

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4971 OF 2003

In the matter of:

An application under Section 25 of the Small Cause Courts Act, 1887.

And

Md. Yakub Ali @ Md. Yakub Hossain and others
... Petitioners

-Versus-

Hasan Ali Bhuiyan
... Opposite party

Mr. Md. Shareful Islam, Advocate
... For the petitioners.

Mr. Probir Neogi, Senior Advocate with
Mr. Sumon Ali, Advocate
....For the opposite party.

Heard on 28.04.2025 and Judgment on 04.05.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 29.09.2033 passed by the learned Senior Assistant Judge, 3rd Court, Dhaka in S. C. C. Suit No.22 of 2001 decreeing the suit should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the father of the defendants, Yusuf Mia, was a monthly tenant for north-south side shop of Holding No.163/2 of the plaintiff and he paid rent until March 1983. On 27.02.1984 when the plaintiff was a minor his father entered into an agreement with Yusuf

Mia for relocation of his business for demolition of above dilapidated building for construction of Bhuiyan market. It was stipulated that during construction period Yusuf Mia be relocated in a eastern side shop to run his business and after completion of construction above Yusuf Ali will be transferred in the western side shop of the father of the plaintiff. But after completion of construction Yusuf Mia instead of moving to the western side shop of the father of the plaintiff continued possession in the eastern side shop of the plaintiff and paid rent at Taka 250/- per month until May 1984. Yusuf Mia or defendant Nos.1-7 did not pay any rent from June 1984 and above shop is needed for own business of the plaintiff.

Defendant Nos.1-7 contested the suit by filing a joint written statement alleging that Yusuf Mia, predecessor of the defendants obtained rental of a shop of the disputed premise from the father of the plaintiff in 1974 on payment of salami of Taka 1,10,000/- and paid monthly rent at Taka 250/- to the plaintiff until May, 1984. On 27.02.1984 Yusuf Mia and plaintiff 's father executed an agreement for temporary relocation to a eastern side ghar during construction of market. After completion of above construction Yusuf Mia would move to the western side shop and pay monthly rent Taka 500/-. But the roof of eastern side shop collapsed and Yusuf Mia was relocated in a western side small room during June, 1984 to June, 1985 and he continued his business there on payment of rent at Taka 250/-. After

completion of construction above contract dated 27.02.1984 was orally modified and Yusuf was given a eastern side shop instead of western side shop. Defendants or their predecessor did not default in the payment of rent.

At trial plaintiff examined one witness and defendants examined three. Documents of the plaintiff were marked as Exhibit No.1-2 series and those of the defendants were marked as Exhibit Nos.“Ka” - “Umo”.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Small Causes Court decreed above suit.

Being aggrieved by above judgment and decree of the trial Court above defendants as petitioners moved to this Court under Section 25 of the Small Causes Court Act, 1887 and obtained this Court.

Mr. Md. Shoreful Islam, learned Advocate for the petitioners submits that since 1974 Yusuf was a tenant of the father of the plaintiff and due to construction of a market in above premise a new contract was executed on 27.02.1984. Pursuant to above contract Yusuf continued his business in above shop during June 1984 to June 1985 and paid rent regularly. Plaintiffs claimed inflated rent and salami since July 1985 and refused to accept rent which compelled the defendant to deposit above rent to the Rent Controller. The plaintiff has failed to prove that the defendants are defaulters in the payment of rent. As far

as own requirement of above premises is concerned the plaintiff did not come to the Court and give evidence in support of his claim. The father of the plaintiff gave evidence as PW1 and stated that above shop was required for his own use. The learned Judge of the Court trial court has utterly failed to appreciate above materials on record and most illegally decreed the suit which is not tenable in law.

On the other hand Mr. Probir Neogi, learned Senior Advocate for the opposite party submits that plaintiff is the rightful owner and landlord of the disputed shop and father of defendant Nos.1-7 namely Yousuf Mia was his tenant since 1974 without any written tenancy agreement. In 1984 the plaintiff wanted to demolish above dilapidated building and construct a market and a written tenancy agreement was executed by the father of the plaintiff and above Yusuf Miah on 27.02.1984. It was agreed upon that during construction of above premises Yunus Mia shall get a shop from eastern side and after completion of construction Yusuf Miah be given a shop from the western side. But Above Yusuf Miah refrained from payment of rent to the father of the plaintiff after June 1984 and he became a defaulter in the payment of rent. The plaintiff has attained majority and above shop is required for initiation of his own business. The father of the plaintiff has given consistent and credence inspiring evidence as PW1 supporting all above claims and allegations made in the plaint. On the other hand the defendants have failed to prove by legal evidence that

they paid rent of above premises regularly and on consideration of above materials on record the learned Judge of the Small Causes Court rightly decreed above suit 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

Plaintiff has filed this suit on 22.11.2001 for eviction of the defendants from the ground floor eastern side shop of Bhuiyan market alleging that that the defendants defaulted in paying rent of for the period from June, 1984 to June, 1985. At Paragraph No.'Ga' of the written statement defendants have claimed that during above period father of the defendants, namely Yusuf Mia was relocated to a small western side room of the father of the plaintiff due to collapse of roof of the of the eastern side room. Above specific claim of the defendants has not been denied by PW1 Md. Ali Bhuiyan, father of the plaintiff while giving evidence as PW1.

At Paragraph No.9Ka of the written statement and in the evidence of DW1 defendants have claimed that Yusuf Mia on the basis of an oral agreement with the father of the plaintiff entered into the disputed premises as a monthly tenant in 1974 on payment of salami of Taka 1,10,000/-. Md. Ali Bhuiyan father of the plaintiff who gave evidence as PW1 has admitted above claim of the defendants in his cross examination and in the written statement.

It is admitted that pursuant to above oral agreement father of the plaintiff and Yusuf Ali executed a written agreement on 27.02.1984 for relocation of tenant Yusuf Mia during the period of demolishing of above old and dilapidated premise and construction of a market. Above agreement dated 27.02.1984 was produced by the defendants at trial which was marked as Exhibit No."Ka". It turns out from above admitted document that father of the plaintiff executed above contract as the owner of the disputed premises and recognized Yusuf Mia as his monthly tenant.

It is admitted that at the time of execution of above deed of contract dated 27.02.1984 the plaintiff was a minor. As such the plaintiff was not born in 1974 when Yusuf Mia pursuant to an oral tenancy agreement became a monthly tenant of a shop of the disputed premises under Md. Ali Bhuiyan father of the plaintiff.

In view of above materials on record I find substance in the submission of the learned Advocate for the petitioner that Yousuf Mia was a monthly tenant under the father of the plaintiff, namely ,Md. Ali Bhuiyan and not under the plaintiff.

In further turns out from the deed of agreement dated 27.02.1984 (Exhibit No."Ka") that parties agreed that during the demolition of above building and construction of market Yousuf Mia will be relocated to an eastern side ghar and after completion of above construction he would return to the western side ghar of Md. Ali Bhuiyan. In the plaint

it has been stated that Yusuf Mia did not voluntarily move to the western side ghar and continued his possession in the eastern side ghar. But there is no mention in the plaint or no admission in the evidence of PW1 that above Yusuf Mia was subsequently by amendment of the contract dated 27.02.1984 given rental of the eastern side ghar. As such it is not clear on what basis the plaintiff claims rent from Yusuf Miah or defendant Nos.1-7 for the eastern side ghar beyond the deed of tenancy dated 27.02.1984.

Defendants have claimed that the roof of eastern side room was collapsed and Yousuf Mia shifted to a western side ghar for the period from during June 1984 to June 1985. The plaintiff did not deny above claim either by way of amendment of the plaint or by the evidence of PW1. Plaintiff has claimed rent for above period for the easter side room not the western side room.

As far as the claim of own requirement of above premise for the plaintiffs is concerned, the plaintiff did not give evidence in support of above claim. The father of the plaintiff Md. Ali Bhuiyan gave evidence as the sole plaintiff witness and claimed that above ghar was required for his own use. He did not mention that above room was needed for use of the plaintiff.

On consideration of above facts and circumstances of the case and evidence on record I hold that the plaintiff has utterly failed to prove that Yusuf Mia or the defendants were monthly tenants of the plaintiff

for the eastern side ghar during the period June,1984 to June, 1985 and he defaulted in paying rent for above period or above shop was required for the own use of the plaintiff by the legal evidence. But the learned Judge of Small Causes Court utterly failed to appreciate above materials on record and most illegally decreed the suit which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 25 of the Small Causes Court Act, 1887 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute. The impugned judgment and decree dated 29.09.2033 passed by the learned Senior Assistant Judge, 3rd Court, Dhaka in S. C. C. Suit No.22 of 2001 is set aside and above suit is dismissed on contest against defendant Nos.1-7 and ex-parte against the rest without cost.

However, there will be no order as to costs.

Send down the lower Court's records immediately.