

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No.5261 of 2007**

Dinesh Chandra Shaha and another

... Petitioners

-Versus-

Md. Mobarak Hossain and others

...Opposite-parties

Mr. Md. Shahadat Tanveer Amin, Advocate

...For the petitioners

Mr. Zainul Abedin (Tuhin), Advocate for

Mr. Zafar Sadeque, Advocate

...For the opposite-party Nos.1-14,  
16-18 & 19-22.

**Judgment on 27<sup>th</sup> May, 2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite party No.1-18 to show cause as to why the impugned judgment and decree dated 10.07.2007 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon in Title Appeal No.135 of 2003 disallowing the appeal and thereby affirming the judgment and decree dated 24.05.2003 passed by the learned Senior Assistant Judge, 1<sup>st</sup> Court, Naogaon in Title Suit No.113 of 2003 dismissing 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The present petitioner and opposite party Nos.23 and 24, as plaintiffs, filed Title Suit No.26 of 1987 in the Court of Assistant Judge, (8<sup>th</sup> Court), Shapahar, Naogaon renumbered as Title Suit No.113 of 2003 on transfer to the court of Assistant Judge, 1<sup>st</sup> Court, Naogaon against the opposite-parties, as defendant, for declaration of title in the suit property claiming that the scheduled land originally belonged to Vadra Napit and Gopal Napit who transferred the same to Jhontoo Ram Shaha, the father of the plaintiff Nos.1 and 2 by registered Deed No.5467 dated 05.06.1942. Jhontoo Ram Shaha possessed the land peacefully but S.A. and R.S. records of the land erroneously prepared in the name of the predecessor of the defendants. The predecessor of the plaintiff Nos.1 and 2 got his name mutated vide Mutation Case No.8/13/85-86, obtained D.C.R. and paid rents to the government. On 24.12.1985 the plaintiffs came to know about the wrong R.S. khatian which clouded their title. The heirs of Jhontoo Ram Shaha transferred  $1\frac{1}{2}$  decimals of land to plaintiff No.3 on 13.01.1986 by Deed No.172 and  $0\cdot\frac{3}{4}$  decimals of

land to the plaintiff No.4 by Deed No.412 dated 15.01.1987. Wrong record did not create any title to the defendants, but cast cloud in the title of the plaintiff, hence, the present suit for declaration.

The defendant Nos.1-4 appeared and contested the suit by filing joint written statement denying all the material allegations made in the plaint contending inter alia, that the suit land originally belonged to Vadra Napit and Gopal Napit. Vadra Napit died leaving only son Bindachal Sil. Bindachal Sil and his uncle Gopal transferred the land to one Mossammat Zamirannessa Chowdhury on 02.01.1956 vide Deed No.425 who got her name mutated in the khatian and paid rents to the government. S.A. khatian prepared in her name. While in possession she transferred the suit land on 22.09.1959 to Hazi Khepor Mohammad Mondal vide Deed No.8234 dated 22.09.1959 who constructed a two storied building thereon and let out one room to Abdul Hamid, son of Kafiluddin, one room to Shafi Kabuliwala and another one to plaintiff No.1 at a rental of Tk.400/- per month. B.S. khatian of the suit land stands prepared in the name of Hazi Khepor Mohammad Mondal. During liberation war Shafi Kabuliwala had surrendered his possession and Dinesh has

been running his sweet shop. One Bisweswar Shaha, Dr. Abdul Motin and Sukur Mohammad have been possessing other rooms as monthly tenants by paying Tk.200/- per month each. Some portion of the land was acquired for Patnitola Khanjanpur Road vide L. A. Case No.56/77-78 Rajshahi and L.A. Case No.18/84-85 Naogaon and the compensation money was received by Hazi Khepor Mohammad Mondal on 19.09.1979. Plaintiffs have filed the suit by creating a forged deed of the year 1942 as Balurghat Sub-registry was burnt in the year 1942. Hazi Khepor Mohammad Mondal died leaving two sons, defendant Nos.1 and 2, two daughters, defendant Nos.3 and 4, two wives and two other heirs. Defendant No.5 died before 1970 and plaintiffs have filed the suit against the dead person. Suit of the plaintiffs is false, fabricated, malafide and based on forged documents, as such, liable to be dismissed with costs.

