

District-Natore.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 7479 of 1991.**

Salahuddin Ahmed and another.

---- Plaintiffs-Respondents- Petitioners.

-Versus-

Hasina Bewa being dead her heirs Md. Wahiduzzaman
and others.

---- Appellants-Opposite Parties.

Mr. Md. Shahadat Tanveer Amin, Advocate

---- For the Plaintiffs-Respondents- Petitioners.

Mr. Md. Shahidul Islam, Senior Advocate

---- For the Appellants-Opposite Parties.

Heard On: 24.02.2026, 25.02.2026 and 08.03.2026.And**Judgment Delivered On: 10.03.2026.****Md. Toufiq Inam, J:**

This Rule was issued at the instance of the plaintiff–petitioner calling upon the opposite parties to show cause as to why the judgment and decree dated 18.12.1986 and 24.12.1986 respectively passed by the learned District Judge, Natore in Title Appeal No. 80 of 1984 allowing the appeal and thereby reversing the judgment and decree passed by the learned trial court in Title Suit No. 57 of 1972 decreeing the suit, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioners as plaintiffs instituted the above-mentioned suit seeking declaration of his right, title and interest in the suit property along with other consequential reliefs. The case of the plaintiffs, in brief, is that the suit land originally belonged to one Halimuzzaman, who died leaving behind his widow Kamrun Nessa, his son Hasibul Hossain (the original plaintiff), and two daughters, namely Sultana Begum and Hazera Khatun (defendants Nos. 5 and 6). After the death of Halimuzzaman, the heirs inherited the suit property according to their respective shares and remained in possession thereof. Subsequently, Kamrun Nessa contracted a second marriage with one Abdur Razzaque Khan. The plaintiffs state that the suit land remained in possession of Hasibul Hossain, who continued to enjoy the property as one of the heirs. It is further stated that during the pendency of the dispute Hasibul Hossain executed a registered deed of Hiba-bil-Ewaz on 8.9.1977 in favour of his two sons, the present plaintiffs, transferring the suit land along with other properties. According to the plaintiffs, they acquired valid title to the suit property by virtue of the said deed and continued in possession thereof. However, the defendants, denying the plaintiffs' title, allegedly dispossessed them from the suit land on 13.4.1972 and thereafter started asserting hostile claim over the property. The plaintiffs therefore instituted the suit seeking declaration of their right, title and interest in the suit land and recovery of khas possession.

The defendants contested the suit by filing written statements denying the material allegations made in the plaint. Their case, in substance, is that the suit land was auction-purchased by defendant No.1, Most. Siddiqa Khatun, in execution of a money decree obtained against her husband Hasibul Hossain in Title Suit No.15 of 1942. In execution of the decree, the suit land along with other lands was put to auction in Title Execution Case No.160 of 1942, and Siddiqa Khatun became the purchaser as evidenced by the sale certificate dated 15.2.1944. Subsequently, in Money Execution Case No.110 of 1951 she was delivered possession through court of 24 decimals of land out of the suit plot on 18.3.1953. The defendants further state that since the delivery of possession in 1953, Siddiqa Khatun and thereafter her sons have been possessing the suit land openly, continuously and peacefully to the knowledge of all concerned for several decades. It is also their case that the auction sale was later challenged in a Miscellaneous Case under Order XXI Rule 90 of the Code of Civil Procedure and the sale was set aside, but the possession already obtained by Siddiqa Khatun remained unaffected. The defendants also rely on the record of rights prepared during the S.A. and R.S. operations in which the name of Siddiqa Khatun was recorded along with others, her share being shown as 7 annas in the R.S. Khatian. According to the defendants, Hasibul Hossain never challenged such record nor took any step to recover possession of the suit land during his lifetime. They further contend that the alleged deed of Hiba-bil-

Ewaz executed by Hasibul Hossain in favour of the plaintiffs is collusive and ineffective, as he had already lost title and possession long before the execution of the said deed. The defendants thus assert that by long, continuous and uninterrupted possession since 1953 they have acquired valid title to the suit land, if not by virtue of the auction purchase, then by adverse possession. On these assertions the defendants pray for dismissal of the suit.

Upon consideration of the pleadings of the parties, the learned trial court framed necessary issues for determination. Both parties adduced oral and documentary evidence in support of their respective cases. After hearing the parties and upon consideration of the evidence on record, the learned trial court decreed the suit in favour of the plaintiffs-petitioners.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendants preferred Title Appeal before the learned District Judge. Upon hearing the parties and reappraising the evidence on record, the learned appellate court allowed the appeal and thereby reversed the judgment and decree passed by the trial court. Challenging the legality and propriety of the said judgment and decree of the appellate court, the plaintiff moved this Court and obtained the present Rule.

