

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 3927 of 2015

With

Civil Revision No. 1238 of 2008

Dr. Ashraf Hussain being died his legal heirs:

1(a) Shahana Begum and others

.....petitioners

-Versus-

Haji Asaduzzaman Bhuiyan and others

.....opposite parties

Mr. Zulfiquar Ahmed, Advocate

.....for the petitioners

Mr. Sherder Abul Hossain, Advocate

.....for opposite parties

**Heard on: 18.06.2026, 30.06.2026,
21.07.2026, 25.08.2026 and 03.09.2026**

Judgment on: 14.09.2026

Civil Revision Number 3927 of 2015 has been filed by the plaintiff of the original suit. On the other hand Civil Revision Number 1238 of 2008 has been filed by Defendant 1 of the original suit. Both the revisions are being disposed of by this single judgment.

The plaintiff filed Title Suit Number 169 of 1985 in the Court of the Subordinate Judge, Brahmanbaria on 24.11.1985 seeking declaration of title and recovery of possession.

The plaintiff's case in brief is that the suit land admittedly belonged to Sailo Bala and her son Jagadish

Chandra Roy. They sold the suit land to the plaintiff by a registered deed dated 25.02.1976 and delivered possession to him. Accordingly the plaintiff obtained possession of 2 decimals of land by virtue of his purchase. After obtaining possession the plaintiff constructed a tin-shed house with fencing thereon and started a medicine business in the said house.

On 07.01.1977 the defendants entered into the suit land and demolished the said house and dispossessed him. The plaintiff then filed a case before the Court of the Regional Martial Law Administrator. On 05.08.1977 the said authority directed the Circle Officer of Nasirnagar Police Station to restore possession of the suit land to the plaintiff. Accordingly on 25.08.1977 the Circle Officer restored possession of the suit property to the plaintiff with police assistance.

The plaintiff thereafter erected another house thereon and resumed his medicine business. In that situation on 22.09.1978 the defendants again demolished the plaintiff's house and dispossessed him. The plaintiff again approached the Deputy Regional Martial Law Administrator for restoration of possession. On 06.09.1982 the Martial Law authority directed the Circle Officer to restore possession to

the plaintiff. However as the defendants offered to settle the matter with the plaintiff the Circle Officer did not restore possession to him.

The defendants disclosed that they purchased the suit land from Shailabala Poddar. While assuring the plaintiff that they would settle the matter amicably the defendants continued to harass him for a long time. On 10.10.1985 during the civil court vacation they started constructing a pucca building on the suit land. As the plaintiff could not approach the court in time he lodged a complaint with the Nasirnagar Police Station. Thereupon the Officer-in-Charge of the police station issued a notice under Section 154. The defendants ignored the said notice and continued the construction work.

In such circumstances the plaintiff filed the suit against the defendants seeking declaration of title to the suit land and recovery of possession.

Defendants 1 and 2 contested the suit by filing a written statement. Their case in brief is that Shailabala was the owner of 4 decimals of land comprising the 2 decimals of the suit land and another 2 decimals of non-suit land. While she was in possession she decided to sell the said land to Defendants 1 and 2 for taka 15,000/- (fifteen thousand). However as the

S.A. khatian of the suit property had been wrongly recorded it was agreed that steps would be taken to correct the said record before registration of the sale deed. In the meantime an agreement for sale was executed and possession of the suit land was delivered to the defendants.

In accordance with the terms of the agreement Defendants 1 and 2 paid taka 10,000/- (ten thousand) to Shailabala on 09.11.1974. The plaintiff was fully aware of the said agreement for sale. Subsequently on 29.09.1976 S.A. Khatian Number 604 was prepared in the name of Shailabala. Thereafter on 04.10.1976 Shailabala and her son Jagadish executed the sale deed. The deed was registered in favour of the defendants on 19.10.1976.

Thus after acquiring title to the property the defendants constructed a two-roofed tin-shed house and have been carrying on business with the knowledge of all concerned including the plaintiff to the exclusion of others.

In the meantime the then Sub-Divisional Officer, Brahmanbaria issued an illegal notice dated 05.10.1978 upon Defendant 1 in Case Number 3 of 1978 directing the defendants to vacate the property purchased by them. Defendant 1 submitted a written objection against the said

notice. However after hearing the objection was rejected on 02.11.1978.

