

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 2086 OF 2007**

**IN THE MATTER OF:**

An application under section 115(1) of the  
Code of Civil Procedure.

(Against Decree)

-And-

**IN THE MATTER OF:**

Sadek Ali Howlader

--- Petitioner.

-Versus-

1(Ka). Saitara Begum and others

---Opposite Parties.

Mr. Md. Shahidul Islam with  
Mr. Md. Riaz Hossain Sikder, Advocates

--- For the Petitioner.

Mr. Uzzal Kumar Bhowmick with  
Ms. Tasmia Prodhan and

Mr. Monoz Kumar Kirtania, Advocates

---For the Opposite Party Nos. 1(Ka)-1(Gha).

**Heard on: 22.02.2023, 23.02.2023,**  
**28.02.2023 and 02.03.2023.**

**Judgment on: 16.03.2023.**

At the instance of the present defendant-petitioner, Sadek Ali Howlader, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1(Ka)-1(Uma) only at the risk of the petitioner to show cause as to why the impugned judgment

and decree dated 10.01.2007 passed by the learned Joint District Judge, Court No. 1, Jhalakathi in the Title Appeal No. 80 of 2005 disallowing the appeal and thereby affirming the judgment and decree dated 01.06.2005 passed by the learned Senior Assistant Judge, Nalchity, Jhalakathi in the Title Suit No. 79 of 1993 in decreeing the title suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that originally the plaintiff, Syed Ali Howlader filed the Title Suit No. 79 of 1993 in the court of the learned Senior Assistant Judge, Nalchity, Jhalakathi for declaration of title and for partition in respect of the suit property, however, during the pendency of the said Title Suit No. 79 of 1993 the said Syed Ali Howlader died leaving behind 4 daughters who are the plaintiff Nos. 1(Ka)-1(Gha) and a wife being plaintiff No. 1(Uma) who were substituted. The plaint contains that the suit land is situated under District- Bakergonj which is now as district- Jhalakathi, Police Station- Nalchity, at Mouza- Bahrapur, C. S. Khatian No.  $\frac{86}{1}$ , C. S. Plot Nos. 3, 131, 135, 136, 137, 138, 139, 140, 141 and 204 land measuring 1.08 decimals belonged to one Ismail. Accordingly, the record of right was published in the name of

Ismail. Another land C. S. Khatian No.  $\frac{86}{2}$ , C. S. Plot Nos. 3, 311, 135-141 and 267 land measuring 83 decimals belonged to one Ismail. Other lands measuring 80 decimals belong to one Ahsan Ali and land measuring 79 decimals belonged to Meser Ali and other lands measuring 1.15 belonged to comprising by Israil and Ismail. Israil got total land measuring  $1.40\frac{1}{2}$  acres who died leaving behind 3 sons Amzad Ali, Hashem Ali and Syed Ali and 2 daughters, namely, Banu Bibi and Hamidunnhessa and a wife. Amzad Ali and others sold the land measuring 83 decimals to Ramdas Dayal Bar alias Ram Kumar Bar by a sale deed dated 22.07.1932. They also sold 29 decimals. Ramdas Doyal Bar sold 1.12 acres to Amzad Ali, Hashem Ali and Syed Ali. The plaint also states that Ismail got  $1.65\frac{1}{2}$  acres, thereafter, Ismail orally gifted his entire land to his daughters and brothers. Ismail's daughters are from the first wife of Amzad Ali but they did not have any issues, thus, Amzad Ali became owner. Amzad Ali also got  $1.65\frac{1}{2}$  acres by oral gift and also became owner by succession, therefore, total land was  $2.09\frac{1}{2}$  acres. Amzad Ali died leaving behind the plaintiff Syed Ali Howlader and

defendant Nos. 1 and 2 and 2 daughters who are the opposite parties. The plaintiff Syed Ali Howlader got land by way of purchase and inheritance total land measuring 83 decimals and possessing the land. However, R. S. and S. A. Khatian wrongly prepared in the name of one Jobed Ali son of late Ismail. Defendant denied the plaintiffs title and refused to an amicable partition and hence the title suit.

