

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

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

**CIVIL REVISION NO. 3025 OF 1996**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Sreemoti Chapala Bala Das and others

--- Defendant-Respondent-Petitioners.

-Versus-

Mrinal Kanti Shaha {(O.P. No. 2 died leaving  
behind her legal heirs: 2(a), 2(b) & 2(c)} and  
others

--- Plaintiff-Appellant-Opposite Parties.

No one appears

--- For the Petitioners.

Mr. Subrata Saha, Advocate

--- For the Opposite Party No. 2(a)

Mr. Sabyasachi Mondal, Advocate

---For the opposite party Nos. 2(b) & 2(c).

Mr. Md. Humayun Kabir, AAG

--- For the Opposite Party No. 3 (Government).

**Heard on: 29.05.2023, 01.06.2023,  
04.06.2023, 23.07.2023 and 19.10.2023.**

**Judgment on: 06.11.2023.**

At the instance of the present defendant-respondent-  
petitioners, Sreemoti Chapala Bala Das and others, 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 and 2 to show cause as to why the judgment and decree dated

28.07.1996 passed by the learned Additional District Judge, Khulna in the Title Appeal No. 230 of 1991 allowing the appeal and reversing the judgment and decree dated 28.05.1991 passed by the then learned Subordinate Judge, Court No. 1, Khulna in the Title Suit No. 388 of 1980 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1 and 2, namely, Mrinal Kanti Shaha and another as the plaintiffs filed the Title Suit No. 388 of 1980 in the court of the then learned Subordinate Judge, Court No. 1, Khulna praying for declaration of title, recovery of khas possession after evicting the present petitioners and also for realization of mense property from the suit property. The plaint contains that the suit property consists of a Cinema Hall named “Ullashini” along with other properties and buildings thereon originally belonged to one Promoth Nath Das who executed a “will” appointing the plaintiffs as Executor and Executrix of the suit Estate. The predecessor of the defendant Nos. 1-6, namely, Pankaj Kumar Das as a Supervisor of the “Ullashini” Cinema Hall who was provided with the official accommodation in the suit property by the owner of the property, namely, Promoth Nath Das as an employee under him to the said Pankaj Kumar

Das. The said Pankaj Kumar Das died on 16.12.19978. His wife and sons had been living in the suit property as a trespasser. The notices were served to the defendants on 18.05.1979 for evicting the defendant-petitioners from the suit premises within 15 (fifteen) days time but refused by the defendants to vacate the premises, therefore, the present plaintiff-opposite parties filed an application under section 24 of the Employment of Labour (Standing) Ordinance, 1965 before the Sub-Divisional Magistrate, Khulna who after hearing the parties rejected the said application who directed to file a civil suit.

The present petitioners as the defendants contested the suit by filing a written statement contending, *inter alia*, that one Ganga Dhar Kuri had 2 sons, namely, Sagar Chandra Kuri and Keshob Chandra Kuri. Son of Sagar Chandra Kuri, namely, Satish Chandra Das and son of Keshob Chandra Das, namely, Promoth Nath Das had left Nadia and came to Khulna for fortune and they acquired the property by joint labour. Promoth Nath Das succeeded from Keshob Chandra Das who left the property and who succeeded the suit properties at Khulna. The said Satish Chandra Das died leaving behind his wife and his son Pankaj Kumar Das who was treated as the son of the said Promoth Nath

Das as the family members and they were living in the suit premises and Pankaj claimed 8 (eight) annas share of the suit property.

