

Present:
Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 1104 of 2008

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. A.Jabbar being died leaving behind his
heirs 1(a) Most. Jabeda Begum and others
Defendant-respondents-petitioners

Versus

Md. A. Gafur and others
Plaintiff-appellants-opposite parties

Mr. Md. Eunus Ali, Advocate
for the petitioner

No one appear
for the opposite parties

Heard on:27.01.26, 16.02.26 & 03.05.2026
Judgment on:08.06.2026

1.This Rule was issued calling upon the opposite party
Nos.1-9 to show cause as to why the judgment and decreed dated
14.11.2007 (decree signed on 19.11.2022) passed by the learned
Additional District Judge, Kurigram in Other Appeal No.62 of
2006 allowing the appeal and setting aside the judgment and
decree dated 17.07.2006 (decree signed on 24.07.2006) passed by
the learned Senior Assistant Judge, Kurigram Sadar in Other Suit
No.13 of 2001 dismissing the suit should not be set aside and/or
pass such other or further order or orders passed as this Court may
seem fit and proper.

2.The opposite party Nos.1-8 in this application as plaintiffs filed Other Suit No.13 of 2001 before the Court of the Assistant Judge, Kurigram Sadar against the petitioners and opposite party No.9 for declaration of title in the suit land.

3.The case of the plaintiffs in short is that the suit land originally belonged to Hunga Barman. He had been the owner of 1.36 acres of land and gave the same pattan in favour of the plaintiffs predecessor namely Mahiuddin by a registered patta dated 05.11.943. Mahiuddin had been the owner and possessor of the suit land died leaving behind the plaintiffs as his heirs. At the time of last S.A. operation Mahiuddin was ill for a long time and that was why he could not meet the settlement staffs and he gave the authority to record the suit land in his name to the defendant No.1 who is his brother's son but the defendant No.1 without recording the entire land in the name of the plaintiffs predecessor rather he recorded eight annas land in the name of the plaintiffs predecessor and the rest eight annas in his name. The said record is wrong and the same has clouded the title of the plaintiffs. The cause of action of the suit arose on 15.11.2000 when the defendant No.1 expressed that the eight annas land out of the suit land has been recorded in his name and hence the case.

4.The petitioners in this application as defendant Nos.1/3 contested the suit by filing written statements separately denying all the material allegations made in the plaint alleging inter alia

that the suit is not maintainable in the present form and the suit is barred by limitation.

5.The case of the defendant Nos.1/3 in short is that the suit land originally belonged to Hunga Barman. He had been the owner and proposed to give pattan of the suit land and accordingly Penat Sheik and Mahi Sheik took pattan it but in the patta only the name of Mohi Sheik was given. After the death of Penah Sheik his eight annas share was inherited by the defendant No.1 Abdul Jabbar and his uncle Mahi Sheikh would have lived in the joint mess. At the time of last S.A. operation the defendant No.1 was a minor and he was ignorant about the land. Mohi Sheik himself recorded eight annas land in the name of the defendant No.1. In the last R.S operation, 68 decimals of land out of the suit land has been recorded in the name of defendant No.1. On 10.01.1996 the defendant No.1 transferred 24 decimals of land to his son the defendant No.3. Now the defendant No.1 has been possessing 44 decimals of land and the defendant No.3 has been possessing 24 decimals of land. At the livelihood of Mohi Sheik he did not raise any objection against the S.A. record. The plaintiffs have no right title and possession in the defendant. The false suit is liable to be discharged.

6.After trial the learned Senior Assistant Judge, Kurigram Sadar was pleased to dismiss the suit by his judgment and decree dated 17.07.2006.

7. Thereafter the plaintiffs against the above judgment and decree preferred Other Appeal No.62 of 2006 before the Court of the District Judge, Kurigram. The appeal was transferred to the Court of the Additional District Judge, Kurigram for disposal. The learned Additional District Judge, Kurigram was pleased to allow the appeal by her judgment and decree dated 14.11.2007.

8. Being aggrieved by and dissatisfied with judgment and decree passed by the appellate Court and the defendant-respondent petitioner moved this revision and obtained the Rule.

9. Learned Advocate appearing for the defendant-respondent-petitioner referred the plaint, written statement, evidence and materials on record and the proposition of law and submits that 11.8 anna share of total land i.e. 68 decimals of land was recorded in the name of the defendant namely Abdul Jabbar while he was minor. After the death of Abdul Jabbar's father Penath Sheikh record of right for 11.8 anna share was prepared in the name of Abdul Jabbar at the life time of his uncle Mohiuddin. Thereafter on the death of Mohiuddin, his heirs raised no objection regarding the record of right. Learned Advocate further argues that under provision of section 57 of Mohammedan law during continuance of the family properties are acquired in the name of the managing member of the family and it is proved that they are possessed by all the members jointly, the presumption is that they are the family properties. He added that the property was purchased with joint fund in the year of 1943 and since then

Mohiuddin and Penath Sheikh were jointly possessed the land. After the death of Penath Sheikh his only son Abdul Jabbar defendant No.1 possessed the land jointly with his uncle Mohiuddin Sheikh. So according to the provision of section 57 of the Mohammedan law defendant No.1 is the legal owner and possessor of the case land and record of right is correctly prepared in his name. This records of right i.e. S.A. and R.S. record was held on the basis of actual physical possession and the predecessor of the petitioners filed the dakhilas to prove his possession upon the suit land.

10.Learned Advocate further submits that learned appellate Court on misreading and non-consideration of the evidence and materials on record and without applying his judicial mind passed the judgment and decree and as such committed an error of law resulting in an error in the decision occasioning failure of justice and the impugned judgment and decree liable to be set aside and the judgment and decree of the learned judge of the trial Court is liable to be affirmed and the Rule is liable to be made absolute.

11.Per contra, learned Advocate appearing for the plaintiff-appellant opposite party did not take part in this revision hearing.

12.Having heard the argument of the learned Advocate for the defendant-respondent-petitioner and having perused the evidence and materials on record, the only questions for the consideration of this Court is whether the suit land was acquired by the tend of the joint family in the name of the head of the family

and whether the same was possessed by both the brothers Mohiuddin Sheikh and Penath Sheikh?

13. Answer's of the aforesaid question found in the cross examination of the Pw1 Abdul Gafur. He admitted that “আমার ছোট বেলায় দেখিয়াছি যে, ১নং বিবাদী ও আমার পিতা একই অল্পে বসবাস করতো। আমার জেঠা পেনাত ও আমার পিতা একই অল্পে বসবাস করিত। জমিজমার কাগজপত্র আমার পিতাই দেখাশুনা করিতেন।” So it appears that joint familiness was continued up to the aliveness of two brothers Mohiuddin Sheikh and Penath Sheikh and even up to the aliveness of Mohiuddin Sheikh and the defendant No.1 Abdul Jabbar. So it can easily be inferred that everything would have guided by the fund of the joint family and the suit land was acquired by the fund of the joint family in the name of Mohiuddin.

14. Also it is admitted by pw1 that his father had 15/30 bighas of land and save and except the suit land the other land was rightly recorded in his name in the S.A. record. So it reveals that the suit land was not possessed by the father of the plaintiff if he would possess the same. The plaintiff-opposite party could not show the reason not to record the suit property particularly in the name of his father. Pw1 admitted in his evidence that “বর্তমান R.S. রেকর্ডে আমাদের নামে নালিশী জমির আট আনা অংশে রেকর্ড হইয়াছে এবং বাকী আট আনা ১নং বিবাদীর নামে হইয়াছে।” The present R.S. record has a strong presumptive value in as much as the same operation was held on the basis of actual physical possession. The defendant-petitioner

filed as many as 12 dakhilas which are the best evidence of possession of the defendant No.1. As it is discussed earlier that the suit land was acquired by the joint fund of the family for which even after the death of Penath Sheikh the brother Mohiuddin did not deprive the defendant No.1 from the share of the suit property, rather he as uncle of a fatherless nephew recorded eight annas of the suit land in his name.

15.Learned trial Court rightly rebutted the argument of the learned Advocate of the plaintiff-opposite party while it is asserted that there is no joint family and joint family business in the Mohammedan law. But learned Advocate did not go through the entire section of 57 of the Mohammedan law which provides as follows:-

“When the members of Mohammedan family live in commensality they do not form a joint family in the sense in which that expression is used in the Hindu Law. Further in the Mohammedan “Law. There is not as in the Hindu Law, any presumption that the acquisitions of several members of a family living and messing together are for the benefit of the family. But if during the continuance of the family properties are acquired in the name of the managing member of the family and it is proved that they are possessed by all the members jointly the presumption is that they are the properties of the family and not the separate properties of the member in whose name they stand. Not only that at the

time of argument the learned Advocate for the defendant No.1 and 3 referred a decision reported in 24 DLR at page 173 where his lordship pleased to opine-

“properly purchased by the joint fund which is accrued out of income from property belonging to all members of the family.

Held such property is joint property.”

