাই। যাহা তেরিজ দৃষ্টে প্রতীয়মান হয়। উক্ত তিনটি মোকদমার বিচারক ছিলেন জনাব সুলতান আহমেদ। আরো প্রকাশ থাকে যে, অত্র জজশীপের পুরাতন রেকর্ডরুমে রক্ষিত সমস্ত রেকর্ড ও রেজিস্ট্রী ও অন্যান্য কাগজপত্র সমূহ নতুন বিল্ডিং হওয়ার পর পুরাতন রেকর্ড রুম হইতে নতুন বিল্ডিং এর রেকর্ড রুমে স্থানান্তর করা হইয়াছে। উক্ত তেরিজ রেজিস্ট্রীরের সার্টিফাইড কপি ও ফটোকপি অত্রসহিত সংযুক্ত করা হলো।” From the record it is clear that the respondents by practicing fraud obtained the judgment and order in their favour from the High Court Division. According to Section 72 of the Evidence Act, 1872, the register of the record room of the Court is a public document and a certified copy of the register of the record room of the Judge Court, Jashore has also been produced by the appellants, which is admissible by the Court. Thus, from the certified copy of the register of the record room it appears that on the 1st March, 1971 three orders were passed in three title suits, those are Title Suits No.203 of 1970, 508 of 1970 and 143 of 1969. Thereafter, no judgment was passed in the month of March. Since

as per record of the concerned Court no judgment was passed on 15.03.1971, the respondents could not produce any certified copy of the judgment and decree dated 15.03.1971 passed in Title Suit No.587 of 1970. So, it is crystal clear that the respondents practiced fraud upon the Court.

Fraud vitiates everything. As the respondents practiced fraud and no judgment and decree was passed on 15.03.1971, so the said Sujayet Ali Kha did not have any right title over the disputed property as well as the respondents had not acquired any right over the disputed property. So, the question of releasing the property from the list of vested property in favour of the respondents does not arise at all as they have no right over the disputed land/property.

Besides, as there is no existence of Title Suit No.587 of 1970, so the judgment and decree passed in Title Suit No.587 of 1970 dated 15.03.1971 is also non-existent in the eye of law. The question of binding effect of the judgment and decree of Title Suit No.587 of 1970 dated 15.03.1971 upon the appellants is completely fictitious. The appellants are not under any legal obligations to release the property from the list of vested property in favour of the respondents.

On consideration of the matters discussed above, we are of the view that the respondents obtained judgment and decree practicing fraud upon the High Court Division. If fraud is

practiced upon Court for obtaining any order, then the order of the Court is liable to be set aside. It was held in the case of *Government of Bangladesh and another vs. Mashiur Rahman and others* [50 DLR(AD) 205] that “It is a cardinal principle of administration of justice that no result of any judicial proceeding should be allowed to receive judicial approval from any court of law whenever it is obtained by practicing fraud upon the court; reason being fraud demolishes the very foundation of sanctity of such judicial proceeding. It is also well established principle of law that fraud vitiates all judicial proceeding. Thus contravention of the provision of law, cannot be a valid ground for allowing an order obtained by fraud to stand. When the trial court itself on consideration of the materials on record was satisfied that a fraud had been committed in obtaining the ex parte decree it was the duty of the trial court to set aside the ex parte decree.” In the case of *Abdul Jalil & others vs. Islami Bank Bangladesh Ltd. and others* [64 DLR(AD) 107] the Appellate Division observed that, “It is true that fraud vitiates everything; even a judgment and decree affirmed by the apex Court of the country can be declared illegal and void by the trial Court if it is proved that the judgment and decree was obtained by practicing fraud upon Court. But mere allegation of fraud is not enough to entertain a suit for declaring a judgment and decree affirmed by the apex

Court of country illegal. Unless strong prima facie case of fraud is made out and sufficient acceptable evidence and materials are produced before Court to substantiate the allegation of fraud a suit for declaring a judgment and decree affirmed by the apex Court of the country should not be entertained.” In this present case, it has been proved that the respondents obtained judgment and decree practicing fraud upon the High Court Division. The High Court Division made a serious error of law making the Rule absolute based on fictitious judgment and decree passed in Title Suit No.587 of 1970 dated 15.03.1971, which has no existence at all. So, we are constraint to interfere with the judgment and order passed by the High Court Division in Writ Petition No.6053 of 2008 on 17.12.2009. Accordingly, the judgment and order passed in Writ Petition No.6053 of 2008 on 17.12.2009 is set aside.

Thus, the appeal is **allowed** without any order as to costs.

C.J.

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