

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 5325 of 1998.

Rattan Ali Howlader.

..... -Petitioner.

-Vs-

Afsar uddin Howlader and others.

..... -Opposite parties.

Mr. Sheikh Sharif Uddin with

Mr. Tapash Kumar Biswas, Advocate.

..... For the petitioners.

Mr. S.M. Aminul Islam, Advocate.

..... For the opposite party.

*Heard on: 27.04.2025, 13.05.2025,
18.05.2025 and Judgment on: 25.05.2025.*

This Rule was issued calling upon the opposite parties No. 1-8 to show cause as to why the judgment and decree dated 14.05.1998 passed by the learned Subordinate Judge, Barishal in Title Appeal No. 169 of 1997 dismissing the appeal and affirming those dated 29.04.1997 passed by the learned Assistant Judge, Hizla, Barishal in Title Suit No. 53 of 1993 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for the disposal of the Rule are that the present opposite parties No. 1-8 as plaintiffs instituted a suit in the Court of Assistant Judge, Hizla, Barishal impleading the present petitioner and others as defendants praying for a declaration of title in respect of the suit property as described in the schedule to the plaint. The case of the plaintiffs, in short, is that the suit land originally belongs to Rahim Uddin and Nasoruddin. Nasoruddin died leaving behind a son, namely Ayenuddin as his heir. Aynuddin

transferred the suit property by a Kabala deed dated 23.01.1935 in favour of Golam Ali Hawlader and Mofizuddin Hawlader who held the same in the benami of Nazar Ali Nafti. Subsequently, Nazar Ali Nafti executed and registered a Nadabipatra in favour of Golam Ali Hawlader and Mofizuddin Hawlader. After the death of Golam Ali Hawlader, his son Hachen Ali Hawlader became the owner of the land. Hachen Ali Hawlader died leaving behind the plaintiffs as his heirs. The record of right in respect of the suit land was wrongly prepared in the name of Golam Ali Hawlader and his three brothers, namely Kadam Ali, Babar Ali and Ohad Ali, instead of in the sole name of Golam Ali Hawlader. The defendants had been claiming the suit property on the basis of said wrong recording, hence the plaintiffs instituted the suit. In the plaint, the plaintiffs also stated that they had earlier filed Title Suit No. 242 of 1985 and the said suit was dismissed for default as the plaintiff did not pursue the suit due to an amicable settlement with the defendants by which the defendants abandoned their claim over the suit property.

The present petitioner and others as defendants contested the suit by filing a written statement denying the material allegations made in the plaint contending, inter alia, that the suit was not maintainable in its present form, the suit was bad for defect of parties and the suit was barred by limitation. The definite case of the defendants is that Golam Ali Hawlader (predecessor of the plaintiffs), Babar Ali, Kadam Ali and Ohad Ali (predecessors of the defendants) were full brothers. Golam Ali Hawlader did not purchase the suit property alone, but rather, the four brothers purchased the property together and had been possessing the property jointly as homesteads. Since

the plaintiffs and the defendants are in joint possession of the suit property, the same was rightly recorded in their names jointly. The plaintiffs earlier filed Title Suit No. 242 of 1985 for a declaration of title and the same was dismissed for default; hence, the present suit is barred under the law.

During the trial, the plaintiff examined two P.Ws, the defendants examined three D.Ws, and the court examined one Mofizuddin Hawlader, the co-transferee of the Nadabipatra as C.W. 1. The documentary evidence adduced by the parties were duly exhibited.

The trial court on consideration of the evidence on record, found the suit maintainable, not barred under any law including the law of limitation. The trial court found title and possession of the plaintiffs in the suit property. The trial Court also found that the defendants failed to establish that Golam Ali Hawlader purchased the suit property jointly with his three brothers and all the said four brothers had been possessing the property jointly as homesteads. On these findings, the trial Court decreed the suit. On appeal, the learned Subordinate Judge, Barishal by the judgment and decree dated 14.05.1998 dismissed the appeal and affirmed the said findings of the trial Court.

Being aggrieved thereby, the present petitioners preferred this revisional application and obtained the Rule.

