

**District-Nawabgonj.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 8115 of 1991.**

Bangladesh, represented by the Deputy Commissioner,  
Nawabgonj.

.....Defendant-Appellant-Petitioner.

-Versus-

Md. Afzal Hossain and others.

..... Plaintiff-Appellant-Opposite Parties.

Mr. Md. Yousuf Ali, DAG with  
Mr. Kazi Rahman (Manik), AAG,  
Mr. Md. Siddik Ali, AAG and  
Ms. Kamrunnahar Lipi, AAG,

..... For the Defendant-Appellant-Petitioner.

Mr. Mansur Habib, Advocate

.....For the Plaintiff-Appellant-Opposite Parties.

**Heard On: 14.08.2025, 27.08.2025.**

**And**

**Date of Judgment: 28.08.2025.**

**Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite parties Nos. 1–4 to show cause as to why the judgment and decree dated 29.05.1986 and 30.06.1986, passed by the learned Subordinate Judge, Nawabgonj in Title Appeal No. 22 of 1985, reversing the judgments dated 27.02.1985 and 23.03.1985 passed by the learned Munsif, Nawabgonj in Other Class Suit No. 518 of 1982, should not be set aside and/or why such other or further order or orders should not be passed as this Court may deem fit and proper.

The opposite parties, as plaintiffs, filed Other Class Suit No. 518 of 1982 on 24.08.1982 in the court of the learned Munsif, Nawabgonj, seeking a declaration of title in respect of the scheduled property. The

plaintiff's case, in short, is that the suit land originally belonged to Ex-Landlord Kumar Ananda Prasanna Lahiri and was settled to Tofazzal Hossain and Jaeda Khatun in 1344 B.S. at a jama of Tk. 5 and annas 12. Two rent receipts were issued in their favour, and they paid rents to the Government as recognised tenants. The plaintiffs further claimed that Tofazzal Hossain and Jaeda Khatun orally gifted the suit land to them on 1st Chaitra, 1374 B.S., and the plaintiffs have since been possessing the property like their predecessors.

During the last R.S. record operation, attestation (Bujarat) was prepared in their names. The plaintiffs also contended that lands purchased by Tofazzal Hossain and Jaeda Khatun of C.S. plot No. 70 measuring 1.805 acres were amalgamated with this land, making the total 10.40 acres. Rent was realised collectively for convenience. Plaintiff No. 4's share was wrongly omitted in records but included under Plaintiff No. 1's share.

The plaintiffs paid rents up to 1388 B.S. and approached the Tahsil Office in Chaitra, 1386 B.S., to find the land recorded under Government ownership. Thereafter, they applied to the C.O. (Rev.) for investigation and delivery of possession. A surveyor confirmed the plaintiffs' possession and reported that no one else should claim the land from the Government. On 25.08.1980, the C.O. (Rev.) ordered that the land be recognised in the plaintiffs' names, and they have been paying rents for holding No. 211. Subsequently, holding No. 211 was re-numbered as No. 188, and rents were received accordingly. The plaintiff sought for a declaration that holding No. 188 was correct and not liable to be cancelled. The cause of action was alleged to have arisen on 11.08.1982.

The present petitioner, as defendant, contested the suit through a written statement, contending, inter alia, that the suit land originally belonged to Kumar Ananda Prasanna Lahiri and vested in the

Government under the S.A.T. Act. The S.A. and R.S. records were correctly prepared. The plaintiffs, in collusion with the Assistant Tahsildar, created holding No. 211 (later 188), which was cancelled by the ADC (Rev.), Rajshahi, in Misc. Case No. 127/82-83(XIII). The Government took possession on 12.05.1983, and the suit plots were leased to defendants Nos. 4–8, who have been in possession ever since.

The defendant further contended that the plaintiffs' claims of settlement, oral gift, and payment of rent do not prove possession, and any settlement applications filed admitted Government ownership. The defendants maintained that the plaintiffs' suit was based on collusive and forged documents, and therefore liable to be dismissed.

The learned Munsif, after recording evidence and examining documents, dismissed the suit. On appeal, the learned Subordinate Judge allowed the appeal and decreed the suit. Against this, the Government petitioner filed the present revisional application under section 115(1) CPC and obtained the present Rule.

In support of the Rule, Mr. Md. Yousuf Ali, learned Deputy Attorney General, argued that a suit for declaration of title without seeking recovery of possession is not maintainable, citing 42 DLR (HCD) 435, *Noor Mohammad Khan & Ors. vs. Government of the People's Republic of Bangladesh*. He submitted that the appellate court did not consider all points raised by the trial court and delivered a mechanical judgment contrary to Order 41, Rule 31 CPC, relying on 15 BLD(HCD) 464, *Nazir Ahmed Saial & Ors. vs. Abdul Kader Mallik*.

