

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

Present:

**Mr. Justice Md. Khairul Alam
Civil Revision No. 6342 of 2002.**

Kanchan Ali Howlader and others

.....- Petitioners.

-Vs-

Fazlul Haque Master being dead his legal heirs,
Md. Alamin and others

.....-Opposite parties.

Mr. Sk. Shariff Uddin with

Mr. Taposh Kumar Biswas, Advocates

...For the petitioners.

Mr. A.K. Rashedul Huq, Advocate

.. For the opposite parties.

**Heard on: 29.06.2025, 01.07.2025
and Judgment on: 08.07.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 14.08.2002 passed by the learned Additional District Judge, Patuakhali in Title Appeal No. 215 of 2000 affirming those dated 05.11.2000 passed by the learned Joint District Judge, 1st Court, Patuakhali in Title Suit No. 06 of 1998 dismissing the suit should not be set aside.

The petitioners herein, as plaintiffs, instituted Title Suit No. 06 of 1998 impleading the present opposite parties as defendants, seeking declaration of title and confirmation of possession in respect of the suit land. The case of the plaintiffs, in short, is that the suit land originally belonged to Madhu and Meheruddin. Madhu died leaving behind his wife Meherjan, two sons Hachon Howlader and Hossen Howlader, and one daughter Jaminjan. Hachon died issueless, leaving behind his mother Meherjan, brother Hossen, and sister Jaminjan as

heirs. Thereafter, Meherjan died leaving Hossen and Jaminjan as her heirs. Hossen died leaving behind one son Munsur Ali and one daughter Ajiton. Munsur Ali died leaving behind three sons, plaintiff Nos. 1–3, one daughter, plaintiff No. 4, and his wife, plaintiff No. 5. Ajiton died leaving one son, plaintiff No. 8. Jaminjan died leaving behind two sons, plaintiff No. 6 and Abdul Hamed. Abdul Hamed died leaving behind his son, plaintiff No. 7. Meheruddin died leaving behind one daughter, plaintiff No. 5. Thus, according to the plaintiffs, they became the owners of the suit land and had been in possession thereof. Out of 7.02 acres of land, only 1.15 acres of land were recorded in the name of the plaintiffs, while the remaining land was erroneously recorded in the names of Aynali and Meheruddin, the predecessors of the defendants. On 20.01.1998, the defendants threatened to dispossess the plaintiffs, hence the suit.

Defendant No. 7 contested the suit by filing a written statement denying the material allegations made in the plaint contending, inter alia, that the suit was not maintainable and barred by limitation. It was further contended that after the death of the original tenants Madhu and Meheruddin, Rent Suit No. 1267 of 1924 was filed in the 4th Court of Munsiff, Patuakhali. The suit was decreed and the decree was put in execution by filing Execution Case No. 1183 of 1924. In the said execution case, the suit land was sold in auction. The landlords purchased the land and obtained delivery of possession on 23rd Falgun, 1332 B.S. Thereafter, they granted patta to Aynali Sikder, Eman Ali Sikder, Mafezuddin Sarder, and Sonaban Bibi. Aynali and others executed and registered a kabuliyat in favour of the

landlord on 02.07.1928 and 23.07.1928 respectively. Later, Aynali and Eman Ali Sikder orally settled part of the land to Meherjan and Munsur Ali, and subsequently, a further .85 decimals of land was settled in their favour. Accordingly, R.S. Khatian Nos. 281 and 283 were prepared in the names of Meherjan and Munsur Ali. The remaining land, i.e. the suit land, was rightly recorded in the names of Aynali, Eman Ali, Mafezuddin, and Sonaban Bibi. It was asserted that after the auction sale, the plaintiffs never possessed the suit land.

The trial Court dismissed the suit by judgment and decree dated 05.11.2000, holding that the suit was barred by limitation, the plaintiffs failed to prove their title and possession, and the defendants established possession by producing documentary evidence, namely, the bainama (Ext. A), kabuliyat (Ext. B), S.A. and R.S. records, and rent receipts (Ext. F series).

On appeal, the learned Additional District Judge, Patuakhali, affirmed the trial Court's findings by judgment and decree dated 14.08.2002, holding that the property was sold in auction (sale certificate Ext. A), followed by kabuliyat (Ext. B), and that possession was established through S.A. and R.S. records and rent receipts (Ext. F series).

Mr. A.K. Rashedul Huq, learned Advocate for the petitioners, submits that both Courts below, on misappreciation of facts and law, came to an erroneous decision. He next submits that without the judgment and decree of the rent suit, declaring the title relying on an unregistered sale certificate was erroneous. He further submits that the writ of possession was not produced, and in the absence of any

zamindar's dakhila, the kabuliyat could not be said to have been accepted. He lastly submits that since the record of part of the suit land remained in the name of the plaintiffs, the presumption should go against any alleged auction sale, but the Courts below without considering this aspect of the case and passed the impugned judgment and order and the same is liable to be set aside.

Per contra, Mr. Sk. Shariff Uddin, learned Advocate for the opposite parties, supports the impugned judgments, submitting that both Courts below upon proper consideration of evidence concurrently found against the plaintiffs, and this Court in revision should not disturb such concurrent findings of fact.

Admittedly, Madhu and Meheruddin were the C.S. recorded tenants. The plaintiffs claimed title as their descendants, while the defendants asserted that the land was sold in auction in a rent suit which was purchased by the landlord, and later settled by patta and kabuliyat in favour of the defendants' predecessors.

The defendants adduced the sale certificate (Ext. A), the registered kabuliyat of 1928 (Ext. B, a more than 30-year-old document), the S.A. and R.S. records, and rent receipts (Ext. F series). On consideration of the said documentary evidence, it appears to me that the records of rights were correctly prepared in the names of the defendants' predecessors. The plaintiffs failed to establish their claim that the records were erroneous.

Both the Courts below, upon proper appreciation of oral and documentary evidence, concurrently held that the plaintiffs failed to prove title and possession, whereas the defendants established both.

The learned Advocate for the petitioners has failed to show that such concurrent findings suffer from non-consideration or misreading of evidence.

Now it is well-settled that a concurrent findings of fact recorded by the courts below should not ordinarily be interfered with in revision (Mofizuddin v. Narayan Chandra 4 MLR (AD) 127). The revisional court is not to act as a court of appeal by re-appreciating evidence (Abdul Mannan v. Lal Miah Haji 16 DLR (AD) 68). Interference is permissible only where such findings are shown to be perverse, based on misreading or non-consideration of material evidence, or where the courts below acted without jurisdiction or committed an error of law apparent on the face of the record (Joynab Begum v. Shaheb Ali 12 MLR (AD) 337).

In the above facts and circumstances, I find no reason to interfere with the concurrent findings of fact arrived at by the Courts below.

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

Send down the lower Court records along with a copy of this judgment at once.