

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.143 OF 2010.

Executive Engineer, Roads and High Ways,
Brahmanbaria.

-----*Plaintiff-Petitioner.*

-VERSUS-

Abdul Motalib and others

-----Defendant-Opposite Parties.

Mr. Waliul Islam Oli, D.A.G. with
Mr. Mohammed Shaif Uddin Raton, AAG.
Mr. Md. Nazrul Islam Choton, A.A.G.
Mr. Md. Nasimul Hasan, A.A.G.

..... *For the Petitioner.*

Mr. Partha Sharathi Ray, Advocate

..... *For the Opposite Party Nos.1-6.*

**Heard on 28.10.2024, 29.10.2024
and 30.10.2024.**

Judgment on 06.11.2024.

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and decree dated 21.01.2009 passed by learned District Judge, Brahmanbaria in Title Appeal No.30 of 2008 allowing the appeal and reversing the judgment and decree dated 03.08.2008 passed by the learned Assistant Judge, Sadar, Brahmanbaria in Title Suit No.160 of 2007 decreeing the suit should

not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The petitioner as plaintiff instituted Title Suit No.160 of 2007 before the Assistant Judge, Sadar, Brahmanbaria, against the defendant-opposite parties for the declaration of title with a recovery of Khas possession and the judgment and decree dated 17/11/1998 passed in Title Suit No.107 of 1998 was not binding upon him contending inter-alia that 0.64 acres of land of C.S. Plot No.113 of C.S. Khatian No.205 was acquired by L A Case No.1/51-52 for the then communication and Building Department by paying compensation to its original owner in full; that S.A. Khatian of the property was rightly recorded in its name; subsequently Roads and High Ways Department of the government under the Ministry of Communication became its owner and R.S. Khatian No.315 was recorded in the name of C & B and D.P. Khatian No.2 has been prepared in the name of Roads and High Ways; that the defendants in september,2003 erected shops in the suit land illegally and when the plaintiff them to remove the same they refused to do so; that on 24.02.2007 when the joint forces went to recover the suit land the defendants showed papers of the decree of Title Suit No.107 of 1998 and claimed title over the same; that the plaintiff took certified copy of the judgment and decree of the said Title Suit No.107 of 1998 and came to know that the defendants upon

committing fraud on the court by suppressing summons upon the defendant obtained the said collusive decree and hence the suit.

The opposite party Nos.1-6 and opposite party No.15 as defendant Nos.1-7 contested the said suit by filing written statements denying all the materials averments of the plaint contending, inter-alia, that one Madari was the C. S. record tenant of the suit property; that Madari died leaving behind his son Safar Ali and Safar ali died leaving behind his three sons Kafiluddin, Mafiluddin, and Seraj Ali; that Kafiluddin Mafiluddin and Seraj Ali sold 15 acres of land to Bazlur Rahman. Titas Gas Company got said 15 acres of land vide LA Case No.14(27) of 1979-80, defendant No.1 and the predecessor of defendant Nos.2-7 purchased 27 acres of suit land by two registered kabala dated 04.06.1964 and 20.11.1967 from the successor of original owners; that the S.A. Khatian of the suit property has wrongly been recorded in the name of C & B for which these defendants filed Title Suit No.141 of 1996 subsequently, renumbered as Title Suit No.107 /19 98 before the Assistant Judge, Brahmanbaria, and the suit has been decreed ex parte after serving proper notice upon the present plaintiff. The plaintiff has no right, title, or possession of the suit land, and the suit is liable to be dismissed with cost.

During the trial, the learned Assistant Judge, Sadar, Brahmanbaria, framed five issues.

The plaintiff-petitioner examined 1(one) witness and produced documents marked as exhibits Nos.1-6 to prove his respective case. The defendant-opposite parties also examined 6(six) witnesses, and in support of their claim, they produced documents marked as exhibit Nos. Ka to Ja series”. Eventually, the learned Assistant Judge, Sadar, Brahmanbaria, decreed the suit by the judgment and a decree dated 03.08.2008.

