

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6045 of 2001

In the matter of:

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

And

Kamruzzaman Babu and others
... Petitioners

-Versus-

Government of Bangladesh and others
... Opposite parties

Mr. Uzzal Bhowmick, Advocate
... For the petitioners.

Mr. Md. Moshihur Rahman, Assistant Attorney General
with

Mr. Md. Mizanur Rahman, Assistant Attorney General
... For the opposite party Nos.1 and
2.

Heard on 08.01.2025 and Judgment on 09.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 28.06.2001 passed by the District Judge, Nilphamari in Other Appeal No.88 of 2000 reversing the judgment and decree dated 13.08.2000 passed by the learned Senior Assistant Judge, Sadar, Nilphamari in Other Suit No.14 of 1999 should not be set aside and/or

pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration of title for 1.24 acres land as described in the schedule to the plaint and for further declaration that the notice of eviction issued by defendant No.2 on 29.12.1998 directing the plaintiffs to remove their structures and hand over possession of the disputed land is unlawful and not binding upon the plaintiff.

It was alleged that above property belonged to pro-forma defendant Nos.3-6 and in their names C. S. Khatian No.1 was correctly prepared and in above disputed land the Kacharighor of above Zaminders was situated. But subsequently the Kacharighor was shifted to contiguous Plot No.1605 and above Zaminder gave settlement of above land to the predecessor of the plaintiffs namely Joban Uddin in 1350 B.S. Above land was erroneously recorded in the name of the Government in S. A. Khatian No.1. But in the comment column the possession of above Joban Uddin from 1352 B.S. was correctly recorded.

Defendant No.1 and 2 contested the suit by filing a joint written statement alleging that above land belongs to the Government and the same is being used as Union Land Office and the claim of the plaintiffs that their predecessor Joban Uddin obtained settlement of above land

from previous landlords Gopi Ballab Sen and others is false. The plaintiffs do not have any right, title, interest and possession in above land and they unlawfully constructed a dwelling hut in above land and the defendant had removed above structure and obtained possession of above land.

At trial plaintiffs examined four witnesses and documents of the plaintiffs were marked as Exhibit Nos.1 and 2 series. On the other hand defendant examined one witness and the documents of the defendants were marked as Exhibit Nos.'Ka' to 'Kha' series.

On consideration of above facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendant as appellant preferred Other Appeal No.88 of 2000 to the District Judge, Nilphamari who allowed above appeal set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with the above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Uzzal Bhowmick, learned Advocate for petitioner No.1 submits that the disputed land is non agricultural land and proforma

defendant Nos.3-6 gave oral settlement of above land to Joban Uddin, predecessor of the plaintiffs in 1943 B.S. and granted rent receipt and delivered possession 1350 B.S. Since above date plaintiffs are in peaceful possession in above land by constructing their dwelling house and the same has been reflected in the comment column of S. A. Khatian No.1. PW4 Nasir Uddin an elderly man of 70 years of age has given evidence in support of above oral settlement of the disputed land and as to the granting of rent receipt by above Zaminders. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly decreed the suit. But the learned District Judge failed to appreciate above materials on record properly and most illegally allowed the appeal and set aside the lawful judgment of the trial Court which is not tenable in law. The learned Advocate further submits that Section 107 of the Transfer of Property Act, 1882 provides for oral settlement of non agricultural land. Since above settlement was obtained by the father of the plaintiffs who has died long before the plaintiffs could not provide all information about above settlement. But plaintiffs continuous possession has been proved from the relevant S. A. Khatian In his evidence DW1 Abdul Matin the local land Officer has admitted that the plaintiff has a ghor and shops in the disputed land. On consideration of above facts and

evidence the learned District Judge should have dismissed the appeal and upheld the judgment and decree of the trial Court but the learned Judge of the Court of Appeal below failed to take into account above materials on record correctly which has vitiated the impugned judgment and decree of the Court of Appeal below with illegality which is not tenable in law.

On the other hand Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the opposite party Nos.1 and 2 submits that plaintiffs could not mention in the plaint or in the evidence of PWs the exact month and date when their predecessor obtained settlement of the disputed land. Nor they have mentioned the date of their entry into the disputed land. It has been merely stated in the plaint and in the evidence of PW1 Kamruzzaman that Joban Uddin obtained bandobosto in 1350 B.S. But in the comment column of S. A. Khatian No.1 possession of Joban Uddin was recorded from 1352 B.S. In above column further mention has been made that there is a kachari ghor in the disputed plot and four wells. The plaintiffs do not claim that the later part of the comments in S. A. Khatian No.1 was erroneous but claims that above Kacharighor was shifted to plot No.1605 which cannot be relied upon. PW1 who is plaintiff No.1 of this suit and he is of 30 years of age and he does not have any personal knowledge as to

above oral settlement or possession of Joban Uddin. The only witness examined by the plaintiff in support of above settlement is PW4 Nasir Uddin who was a minor boy of 13/14 years age in 1350 B.S. PW4 Nasir stated in his evidence that Joban Uddin gave settlement of the disputed land and rent receipt was written by Shochindra Kumar and Genoda Prasad. Above claims of PW1 are out of pleadings and contradictory with the case of the plaintiffs. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal below has rightly allowed the appeal and set aside the unlawful judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence on record.