Against the said order defendant 1 preferred a Miscellaneous Appeal before the Commissioner. After hearing the appeal was allowed on 21.07.1979. The plaintiff preferred an appeal before the Land Administration Board against the said order. The Chairman of the Board upheld the earlier order on 10.03.1983.

The plaintiff thereafter filed another suit being Title Suit Number 27 of 1978. The said suit was dismissed for want of prosecution. Subsequently on 09.10.1985 the plaintiff submitted an application to the Superintendent of Police, Brahmanbaria. An investigation was conducted and a non-FIR case was started. The said case was subsequently dismissed.

The plaintiff has no title or possession in the suit property. The alleged kabala dated 25.02.1976 relied upon by the plaintiff is forged and fraudulent. The plaintiff has been harassing the defendants on various false pretexts. The suit is therefore liable to be dismissed.

The trial Court framed four issues in the suit. The plaintiff examined seven witnesses in support of his case. The defendants also examined seven witnesses. Both parties

adduced documentary evidence in support of their respective cases. In addition the Advocate Commissioner was examined as a Court witness.

Initially the Subordinate Judge, First Court, Brahmanbaria decreed the suit on 30.03.1995. Against the said judgment and decree defendants 1 and 2 preferred Title Appeal Number 73 of 1995. The Additional District Judge, Second Court, Brahmanbaria allowed the appeal by judgment and decree dated 12.10.1998.

Against the said judgment and decree plaintiff filed Civil Revision Number 4893 of 1998. The High Court Division remanded the case to the Court below by its order dated 03.07.2000.

Thereafter the Joint District Judge, First Court, Brahmanbaria dismissed the suit by judgment and decree dated 24.11.2004. Against the said judgment and decree plaintiff preferred Title Appeal Number 15 of 2005. The Additional District Judge, Second Court, Brahmanbaria allowed the appeal by judgment and decree dated 29.08.2007. He set aside the judgment and decree of the trial Court and remanded the case to the Court below.

Against the said judgment and decree defendant 1 filed the present Civil Revision Number 1238 of 2008. The plaintiff also filed Civil Revision Number 3927 of 2015. Both these civil revisions are now before us for disposal.

Learned Advocate Mr. Zulfiquar Ahmed appearing on behalf of the plaintiff submits that the Courts below committed error of law resulting in an error in such decree occasioning failure of justice. He submits that the trial Court failed to consider that the plaintiff has proved his title and also his earlier possession followed by dispossession by a series of documentary and oral evidence. He further submits that both the Courts below failed to appreciate that plaintiff has made out a definite case of his specific possession in the suit land. Such possession is apparent from the materials on record.

He submits that the appellate Court remanded the suit on the ground of want of specification. Such ground is not tenable in law. He further submits that law permits a co-sharer who has been enjoying specific possession of a specified portion of land to recover possession of that portion if dispossessed. Such recovery is permissible under Article 142 of the Limitation Act.

He also submits that the plaintiff's document is earlier in point of time. According to Section 47 of the Registration Act the date of registration determines the operation of the registered document. The execution of the bainapatra is therefore not an issue which requires consideration and decision in the present case. In this regard he refers to the case of Zamir Uddin Ahmed Vs. Ziaul Haq and others reported in 49 DLR 622.

He finally submits that the order of remand is unnecessary. There is sufficient evidence on record to decide the suit on merit. He therefore prays that the suit may be decreed in revision.

On the other hand learned Advocate Mr. Sherder Abul Hossain appearing on behalf of the defendant submits that the trial Court correctly dismissed the suit upon proper appreciation of the evidence. The appellate Court however upon misreading and non-consideration of material evidence wrongly remanded the suit by setting aside the decree passed by the trial Court. Thus the appellate Court committed error of law occasioning failure of justice.

He submits that long before the alleged purchase of the land by the plaintiff the defendants entered into an agreement

for sale with Sailobala. Pursuant thereto the sale deed in favour of the defendants was executed and registered. The defendants obtained possession of the suit land. The plaintiff's case of earlier possession followed by dispossession is therefore completely false.

He further submits that the plaintiff had full knowledge of the earlier agreement for sale. His subsequent document is forged and fraudulent. The trial Court rightly dismissed the suit. The appellate Court wrongly remanded the suit as a matter of course although sufficient evidence was available on record.

