

In the Supreme Court of Bangladesh (High Court Division)

Civil Revision No. 1554 of 2001

Published in BLD:

- Volume: 23
- Year: 2003
- Page: 445 to 448

Decided On:

The 23rd March, 2003

Result:

Rule discharged

Parties:

Md. Abdul Baten vs Vebla Chandra Mistry @ Molin and ors.

Hon'ble Judge(s):

Bijan Kumar Das, J

Counsels:

For the petitioner:

Mr. Mahmudul Islam for Mr. Mohammad Ozair Farooq and Mr. S.K. Md. Morshed, Advocates, for the Petitioner.

For the Opposite Parties:

Mr. Md. Fazlul Karim for Mr. Garib He-waz with Ms. Maksuda Akhter and Mr. Khandaker Aminul Haque, Advocates, for the Opposite Parties.

Subject Matter:

Code of Civil Procedure, 1908(V of 1908)

Section—115(1)

The Lower Appellate Court being the final court of fact has held that plaintiffs have proved their prima facie title in the suit land and their exclusive possession. The lower court recorded finding with regard to prima facie title and exclusive possession of plaintiff on consideration of evidence on record. The suit land has been described in the plaint with plot number, khatian number, area and boundary. There is no vagueness in the description of suit land. There is no illegality in the judgment of the Lower Appellate Court.

(Para—10)

Jurisdiction:

Civil Revisional Jurisdiction

Related Acts/Rules/Orders:

Code of Civil Procedure, 1908(V of 1908), Section—115(1)

Key words:

JUDGMENT

Bijan Kumar Das, J: By this Rule the opposite parties were called upon to show cause as to why the impugned judgment and decree dated 17.1.2001 passed by the Additional District Judge, 4th Court, Dhaka in Title Appeal No. 589 of 2000 reversing those dated 9.8.2000 passed by the Senior Assistant Judge, 6th Court Dhaka in Title Suit No. 4 of 2000 dismissing the suit for permanent injunction should not be set aside or such other or further order or orders passed as to this Court may seem fit and proper.

2. The opposite parties No. 1-5 as plain-tiffs through their attorney instituted Title Suit No. 04 of 2000 in the Court of the Senior Assistant Judge, 6th Court, Dhaka impleading the petitioners as defendant-praying for a decree for permanent injunction restraining the defendant from interfering with the plaintiffs peaceful possession in the suit property al-leging, inter-alia, that one Harish Chandra Mistry was the C.S. recorded owner of Plot No. 1689 of C.S. Khatian No. 272 measuring an area of .57 decimals and after the death of said Harish Chandra his only son Bashanta Kumar became the owner in possession of the suit

land and the S.A. Khatian was recorded in the name of said Bashanta Kumar and that the said Bashanta Kumar died leaving behind his only son Gopal Chandra Mistry who while in possession of the suit land died leaving behind the plaintiffs as his 5 sons and the plain-tiffs are in possession of suit Plot No. 1689 upon mutating their names therein and on payment of rents and taxes. The plaintiffs also alleged that for taking care and cultivation the plaintiffs appointed one Aminul Hossain as their attorney and the said attorney has been looking after the suit property. It is further alleged that the defendant has no title or pos-session in the suit land but he held treat to the attorney of the plaintiffs when the attorney attempted to construct huts on the suit land and the said attorney lodged a complaint to Demra Police-Station on 28.12.1998. It is also alleged that the plaintiffs are possessing the suit land by constructing one in tin shed and by cultivating the rest properties and the de-fendant held threat on 12.1.2000 at 10 A.M. with few unruly elements of the locality and hence the suit for permanent injunction.

3. The defendant contested the suit by filing a written statement contending, inter- alia, that Harish Chandra Mistry was the C.S. recorded owner of the suit land and subsequently one Atul Behari Sarkar, Bhupati Mohan Sarkar and Haripada Sarkar became the owners of the suit land and S.A. record was prepared in their names. The defendant further alleged that the aforesaid S.A. recorded owners Atul Behari Sarkar, Bhupati Mohan Sarkar and minor sons of Haripada Sarkar namely, Amol Chandra Sarkar, Kamol Chandra Sarkar and Nirmol Chandra Sarkar represented by their mother Rangomoni Sarkar became the owner of the suit land on the basis of the deed of exchange No. 306 dated 17.5.1971. It is further alleged that one Shamim Hossain Mahmud, Nur Mohammad Abu Jafor and Abdul Malek Shamim Hossain Mahmud mutated their names on the basis of the deed of exchange and paid taxes and subsequently by 3 kabals dated 7.8.1981 the defendant purchased .57 decimals of land and since then the defendant has been in possession of his purchased land upon mutating his name and on payment of taxes. It is also alleged that though name of Bashanta Kumar was not recorded in the S.A. Khatian but the plaintiffs falsely and fraudulently got their names mutated. The plaintiff has no title and possession in the suit land and accordingly the suit is liable to be dismissed.

4. The trial Court framed necessary issues and on consideration of the evidence on record came to the conclusion that the suit involves complicated question of title and as such no decree for permanent injunction can be granted. Accordingly by judgment and decree dated 9.8.2000 the trial Court dismissed the plaintiffs suit.

5. The plaintiff then preferred Title Appeal No. 589 of 2000 before the learned District Judge, Dhaka. The learned Additional District Judge, 4th Court, Dhaka who heard the said appeal found that the plaintiffs have proved their *prima facie* title and exclusive possession in the suit land. Accordingly by judgment and decree dated 17.1.2001 the learned Additional District Judge, allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit in favour of the plaintiffs.

6. Being aggrieved thereby the defendant moved this court and obtained the present Rule.

7. Mr. Mahmudul Islam, the learned Advocate appears on behalf of the learned Advocate Mr. Md. Ozair Farooq and Mr. Sk. Md. Morshed for the petitioner and Mr. Md. Fazlul Karim, the learned Advocate appears on behalf of learned Advocate Mr. Maksuda Akhter.

8. Mr. Mahmudul Islam, the learned Advocate appearing for the petitioner has taken me through the judgments of both the courts below and submits that the trial court upon elaborate discussion and consideration of the evidence on record came to a positive finding that the plaintiff could not prove his title by acceptable evidence and that the pleadings of the parties and the documents filed by both the parties indicate that the suit involves complicated question of title which can not be decided in a suit for simple permanent injunction but the lower appellate court without reversing the said finding allowed the appeal which has resulted in miscarriage of justice. Mr. Islam has invited my attention to the large number of documentary evidence and submits that these documents can not be properly scrutinized in a simple suit for permanent injunction and this could be

considered only in a suit for declaration of title and the trial Court was therefore correct in dismissing the suit. According to Mr. Islam the impugned judgment of the lower appellate court is not a proper judgment of reversal.

9. Mr. Md. Fazlul Karim, the learned Senior Advocate appearing on behalf of the opposite parties, on the other hand, supports the decision of the lower appellate court and submits that the lower appellate court has clearly held that the plaintiffs have succeeded in proving their *prima facie* title and exclusive possession in a suit for permanent injunction and has rightly reversed the decision of the trial court assigning cogent reason. Mr. Karim further submits that the decision of the lower appellate court is based on consideration of the evidence on record and the lower appellate court being the final court of fact has recorded finding after assessment of the evidence which may not be disturbed by this Court in revisional jurisdiction.

10. I have considered the submissions of the learned advocates for both the parties and perused the judgments of the courts below including the evidence on record. There is no dispute that one Harish Chandra Mistry was the original C.S. recorded owner in possession of the suit land. It is not denied that Harish Chandra Mistry died leaving behind his only son Bashanta Kumar Mistry and his name was recorded in the S.A. Khatian. The plaintiff has also proved that Bashanta Kumar Mistry died leaving behind his only son Gopal Chandra Mistry and Gopal Chandra Mistry died leaving behind the plaintiffs as his 5 sons Ext. 3 is the certified copy of S.A. Khatian No. 151 showing that it was recorded in the name of Bashanta Kumar. The lower appellate court has considered the defence case that suit plot No. 1689 was recorded in the S.A. Khatian in the names of Atul Behari Sarker, Bhupati Mohan Sarker and Haripada Sarker and in support thereof the defendant filed a copy of S.A. Khatian No. 151/2 Ext. Kha (I) On a consideration of the Ext. Kha(I) and Ext. 3 it appears that Ext. 3 contains the names of Bashanta Kumar Mistry along with Atul Behari Sarker and Bhupati Mohan Sarker while Ext. Kha(1) shows the names of Atul Behari Sarker, Bhupati Mohan Sarker and one Haripada Sarker. The lower appellate court has noticed that P.W.6 Mozammel Hoque stated that the portion of the Pages of the volume of S.A. Khatian No. 212 is found torn and this S.A. Khatian No. 212 Ext. Kha(I) could not disclose who are the recorded tenants. The lower appellate court has rightly noticed that since the defendant admitted that Harish Chandra Mistry was the C.S. recorded tenant of the suit plot being C.S. Khatian No. 272 and plot No. 1689 measuring .57 deci mals there was no evidence how Atul Behari, Bhupati Mohan Sarker and Haripada Sarker could be the owners of the suit land. The defendant did not disclose how the said Atul Behari Sarker, Bhupati Mohan Sarker and Haripada Sarker became the owners of the suit land. D.W.I. could not explain as to how the defendant got the suit land. He has no knowledge about the S.A. recorded tenants and the lower appellate court has correctly held that in the absence of any evidence it cannot be held that Atul Behari Sarker, Bhupati Mohan Sarker and Haripada Sarker were the owners of the suit land. It is therefore clear from the geneology of the plaintiffs that the plaintiffs are the successive heirs of the admitted C.S. recorded owner Haris Chandra Mistry and therefore the plaintiffs have proved their *prima facie* title in the suit land.

The lower appellate court has considered the issue on exclusive possession and on consideration of the evidence of the witnesses, namely, P.W. Nos. 1,2,3,4 and 5 came to the finding that the plaintiffs are in exclusive possession of the suit land. The lower appellate court has also considered the evidence of D.W.1, D.W.2, D.W.3 and D.W.4 and on assessment of their evidence rejected to accept their evidence. It thus appears that the lower appellate court being the final court of fact has clearly held that the plaintiffs have proved their *prima facie* title in the suit land and their exclusive possession therein. The lower appellate court has reversed the finding of the trial Court who held that the suit involves complicated question of title and thus it can not be said that the impugned judgment is not a proper judgment of reversal. On a consideration of the impugned judgment I find that the learned Additional District Judge recorded finding with regard to *prima facie* title and exclusive possession of the plaintiffs on consideration of the evidence on record. The lower appellate court also considered the oral evidence of all the witnesses of both the sides and accepted the evidence of the plaintiffs witnesses and concluded that the plaintiffs have proved their exclusive possession in the suit land. The suit land has been described in the plaint with reference to khatian number, plot number, area and boundary. Therefore there is no vagueness in the description of the suit land. In view of my discussion above I do not find

any illegality or infirmity in the impugned judgment of the lower appellate court. There is, therefore, no merit in this Rule.

11. In the result this Rule is discharged without any order as to costs. The impugned Judgment and decree dated 17.1.2001 passed by the Additional District Judge, 4th Court, Dhaka in Title Appeal No. 589 of 2000 is hereby affirmed.

12. The order directing the parties to maintain status quo in respect of possession of the suit land as passed at the time of issuance of the rule is vacated.

. Send down the L.C.R.