It turns out from C. S. Khatian No.1 that 175.88 acres land stand in the names of to pro-forma defendant No.86 and Rukkhini Bollob Sen as has been stated in the plaint. But while giving evidence as PW1 plaintiff No.1 stated that disputed property belonged to Gopi Ballab. It is admitted that in S.A. Khatian No.1 above property has been recorded in

the name of the Government of Bangladesh. But in the possession column following comments have been made:

“১৩৫২ সন হইতে দং জবান উদ্দিন পিং রহিম উদ্দিন প্র- কাচারী
বাড়ী ঘর ১, কুয়া ৪.”

The learned Advocate for the petitioners submits that above comments as far as the possession of Jaban Uddin is concerned was correctly made and relying on above endorsement in the S. A. Khatian he made a long submissions as to how a Court of law can presume the existence of oral settlement on the basis of possession. But it is not the case of the plaintiffs that Joban Uddin obtained settlement of above land in 1352 B.S. It has been claimed by the plaintiffs both in the plaint and evidence of PW1 that Joban Uddin obtained settlement in 1350 B.S. There is no explanation either in the plaint or in the evidence of the PWs as to why after obtaining settlement in 1350 B.S. Joban Uddin entered into the possession in 1352 B.S.

PW1 stated that above property belonged to Ballob Sen but in the next breath he stated that his father Joban Uddin obtained settlement from the Zaminders in 1350 B.S. The plaintiff did not mention either in the plaint or in the evidence of the PWs the exact name of the month and date or the place from where above settlement was obtained by Joban Uddin. Nor the plaintiffs mentioned the mode of above

settlement. Admittedly disputed land was not agricultural land and in the absence of the mode of settlement learned Advocate for the petitioners repeatedly stated that above settlement was obtained orally. In support of above oral settlement plaintiffs examined PW4 Nasir Uddin who stated on 05.07.2000 that his age was 70 years. As such in 1350 B.S. he was a minor boy of 13/14 years. He stated in his evidence that Joban Uddin gave settlement of the disputed land and paid rents. The rent receipt was written by Shochindra Kumar Mazumder and Genoda Proshad in his presence. It is not the case of the plaintiffs that Joban Uddin gave settlement of the disputed land. There is no mention either in the plaint or in the evidence of PW1 that rent receipts were written by Shochindra Kumar Mazumder and Genoda Proshad. PW4 Nasir Uddin did not mention the competence or capacity of above Shochindra Kumar Mazumder and Genoda Proshad in writing of above rent receipts. Above two rent receipts were private documents as such execution of above documents by the authorized person or above Zaminders was required to be proved in accordance with law. But the plaintiffs have failed to prove due execution of above rent receipts in accordance with law.

It is true that DW1 Abdul Matin Tahshilder of the local land office had admitted in his cross examination that in the disputed land

plaintiff's ghor and shops are situated. Above evidence supports the endorsement made in the possession column of S.A. Khatian No.1 that Joban Uddin was in possession in above land since 1352 B.S. but the plaintiffs did claim title by adverse possession. In the plaint the quantity of the disputed land has been stated to be 1.24 decimal but both in the S. A. Khatian and C.S. Khatian the quantity of land in Plot No.1604 appears to be 1.24 acres.

The learned Advocate for the petitioner repeatedly stated that there was Kacharighor of the Zaminders in disputed Plot No.1604 but subsequently the same was shifted to Plot No.1605. The plaintiffs did not mention when and why above shifting of the Kacharighor occurred. It turns out from the comment column of both the relevant C. S. and S. A. Khatian that there is a kachari ghor in the disputed plot. DW1 Abdul Matin stated that the Kacharighor of the Zaminder was in the disputed plot which is being used now as Union Land Office.

On consideration of the facts and circumstances of the case and evidence on record I hold that the learned District Judge on correct appreciation of materials on record rightly held that plaintiffs could not prove their lawful title in the disputed land and rightly allowed the appeal and set aside the flawed and unlawful judgment and decree of the trial Court which calls for no interference I am unable to find any

illegality or infirmity in the judgment and decree of the Court of Appeal below nor I find any substance in this revisional application under section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER