

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4534 of 2001**

In the matter of:

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

And

Sree Makhan Lal Bhowmik being dead his heirs-Manik Chandra Ghosh

.... Petitioner

-Versus-

Enayatullah and others

.... Opposite parties

Mr. Mohammad Mahmud Hasan with

Mr. Md. Salah Uddin, Advocates

.... For the petitioner.

None appears

.... For the opposite parties.

**Heard on 11.12.2024 and Judgment on 05.01.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-8 to show cause as to why the impugned judgment and decree dated 12.04.2001 passed by the learned Sub-ordinate Judge, 2<sup>nd</sup> Court, Lakshmipur in Title Appeal No.132 of 1995 affirming the judgment and decree dated 30.09.1995 passed by the learned Assistant Judge, Ramgati, Lakshmipur in Title Suit No.273 of 1993 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 the petitioner as plaintiff instituted above suit for declaration of title for 7.64 acres land as described fully in the schedule to the plaint alleging that above land originally belonged to Amzad and others and superior landlord was Talukder. Due to non payment of rent above superior landlord filed Rent Suit No.296 of 1943 in the 3<sup>rd</sup> Court of Munsif, Lashmipur and obtained a decree and in execution of above decree vide Decree Execution Case No.1806 of 1944 above land was sold in auction. Above superior landlord purchased above land and gave settlement of 4.5 acres land to Dinobondhu Bhowmik by an unregistered amalnama on 12 Ashar 1355 B.S. Kushumkumari Majumder who was the owner of 11 anas share of other disputed property who instituted Rent Suit No.1544 of 1927 in the 1<sup>st</sup> Court, Munsif, Lakshimpur for recovery of outstanding rent from the tenants and obtained a decree and in Decree Execution Case No.535 of 1944 above property was sold in auction which was purchased by above landlords who gave settlement of above 5.24 acres land to Denobondhu Bhowmik by deed of kabuliyat on 05.03.1935. Thus Denobondhu Bhowmik became owner and possessor of 9.75 acres land and he gave settlement of 3.42 acres land to Chan Miah and Farid Miah who transferred above land to Bishember. Above Bishember was a benamder of Dinobondhu Bhowmik who died leaving 7.64 acres land

and the plaintiff as the only heir. In the Diara Settlement 1.87 acres land was recorded in the name of the plaintiff in Diara Khatian No.571 but in the possession column the name of Enayetullah and others were erroneously recorded. The remaining disputed 5.77 acres land was erroneously recorded in the name of the defendants who claimed title in above land on the basis of above erroneous recorded.

The suit was contested by defendant Nos.1-3 and 25-29 by filing separate written statements wherein they have denied all claims and allegations made in the plaint and alleged that disputed properties of C.S. Khatian Nos.94/1, 94/2 and 94/3 were never sold in auction nor the auction purchaser evicted the tenants and got possession of above land. All documents of so-called auction purchase and subsequent settlement of the plaintiff are false, fabricated and not acted upon. Defendants as successive heirs of C.S. recorded tenants and subsequent purchases are in possession in above land and in their names relevant Diara Khatians were correctly recorded. The plaintiffs do not have any right, title and interest of possession in the above land.

At trial plaintiffs and defendants examined 3 witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1 series – 9 and those of the defendants were marked as Exhibit Nos.'Ka' – 'Ga'.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Title Appeal No.132 of 1995 to the District Judge, Lakshimpur which was heard by the learned Sub-ordinate Judge, 2<sup>nd</sup> Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Mohammad Mahmud Hasan, learned Advocate for the petitioner submits that the plaintiff claims that disputed property was sold in auction in execution of two separate rent suit decrees and the superior landlords purchased the same and gave settlement to Dinobondhu father of the plaintiff. In support of above auction sale the plaintiff has produced the certificate of sale and certificate of the relevant suit register. As far as subsequent settlement of above land to Dinbondhu is concerned the plaintiff has produced registered deed of kabuliyat and an unregistered amalnama and a bunch of rent receipt. It is admitted that Diara Khatian No.571 was recorded in the name of the

plaintiff. The plaintiff has proved his possession in above land by the evidence of three competent plaintiff witnesses. On consideration of above evidence on record the learned Judge of the Court of Appeal should have allowed the appeal and decreed the suit but the learned Judge failed to appreciate the evidence on record properly and most illegally dismissed above appeal and affirmed the unlawful judgment and decree of the trial Court which is not tenable in law.

No one entered appearance on behalf of the opposite parties despite service of the process of the Civil Revision nor anyone appears on their behalf at the time of hearing of this Civil Revision although this matter appeared in this list for hearing on several dates.

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

Admittedly 7.64 acres land belonged to Amjad and others and Kushum Kumari Majumder and Talukder were landlords in separate shares and above C.S. khatians were correctly recorded and defendants are successive heirs of above C.S. recorded tenants Amzad and others.

The plaintiffs claimed that above properties were sold by two auction sale and those were purchased by above landlords who subsequently gave settlement to the father of the plaintiff, namely,

Dinobondhu. In support of auction sale of 11 ana share of Kushumkumari the plaintiff has produced a certificate of sale and a certified copy of the register of Rent Suit No1544 of 1927 which were marked as Exhibit Nos.2 and 3 respectively. The plaintiff could not produce the certificate of delivery of possession showing that pursuant to above auction purchase the landlord evicted the tenants and got possession of above land. While giving evidence as PW1 the plaintiff admitted that he did not have any personal knowledge as to above auction sale of the land of Kushum Kumari. In support of the settlement of above land PW1 has produced a certified copy of kabuliyat dated 05.03.1935 and two rent receipts. A kauliyat is a unilateral document which is executed by a tenant in favour of a landlord and which becomes effective after receipt of the same by granting of a rent receipt or patta deed by the landlord. No patta deed has been produced and proved by the plaintiff and two rent receipts allegedly granted by the landlady which are private documents, were not proved in accordance with law.

As far as the second auction sale of the share of Rajkumar Basu and others is concerned PW1 could not produce any certificate of sale or certificate of delivery of possession pursuant to above auction sale.

As such the claim of the plaintiff that above landlord auction purchased above property and got possession of the same remains not proved.

The plaintiff further claims that above superior landlords gave settlement of above 4.51 acres land to Dinobondhu Bhowmik by an amalnama. PW1 has produced an unregistered amalnama and two rent receipts allegedly granted by above landlords. Above private documents were required to be proved in accordance with law. But the plaintiff did not make any endeavor to prove above documents. As such above claim of settlement of disputed 4.51 acres land also remains not proved.

It is admitted that excepting 1.87 acres land all disputed land was recorded in the name of the defendants and Diara Khatian No.571 has been prepared for above 1.87 acres land in the name of the plaintiff but in the possession column of Diara Khatian No.571 the names of the defendants predecessors have been recorded as the possessors. As to the possession of the disputed land PW1 stated that he is possessing above land by bargaders but he did not mention the names of his bargaders either in the plaint or in his evidence.

On consideration of above facts and circumstances of the case and evidence on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Judge of the

Court of Appeal nor I find any substance in this Civil revisional application under Section 115(1) of the Code of Civil Procedure.

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*