One Sadek Ali being the defendant No. 26 contested the suit by filing a written statement contending, *inter alia*, that Israil, the owner of 1.08 acres land in the C. S. Khatian No.  $\frac{86}{2}$  measuring comprising area of 83 decimals and  $57\frac{1}{2}$  decimals. The said Israil died without any issue but leaving behind brother Ismail. Thereafter, Ismail died leaving behind 3 sons, namely, Amjad Ali, Jobed Ali and Hashem Ali and also wife Jamina Khatun who died leaving behind as above. C. S. Khatian No.  $\frac{86}{1}$  and C. S. Khatian No.  $\frac{86}{2}$  was correctly recorded in the names of Amjad Ali, Jobed Ali and Hashem Ali and wife Jamina Khatun and published the record of right in the S. A. Khatian No. No. 94 comprising shares of  $\frac{1}{3}$  which is an area of .76 decimals of land.

Accordingly, .76 decimals land was correctly recorded in the name of Jobed Ali who sold  $.25\frac{1}{2}$  decimals in favour of the defendant No. 26, Sadek Ali and A. Kader became equal owners by a sale deed dated 09.07.1964 and handed over possession thereof. Kader transferred his land measuring  $.12\frac{3}{4}$  decimals in favour of Momotaj Begum, wife of the defendant No. 26 by a sale deed dated 17.08.1991. The said Momotaj Begum remained an owner of  $25\frac{1}{2}$  decimals. This defendant claimed that sale deed 22.07.1932 and 28.06.1940 those are forged, fraudulent and not acted upon.

After hearing the parties the learned trial court decreed the suit. Being aggrieved the defendant-petitioner No. 26 preferred the Title Appeal No. 80 of 2005 in the court of the learned District Judge, Jhalakathi which was subsequently heard by the learned Joint District Judge, Court No. 1, Jhalakathi and passed the impugned judgment and decree dated 10.01.2007 by disallowing the appeal and thereby affirming the judgment and decree dated 01.06.2005 passed by the learned court below.

Being aggrieved the present defendant No. 26 -appellant-petitioner, namely, Sadek Ali Howlader filed this revisional

application under section 115(1) of the Code of Civil Procedure challenging the legality and propriety of the impugned judgment and decree of the learned appellate court below and this Rule was issued thereupon.

Mr. Md. Shahidul Islam, the learned Advocate, appearing along with the learned Advocate, Md. Riaz Hossain Shikder, on behalf of the present defendant No. 26- appellant- petitioner, submits that the impugned judgment and decree was based on mere surmise and conjecture and non-consideration of evidence on record both oral and documentary and the learned courts below most illegally made an observation that the present R. S. and S. A. Record of right is not a document of title. The learned courts below should have held that R. S. and S. A. Record of right are the evidence of present possession and the title and the later Record of right will prevail over the earlier document and should have decided that mere execution and registration of kabala (কবলা) deed dated 22.07.1932 and dated 28.06.1940 *isofacto* does not pass title to the purchaser and those two kabala (কবলা) deeds are forged and fraudulent and not acted upon but the learned courts below did not consider that the legal aspect, thus,

committed an error of law in the decision occasioning failure of justice.

The Rule has been opposed by the present opposite party No. 1(Ka)-1(Gha).

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocates, Ms. Tasmia Prodhan and Mr. Monoz Kumar Kirtania, on behalf of the opposite party Nos. 1(Ka)-1(Gha), submits that both the courts below considered the documentary and oral evidence by way of depositions and came to a conclusion concurrently in favour of the present plaintiff-opposite parties.

He also submits that the plaintiff could successfully prove the transfer of the suit property by the sale deed dated 22.07.1932 in order to show their chain of ownership of the suit land, as such, the learned trial court and the learned appellate court below committed no error of law by passing the impugned judgment and order, as such, this court should not interfere upon the impugned judgment concurrently passed by the courts below.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present

defendant-appellant-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned courts below and also perusing the relevant documents available in the lower courts record, it appears to me that the predecessor of the present defendant- opposite parties filed a suit for declaration of title and partition of the suit land. The plaint contains that a right on the basis of the C. S. Record and also by way of transfer sale deed dated 22.07.1932 and 28.06.1940 exhibited as Exhibits- 3 and 2, the plaintiffs could prove their title by adducing and producing exhibits before the learned courts below and the learned courts below considered those documents but the defendant No. 26- petitioner could not disprove by producing any evidence but the plaintiff- opposite parties could adduce and produce those documents in support of their case, as such, both the learned courts below concurrently found in favour of the present plaintiff- opposite parties.