The then learned Subordinate Judge, Court No. 1, Khulna after hearing the parties and obtaining both oral and documentary evidence dismissed the suit of the plaintiffs by his judgment and decree dated 28.05.1991. Being aggrieved the plaintiff-petitioners preferred the Title Appeal No. 230 of 1991 in the court of the learned District Judge, Khulna which was subsequently transferred for hearing to the learned Additional District Judge, Khulna. After hearing the parties the learned Additional District Judge, Khulna allowed the appeal by his judgment and decree dated 28.07.1996 thereby reversing the judgment of the learned trial court. Being aggrieved the present petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

This matter has been appearing in the daily cause list for a long period of time but no one appears to support the Rule. However, the petitioners have taken a ground in the revisional application contending, *inter alia*, that having regard to the fact

that Pankaj was born in the suit house in the year 1908 and brought up under his uncle Promoth Nath Das who is the master of the joint family and he lost his hands in an accident in the same premises at the age of 15/16 years and Promoth as a master performed the marriage of Pankaj in the same house in the year 1925. So, the claim of the plaintiff-appellants that Pankaj was given the premises as an official accommodation which was a baseless and concocted story, as such, the appeal should be liable to be discharged.

The present Rule has been opposed by the present opposite party Nos. 1-6.

Mr. Subrata Saha, the learned Advocate, appearing along with the learned Advocate, Mr. Sabyasachi Mondal for the present opposite parties, submits that admittedly the property in question was owned and possessed by Promoth Nath Das and he transferred the entire estate to his second wife Molina Rani Das and his grandson Proshanto Kumar Das by way of a “will” dated 09.10.1945 and after the death of Promoth Nath Das the LA Case No. 04 of 1955 was preferred by Molina Rani das and another executor and the same was probated on 30.03.1959. Subsequently, the Government declared the property as an

enemy property against which Molina Rani Das and her appointed Executor jointly filed Writ Petition No. 205 and 206 of 1966 before the High Court and the property was declared as not the enemy property. So, the Government was made a party to the case but did not contest it. So, no way the joint property is proved, that is why, the defendants are liable to be evicted from the disputed rooms for vacating the same.

He further submits that the learned appellate court below reversed the findings of the learned trial court and observed that the property in question, as well as the property of Promoth Nath Das Estate, were transferred to Proshanto Kumar Das and Molina Rani Das by way of “will” dated 09.10.1945 and the same was probated by LA Case No. 04 of 1955 on 30.03.1959 and also observed that as a manager Pankaj withdrew his salary amounting of Tk. 220/- (Two Hundred and Twenty) per month which was exhibited as Exhibit No. 9, thereafter, the elder son of Pankaj Kumar Das was substituted as an employee of that estate and he withdrew amounting to Tk. 344.67/- as gratuity due to his father which is exhibited as Exhibit No. 7 which proved that Pankaj Kumar Das was the manager of the Cinema Hall and

nowhere and in no way did the defendants prove that the estate was earned by joint income of both the families.

Mr. Md. Humayun Kabir, the learned Assistant Attorney General, opposes the Rule by stating that the suit property is an enemy property and left that property the landlord went to India, as such, the property is Promoth Nath Das Estate.

I have carefully examined the relevant documents provided by the respective parties before the learned courts below in order to release the property by a legal procedure, as such, the suit properties belonged to Promoth Nath Das after releasing from the enemy property.

Considering the above submissions made by the learned Advocates appearing for the opposite parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and order passed by the learned appellate court below and also perusing the very old documents adduced and produced by the respective parties by way of depositions as PWs and DWs in the learned courts below which have been included in the lower courts records, it appears to this court that the present plaintiff-opposite parties filed the

instant suit praying for declaration of title, recovery of possession after evicting the present defendant-petitioners from the suit premises and also claiming mense profit from the suit property consisting of a Cinema Hall, namely, “Ullashini” and other properties and building originally belonged to one Promoth Nath Das who executed a will appointing the plaintiffs as executors and executrix of the properties of the predecessor of the defendant Nos. 1-6. Pankaj Kumar Das was appointed a Supervisor/Manager of the “Ullashini” Cinema Hall who was allowed to reside within the suit premises as an employee under Promoth Nath Das. The said Pankaj Kumar Das died on 16.12.1978 leaving behind his wife and son who were living in the property and looking after the Cinema Hall. This suit was also filed for evicting the successors of Pankaj after serving a notice for eviction. When the present petitioners refused to vacate the property this suit was filed by the successors of the original owners of the suit premises, namely, Promoth Nath Das. The Government of Bangladesh represented by the Deputy Commissioner, Khulna has been made a proforma-defendant-opposite parties as some portion of the suit property was enlisted as an enemy property. However, by taking an appropriate step

the suit property was removed from the enemy property pursuant to the legal step taken by the plaintiff-opposite parties. The present defendant-petitioners claimed that Pankaj himself and after his death, his successors have been living in the suit property as the employees under the original owner Promoth Nath Das. However, the defendant-petitioners claimed that the suit property was owned by Promoth Nath Das and Satish Chandra Das as a joint family property, thus, Pankaj was a successor of Satish Chandra Das who claimed ownership of the suit property upon the 8 (Eight) annas of the  $\frac{1}{2}$  portion of the property and they have been residing there for a long period of time.

In view of the above factual and legal aspects, this court has to take a decision whether the plaintiff-opposite parties could prove their case in the trial court as to the successors of the Promoth Nath Das upon the entire suit premises including Cinema Hall and also including other areas of land and whether Pankaj himself and his successors could get any entitlement upon the suit property. In order to answer the above material facts I have examined the Exhibits filed before the learned trial court as well as before the learned appellate court below in support of

their respective cases. In this regard, the learned trial court heard the matter of entitlement upon the suit premises. Admittedly, the suit property was owned by Promoth Nath Das who employed Pankaj Kumar Das to look after the property as a Supervisor/Caretaker and employees of the suit premises. The said Pankaj claimed 8 (Eight) annas share of the suit property as it was purchased by the family arrangement by and between the father of Pankaj Kumar Das who has been occupying the property.

In view of the above, I consider that an employee as a Supervisor/Caretaker of the suit premises cannot get any entitlement upon the suit land as Promoth Nath Das executed a “will” in favour of the present plaintiff-opposite parties. The settled principle of law is that a person cannot get entitlement upon a suit property as an employee/ lessee/ licensee on the basis of occupying the property. The said Pankaj has been living in the property as an employee as a Supervisor, therefore, neither Pankaj himself nor his successors who are the present defendant-petitioners cannot get entitlement upon the suit premises.

In view of the above, the present plaintiff-opposite parties succeed in entitlement upon the suit premises as successors of

the original owner Promoth Nath Das. In fact, Promoth Nath Das executed a “will” to the opposite party No. 2, namely, Sreemoti Malina Rani Das (now deceased) and her heirs have been substituted and who have contested the Rule as an employee of the Estate. Pankaj cannot get entitlement upon any share of the suit land because there was a “will” which have been executed by Promoth Nath Das in favour of the said Sreemoti Malina Rani Das and on her death her successors.

I have carefully examined the judgment of the learned trial court and also the learned appellate court below who have passed the conflicting judgment upon conflicting findings and legal aspects. The learned trial court dismissed the suit filed by the present plaintiff-opposite parties on the basis of the following findings:

...“সুতরাং বিজ্ঞ জেলা জজ কর্তৃক উক্ত মিস আপীল মোকদ্দমায় প্রদত্ত ২৯.০৭.১৯৭১ ইং তারিখের আদেশ মোতাবেক দেখা যায় যে, পি. এন. দাস এস্টেটের যাবতীয় সম্পত্তি তাহাদের শরিকগ-ণর ম-ধ্য কৃত চিহ্নিত ম-ত বিভাগ-বন্টন হয় নাই। সুতরাং, দেখা যায় যে, নালিশী বাড়ি বিভাগ-বন্টন ম-ত বাদীগ-ণর অংশ কৃত চিহ্নিত ম-ত বিভাগ না হওয়া পর্যন্ত বাদীগণ কর্তৃক দাখিলী অত্র মোকদ্দমাটি বর্তমান আকারে চলিতে পারে না, বাদীপক্ষ কর্তৃক দাখিলী আর্জির তপশীল হই-ত দেখা যায় যে, উহা-ত কোন দাগ-খতিয়ান উ-ল্লখ করা হয় নাই। এবং নালিশী জমি ও বাড়ি