The trial court framed 5(five) issues for adjudication of the matter in dispute between the parties. In course of hearing the plaintiffs examined 3(three) witnesses as P.Ws and the defendants examined 3(three) witnesses as D.Ws. Both the parties submitted documents in support of their respective claim and got them marked

as exhibits. The trial court by its judgment and decree dated 24.05.2003 dismissed the suit with costs of Tk.3,000/-.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Title Appeal No.135 of 2003 before the Court of learned District Judge, Naogaon. Eventually, the said appeal was transferred to the Court of learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon for hearing and disposal who after hearing by the impugned judgment and decree dated 10.07.2007 disallowed the appeal and thereby affirmed the judgment and decree passed by the trial court. At this juncture, the plaintiff-petitioners, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Shahadat Tanveer Amin, learned Advocate appearing for the petitioners submits that admittedly the suit property belonged to 2(two) brothers, Vadra Napit and Gopal Napit in equal share and C.S. khatian stand recorded in their names. While they were in possession by a Registered Deed No.5467 dated 05.06.1942, sold out the same to the predecessor of the plaintiff Nos.1 and 2 named

Jhontoo Shaha. While predecessor of the plaintiff Nos.1 and 2 had been possessing the suit land by purchase S.A. and R.S. records erroneously prepared in the name of the defendants predecessor instead of recording of the same in the name of the predecessor of the plaintiffs and the plaintiffs themselves. However, the plaintiff Nos.1 and 2 got their names mutated in S.A. Khatian vide Case No.8/13/85-86 and paid rents to the government on 24.12.1985. Wrong S.A. and R.S. khatians has created cloud in the title of the plaintiff in the suit property.

He submits that, the plaintiffs predecessor transferred  $1\frac{1}{2}$  decimals land to the plaintiff No.3 by a Registered Deed No.172 dated 13.01.1986 and  $\frac{3}{4}$  decimals land to the plaintiff No.4 by a Registered Deed No.412 dated 15.01.1987 who have been possessing the same. Though, S.A. and R.S. records wrongly recorded in the name of the defendants, no disturbance, occurred in peaceful possession and enjoyment of the plaintiffs in the suit land. Since the record of right has not been prepared in the name of the plaintiffs they have compelled to file the suit for declaration of title.

He submits that the suit was earlier decreed ex parte against which defendant No.1 filed appeal before the learned District Judge, Noagaon which was allowed on the condition of payment of cost of Tk.500/-, but the defendants did not comply with the order and direction of the appellate court. Consequently, the appellate court by order dated 10.07.1989 dismissed the appeal for non compliance of the order. Thereafter, son of defendant No.5 filed another miscellaneous case under Order 9 Rule 13 of the Code, praying for setting aside the ex parte decree which was rejected by the trial court. Then he preferred appeal before the learned District Judge, Naogaon, wherein, appeal was allowed and the suit was restored in its original file and number. After restoration of the suit, the defendant Nos.1 and 4 contested the suit by filing written statement, whereas, the defendant No.1 was legally debarred from contesting the suit by maintaining ex parte judgment and decree against him. Both the courts below while dismissing the suit as well as appeal did not even touched the question of law, whether defendant No.1 can at all contest the suit who did not comply with the order of the court.

He submits that the plaintiffs filed Deed No.5467 dated 05.06.1942 (Exhibit-1) in original before the trial court. The defendants could not bring any contrary documents or situation regarding existing or non-existing of the said deed by producing any evidence. But the trial court as well as the appellate court while dismissing the suit and appeal on their own motion observed that on the said deed, rubber stamp used by the Registry Office contained some spelling mistake to which the plaintiffs had no nexus at all. He submits that in the absence of any contrary evidence only on the face of the document it cannot be ascertained that the document is forged one. But both the courts below without appreciating provisions of law in this regard by making out a third case beyond the pleadings and evidences disbelieved the sale deed of the year 1942, holding that the deed has been forged by the plaintiffs. He submits that the deed of the plaintiffs is more than 30 years old which has protection under Section 90 of the Evidence Act and need not be formally proved as per provisions of law. But the defense side filed a true copy of Sale Deed No.425 dated 26.01.1956 which has not been proved in accordance with law. Consequently, the trial court did not