Now, I am considering the judgment and decree passed by the learned courts below:



The learned trial court came to its lawful conclusion to decree the suit on the basis of the following finding which reads as follows:

...“এছাড়া বাদীপক্ষের পূর্ববর্তী আম-জদ আলীর রেকর্ডীয় এছমাই-লর নিকট থেকে দানসূত্রে এবং ১ম স্ত্রীর নিকট থেকে ওয়ারিশ সূত্রে জমি পাবার বিষয়টি বিবাদীপক্ষ থেকে অস্বীকার করা হয় নাই। বিবাদীপক্ষ থেকে এছরাই-লর কন্যা থাকার বিষয়টি অস্বীকার করা হই-লও আম-জদ এর অংশ অস্বীকার ক-র নাই। তাহা-ত বাদীপক্ষ ২৮-০৬-১৯৪০ ইং তারিখের কবলার সম্পত্তিসহ অতিরিক্ত .৪৬ একর সম্পত্তি আমজেদ আলীর ওয়ারিশ হিসা-ব পাই-ত পা-র ব-ল আদালত ম-ন ক-র। এমতাবস্থায় বাদীপক্ষ (খ) তপশীলোক্ত ভূমিতে খরিদা এবং ওয়ারিশী সূত্রে স্বত্বান হওয়ায় এবং (খ) তপছিলভুক্ত ভূমি ইতোপূর্বে বন্টন না হওয়ায় উক্ত ভূমি বাদীপক্ষ প্রার্থিত ম-ত বন্টন পাই-ত পা-র ব-ল আদালত সিদ্ধান্ত গ্রহণ ক-র।”...

Similarly, the learned appellate court below concurrently passed the impugned judgment on the basis of the following findings and manner which reads as follows:

...“জ-বদ আলীর না-ম এরূপ লিপিবদ্ধ হওয়ার ভিত্তি বিবাদীপক্ষ আদাল-ত প্রমাণ কর-ত সক্ষম হন নাই। বিবাদী পক্ষের জবাব পর্য্য-লাচনায় দেখা যায় যে, জবাবটি অস্পষ্ট হ-ছে। প্রকৃতপ-ক্ষ, ২৬ নং বিবাদী ১৯৬৪ সা-লর কবলামূ-ল কোন স্বত্ব অর্জন ক-রন নাই। বাদীগ-ণর পূর্ববর্তী আম-জদ আলী ইসরাই-লর রেকর্ডীয় অংশ বিক্রি বাদে অবশিষ্ট ২৮  $\frac{1}{2}$  শতক জমির মধ্য থেকে ৭ শতক জমি ওয়ারিশসূত্রে প্রাপ্ত হন। তাছাড়া বাদীপক্ষের পূর্ববর্তী আম-জদ আলী ইসমাই-লর নিকট থেকে দানসূত্রে এবং

প্রথম স্ত্রীর নিকট থেকে ওয়ারিশ সূত্রে জমি পাওয়ার বিষয়টি বিবাদীপক্ষ থেকে অস্বীকার করা হয় নাই। ফ-ল বাদীপক্ষ ২৮/০৬/১৯৪০ ইং তারিখের কবনার সম্পত্তিসহ অতিরিক্ত .৪৬ শতক সম্পত্তি আম-জ-দর ওয়ারিশ হিসাবে পেতে পারে। সার্বিক পর্যালোচনায় দেখা যায় যে, নানিশী সম্পত্তিতে বাদীপক্ষ ওয়ারিশ ও খরিদসূত্রে স্বত্ব অর্জন করেছেন।”...

In view of the above concurrent findings of the learned courts below, I am of the opinion that the learned courts below committed no error of law by passing the judgments and decrees, in particular, the learned appellate court below by passing the impugned judgment and decree.

In view of the above discussions, I am not inclined to interfere into the judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order of stay passed by this court at the time of issuance of the Rule and subsequently the same was extended and lastly, it was extended till disposal of the Rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.