Mr. Sheikh Sharif Uddin, the learned Advocate appearing for the petitioners submits that from the evidence of the D.Ws it would be evident that Golam Ali Hawlader did not purchase the suit property alone, but rather, Golam Ali Hawlader together with his three brothers purchased the property and they had been possessing the property jointly as homesteads. He next

submits that to obtain a decree the plaint shall contain a description of the property sufficient to identify it but the present suit for declaration of title of an immovable property, without a sufficient description to identify it, is not maintainable. In support of the submission, he referred to the case of Ershad Ali Howlader and others Vs. Santi Rani Dhupi and others reported in 12 MLR (AD) 105. Referring to the deposition of C.W.1 to the effect that “মামলার জমিতে বাড়ী এই বাড়ীতে বাদী বিবাদী আমরা সবাই থাকি।” the learned Advocate next submits that since the plaintiffs and the defendants had been possessing the suit property jointly, without seeking recovery of possession, a simple suit for declaration of title is not maintainable. He again submits that the plaintiffs earlier filed a suit being Title Suit No. 242 of 1985 for declaration of title which was dismissed for default, therefore, this suit is barred under the law. He lastly submits that admittedly the suit land was recorded in the name of the defendants and the defendants paid rent and exhibited the rent receipts which are evidence of possession and may be used as collateral evidence of title, but both the courts below without considering the same most erroneously passed the impugned judgment and decree which required to be interfered by this Court.

On the other hand, Mr. Aminul Islam, the learned Advocate appearing for the opposite parties submits that the trial court framed issues regarding maintainability, defect of parties, title and possession and conclusively decided the issues in favour of the plaintiffs. The lower appellate judge, being the final judge of fact, affirmed the findings of the trial Court, therefore, the concurrent findings of fact arrived at by the Courts below should not be interfered with under the revisional jurisdiction. In support of

the submission, he refers to the case of Mohor Ali Bhuiyan Vs. Michir Ali Bhuiyan and others reported in 15 M.L.R. (AD) 500.

Heard the learned Advocates of the contending parties, perused the revisional application and other materials on record.

From the materials on record, it appears that both parties admitted that Aynuddin was the owner of the suit property who executed and registered the kabala deed in the name of Nazar Ali Nafti (Exhibit-1). Subsequently, Nazar Ali Nafti executed and registered a Nadabipatra (Exhibit-1ka) in favour of Golam Ali Hawlader and Mofizuddin Hawlader.

The plaintiffs contend that Golam Ali Hawlader and Mofizuddin Hawlader held the property in the benami of Nazar Ali Nafti hence, Nazar Ali Nafti executed and registered the Nadabipatra in their favour. On the other hand, the defendants contend that Golam Ali Hawlader did not purchase the suit property alone, but rather, Golam Ali Hawlader purchased the property together with his three brothers, and they are jointly possessing the property as homesteads. Inadvertently, Nadabipatra was executed and registered in the name of Golam Ali Hawlader instead of the four brothers. The record of right in respect of the suit property was rightly prepared in the name of the four brothers according to their possession.

From Ext. 1ka, it appears that the Nadabipatra stands in the name of Golam Ali Hawlader and Mofizuddin Hawlader. The entire case is based on the construction of said documents. From a careful perusal of the said documents, there appears no ambiguity, rather, it is clear that Nazar Ali Nafti executed and registered the Nadabipatra in favour of Golam Ali Hawlader and Mofizuddin Hawlader. There is no dispute regarding the

portion of Mofizuddin Hawlader. The defendants by adducing oral evidence tried to establish that Golam Ali Hawlader purchased the property together with his three brothers and Nadabipatra supposed to be executed and registered in favour of the four brothers, but inadvertently, the same was executed and registered in favour of Golam Ali Hawlader alone. Section 59 of the Evidence Act explicitly excludes the contents of documents from being proven by oral evidence. Besides that C.W. 1, Mofizuddin Howlader, co-transferee of the Nadabipatra, in his deposition, clearly and consistently stated that he and Golam Ali Hawlader purchased the suit land together in the benami of Nazar Ali Nafti who subsequently executed and registered the Nadabipatra in their favour. Therefore, both the courts below rightly disbelieved the oral evidence of the D.Ws against the contents of the documentary evidence and rightly held that Golam Ali Hawlader alone held the suit property in the name of Nazar Ali Nafti, and accordingly, Nazar Ali Nafti executed and registered the nadabipatra in his favour. The learned Advocate for the petitioners failed to show any legal evidence to substantiate the facts that the above concurrent finding of facts of the courts below is based on non-consideration of any material evidence.

The next contention of the petitioner is that the suit land is not specified and no relief concerning an unspecified and vague land can be granted.