take it into consideration by marking the same exhibit. Where the deed of the plaintiff is in original and the deed of the defendants claiming title in the suit property is a true copy of sale deed, both the courts below ought to have held that in the absence of formal proof of true copy of deed dated 26.01.1956 the defendants acquired no title in the property. In support of his submission he has referred to the case of *Additional Deputy Commissioner (Revenue) Vs. Md. Reazuddin Pk and others* reported in *5 BLC (AD) 76* and *Sova Rani Guha alias Sova Rani Gupta Vs. Abdul Awal Mia and others* reported in *47 DLR (AD) 45*.

He submits that the plaintiffs are in possession of the suit land, they paid rents to the government and got the S.A. khatian corrected by filing case before A.D.C. (Revenue). The trial court as well as the appellate court failed to consider the documentary evidences filed by the plaintiffs, consequently, dismissed the suit and disallowed the appeal and as such, committed illegality and error of law in the decision occasioning failure of justice.

Mr. Zainul Abedin (Tuhin), learned Advocate appearing for  
Mr. Zafar Sadeque, learned Advocate for the opposite party Nos.1-

14, 16-18 & 19-22 submits that it is admitted that the property belonged to 2(two) brothers Vadra Napit and Gopal Napit. Vadra Napit died leaving only son Bindachal Sil. Said Bindachal Sil and his uncle Gopal Napit by a Registered Deed No.425 dated 26.01.1956 transferred the suit property to one Mosammat Zamirannessa Chowdhury, evidencing which the defendants filed true copy of the said deed and the deed in original and the same has not been challenged by the plaintiffs in any way. After purchase by Mosammat Zamirannessa Chowdhury, S.A. khatian prepared in her name as admitted by the plaintiffs, but predecessor of plaintiffs knowing fully well about record of right did not take any step by filing any case before any court of law. Mosammat Zamirannessa Chowdhury while in possession by a registered Deed No.8234 dated 22.09.1959 transferred the suit property to one Hazi Khepor Mohammad Mondal who after purchase constructed a 2(two) storied building on the suit property and let out 1(one) room to Abdul Hamid son of Kafiluddin, one room to Shafi Kabuliwala and another one to plaintiff No.1 at a monthly rental of Tk.400/-. R.S. khatian stands recorded in the name of Hazi Khepor Mohammad Mondal.

During war of independence Shafi Kabuliwala left the premises by surrendering to Hazi Khepor Mohammad Mondal, plaintiff has been running sweet shop in the premises let out to him. One Bisweswar Saha, Dr. Abdul Motin and one Sukur Mohammad have been possessing 3 rooms at a monthly rental of Tk.200/- per month each. Subsequently, a portion of the suit land was acquired by the government for construction of Patnitola Khonjanpur Road vide L.A. Case No.18/84-85 Naogaon and compensation money was received by Hazi Khepor Mohammad Mondal on 19.09.1979. In support of his contention he referred all the documents filed before the trial court.

He submits that all those documents amply established that the defendants are owner of the property and have been possessing the same with the knowledge of all. After the death of their father Hazi Khepor Mohammad Mondal, the plaintiffs created a forged document showing executants Vadra Napit and Gopal Napit. The trial court as well as the appellate court rightly held that the deed of the plaintiffs of the year 1942 is forged one and the plaintiffs could not prove the said deed in accordance with law, by producing

certified copy of the same from the concerned Sub-registry Office and all other documents like order of Additional Deputy Commissioner (Revenue) for correction of S.A. khatian in the name of plaintiffs, rent receipts showing payment of rents etc. by any evidence. The defendants filed Deed No.425 dated 26.01.1956 both true copy and in original before the trial court and appellate court, both the courts elaborately discussed about the said deed and finally observed that the defendants claimed the property on the basis of Deed No.425 dated 26.01.1956, but inadvertently said deed has not been marked as exhibit. But this Court can mark the same as sufficient evidence is available in the records as well as well discussion in the judgment of both the courts below about the deed in quesiton.

