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Bangladesh Form No. 3701

HIGH COURT FORM NO.J (2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT- CHATTOGRAM

IN THE BOALKHALI ASSISTANT JUDGE COURT,

PATIYA, CHATTOGRAM

Present : Mr. Md. Hasan Zaman,

Senior Assistant Judge, Patiya, Chattogram.

Date of Delivery of Judgment : 26th day of November, 2024

Other Suit No. 48 of 2013

Mohammad AliPlaintiffs

-Versus-

Md. Golapur Rahman and OrsDefendants

This case came up for final hearing on 02.02.2020,
14.11.2022, 18.01.2024, 18.03.2024; 27.05.2024; 02.07.2024
and 25.07.2024.

In presence of :

Mr.Mukul Kanti DevAdvocate for Plaintiff.

Mr. A.K.M Shajahan UddinAdvocate for Defendants.

And having stood for consideration to this day, the court
delivered the following judgment:-

This is a suit for Declaration.

Case of the Plaintiff

Plaintiff's case in brief is that the scheduled property was originally recorded in the R.S. record in the name of Korom Ali. Upon his demise, he left behind two daughters and his wife, Amda Khatun. During their continued possession and enjoyment of the property according to their respective shares, Amda Khatun, having no son of her own, took the plaintiff as her adopted son and raised him. Subsequently, on 29/05/1964, she executed a registered usufructuary deed bearing No. 2997 in favor of the plaintiff, pursuant to which B.S. Khatian No. 2582 was created in his name. The plaintiff constructed a dwelling house on the said property and had been in continuous possession and enjoyment thereof.

On 07/12/2012, Defendant No. 1 entered the suit land and demanded that the plaintiff vacate the homestead, claiming that the plaintiff had sold the suit property to him. On that very day, the plaintiff was shown the impugned sale deed by Defendant No. 1, which caused him great astonishment. Since Defendant No. 1 was a relative of the plaintiff, the plaintiff trusted him. Taking advantage of this trust, Defendant No. 1 lured the plaintiff and his mother to the city under the pretext of requiring their signatures as witnesses to some land-related formalities. Under this false pretense, he fraudulently obtained thumb impressions from the plaintiff and his mother. Prior to the said date, the impugned sale deed had never been disclosed.

Upon scrutiny of the impugned sale deed, it appears that the attesting witness and identifier of the document is none other than the own brother of Defendant No. 1. Furthermore, the scribe of the document, as well as another witness, belong to a different village, and no local persons have acted as witnesses. The plaintiff had no reason to sell his only homestead. In reality, neither the plaintiff nor his mother executed any such sale deed, nor did they receive any consideration or hand over possession of the suit land. The plaintiff and his family are still residing on the disputed homestead.

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The impugned sale deed is entirely fraudulent, void, and inoperative. Based on this forged document, Defendant No. 1 caused the wrongful mutation of Khatian No. 5524 in his name, which is illegal and without legal effect. The plaintiff is in no way bound by the fraudulent sale deed or the consequential mutation record. Hence, the plaintiff has instituted the present suit seeking a declaration that the impugned deed is forged, fraudulent, and void.

Defendant's Case :

The defendant No. 1 contested the suit by filing written Statement contending, inter alia that the suit land originally belonged to Korom Ali's wife, Amda Khatun, as well as Momtaz and Aman Khatun. This fact is admitted in the plaintiff's plaint. Momtaz and Aman Khatun are the daughters of Amda Khatun. By executing Deed No. 2997 dated 29.05.1965, Amda Khatun transferred the suit land to the plaintiff, Mohammad Ali, upon which B.S. Khatian No. 2582 was prepared in his name. Gol Bahar Khatun, having acquired her share from her mother, and the plaintiff, having obtained his share through the said deed, jointly possessed the suit land as rightful owners as per the B.S. record.

Subsequently, when the plaintiff intended to sell the suit land, the defendant expressed his willingness to purchase the same. Upon mutual discussion, the price of the suit land was fixed at TK 3,000/-. Thereafter, the plaintiff and his mother, Gol Bahar Khatun, upon receiving the full sale consideration of TK 3,000/- from the defendant, executed and registered Sale Deed No. 3032 dated 15.11.1992 in favor of the defendant and handed over possession of the sold land to him. The defendant then had B.S. Mutation Khatian No. 5524 prepared in his name and has been paying land revenue accordingly while remaining in possession.

Subsequently, Gol Bahar Khatun and Bachu Mia proposed to temporarily reside in the suit homestead as tenants, to which the defendant agreed. Consequently, by executing a temporary tenancy agreement dated 11.04.2009 the defendant leased out the homestead to them on a temporary basis at a

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monthly rent of TK 200/-. The defendant remains in possession of the suit land, and the B.S. Mutation Khatian stands in his name. The plaintiff has been residing in the suit homestead as a tenant under the defendant. Taking advantage of this situation, the plaintiff, with ill motive, has filed the present false suit to unlawfully usurp the suit property by denying the sale deed executed in favor of the defendant.

The plaintiff and his mother lawfully executed and registered the said sale deed in favor of the defendant upon receiving full consideration and delivering possession of the suit land. The plaintiff, having himself executed the deed, has no legal right to deny its validity. The defendant's sale deed is genuine, valid, effective, and legally binding, and there exists no justifiable reason to cancel or revoke the same. Hence, the plaintiff's suit is liable to be dismissed.

Issues:

From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, the following issues has been framed for proper adjudication of the case :

1. Whether the present suit is maintainable in its current form and manner?
2. Whether any cause of action has arisen for filing the present suit?
3. Whether the present suit is barred by limitation?
4. Whether the plaintiff has any right, title, or interest in the suit land?
5. Whether the impugned Sale Deed No. 3032 dated 15.11.1992 is forged, fraudulent, and inoperative?
6. Whether the plaintiff is entitled to a decree as prayed for?

Discussions of Evidences

In support of the case, the plaintiff has examined two witnesses, namely: Mahamud Ali (P.W.1) and Azizul Haque (P.W.2). On the other hand, the defendant has also examined two witnesses, namely: Mohammad Golapor Rahman (D.W.1) and Md. Ibrahim (D.W.2).

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During the examination of witnesses, the documents on behalf of the plaintiff exhibited are 1. Certified copy of R.S. Khatian No. 464 – *Exhibit-1* 2. Certified copy of B.S. Khatian No. 2582 – *Exhibit-2* and 3. Kabala Deed No. 2997 dated 26.05.1964 and Kabala Deed No. 3032 dated 15.11.1992 (series) – *Exhibit-3*

During the examination of witnesses, the following documents were marked as exhibits on behalf of the defendant:

1. Certified copy of R.S. Khatian No. 464 – *Exhibit-Ka*
2. Certified copy of B.S. Khatian No. 582 – *Exhibit-Kha*
3. Mutation Khatian No. 5524 – *Exhibit-Ga*
4. Rent receipt – *Exhibit-Gha*
5. Kabala Deed No. 3032 dated 15.11.1992 – *Exhibit-Uma*
6. Kabala Deed No. 5718 dated 09.07.1943 – *Exhibit-Cha*
7. Kabala Deed No. 538 dated 26.01.1944 – *Exhibit-Chha*
8. Kabala Deed No. 447 dated 24.01.1952 – *Exhibit-Ja*
9. Kabala Deed No. 5490 dated 10.06.1975 – *Exhibit-Jha*
10. Kabala Deed No. 204 dated 03.02.1972 – *Exhibit-Nio*
11. Kabala Deed No. 205 dated 03.02.1972 – *Exhibit-Ta*
12. Original Lease Agreement dated 11.04.2009 – *Exhibit-Tha*

P.W.1 for the plaintiff and **D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

Discussions and Decision

Issue no. 1-3

Whether the suit is maintainable in its present form and prayer?

Whether the plaintiffs have any cause of action for filing the suit ?

Whether the suit is barred by limitation?

Considering that the three issues under adjudication are interrelated, they have been taken up together for discussion and decision-making.

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Upon perusal of the plaint, written statement, and the evidence on record, it appears that the present suit is purely civil in nature, and there exists no legal impediment to its adjudication by this Court. In view of the above, I find that the suit is maintainable in its present form and manner.

From the averments made in the plaint, sufficient cause for instituting the suit has been established. As per the plaintiff's claim, the scheduled property mentioned in the plaint was acquired by the plaintiff through a registered grant deed (Bhog-Anumoti-Patra) No. 2997 dated 29.05.1964, pursuant to which the plaintiff has been in continuous possession of the suit land, having constructed a residential house thereon. The plaintiff asserts that the defendant never had any title or possession over the suit land at any point in time. However, on 07.12.2012, Defendant No. 1 entered the suit land and claimed ownership based on a disputed deed of conveyance, at which point the plaintiff became aware of the said document.

The cause of action for the suit arose on 07.12.2000, and the suit was instituted on 05.03.2013, which is within the prescribed period of limitation. Hence, it is evident that the present suit is maintainable in its current form and manner, is not barred by limitation, and there exists sufficient cause for its institution. In light of the above considerations, the three issues under determination are decided in favor of the plaintiff.

Issue No : 4-5:

Whether the plaintiff has any right, title, or interest in the suit land?

Whether the impugned Sale Deed No. 3032 dated 15.11.1992 is forged, fraudulent, and inoperative?

Since the matters under consideration are interrelated, they have been taken up together for discussion and decision. The plaintiff has claimed ownership of 3.16 decimals of homestead land in R.S. Plot No. 13847 of R.S. Khatian No. 464, which has been included in B.S. Plot No. 18589 of B.S. Khatian No. 2582.