16.Learned appellate Court found that registry pattra deed No.7456 dated 05.11.1943 marked as Exbt'1' is the basis of the title of the plaintiff opposite party and the recital of this pattra deed proves that Mohiuddin Sheikh alone took patton of the suit. Learned appellate Court relied on the provision of section 92 of the evidence Act which provides that-

“Section 92:-Exclusive of evidence of oral agreement-

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:-

Proviso (1)-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any

contracting party, want or failure of consideration or mistake in fact or law.

Proviso (2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3)-The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4)-The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5)- any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6)- Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

17. In this context the decision adopted in the case of Abdul Khaleq Vs. Saiman Nessa Bibi reported in 19 DLR at page 17 is very much relevant in the instant case. It is held in this decision that “surrounding circumstances are admissible in evidence- Courts power to arrive at the true purport of a document remains unfettered.”

18. It is settled that in property and contract law, appellate Courts such as the Supreme Court of India or Bangladesh consistently affirm that to determine the true nature of a transaction, surrounding circumstances and contemporaneous conduct are admissible and vital, even beyond the explicit recital of a deed. In the instant case the learned appellate Court did not take into account the surrounding circumstances that the suit land was acquired by the joint fund of the family which is a admitted fact by the pw1 Abdul Gafur in his cross examination and also from the possession by the defendant upon the suit land. This finding of the trial Court is not reversed by the learned Appellate Court. Learned Appellate Court repeatedly asserted that purchase of the suit property by joint fund of the family is not proved by the defendant opposite party. As it is found from the cross examination of Pw1 that his father and his uncle Penath used to live in a same mess together, so it is quite pragmatic that they used to do everything for the interest of their joint family. Also pw1 admitted that “জমি জমার কাগজপত্র তার পিতাই দেখাশুনা করিতেন।” It is also of the evident that their joint familiness continued upto the aliveness of

Mohiuddin Sheikh and the defendant No.1. Therefore the contention of the defendant is quite credible to the effect that the suit land was acquired by the joint fund of the family of two brothers Mohiuddin and Penath Sheikh but erroneously patta deed was executed only in favour of Mohiuddin.

19.It is known to everybody that R.S. record has a presumptive value as the same is prepared on the basis of actual physical possession. S.A. and R.S record for the suit property is prepared in the name of the defendant No.1. These are the best evidence of possession in favour of the defendant. The defendant also proved that they paid rent to the government for the suit land. These S.A. and R.S. record were prepared with the consent and by the active role of the plaintiffs predecessor Mohiuddin Sheikh. Pw1 admitted that his father had 15/30 bighas of land and save and except the suit land, the other land was rightly recorded in his name. In this situation it is easily can be concluded that the predecessor of the plaintiff knew everything of the alleged S.A. and R.S. khatian and as the suit land was acquired by the joint fund of the family of Mohiuddin and Penath, so the predecessor of the plaintiff did not raise any objection against the aforesaid khatian during his aliveness. Therefore this Court have no hesitation to hold that the aforesaid surrounding circumstances are overlooked by the learned Appellate Court in weighing the validity of the alleged patta deed.

20.From the facts and circumstances and from the proposition of law, the judgment and decree passed by the learned Appellate Court suffers from misinterpretation of fact, non-consideration and mis-reading of the material evidence affecting the merit of the case. In these circumstances Revision Court has scope to interfere. In 48 DLR (AD) at page 154 the Hon'ble Apex Court held as follows:-

“To our mind revisional Court is competent to interfere in a case of non-consideration of material evidence which is specifically material for the determination of the material issue.”

21.As it is found that learned appellate Court on non-consideration and misreading of evidence passed the impugned judgment and decree, as such committed error of law resulting in an error in decision occasioning failure of justice, so the same is liable to be interfered.

In view of the discussion made as above, I am inclined reversing the judgment and decree of the appellate Court dated 14.11.2007. Hence the impugned judgment and decree warrants interference.

In the result the Rule is made absolute without any order as to cost.

The judgment and decreed dated 14.11.2007 (decree signed on 19.11.2022) passed by the learned Additional District Judge, Kurigram in Other Appeal No.62 of 2006 allowing the appeal and setting aside the judgment and decree dated 17.07.2006 (decree signed on 24.07.2006) passed by the learned Senior Assistant

Judge, Kurigram Sadar in Other Suit No.13 of 2001 dismissing the suit is hereby set aside.

The order of stay granted earlier, at the time of issuance of Rule, is hereby vacated.

Send down the lower Courts' record with a copy of this Judgment to the Courts' below at once.