He argued that the plaintiffs could not produce any evidence to disprove the deed of the defendants of the years 1956 and 1959. In the absence of any contrary evidence both the deeds of the years 1956 and 1959 being original deed of 30 years old have protection under Section 90 of the Evidence Act. He submits that admittedly, S.A. and R.S. khatians stand recorded in the name of Mosammat

Zamirannessa Chowdhury and Hazi Khepor Mohammad Mondal which corroborate C.S. khatian, Registered Sale Deed No.425 dated 26.01.1956 and registered sale Deed No.8234 dated 22.09.1959. The plaintiffs could not produce any contrary evidence to disprove the same.

He finally argued that the deed dated 05.06.1942 from the face of it, shows that in the rubber stamp used at 1<sup>st</sup> page the word “under,” back page the words “presented” and “admitted” and the back page of 2<sup>nd</sup> stamp the words “registered”, “volume” and “Deed” have been wrongly mentioned in their spelling. During British regime a deed registered with the Registry Office using rubber stamp with wrong spelling is unusual in the eye of a man of ordinary prudence. The plaintiffs could not satisfy the court why several spelling mistakes occurred on the deed in question. Moreover, had there been any sale deed registered with the Sub-registrar, Balurghat, the plaintiffs could have brought a certified copy of the same. But they did not take any step for satisfying the Court about genuineness of the said deed. Other documents also show that the plaintiffs created the same only to claim their title in the suit property, as such,

both the courts below in dismissing the suit and appeal committed no illegality and error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

As per C.S. khatian and admitted by the parties, suit property belonged to Vadra Napit and Gopal Napit in equal share. The plaintiffs claimed that Vadra Napit and Gopal Napit by a registered Deed No.5467 dated 05.06.1942 (Exhibit-1) transferred the suit property to Jhontoo Ram Shaha, father of the plaintiffs. S.A. khatian and R.S. khatians wrongly recorded in the name of the defendants predecessor. Jhontoo Ram Shaha filed Objection Case No.134 of 1974 against predecessor of the defendants Hazi Khepor Mohammad Mondal which was allowed and Khatian No.13/1 corrected in the name of Jhontoo Ram Shaha (Exhibit-3). Certified copy of the order and the khatian in question show that the same khatian is not a

certified copy and the word “corrected” has been written as “carracted” under Section 54 of the EBSAT Act, vide order of Misc. Case No. 82/porsha/82-83, but said order in miscellaneous case is not available in file. Wrong spelling in the rubber stamp used by Sub-Registrar Office on the deed dated 05.06.1942 and Khatian No.13/1 established that the deed was not actually registered with the Registry Office and khatian was not issued by Additional Deputy Commissioner (Rev.). Had there been any sale deed of the year 1942 executed and registered by Vadra Napit and Gopal Napit, subsequent S.A. khatian and R.S. khatian would have been recorded in the name of Jhontoo Ram Shaha and then in the name of the plaintiffs. But in the instant case, the defendants could not file the Deed No.425 dated 26.01.1956 in original before the appellate court and true copy of the same before the trial court and deposed in support of said deed by P.W.1 and sufficient cross was made on the part of the plaintiffs. The plaintiffs tried to establish that on the basis of sale deed dated 05.06.1942, Jhontoo Ram Shaha filed objection before the Objection Officer against the S.A. record and Assistant Settlement Officer by order dated 15.02.1974 allowed the same and ordered to create a

separate khatian in the name of Jhontoo Ram Shaha for 10 sataks of land. Certified copy of the said order Exhibit-2(cha) shows that the same was obtained on 22.11.1984 and rubber stamp used as official seal is in Bengali, who issued the certified copy has not been mentioned in the official seal. Because of anomalies in Exhibit Nos.1 and 3 and other connected papers it cannot be considered that the rent receipts and D.C.R. showing payment of rents and correction of khatian are genuine. In D.C.R. Misc. Case No. 8/13/85-86 dated 15.12.1985 has been written, but the khatian was corrected vide Misc. Case No.82/porsha/82-83 which did not tally each other.

On the other hand, the defendants filed C.S. Khatian No.13 (Exhibit-Ka) and information slip (Exhibit-Kha) in respect of attested Khatian No. No.13 in the name of Mosammat Zamirannessa Chowdhury, R.S. Khatian No.77 in the name of Hazi Khepor Mohammad Mondal who purchased the land from Mosammat Zamirannessa Chowdhury in the year 1959 (Exhibit-Ga), another information slip regarding acquisition of land vide L.A. Case No.56 of 1977-78 (Exhibit-Ga) showing receipt of compensation by Hazi Khepor Mohammad Mondal. Deed No.8234 dated 22.09.1959



executed by Mosammat Zamirannessa Chowdhury in favour of Hazi Khepor Mohammad Mondal, father of the defendants (Exhibit-Umma). Original Deed No.425 dated 26.01.1956 executed and registered by Bindachal Sil and Gopal Sil transferring the property to Mosammat Zamirannessa Chowdhury was filed before the appellate court and true copy of which was filed before the trial court. Since the deed in original filed before the appellate court on 18.09.2006 and the appellate court took into consideration it ought to have marked the same as exhibit as the said deed in original is of 30 years old requiring no formal proof of the same. Moreover, no contrary evidence came from the plaintiffs side. Consequently, I am inclined to mark the same as (Exhibit-Uma(1)).

P.W.1, Mahadev Chandra Shaha admitted that S.A. and R.S. khatians prepared in the name of the defendants and also admitted that the spelling of words mentioned in the Deed No.5467 of 1942 are wrong. P.W.2, Ashraful Islam stated that the plaintiffs are in possession of a room and there is a political party office on the disputed land which has been corroborated by P.W.3, Saizuddin. D.W.1 in his examination-in-chief specifically stated that who are

their tenants and stated that the plaintiffs have been carrying a sweet shop in a room let out to their father. Being denied payment of monthly rents to the defendants they already initiated a proceeding by filing ejectment suit. D.W.2, Sukur Ali is a tenant under the defendants who stated that the plaintiffs have been running a sweet shop in a premise and there is a political party office on the suit plot. D.W.3, Abdur Noor is also a tenant under the defendants who stated that plaintiff Nos.1 and 2 have been carrying sweet shop in a premises as tenant under the defendant. Nothing contrary to the evidence led by the defendants both oral and documentary could bring by the plaintiffs to forestall the claim of the defendants. Rather, the plaintiffs utterly failed to prove that their father Jhontoo Ram Shaha purchased the property from Vadra Napit and Gopal Napit and failed to prove the deed dated 05.06.1942 in accordance with law. Deed No.5467 dated 05.06.1942 on the face of it shows that the rubber stamp used on the 1<sup>st</sup> page the word “under” has been written as “URder”, at the back of 1<sup>st</sup> page word “Presented” has been written as “Prasanted” “admitted” has been written as “admitted”. At the back of 2<sup>nd</sup> stamp words “Registered” has been written as

“Registrad” “volume” has been written as “Volum” “Deed” has been written as “Bing”. Both the courts below rightly detected the above anomalies in the Exhibit-1.

It is fact that the suit once decreed ex parte. On appeal by the defendant No.1 , suit was restored on the condition of payment of costs of Tk.500/- (five hundred), but the appellant failed to deposit the costs consequently appeal was dismissed, ex parte decree was maintained. Thereafter, son of deceased defendant No.5 who died in 1970 filed miscellaneous case under Order 9 Rule 13 of the Code which was dismissed. On appeal it was allowed and restored the suit in its number and position. The plaintiff-petitioners did not move against the judgment and order of the appellate court before this Court, meaning thereby, they conceded the order and in due course proceeded with the hearing of the suit. Therefore, at this the stage the petitioners are legally estopped from raising any question regarding validity or legality of the order of restoration of the suit and contest of the suit by defendant No.1 along with other defendants, as the suit was not restored in part so far it relates to the applicant only.

In view of the observations made hereinabove, I find that both the courts below in dismissing the suit and disallowing the appeal well discussed the evidences available in the records and rightly found that the plaintiffs failed to prove their case and the findings given in the judgment are found to be well reasoned and based on evidences both oral and documentary and as such, committed no illegality in law and error in the decision occasioning failure of justice calling for interference by this Court.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is discharged, however, without any order as to costs.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.