

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1810 of 2017.

In the matter of:

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

And

Chand Mia and another

...Petitioners

-Versus-

Md. Ali Ahammad and others

...opposite parties

Mr. Md. Amjad Hossain Murad, Advocate

...For the petitioners

Mr. Md. Mubarak Hossain, Advocate with

Mr. Ramzan Ali Sikder, Advocate with

Mr. Motahar Hossain, Advocate

...For the opposite party No.1.

Heard on: 18.11.2024

Judgment on: 19.11.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 18.04.2017 (decree signed on 24.04.2017) passed by the learned Joint District Judge, 2nd Court, Cumilla dismissing the Title Appeal No.67 of 2016 affirming the judgment and decree dated 17.02.2016 and 23.02.2016 respectively passed by the learned Assistant Judge, Nangolkot, Cumilla decreeing the Title Suit No.67 of 2010 should not be set aside and/or pass such other or further

order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for a decree for perpetual injunction for $4\frac{1}{2}$ decimal land as described fully in the schedule to the plaint. It was alleged that Najumuddin was the owner of land of C.S. khatian No.97 including disputed land who died leaving one son Sonaban and two daughters Arfaner Nessa and Sonaban as heirs. Above Sonaban died leaving four sons Salamat Ali, Elahi Baksha, Dar Baksha and Rahamat Ali. Plaintiffs and defendants are grandsons of above mentioned Arfaner Nessa and they inherited land in the disputed khatian as successive heirs of Arfaner Nessa. Plaintiff purchased disputed $4\frac{1}{2}$ decimal land from Ana Miah a son of Dar Baksha by registered kobla deed dated 09.09.1986. In the name of Ana Miah S.A.Khatian No.104 was correctly recorded and in the name of the plaintiff B.S Khatian No.195 has been correctly prepared for the above land. Defendants threatened the plaintiffs with forceful dispossession from the above land.

Defendant Nos.1-3 and 5-7 contested the suit by filling a joint written statement claiming to

be successive heirs of Sonaban and they have also claimed that Dar Baksha the son of Sonaban died leaving two sons Elahi box and Abdur Rahman. Dar Baksha died leaving one wife Sufia Khatun and one son Ana Miah and one daughter Shamla Khatun. Above sufia khatun transferred 6 decimals land to Defendant Nos.1-4 by registered kobla deed No.4148 dated 31.08.1950 and defendants are in possession in above land.

Defendant Nos.1-3 and 5-7 are in peaceful possession in the disputed land. The plaintiff does not have any exclusive possession in the disputed land.

At trial plaintiffs examined three witnesses and documents of the plaintiffs were marked Exhibit Nos.1-3. On the other hand defendant examined 4 witnesses and their documents were marked as Exhibit Nos.ka-Ga.

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

Being aggrieved by above judgment and decree of the trial court defendant preferred Civil Appeal No.67 of 2016 to the district judge, Cumilla which was heard by the learned joint district judge 2nd court who dismissed the appeal

and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellants as plaintiffs moved to this court and obtained this rule.

Mr. Md. Amjad Hossain Murad learned Advocate for the petitioners submits that admittedly plaintiffs and defendants are co-shares and they are successive heirs of C.S. recorded tenant Nazimuddin through his daughter Sonaban and the disputed property has not being partitioned by meets and bounds. As such the plaintiffs should have preferred a suit for partition this the suit for perpetual injunction is not tenable in law against the co-shares defendants. The learned Advocate further submits that the defendants purchased disputed land from Dar box father of Ana Miah from whom plaintiffs have claimed to have purchased disputed land. By the evidence of four competent witnesses the defendants have succeeded to prove their possession in the disputed land and the plaintiffs could not prove their exclusive possession in the above land.

In view of above facts and materials on record the learned judges of the court of appeal

below committed serious illegality in dismissing the appeal and affirmed the flawed judgment and decree of the trial court which is not tenable in law.

On the other hand Mr. Md. Mubarak Hossain the learned Advocate for the opposite party submits that the plaintiffs purchased disputed land from Ana Mia by registered kobla deed 09.09.1986 marked by (Exhibit No.3) and in the name of above Ana Miah S.A. khatian No.104 was rightly prepared. On the basis of above purchase plaintiffs got possession in above land and in their name BRS Khatian No.195 was admittedly recorded. Defendant No.3 gave evidence in this suit as D.W.1 and in his cross examination he has admitted that plaintiffs are in possession in the disputed land and in their name B.R.S. Khatian No.104 has been prepared. Since the plaintiffs are in exclusive possession in the disputed land. The learned judges of the court below on consideration of above evidence on record rightly decreed the suit and dismissed the appeal respectively which calls for no interference.

I have considered the submissions of the learned advocate for respective parties and carefully examined all materials on record.

It is admitted that Darbox was the successive heir of C.S. recorded tenant Nazimuddin and he died leaving one son Ana Miah and one wife Sufia khatun and one daughter and S.A. khatian No.104 of disputed land was prepared in the name of Ana Miah and others.

Plaintiff claims to have purchased disputed $4\frac{1}{2}$ decimal lands from above Ana Miah by registered kobla deed on 09.09.1986 (Exhibit No.3). On the other hand defendants claimed 6.50 decimal land on the basis of purchase from Sufia Khatun wife of Dar box. While giving evidence as P.W.1 plaintiff himself has produced above original kobla deed executed by Ana Miah and the certified copy of S.A. khatian No.104. Above two documents Prima facie prove lawful title of the plaintiff in disputed $4\frac{1}{2}$ decimal land. S.A. Khatian No.104 shows that Ana Mia predecessor of the plaintiffs was a tenant and Exhibit No.3 shows that above Ana Mia transferred disputed $4\frac{1}{2}$ decimals land to the plaintiffs. As such above two documents gives evidence in support of Prima facie title of the plaintiffs in the disputed $4\frac{1}{2}$ decimals lands.

As far as possession of the plaintiffs in the above land is concerned Defendant No.3 gave evidence as D.W.1 and in his cross examination he

has admitted that plaintiffs are in possession in the disputed land and B.R.S. khatian of above land has been prepared in the name of the plaintiffs.

It is well settled that in a civil suit admission may be made either in the pleadings or in the evidence and an admission is the best evidence against its maker and an admitted fact does not require further prove by legal evidence.

Above defendant witness No.1 has clearly admitted plaintiff's exclusive possession and preparation of the latest khatian in his name.

On consideration of above materials on record I hold that the concurrent findings of the learned judges of the courts below that the plaintiff has succeeded to prove his Prima facie title and exclusive possession in the disputed land is based on legal evidence on record and in the absence of any allegation of non consideration or misreading of any evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

It is true that the plaintiffs and defendants are co-shares of the disputed joma and the land of the disputed joma has not been partitioned by

meets and bounds. But since the plaintiffs have succeeded to prove his exclusive possession in the disputed land he is entitle to protect above possession by a decree of permanent injunction against the co-shares until a partition by meets and bounds is affected. Since the defendant are dissatisfied with above judgment and decree of the court of appeal below they should move to appropriate civil court with a suit for partition.

In above view of the materials on record I am unable to find any substance in this civil revision under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.