Being aggrieved by and dissatisfied with the above judgment and decree dated 03.08.2008, the defendant-opposite party, Nos.1-6, as appellant, preferred Title Appeal No.30 of 2008 before the District Judge, Brahmanbaria. Eventually, the learned District Judge, Brahmanbaria, by the judgment and decree dated 21.01.2009, allowed the appeal and reversed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with the above judgment and decree, the plaintiff as petitioner preferred an application under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Waliul Islam Oli, the learned Deputy Attorney General appearing on behalf of the petitioner, submits that the court of appeal below committed an error of law, resulting in an error in the decision occasioning failure of justice in allowing the appeal reversed the judgment and decree of the trial Court; that the trial Court after considering the oral and documentary evidence justifiedly found the

petitioner title over the suit land and disbelieved the defendant's case but the court of appeal below without considering those documents and without adverting the findings of the trial Court allowed the appeal and thereby committed an error of law resulting in an error in the decision occasioning failure of justice; that the appellate court failed to consider that summons of the Title Suit No.107 of 1998 was collusively served upon the defendant of that suit, i.e., the plaintiff-petitioner.

Mr. Partha Sharathi Roy, the learned Advocate appearing for the opposite party Nos.1-6, submits that the plaintiff has no legal right to claim total suit property as per C.S. Khatian, and as the defendant opposite parties purchased the suit land from the original owner and heirs of the C.S. recorded tenant and enjoying the same after erecting some structures in the suit land; that the appellate court below rightly found that the summons was duly served upon the plaintiff but they failed to appear before the trial Court in the earlier suit and thus the appellant Court rightly passed the judgment and decree; that the government failed to explain that the land in question was acquired vide LA Case No.14(27) of 1979-80 despite acquiring the suit land by LA Case No.1/51-52.

I have anxiously considered the submissions advanced by both parties, perused the judgment and decree of the courts below, and considered oral and documentary evidence on the records. It manifests from the pleadings of the parties that the plaintiff-petitioner has taken

the plea that he was not served with the summons in Title Suit No. 107 of 1998, which was decreed ex-parte. In September 2003, the defendant-opposite parties illegally erected shops in the suit land. When the plaintiff, with Joint forces, went to remove the structures of the suit land on 24.02.2007, the defendant-opposite parties showed paper of the decree of Title Suit No. 107 of 1998. They came to know that the defendants-opposite parties, upon committing fraud in court by suppressing the summons upon the defendant, obtained the said collusive decree. On the other hand defendant-petitioner claimed that the plaintiff had knowledge about the said suit and a summons was duly served upon him. In this regard, the defendant examined the processes server of that suit, Ashuk Qumer Paul as D. W 3, who admitted in the cross-examination that in the report given by him in respective of service of summons, it was not written by him that he went to the Executive Engineer. Further, it manifests from the exhibits Chha, an original copy of the summons, that there is no receipt date, and the filing date was inserted in the summons. Moreover, AD (Acknowledgement Due) has not been returned from defendant No.1.

In view of the above, it appears that the trial Court rightly and justifiedly held that the summons was collusively served upon the defendant in Title Suit No.107 of 1998. On the other hand, the appellate court, though it discussed the issue of service of summons of the title Suit No.107 of 1998 upon the defendant, did not consider the

aspect of knowledge of the defendant of the title Suit No.107 of 1998 as found by the trial Court. Therefore, it appears that the appellate court committed an error in law, which resulted in an error in the decision, occasioning a failure of justice in holding that the summons was duly served upon the defendant in the title Suit No.107 of 1998.

In view of the above, I am of the view that the present defendant, upon committing fraud in court by suppressing the summons upon the defendant of Title Suit No.107 of 1998, obtained a collusive decree. Therefore, the judgment and decree of Title Suit No. 107 of 1998 are not binding upon the plaintiff-petitioner.

Nevertheless, upon perusing the judgment of the trial Court, it appears that the trial Court, considering the evidence on record, decreed the suit, holding that the government admittedly acquired the suit's land in LA Case No.1 / 51-52 and handed over the suit land for construction of the road to the C and B. Accordingly, S. A, R.S. and D.P. records have been correctly prepared in the name of the C and B and the plaintiff petitioner is able to prove their chain of title in the suit land.

On a careful scrutiny of the impugned judgment, it appears that the appellate court reversed the decision of the trial Court, finding, inter-alia, that the government never acquired the total disputed suit property in L A case No. 1/51-52, and for that, there had been transactions regarding a portion of the suit Plot No.113 in 1964 and

1967 respectfully which empowered the defendant-appellants-petitioner to claim the suit land legally.

It manifests from the evidence of P W 1-(Executive Engineer of Roads and High Ways) and the record that the total suit property of C.S. Plot No.113, Khatian No.205, was acquired by the government in the L. A. Case No.1/51-52 for the then communication and building department by paying full compensation to its original owner. The S.A. Khatian was recorded in its name. Subsequently, the Roads and High Ways Department of the Government under the Ministry of Communication became its owner, and R.S. Khatian No.315 PR/02 was recorded in the name of the C and B and D.P. Khatian No.2 has also been prepared in the name of the Roads and Highways. The plaintiff produced a photocopy of L.A. Case No.1/51-52 to prove his claim, marked as Exhibit 2. Having perused Exhibit-2- it manifests that the Gazette Notification about L.A. Case No.1/51-52 was published on the 10th of December, 54 as Gazette No.50, and a total of 64 decimals of land was acquired from the C.S. Record No.113 for C and B. It also manifests from Exhibits 3 and 4 that after the acquisition, the suit land has correctly been recorded in the name of C and B in the S.A., R.S. and D.P. Khatian.

Further, it manifests from the evidence of D W 1 and D W 2 and the suit's records that the defendant-opposite parties purchased some suit property, i.e., 27 decimals of the land from the successors of C S

Khatian by registered deed Nos 2764 (exhibit Cha) and 3080 (exhibit Ja) on 04.06.64 and 21.11.67 respectively.

In view of the above, I am of the view that since the government has acquired the suit land, the suit lands are protected from the date of publication of the Gazette Notification dated 12.10.1954; the same could not be transferred legally by any person to any other persons. Therefore, as mentioned earlier, deeds No.2764 (Exhibit-Cha) dated 04.06.1967 and Deed No. 3080 (Exhibit-Ja) have no validity, and the transfer has been made without lawful authority and has no legal effect.

This view gets support from the case of the Government of Bangladesh and others –Vs.- Laila Arjuman Banu reported in 5 ALR (AD) Page 38 held that---

“Having gone through the record, it appeared that all the writ-petitioners purchased the land covered by the Gazette Notification in 1968. In the case reported in (2010) VII ADC 339, it has been observed that from the said notification, it appears that the case land has been described as Khash waste land and the said land has been acquired by the government under section 29(3) of the Forest Act. Thus the said lands are protected with effect from the date of publication of notification in the gazette. Subsequently, the registered deed of sale of the writ-petitioners alleged to have been executed and registered in 1968 showing sale of land is an invalid document in the eye of

law inasmuch as without delisting the suit land from the aforesaid notification dated 18.11.1961 published in the gazette on 30.11.1961 the same could not be transferred legally by any person to any other persons. Thus, the sale deed in reference has no validity, and the transfer has been made without lawful authority and has no legal effect.”

In view of the above and the reason stated above, it appears that in the instant case, the appellate court did not advert the reasoning of the trial court, and this hit the root of the merit of the suit; it also appears that the appellate court did not comply with the requirements of Order 41 Rule 31 of the Code of Civil Procedure in delivering the impugned judgment and decree and thus it is not a proper judgment of reversal and has occasioned a failure of justice.

Resultantly, the Rule is made absolute without any order as to the cost.

The impugned judgment and decree dated 21.01.2009 passed by learned District Judge, Brahmanbaria in Title Appeal No.30 of 2008 is hereby set aside, and the judgment and decree dated 03.08.2008 passed by the learned Assistant Judge, Sadar, Brahmanbaria in Title Suit No.160 of 2007 is hereby affirmed.

Communicate the judgment and send down Lower Court Records at once.

.....

(Md. Salim, J).

Kabir/BO