He also submits that the land claimed by the plaintiff is not sufficiently specified. Therefore the present suit for recovery of possession cannot be decreed in view of Order 7 Rule 3 of the Code of Civil Procedure. He finally submits that the suit is false and is liable to be dismissed.

I have heard the learned Advocates for both sides and perused the materials on record and gone through the judgments passed by the Courts below. I have also noticed that the rule issuing orders challenge the judgments and orders of the Courts below. However the decrees have not been

specifically challenged although the decree of the trial Court has been filed with the two civil revisions.

Since sufficient evidence is available on record I am of the view that justice will be best served if the suit is decided on merit on the basis of the evidence already on record rather than sending it down on remand to either of the courts below. The suit has been pending since 1985. In the circumstances I propose to decide the suit on merit without any further remand.

It is on record that the instant suit was decreed earlier on 30.03.1995. Against the said judgment and decree the defendants preferred Title Appeal Number 73 of 1995 which was allowed. The plaintiff then preferred Civil Revision Number 4893 of 1998. In that revision the suit was sent down on remand. Thereafter the trial Court dismissed the suit on 24.11.2004. Against the said judgment and decree the plaintiff preferred Title Appeal Number 15 of 2005. In that appeal the judgment and decree of the Court below was set aside and the suit was sent down on remand on 29.08.2007.

It appears from Exhibit-1 which is an admitted document that C.S. Khatian Number 59 contains 9 decimals of land in Plot Number 137/701. The suit property was subsequently

inherited by Shailabala Roy and her son Jagadish Chandra Roy as successive heirs of the C.S. recorded tenant. It is also admitted by both parties that although the S.A. khatian was wrongly prepared the record was subsequently corrected in the name of Shailabala by an order dated 29.09.1976 passed in the record correction case.

The plaintiff's case is that while Shailabata and her son were in possession of the suit land as owners they sold the same to the plaintiff by a deed executed and registered on 25.02.1976 and delivered possession to him. After purchasing the land the plaintiff constructed a tin-shed house thereon and started medicine business. The plaintiff produced the original sale deed dated 25.02.1976 before the Court. The same was marked as Exhibit-2.

P.W. 1 in his deposition stated that after Shailabala sold the suit property to him by a registered deed he constructed a one-roofed house with a door and started medicine business therein. On 07.01.1977 the defendants demolished the house and dispossessed him. He then filed a case before the Martial Law Court. Thereafter the Circle Officer was directed to restore possession to him by Exhibits 4 and 4(ka). In

accordance with Exhibit-4(kha) dated 25.08.1977 he recovered possession of the suit property.

After resuming his business the defendants again demolished his house and dispossessed him on 22.09.1978. He again obtained an order for restoration of possession from the Martial Law Court. However the defendants offered to settle the matter amicably. Without settling the matter they started constructing a pucca building on the suit land on 10.10.1985.

In cross-examination P.W. 1 stated that Shailabala was the owner of 4 decimals of land including the suit land. He also specifically described the boundaries of the suit property as stated in his deed. He stated that the land to the north of the suit property belonged to Dudumia and others and was subsequently possessed by Isab Ali. The land to the south belonged to Wajuddin. The land to the east belonged to the vendor Shailabala herself. The Land to the west belonged to Wajuddin and was subsequently possessed by Ahmad Ali and others.

P.W. 2 in his deposition stated that he constructed the plaintiff's house on the suit land and P.W. 3 was also present there. He stated that the plaintiff practised medicine in that house. He further stated that he constructed the house twice. In

cross-examination he clearly stated that the first house was a tin-shed house and the second one was made of bamboo.

P.W. 3 also gave similar evidence. He stated that the house was subsequently constructed with bamboo and the plaintiff practised medicine there. In cross-examination P.W. 3 stated that he heard from the market watchman that the plaintiff's house was demolished. The said watchman was examined as P.W. 4.

P.W. 4 in his deposition stated that there was a tin-shed house on the suit land. He was the market watchman. He stated that the defendants demolished the said house and he informed the doctor about the incident. He further stated that the defendants demolished the house again on the second occasion. In cross-examination he stated that the defendants has been in possession of the suit land for 16 or 17 years.