In this connection the provision of rule 3 of Order VII of the Code of Civil Procedure may be looked into, which reads as follows:-

"Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries

or numbers in a record of settlement of survey, the plaint shall specify such boundaries."

From the above, it is clear that where the subject matter of the suit is immovable property, the plaint shall contain a "description of the property sufficient to identify" it. But the fact is that "description of the property sufficient to identify" is not defined and such "description of the property sufficient to identify" is not constant and it is always variable with the nature of the suit property and the suit.

In the case of Bangladesh vs. Dewan Obaidur Reza Chowdhury and others reported in 43 DLR 551 wherein this division held to the effect:-

" Apart from that, the instant suit was a suit for declaration of title only and in fact for correction of the alleged wrong record of right in the Khatian and there was neither any prayer for confirmation of his possession nor recovery of possession of the suit land. From that point of view also it appears that the point of alleged vagueness was not so material for the adjudication of the present suit."

Like the above-cited suit, the present suit is also for a declaration of title without any prayer for recovery of khas possession or confirmation of possession, therefore, as per the said view of this division, the plea of vagueness is not so mandatory.

Moreover, now it is well settled that dismissal of a suit or a plaint on the ground that the description of the land is insufficient to identify it is not always proper. In such cases, the court may allow the plaintiff to furnish the particulars by amending the plaint. In the present case, the vagueness of the suit property was not raised in the written statement, the trial Court also did not frame any issue regarding the same, so the question of amendment of the plaint did not arise at all. I have perused the plaint and the decree of the trial

court and found that the suit land is to be from the southern side of plot No. 301, so there appears no vagueness in the suit land and so, I find no substance in the contention of the learned Advocate for the petitioner that the description of the property is not sufficient to identify it.

Referring to the evidence of C.W.1 to the effect that “মামলার জমিতে বাড়ী এই বাড়ীতে বাদী বিবাদী আমরা সবাই থাকি।” and the rent receipt, the learned Advocate for the petitioner tries to convince that the plaintiffs do not have possession over the suit property and therefore this simple suit for declaration without seeking recovery of possession is not maintainable.

C.W. 1 in his deposition stated to the effect:-

“গোলাম আলীর অংশের জমি সে একাই ভোগ দখল করিত। উহাতে তার ভাইদের কোন স্বত্ত্ব দখল ছিল না।

.....

নালিশি জমি ছাড়া গোলাম আলীদের আর একটি খতিয়ানে জমি আছে। যাহার নং-৬৭।”

C.W. 1 in his cross-examination stated to the effect:-

“মামলার জমিতে বাড়ী এই বাড়ীতে বাদী বিবাদী আমরা সবাই থাকি।

.....

সত্য নয় যে, মামলার জমি গোলাম আলীর চার ভাইরা সমানভাবে ভোগ দখল করিয়াছে।”

From Ext. 2(kha), the suit khatian, it appears that the total quantum of lands of the suit plots No. 301 and 302 was 4.27 acres, of which only 1.16 acres of lands were recorded in the suit khatian No. 325 in the name of Mofizuddin, Golam Ali (predecessor of the plaintiffs), Kadam Ali, Babar Ali and Ohad Ali (the predecessor of the defendants). It is undisputed that some of the remaining 3.11 acres of land of the suit plots were also recorded in the name of the predecessor of the defendants in khatian No. 67. It is the fundamental principle in the legal system that the evidence should be

considered in its entirety, rather than isolating specific parts. Considering the entire evidence of C.W. 1, on the above facts, it would be clear that there were several houses on the suit plot Nos. 301 and 302; the plaintiffs, the defendants and Mofizuddin Hawlader (C.W. 1) had been residing in their respective houses, but the plaintiffs were in exclusive possession of the suit land.

The instant suit for declaration of title, in fact, is a suit for correction of the alleged record of right in the khatian. Both the courts below concurrently found that the defendants had no title or possession over the suit property and the alleged record of right was wrongly prepared in their name, therefore, the decision of our apex court with regard to the effect that rent receipts are evidence of possession and may be used as collateral evidence of title as reported in 35 DLR (AD) 216 has no manner of application in the present case.

In the above facts and circumstances, I am of the view that both the Courts below passed the impugned judgment and decree on proper consideration of the evidence on record and do not find any reason to interfere with the same.

In the result, this Rule is discharged, however, there is no order as to costs.

Send down the lower court record along with a copy of this judgment at once.

Kashem, B.O