Mr. Md. Shahadat Tanveer Amin, learned Advocate appearing for the plaintiffs–petitioners, submits that the impugned judgment of the appellate court is legally unsustainable as the learned appellate court failed to properly appreciate the evidence on record and reversed the findings of the trial court without reversing the findings of the trial court as to title of the plaintiffs and possession. In this regard he refers to the decision reported in 8 BLC (AD) 77 wherein it was held that in case of reversal it is more incumbent upon the appellate court to reassess the evidence. He contends that the trial court, upon detailed assessment of both oral and documentary evidence, correctly found that the plaintiff had been able to prove his lawful right, title and interest in the suit property. The appellate court, however, interfered with those findings by misreading the evidence and by overlooking material documents which clearly supported the plaintiff’s case.

He further submits that the appellate court placed undue reliance on certain isolated aspects of the evidence while ignoring the consistent and corroborative materials produced by the plaintiff. According to him, the approach of the appellate court in evaluating the evidence was neither comprehensive nor in accordance with settled principles governing appreciation of evidence in civil cases. As a result, the findings arrived at by the appellate court are perverse and not sustainable in law. He also contends that the appellate court misdirected itself in determining the burden of proof and shifted the

burden upon the plaintiff in a manner inconsistent with the pleadings and evidence on record.

Conversely, Mr. Md. Shahidul Islam, the learned Senior Advocate appearing for the opposite party No. 1 and 2 submits that the appellate court, being the final court of facts, was fully competent to reassess the evidence on record and arrive at its own findings. He contends that the trial court failed to properly scrutinize the evidence and reached conclusions which were not supported by the materials on record. The appellate court, after careful examination of the evidence, correctly found that the plaintiff had failed to establish his claim in accordance with law. He further submits that the documents relied upon by the plaintiff do not conclusively prove his title or possession in the suit property and the oral evidence adduced on his behalf was inconsistent and unreliable. According to him, the appellate court rightly evaluated these aspects and came to the conclusion that the plaintiff's claim was not proved.

Mr. Islam lastly submits that the revisional jurisdiction of this Court is limited and does not permit reappraisal of evidence unless the findings of the subordinate courts suffer from jurisdictional error, illegality or material irregularity. In the present case, according to him, the petitioner has failed to demonstrate any such defect in the impugned judgment and therefore the Rule is liable to be discharged.

Upon hearing the learned Advocates of both sides and on perusal of the records, pleadings, evidence and the judgments of the courts below, this Court finds that the principal controversy in the present case centers around the question whether the predecessor of the present plaintiffs, namely Hasibul Hossain, had right, title and possession in the suit land prior to the alleged dispossession and whether the appellate court was justified in reversing the judgment and decree passed by the trial court.

It appears from the record that the suit land originally belonged to Halimuzzaman who died leaving behind his widow Kamrunnessa, his son Hasibul Hossain, the original plaintiff, and two daughters namely Sultana and Hazera who were arrayed as defendants Nos. 5 and 6. After the death of Halimuzzaman the properties devolved upon the said heirs according to their respective shares under the personal law governing them. It is further found that Kamrunnessa subsequently contracted a Nikah marriage with one Abdur Razzaque Khan and she also died leaving behind her son Hasibul Hossain, the said two daughters and her second husband Abdur Razzaque Khan.

The evidence on record further discloses that after the death of Kamrunnessa a partition took place amongst the co-sharers and in that partition the suit land described in Schedule 'Kha' was allotted in the share of Hasibul Hossain. The registered deed of partition produced

and marked as Exhibit-1 clearly supports the case of the plaintiffs that the suit land fell to the share of Hasibul Hossain. The appellate court, however, brushed aside this material document on the ground that defendant No.1 was not a party to the deed. Such reasoning, in the opinion of this Court, is not legally sustainable. A co-sharer may validly partition joint property among themselves and the absence of a stranger or a person claiming hostile interest does not render the partition ineffective inter se the co-sharers. Therefore, the allotment of the suit land in favour of Hasibul Hossain through the registered partition deed constitutes a strong piece of evidence regarding his title and possession.

The trial court, upon detailed consideration of both oral and documentary evidence, arrived at a categorical finding that Hasibul Hossain had been in possession of the suit land until he was forcibly dispossessed by the defendants in the last part of Chaitra 1378 B.S. The plaintiffs examined four witnesses including P.W.1 Salauddin Ahmed who clearly deposed regarding the possession of his father Hasibul Hossain in the suit land and the subsequent dispossession by the defendants. The testimony of this witness remained unshaken in cross-examination. P.Ws.2, 3 and 4 also corroborated the said statement and supported the case of the plaintiffs regarding the possession of Hasibul Hossain. Nothing substantial could be elicited in their cross-examination so as to discredit their testimony. The trial

court, having observed the demeanour of the witnesses and having appreciated the evidence in its proper perspective, accepted their evidence as trustworthy.

On the contrary, the defendants attempted to establish their claim mainly on the basis of certain execution proceedings and alleged delivery of possession through court. It was their case that defendant No.1, Most. Siddiqua Khatun, who was the wife of Hasibul Hossain, obtained a money decree against her husband and purchased the suit land in auction in Title Execution Case No.160 of 1942. The evidence, however, shows that although the sale certificate (Exhibit-A) included plot No.206, the delivery of possession under Exhibit-B was in respect of plot No.205 only and not the suit plot No.206. This significant aspect was rightly noticed by the trial court which held that no delivery of possession of the suit land was proved in favour of defendant No.1 in the execution case of 1942.