P.W. 6 supported the boundaries given by P.W. 1. He stated that he was the owner of 2 decimals of land adjoining the suit property on the west. He further stated that before he acquired title Wajuddin was the owner in possession of his land.

P.W. 7 also gave evidence in support of P.W. 1 and P.W. 6 and described the boundaries of the suit land in similar terms.

It does not appear that the defendants could elicit any material contradiction from any of the witnesses of the plaintiff in cross-examination. The evidence of the plaintiff's witnesses regarding his earlier possession and subsequent dispossession therefore remains substantially unshaken.

P.W. 5 is the deed writer. He stated in his deposition that he wrote the deed on 25.02.1977 and the transaction took place in his presence. It also appears from his cross-examination that he is the identifier of the said deed. The deed itself supports this fact.

In the written statement the defendants did not specifically deny the documents produced by the plaintiff as Exhibits 4 series and 5 series. They also failed to elicit any material contradiction from the plaintiff's witnesses in respect of his earlier possession and subsequent dispossession.

The deed writer of Exhibit-2 identified the executants in accordance with Rule 46 of the Registration Rules. The plaintiff also produced the original deed before the court.

Thus on a consideration of the documentary and oral evidence discussed above it is proved according to law that the plaintiff obtained possession of the suit land by virtue of Exhibit-2 and was subsequently dispossessed therefrom.

On the other hand D.W. 1 stated in his deposition that Shailabala sold the suit property to the defendants on 09.11.1976 upon receiving taka 10,000/- (ten thousand) out of the agreed consideration of taka 15,000/- (fifteen thousand) and delivered possession to them. He further stated that after obtaining possession the defendants have been carrying on business thereon. However he admitted that he did not know the exact area of the suit land. He also did not know which part of the plot comprised the suit land.

In cross-examination when questioned about the agreement for sale D.W. 1 stated that he has not produced the said agreement before the Court.

D.W. 2 stated in his deposition that he is a witness to the agreement for sale and his signature was marked as Exhibit-Ka. In cross-examination he admitted that the ink used for writing the agreement and the ink used for his signature are different.

D.W. 3 gave evidence regarding the title and possession of the defendants over the suit land. In cross-examination he stated that he is the brother-in-law of the defendant.

D.W. 4 Gour Das Deb deposed as the deed writer of the agreement for sale. In cross-examination he admitted that no licence number was mentioned in the agreement.

D.W. 5 and D.W. 6 gave evidence regarding the possession of the defendants. D.W. 7 deposed as a witness to the deed executed by the defendants on 04.10.1976.

The unregistered baina patra was first brought before the Court on 15.02.1995. On that date the witness to the baina patra proved his signature which was marked as Exhibit-Ka. However the baina patra itself was not exhibited on that date. Subsequently D.W. 4 produced the baina patra before the Court on 17.11.2003 and it was marked as Exhibit-Gha.

Perusal of Exhibit-Gha discloses three important matters. First the ink used for writing the baina patra is different from the ink used for the signatures of the witnesses. Secondly two round seals of the Court of the Second Subordinate Judge, Comilla appear on the upper portion of both pages of the baina patra. The date appearing on those seals is 23.08.1971. However the alleged baina patra was executed in 1974 and the

stamp paper was also purchased in 1974. Thirdly the baina patra was executed on 09.11.1974. But the stamp paper was purchased on 28.10.1974 by a person whose identity and connection with the baina patra have not been explained by the defendants. The agreement appears to have been subsequently created and fabricated and cannot be treated as genuine.

D.W. 7 produced the deed of the defendants before the Court on 13.03.2004 and the same was not tendered in evidence by the transferees of the document and no explanation has been offered to that effect. The deed was executed on 04.10.1976 and was marked as Exhibit-Uma. Exhibit-Uma also contains several suspicious features. In Exhibit-Uma the seals appearing from the reverse side of the first page up to the last page of the affidavit are in black ink which is contrary to Rule 45(2) of the Registration Rules.

It is also significant that the recital of Exhibit-Uma contains no reference to the alleged baina patra dated 09.11.1974. The defendants claim that the plaintiff purchased the land with knowledge of the baina patra. If that claim were true there should have been some reference to the baina patra

in the deed of the defendants. No such reference is found in Exhibit-Uma.