He further submitted that there was no proof of settlement in favour of Tofazzal and Jaeda in 1344 B.S., nor of an oral gift to the plaintiffs. The plaintiffs admitted in applications to the C.O. (Rev.) that the land was Government property, and no actual possession had been

delivered. Holding No. 211 (later 188) was cancelled by ADC (Rev.) through Misc. Case No. 127/82-83 (XIII), and no appeal was filed. Thus, the plaintiffs accepted Government ownership.

Per Contra, Mr. Mansur Habib, learned Senior Advocate, argued that the C.O. (Rev.) report of 25.08.1980 confirmed the plaintiffs' possession. Holding No. 211 was re-numbered as 188, and the plaintiffs have been paying rent. Notices for cancellation were collusive, and the appellate court correctly decreed the suit based on proper assessment of evidence.

The present suit, Other Class Suit No. 518 of 1982, was filed by the plaintiffs seeking a declaration of title over the disputed land. The plaintiffs relied on an alleged oral gift in 1374 B.S. from Tofazzal Hossain and Jaeda Khatun, who were purportedly settled on the land in 1344 B.S. by Ex-Landlord Kumar Ananda Prasanna Lahiri. The plaintiffs claimed possession and payment of rent as evidence of title. However, under settled law, a declaration of title without actual possession or without a claim for recovery of possession is generally not maintainable. This principle has been consistently held by the High Court in cases such as *Noor Mohammad Khan & Ors. vs. Government of the People's Republic of Bangladesh* (42 DLR HCD 435), where the Court ruled that possession is a precondition for maintaining a declaratory suit over immovable property.

The evidence clearly demonstrates that the plaintiffs were not in possession of the suit land at the time of filing the suit. The plaintiffs themselves applied to the C.O. (Rev.) for investigation and delivery of possession, thereby acknowledging that the land was recorded in the Government's name. The evidence of rent payment alone, without possession, cannot establish ownership or confer a right to a declaratory decree. The trial court rightly observed that the plaintiffs had no legal possession at the relevant time, and therefore the suit for

declaration simpliciter was not maintainable. The appellate court, in reversing the trial court, did not adequately assess this critical aspect.

The land in question had been recorded as holding No. 211, later re-numbered as No. 188. This holding was contested and subsequently cancelled by the ADC (Rev.) through Miscellaneous Case No. 127/82-83 (XIII), and the Government resumed possession. The plaintiffs did not file any appeal against this cancellation, effectively accepting Government ownership of the land. Evidence also shows that Plaintiff No. 3 had filed an application for settlement of the land from the Government, further admitting Government ownership. Once a party admits that the Government is the owner, they cannot subsequently deny this and claim the land as their own. The trial court correctly relied upon these admissions in concluding that the suit was not maintainable.

Defendant Nos. 4–8 have been in lawful possession of the land as lessees of the Government. The evidence, including cross-examination of plaintiff witnesses, confirms that the land is Government khas land, and the defendants have been cultivating it and paying rents to the Government. The trial court appropriately held that the plaintiffs could not claim ownership against persons in lawful possession under Government authority, particularly when they were never in possession themselves.

The plaintiffs alleged that their predecessors received settlement from the ex-landlord and orally gifted the land to them. However, the trial court found no documentary evidence supporting these claims. Oral testimony alone, without corroboration or proof of delivery of possession, is insufficient to establish a valid gift of immovable property. The appellate court failed to scrutinize this absence of evidence, thereby committing an error of law.

The plaintiffs also argued that the SDO issued notices to predecessors for cancellation of the holding, creating a cloud on their title. The trial court noted that this notice confirmed the land was under Government ownership and that no effective settlement or gift had been implemented. Therefore, the plaintiffs' claim for declaration of title without seeking recovery of possession was legally untenable.

The trial court assessed all the documentary records, rent receipts, and oral testimony of both sides. It noted discrepancies in the plaintiffs' witnesses and concluded that the plaintiffs had failed to prove their case. The appellate court, by reversing the trial court's judgment without proper analysis of these evidences, acted mechanically and failed to apply the settled legal principles regarding possession and maintainability of a declaratory suit.

In the result:

1. **The Rule is made absolute.**
2. The judgment and decree of the appellate court in Title Appeal No. 22 of 1985 are hereby set aside.
3. The judgment and decree of the learned Munsif, Nawabgonj, in Other Class Suit No. 518 of 1982 are hereby restored; the suit stands dismissed.
4. The office is directed to transmit the lower court records along with a copy of this judgment at once.
5. There will be no order as to cost.

**(Justice Md. Toufiq Inam)**