সুনির্দিষ্টভা-ব চৌহদ্দিসহ উল্লেখ করা হয় নাই। বাদীপক্ষ পংকজ কুমার দাস নালিশী উল্লাসিনী সি-নমা হ-লর সুপারভাইজার তথা কর্মচারী হিসা-ব নিয়োজিত ছিল মর্মে শুধুমাত্র উক্ত হলের বেত-নর রেজিস্ট্রীর দাখিল করিয়াছেন। কিন্তু উক্ত বেতন তালিকায় (প্রঃ নং- ৯) প্রদত্ত পংকজ কুমার দা-সর কথিত স্বাক্ষ-রর সহিত পংকজ কুমার দা-সর দাখিলী ৩৯৯২২৩ নং পাকিস্তান পাসপোর্ট ও প্রদত্ত স্বাক্ষরের মধ্যে কোন মিল বা সাদৃশ্য নাই। এমতাবস্থায়, বাদীপক্ষ পংকজ কুমার দাস নালিশী সি-নমা হলসহ পি. এন. দাস এ-স্ট-টর কর্মচারী ছিল- এই কথা প্রমাণ করি-ত ব্যর্থ হইয়া-ছেন। তাহারা পংকজ কুমার দাস ২ নং বাদীনির যৌথ পরিবা-রর সদস্য ছিল না- ইহাও প্রমাণ করি-ত ব্যর্থ হইয়া-ছা।”

However, the learned appellate court below reversed the judgment of the learned trial court on the basis of the following findings which reads as follows:

...“In view of the evidence on record, I am inclined to opine that Promath Nath Das Estate including the suit properties was self-acquired by Promath Nath Das in which Satish Kumar Das or his son Pankaj Kumar Das had no right, title and interest. As such, the defdt- respondents could not claim right, title and interest to the suit land and they are liable to be evicted therefrom. The plff-appellants after the death of Promath Nath Das have got right, title and interest over the suit property and they are entitled to get the decree as prayed for.”...

On the basis of the above conflicting findings by the learned courts below, I consider that the learned trial court committed an error of law in that the plaintiffs could not prove its own case as to the title as successors of Promoth Nath Das.

Both the sisters admitted that Promoth Nath Das was the original owner and Pankaj Kumar Das was an employee as the Supervisor of father Promoth Nath Das Estate and admitted position is that Pankaj Kumar Das was an employee who cannot own any part of the property being a Supervisor or Caretaker as an employee.

In view of the above discussions, I consider that the learned trial court committed an error of law by dismissing the suit by his judgment. However, the learned appellate court below came to a lawful conclusion to allow the appeal on the basis of the succession or a “will” executed by the original owner. I also found that the present plaintiff-opposite parties are entitled to get their inherited property and the employee Pankaj Kumar Das is liable to be evicted from the suit property which the learned appellate court below categorically stated in the impugned judgment and decree.

In such a situation I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below by reversing the judgment and decree of the learned trial court. Therefore, I consider that this is not a proper case for interference from this court and the present plaintiff-opposite parties are entitled to get property from the said Pankaj Kumar Das.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 28.07.1996 passed by the learned Additional District Judge, Khulna in the Title Appeal No. 230 of 1991 allowing the appeal and reversing the judgment of the learned trial court is hereby upheld.

The judgment and decree dated 28.05.1991 passed by the then learned Subordinate Judge, Court No. 1, Khulna in the Title Suit No. 388 of 1980 is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree passed by the learned Additional District Judge, Khulna in the Title Appeal No. 230 of 1991 and all further proceedings of the Title Execution Case No. 05 of 1996

now pending in the Court of the then learned Subordinate Judge, Court No. 1, Khulna and the same was extended time to time and lastly it was extended till disposal of this Rule are hereby recalled and vacated.

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