From the certified copy of R.S. Khatian No. 464 (**Exhibit-1**) submitted by the plaintiff's witness, **Mahamud Ali (P.W.1)**, it appears that 35 decimals of land

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in the disputed R.S. Plot No. 13847 were originally recorded in the names of Abed Ali and others, Gunu Mia and others, and Omda Khatun and others. **Exhibit-3** further reveals that R.S. owner Omda Khatun transferred 3 decimals of land in the disputed plot to the plaintiff, Mohammad Ali, through a deed of Bhoganupotra (ভোগানুপত্র) (Usufructuary deed) bearing No. 2997, dated 26.05.1964. From the certified copy of B.S. Khatian No. 2582 (**Exhibit-Kha**), it is evident that the B.S. survey was correctly published in the name of the said Mohammad Ali. Based on these documents, the plaintiff asserts his ownership over the scheduled property.

On the other hand, the defendant claims that the disputed property was transferred to him by the plaintiff and his mother through a registered sale deed bearing No. 3032, dated 15.11.1992. Exhibit-Ga proves the fact to be true. The defendant further asserts that, after the purchase, he mutated the property in his name, which is supported by the certified copy of Mutation Khatian No. 5524 (**Exhibit-Gha**). It is also evident that the defendant's father, Belayet Ali, acquired certain portions of land in the disputed plot through purchase, which is why his name appears in B.S. Khatian No. 2582.

Upon a thorough analysis, it appears that, although the plaintiff claims ownership over the disputed land, it is evident that the plaintiff and his mother transferred the said property to the defendant, Golapar Rahman, through the registered sale deed No. 3032, dated 15.11.1992. However, the plaintiff claims that the said sale deed is fraudulent, fabricated, and ineffective.

The primary issue in this case is whether the disputed registered sale deed No. 3032 is fraudulent or fabricated. Since the plaintiff has alleged that the registered sale deed is fraudulent and obtained through deception, the burden of proving such allegations lies upon the plaintiff. Section 101 of the Evidence Act, 1872, places the onus on the plaintiff to prove that the disputed deed was executed through fraud, coercion, or misrepresentation.

To prove this, plaintiff's witness P.W.1 stated in his deposition that, on 16.11.1992, Defendant No. 1 invited the plaintiff and his mother to his house, provided them with a meal, and then asked them to put their thumb impressions on a document, stating that it was for witnessing the sale. The plaintiff only became aware of the creation of the disputed sale deed when Defendant No. 1 later asked him to vacate the land on 07.12.2012. This testimony establishes that the plaintiff and his mother affixed their thumb impressions on the disputed sale deed. However, they have not denied that the thumb impressions belong to them.

Since the disputed deed is a registered document, it is presumed to have been executed at the registry office, and there is a reasonable presumption that the plaintiff and his mother affixed their thumb impressions at the registry office. It is not believable that the plaintiff and his mother affixed their thumb impressions on the disputed deed without understanding its contents. Moreover, there is no evidence to suggest that the defendant obtained their thumb impressions through fraud, coercion, or misrepresentation. Therefore, the allegation that the disputed sale deed was created through fraudulent or deceitful means has not been substantiated.

In the case of **Abdul Hakim vs. Md. Abdul Bashir**, 45 DLR (AD) 56, it was held that a registered document carries a presumption of correctness unless rebutted with strong evidence. Similarly, in **Shah Alam vs. Abdul Jabbar**, 60 DLR (AD) 42, the Appellate Division reiterated that a mere plea of fraud without substantive proof cannot invalidate a registered sale deed. Applying these principles, it is evident that the plaintiff has failed to discharge his burden of proof to establish fraud or forgery. Accordingly, the disputed sale deed is considered a valid and lawful document.

The testimony of defendant's witnesses, Mohammad Golapar Rahman (D.W.1) and Md. Ibrahim (D.W.2), further supports that the plaintiff is residing on the disputed land as a tenant of Defendant No. 1. **Exhibit-Tha** the tenant agreement proves the facts to be true. Additionally, the mutation

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khatian No. 5524, recorded in the name of Defendant No. 1, confirms his possession over the disputed land.

From the comprehensive analysis of oral and documentary evidence, it is clear as daylight that the plaintiff is not the rightful owner of the suit property. The registered sale deed No. 3032 dated 15.11.1992 is valid and enforceable. Consequently, the plaintiff is not entitled to the declaratory decree as prayed for. Thus, issues No. 4 and 5 are decided against the plaintiff.

Issue No. 6: Is the plaintiff entitled to the relief sought?

Upon a comprehensive review of the plaint, written statement, oral testimonies, documentary evidence, and arguments advanced by the learned counsels, it is evident that the plaintiff has completely failed to prove his case. Since issues No. 4 and 5 have been decided against the plaintiff, he is not entitled to the decree sought

In result the case failed.

Court fee paid is correct

Hence,

It is Orderedi

that this suit for declaration be dismissed on contest against the defendant no. 1 and ex-parte against the rest without any order as to cost.

The case is thus disposed of.

Typed & Corrected by me

Md. Hasan Zaman
Senior Assistant Judge,
Boalkhali Assistant Judge Court,
Patiya , Chattogram.

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