Moreover although Exhibit-Uma was executed on 04.10.1976 the stamp paper is shown to have been purchased on 07.07.1976. The stamp paper was not purchased by either the executant or the recipient of the deed. No satisfactory explanation has been given for this circumstance. There are also inconsistencies in the signatures given by the Sub-Registrar.

Thus the 1971 seals appearing on Exhibit-Gha and the inconsistencies apparent in Exhibit-Uma create serious doubt about the genuineness of both documents. Having considered the surrounding circumstances and the evidence of the defendants I find that the alleged baina patra and the subsequent deed were not prepared and executed in the ordinary course to the satisfaction of the Court. They were created for the purpose of supporting the false claim of the defendants.

A question has also been raised regarding the boundaries of the suit land. The Courts below failed to notice that the plaintiff clearly proved the boundaries of the suit land through his pleadings and evidence. The Commission Report dated

07.09.1986 and the case map forming part of the record show that the suit land has been specifically shown in light orange colour in the map. The Commissioner gave evidence as C.W. 1 on 01.12.1988. The defendants could not show any material inconsistency in his evidence through cross-examination. Thereafter upon hearing on the Commission Report on 11.04.1990 the Court kept the report on record.

The objection raised by the learned Advocate for the defendants regarding the alleged uncertainty of the boundaries is without substance. The use of one or two complex sentences in the plaint in describing the boundaries does not make the suit land uncertain. The plaintiff clearly described and proved the identity of the suit land through the schedule to the plaint, the schedule to Exhibit-2 and the evidence of P.W. 1, P.W. 6 and P.W. 7 along with Exhibit-5 dated 16.10.1985 and Exhibit-5(Ka) dated 28.10.1985. The Commission Report and the case map further support that description. Plaintiff has complied with the provision of Order 7 Rule 3 of the Code of Civil Procedure to the satisfaction of the Court.

At one stage of the hearing the learned Advocate for the plaintiff brought to the notice of the Court the certified copy of B.S. Khatian Number 579 issued on 25.06.2025. It appears

from the said khatian that the suit land has been recorded in the name of the plaintiff. The names of the defendants have been mentioned in the remarks column as persons in forcible possession. The said B.S. Khatian is a finally published record-of-rights under Section 144A of the State Acquisition and Tenancy Act. When supported by other evidence such a record carries strong presumptive value. It is also a public document within the meaning of Section 74(1)(iii) of the Evidence Act. The Court may take notice of it in the interest of justice even if it has not been formally proved in evidence. The certified copy appears to have been issued under Section 76 of the Evidence Act from the record room of the Deputy Collector, Brahmanbaria. It bears the relevant signatures and endorsements of the concerned officers. It was prepared by the office assistant and verified by the record-room verifier. It was also examined and certified as correct by the record keeper.

Upon consideration of the entire evidence and the surrounding circumstances it appears that the plaintiff was dispossessed from the suit land in 1978 and has been seeking justice since then. P.W. 4 in his cross-examination on 25.09.1994 stated that the defendants has been in possession for about sixteen or seventeen years. His evidence thus

supports the plaintiff's case that he was dispossessed from the suit land in or about 1978.

The evidence adduced in support of defence is not reliable. The alleged baina patra and the subsequent deed are surrounded by suspicious circumstances and have been found to be fabricated and fraudulent.

The submission based on Section 47 of the Registration Act does not assist the defendants. The defendants cannot claim priority over the plaintiff's earlier registered deed merely by relying upon an alleged earlier unregistered baina patra. The title claimed by the defendants cannot be treated as relating back to the date of the alleged baina patra. In the facts of the present case the earlier registered deed of the plaintiff must prevail over the subsequent deed relied upon by the defendants.

In the present case the plaintiff has clearly proved his title as well as his earlier possession and subsequent dispossession by competent evidence.

In view of the above discussion the judgments and decrees passed by the Courts below are set aside. The Rule issued in Civil Revision Number 3927 of 2015 is made

absolute. The Rule issued in Civil Revision Number 1238 of 2008 is discharged.

The plaintiff is entitled to a decree for declaration of title to the suit property and for recovery of possession thereof. Defendants 1 and 2 are directed to remove all obstructions from the suit land and to hand over possession of the same to the plaintiff within 30(thirty) days from the date of communication of this judgment and order. In default the plaintiff shall be entitled to recover possession through the process of the Court.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J: