IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Obaidul Hassan, Chief Justice
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NOS. 8-9 OF 2017
(Arising out of C.P Nos. 347 and 348 of 2014 respectively)

Hajera Khan and others .... Appellants
(In both the appeals)

-Versus-

Afsaruddin being dead his heirs: ....Respondents
1(a) Rumia Khatun and others (In both the appeals)

For the Appellants (In both the appeals)	:	Mr. Farid Ahmed, Senior Advocate instructed by Mr. Zainul Abedin, Advocate-on-record
For the Respondent Nos. 1(a)-1(d)and 2-5 (In C.A No. 8 of 2017)	:	Mr. Zainul Abedin, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-record.
For the Respondent Nos. 1(a)-1(d)and 3-5 (In C.A No. 9 of 2017)	:	Mr. Zainul Abedin, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-record.
Date of Hearing	:	09.01.2024 and 16.01.2024
Date of Judgment	:	31.01.2024

J U D G M E N T

Md. Ashfaqul Islam, J: Both the civil appeals by leave are directed against the judgment and order dated 16.10.2012 passed by the High Court Division in Civil Revision No. 3382 of 1995 (heard analogously with Civil Revision No. 3383 of 1995) making the rules absolute and thereby setting aside the judgment and decree passed in Title Appeal No. 87 of 1989 (heard analogously with Title

Appeal No. 86 of 1989), dismissing the appeal and thereby affirming the judgment and decree passed in Title Suit No. 168 of 1984 (heard analogously with Title Suit No. 53 of 1987), decreeing the suit No. 168 of 1984 and dismissing the suit No. 53 of 1987.

The predecessor of the present appellants, Amjad Hossain as the plaintiff, filed Title Suit No. 575 of 1978 against Jashimuddin, the predecessor of the present respondent Nos. 1-5, and others which was subsequently renumbered as Title Suit No. 168 of 1984. The suit sought a declaration of title for the lands described in Schedules 1 and 2, confirmation of possession of the land in Schedule 1, recovery of khas possession of the land in Schedule 2, and a permanent injunction along with mesne profits.

Jashimuddin as plaintiff filed another suit being Title Suit No. 53 of 1987 impleading Amjad Hossain as the defendants regarding the self same suit land.

The case of the plaintiff in Title Suit No. 168 of 1984, in short, was that the lands described in schedule 1 and 2 are the accreted lands of Nuruli Ganga river adjacent to C.S. Plot No.153 owned by Jibunnessa Khatun

and others, after accretion while the suit land became fit for cultivation the predecessor of the plaintiff Alauddin Bepari took settlement of the same from its owner 40 years back by giving salami and paying taxes. The suit land was duly recorded in the name of Alauddin Bepari in Plot Nos. 101 and 153. Alauddin Bepari died leaving plaintiff as his heir. The defendants raised objection against the S.A. record of the suit land under section 30 of the State Acquisition and Tenancy Act but became unsuccessful. The defendants reside near the schedule 2 property and in the first part of Agrahayan 1385 B.S. they forcefully dispossessed the plaintiffs from the schedule 2 property and hence the suit.

The case of the defendants is that the suit land is the accreted land and it is contiguous to Plot Nos. 154, 161 and 162. While the land started accreting gradually Jashimuddin took settlement of $10^{1}/_{2}$ *pakhi* of land from the original owner Jibunnessa Khatun by executing a kabuliyat which was registered on 14th Chaitra 1353 B.S. Subsequently Jasimuddin took settlement of 15 *pakhi* of land more from Jibunnnessa by two *patta*. Since taking settlement of those lands Jashimuddin possessed the same

on payment of rent to the landlord and subsequently to the Government. He constructed his house on a portion of the suit land and possessed the rest through cultivation, all within the knowledge of everyone, including the plaintiffs. During S.A. operation the suit land was wrongly recorded in the name of plaintiffs. The plaintiffs took advantage of the survey staff residing in their house and collusively managed to have the suit land recorded in their names in the S.A. khatian. The defendants had been residing on the suit land for about 30 to 35 years.

During pendency of Title Suit No.168 of 1984 Jasimuddin himself also filed Title Suit No.53 of 1987 in the same Court for declaration of title in the same land and also for correction of record of rights. Both the Title Suit No.168 of 1984 and Title Suit No.53 of 1987 were tried analogously. The trial Court, decreed Title Suit No.168 of 1984 and dismissed Title Suit No.53 of 1987 by the judgment and decree dated 29.06.1989.

Being aggrieved by the decision of the trial Court, the defendants of Title Suit No.168 of 1984 and the plaintiff of Title Suit No.53 of 1987 preferred Title

Appeal Nos.86 of 1989 and 87 of 1989 respectively. The appellate Court by the judgment and decree dated 04.04.1995 dismissed both the appeals affirming the judgment and decree of the trial Court.

The heirs of the defendants of Title Suit No. 168 of 1984 and the plaintiff of Title Suit No.53 of 1987 then preferred Civil Revision Nos. 3382 of 1995 and 3383 of 1995 before the High Court Division challenging the judgment and decree of the appellate Court below which upon hearing the parties the High Court Division made both the Rules absolute setting aside the judgment and decree of the lower appellate court decreeing the Title Suit No. 53 of 1987 and dismissing the Title Suit No. 168 of 1984. The heirs of plaintiff of Title Suit No.168 of 1984 and defendants of Title Suit No.53 of 1987 have preferred separate Civil Petitions for Leave to Appeal challenging judgment and order of the High Court Division and obtained leave giving rise to these appeals.

The pith and substance of the submissions pressed to service by the learned Senior Advocate Mr. Farid Ahmed for the appellants is that the High Court Division while making the Rule absolute in both the revisions on setting

aside the concurrent findings of both the Courts below gave a finding that both the Courts without discussing the evidence on record decreed Title Suit No.168 of 1984 and dismissed Title Suit No.53 of 1987. This findings of the High Court Division is perverse as because the trial Court as well as the appellate Court on relying on the S.A. and R.S. record of rights, farogs, rent receipts and the oral evidence regarding possession and subsequent dispossession of plaintiff of Title Suit No.168 of 1984 decreed that suit and dismissed Title Suit No. 53 of 1987.

In elaborating his submissions the learned counsel contends that the High Court Division while making the Rule absolute and setting aside the concurrent judgments and decrees of the Courts below, failed to point out the misreading, non-reading or non-consideration of any evidence on record and without reversing the concurrent findings of trial Court and appellate Court made the Rule absolute.

On the other hand Mr. Zainul Abedin, the learned Senior Advocate for the respondents submits the principle not to interfere with concurrent findings of fact is not

a cast-iron practice and that the High Court Division in appropriate cases may depart from that principle where there is any violation of any rule of law or procedure or where there have been misreading or non consideration of evidence affecting the ultimate decision of the Courts below. In the instant case the High Court Division rightly interfered with the concurrent findings of fact arrived at by the Courts below. In support of his contention he placed reliance in the decision of Ziaul Hasan Tarafder vs. Mir Osman Ali 73 DLR AD 250.

Now to sculpt a crystalised foundation of the instances where the principle of no interference vis-à-vis the principle of perversity were adopted by the High Court Division and subsequently either endorsed or disapproved by the Appellate Division we can take into account established precedents.

To dispel any iota of ambiguity on the issue let us go through some of those decisions clarifying the same.

In the case of Ziaul Hasan Tarafder (Md.) vs. Mir Osman Ali and Ors 73 DLR AD 250 it was observed:

> "It is contended that the concurrent findings of fact of the Courts below were illegally reversed by the High Court Division although the High

> Court Division could not point out any misreading or non reading of evidence, oral or documentary."

In the case of Atiqullah alias Atik Vs. Md Safiquddin being dead his heirs Rashida Begum and others 59 DLR AD 149 this Division observed:

> "The learned Advocateon-record failed to point out that the consideration of evidence made by the High Court Division in the background of non-consideration and misreading of the evidence by the appellate Court was erroneous in any respect and the said Division was in error in arriving at the finding as to title and possession of plaintiff and thereupon in setting aside the judgment of the appellate Court. In that state of the matter we do not find any substance in the petition."

In the case of Most. Akiman Nessa Bewa and others Vs. Harez Ali and others 17 BLD AD 36 it was also observed:

> "We find that the High Court Division upon giving cogent reasons found that the plaintiff was not entitled to the benefit of section 13 of the Limitation Act as the pleading in the plaint did not attract the application of the said section. Also we find that the High Court Division in revision rightly interfered with the finding of fact of the lower appellate Court

with regard to the genuineness of the bainapatra Ext. 6. We therefore find no ground for interference.

In the case of Promad Chandra Barman vs. Khodeza Khatun Bewa 12 BLC AD 225 it was observed:

> "In the facts and circumstances of the case and in view of our discussion above, we are of the view that the High Court Division without adverting to the findings given by the court of appeal regarding of pattan by Basanta Kumar in favour of the plaintiffs by dakhilas, subsequent execution of unilateral kabuliyats by plaintiffs in favour of Basanta Kumar and possession of the defendants in the suit land reversed those finding on reassessment of the entire evidence. Accordingly, the High Court Division committed error of law in making the Rule absolute, which requires interference by this court."

In the case of Abul Bakar Siddique (Md) vs. Additional Deputy Commissioner Kurigram and others 48 DLR AD 154 it was observed:

> "The learned Single Judge of the High Court Division having independently assessed the evidence and having found a case of non-consideration of material evidence on record and

> consequent non-reversal of material findings interfered with the finding of fact. To our mind, the revisional court is competent to interfere in a case of non-consideration of material evidence which is specifically material for the determination of the material issue, namely, the issue of shifting of the school to the new mouza."

In the case of Khorshed Alam Vs. Amir Sultan Ali Hyder 38 DLR AD 133 it was observed:

> "The learned Single Judge is found to have rightly refused interference with the finding of the courts below which stands on a solid rock."

Let us now digress into the instant case. Upon gleaning of the decision of the High Court Division with utter surprise we observed that it has misdirected itself without adverting to all the positive findings of the courts below as we have discussed above. The findings of both the Courts below as we have discussed left nothing unsaid about the good title and possession of the plaintiff discarding the feeble and weak case of the defendants.

Though the learned Senior Advocate Mr. Zainul Abedin, Senior Advocate appearing for the respondents tried to impress upon us basing on the decision of Ziaul Hasan vs. Osman Ali 73 DLR AD 250 that it's not a cast-iron practice and dogmatic approach that the High Court Division will not interfere with the concurrent findings of Courts below. The decision as cited by the respondent is well founded and the principle laid down therein is an age old one. It has been decided time and again by this Division. As referred to above decision, certainly it's not a cast-iron practice and dogmatic approach that the High Court Division will not interfere with the concurrent findings of Courts below. Yes, in a proper case as it is propounded in the above decision that High Court Division has ample and unfettered power to interfere with the concurrent findings of the Court below. It can be reiterated that if the decision of the Courts below is a perverse one, no reasons, whatsoever can preclude the High Court Division in interfering with the same. But in the case in hand, no departure of such kind could be traced out upon gleaning the judgments of both the Courts below. Therefore, question of interference by the High Court Division does not arise in this context. It did not at all advert to the points upon which the decision of the Courts below was based. It has

travelled in a different direction trying to stretch out the case in favour of the defendants and against the plaintiff which we disapprove. It is not a case in which this Division will endorse merrily the view of the High Court Division contemplating the Judgments of the courts below being perverse. Rather we hold that the High Court Division should have been loath in interfering the concurrent findings.

Further, on the question of limitation, the Courts below held that State Acquisition and Tenancy Act came into force in 1962 but the defendants instituted the Title Suit claiming the suit land in the year 1987 which is hopelessly barred by limitation. The question of limitation goes at the root, we cannot simply understand how it escaped notice of the High Court Division. No deliberation has been given on that point. Moreover, the Amalnama as it has been observed by the Courts below to be fake and fabricated not coming from the real owner was totally ignored and not taken into consideration by the High Court Division. Likewise, there are so many laches and lacunas which in our view, cannot in any case lead us to think that the decision of the High Court Division was a proper judgment of reversal.

On the conspectus, we find merit in the appeals. Accordingly, both the appeals are allowed. The impugned judgment and order of the High Court Division is set aside, however, without any order as to costs.

CJ.

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The 31st January, 2024
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