The defendants further relied upon Exhibit-B(1) relating to Money Execution Case No.110 of 1951 in which defendant No.1 allegedly obtained delivery of possession of 24 decimals of land in the suit plot. But the record shows that the sale in that execution case was subsequently challenged by Sultana Begum in Miscellaneous Case No.24 of 1954 under Order XXI Rule 90 of the Code of Civil Procedure and the sale was ultimately set aside by order dated

24.04.1954 (Exhibit-10). Once the sale itself was set aside, the legal foundation of the delivery of possession based upon that sale stood extinguished. The appellate court, however, took the view that the setting aside of the sale did not affect the possession of defendant No.1. Such a conclusion is manifestly erroneous. When the sale itself is annulled, the delivery of possession made pursuant to such sale cannot confer any lawful title or possession upon the auction purchaser. The appellate court therefore fell into a serious error of law in treating the said possession as valid and continuing.

Another aspect which has been overlooked by the appellate court is the earlier litigation in O.C. Suit No.11 of 1944 filed by Kamrunnessa, the mother of Hasibul Hossain. In that suit Kamrunnessa claimed title to a substantial share of the suit land on the basis of purchase from her son Hasibul Hossain. The judgment in that suit (Exhibit-7) clearly declared her right to the said share and held that the attachment of the entire property left by Halimuzzaman in the execution proceeding was illegal. This finding clearly indicates that the property including the suit land could not legally pass through the execution sale as claimed by the defendants. The appellate court failed to appreciate the true legal effect of this judgment and thereby arrived at a conclusion which is inconsistent with the earlier adjudication between the parties.

It also appears from the evidence that defendant No.1 herself did not step into the witness box to substantiate her claim. Instead, her son Abu Ahmed was examined as D.W.1. The said witness admittedly had no personal knowledge about the transactions and litigations which took place between his parents as he was a minor at that time. His evidence, therefore, was essentially hearsay in nature. The other defence witnesses also made vague and inconsistent statements regarding the alleged possession of the defendants. In contrast, the plaintiffs' witnesses gave clear and consistent testimony regarding the possession of Hasibul Hossain. The trial court therefore rightly preferred the plaintiffs' evidence over that of the defendants.

The appellate court also accepted the plea of adverse possession raised by the defendants. Such a finding is wholly unsustainable in law. In order to establish adverse possession, the possession must be open, hostile, continuous and to the knowledge of the true owner for the statutory period. In the present case the defendants themselves claimed to have derived possession through court in execution proceedings. Possession obtained through court process cannot simultaneously be treated as hostile or adverse to the true owner. Moreover, there is no clear evidence to show that the defendants asserted a hostile title against Hasibul Hossain for the requisite statutory period. The appellate court thus misapplied the principles governing adverse possession.

During the pendency of the suit Hasibul Hossain executed and registered a deed of Hiba-bil-Ewaz dated 08.09.1977 in favour of his sons, the present plaintiffs, in respect of 4.65 decimals of land including the suit land. This document was produced and marked as Exhibit-2. The defendants did not seriously challenge the genuineness of this deed. Once the validity of the deed stands proved, the plaintiffs, being transferees as well as heirs of Hasibul Hossain, are clearly entitled to step into his shoes and continue the suit. The appellate court rejected the said deed merely on the ground that the witnesses did not elaborate upon it, but such reasoning cannot discredit a registered instrument whose execution has remained substantially uncontroverted.

It further appears that the appellate court was influenced by the fact that the record-of-rights in the S.A. and R.S. operations stood in the name of defendant No.1. It is well settled that entries in the record-of-rights do not create or extinguish title; they are merely evidence of possession and are always rebuttable. When overwhelming evidence both oral and documentary establishes the title and prior possession of Hasibul Hossain, the mere recording of the defendant's name in the record-of-rights cannot defeat the lawful claim of the plaintiffs.

Where the appellate court reverses the well-reasoned findings of the trial court by misreading the evidence, overlooking material

documents and applying erroneous legal principles, such judgment cannot be allowed to stand. In the present case the appellate court clearly failed to properly appreciate the evidence on record and arrived at conclusions which are not supported by the materials available in the record. The trial court had meticulously examined the evidence and rightly held that Hasibul Hossain had right, title and possession in the suit land and that the defendants illegally dispossessed him therefrom. The plaintiffs, as his heirs and transferees under the registered deed of Hiba-bil-Ewaz, are therefore entitled to the relief of declaration of title and recovery of khas possession.

In the circumstances, this Court finds that the judgment and decree passed by the appellate court suffer from serious errors of law and fact resulting in failure of justice.

Accordingly, **the Rule is made absolute.**

The judgment and decree passed by the appellate court are set aside and the judgment and decree of the trial court decreeing the suit are hereby restored.

There will be no order as to costs.

Send down the LC Records together with this judgment at once for information and compliance.

(Justice Md. Toufiq Inam)