

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.1192 of 2008.**

In the matter of:

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

And

Gopal Chandra Saha being dead  
his legal heirs;

1(a) Jiban Chandra Saha and  
others

**...Petitioners**

-Versus-

Md. Bulu Miah and others

**...opposite parties**

Mr. Kamal Hossain with

Mrs. Madhuri Saha with

Mr. Manabendra Roy with

Mr. Oaliullah Sarowar sowran with

Mr. Abul Kalam, Advocates

**...For the petitioner Nos.1(a)-1(d)**

Mr. Ranjit Kumar Barman with

Mr. Malik Abdullah Al Amin with

Mr. Md. Majnul Ahsan, Advocates

**..For the opposite parties**

**Heard on: 20.04.2025 & 26.08.2025.**

**Judgment on: 19.11.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 20.02.2008 of the learned Additional District Judge, 2<sup>nd</sup> Court, Kishoreganj in Title Appeal No.30 of 2002 reversing those dated 05.11.2001 of the Senior Assistant Judge, Sadar Kishoreganj in Other Class Suit No.78 of 2000 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 petitioner as plaintiff instituted above suit for declaration of title, confirmation of possession and further declaration that registered deed of exchanged dated 04.03.1986 as described in schedule No.2 is inoperative and not binding upon the plaintiff alleging that the plaintiff was the owner and possessor of 43 decimal and he transferred 3 decimal land to Monoranjan and is owning and possessing disputed 40 decimal land. Plaintiff executed and registered a deed of exchange on 04.03.1986 with predecessor of the defendants, Abu Taher for above land with 60 decimal land of Abu Taher. But above deed of exchange was not made operational and plaintiff continued possession in above land. But on the basis of above ineffective deed of exchange defendants denied plaintiff's title in above land.

Defendant Nos.1-8 contested above suit by filing a joint written statement wherein they have denied all material claims and allegations made in the plaint and stated that the deed of exchange dated 04.03.1986 between the plaintiff and defendants predecessor Abu Taher for disputed

land and 60 decimal land of Abu Taher was acted upon and Abu Taher transferred 3 decimal land out of disputed 43 decimal to Manoronjon who is the husband of the sister of the plaintiff. Manoronjon is in possession in above land by constructing dwelling house.

At trial plaintiff examined five witnesses but defendant examined none. Documents of the plaintiff were marked as Exhibit Nos.1-4. But defendant did not produce and prove any document.

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

Being aggrieved by and dissatisfied with above judgment and decree above defendant as appellant preferred Title Appeal No.30 of 2002 to the District Judge, Kishoreganj which was heard by the learned Additional District Judge, 2<sup>nd</sup> Court who allowed above appeal and set aside the judgment and decree of the trial court and dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the court of appeal below above respondent as petitioner moved to this court with civil this revisional application

under section 115(1) of the Code of Civil Procedure and obtained this rule.

Mr. Kamal Hossain learned Advocate for the petitioner submits that admittedly disputed 43 decimal land of S.A. khatian No.8193 belonged to the plaintiff. Defendants have claimed that the plaintiff exchanged above land with undisputed 60 decimal land of Abu Taher by registered deed of exchanged on 04.03.1986. But in fact above deed of exchange was not acted upon and plaintiff continued possession in the disputed land. Plaintiff has examined five witnesses in support of continuous possession in above land. Above witnesses were cross examined by the defendants but their evidence remained unshaken and credence inspiring. On the other hand defendant did not adduce any evidence oral and documentary in support of their claim that above deed of exchanged dated 04.03.1986 was made effective and Abu Taher entered into possession of above 43 decimal land. As far as purchase of 3 decimal land by Manoronjon is concerned, plaintiff sold above land to his sister's husband Manoronjan and received consideration money of above sale. But to avoid future legal complications above kobla deed of Monoranjan was executed and registered by

Abu Taher. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial court rightly decreed above suit. But the learned Judge of the court of appeal below utterly failed to appreciate above materials on record and most illegally dismissed above appeal which is not tenable in law.

Mr. Ranjit Kumar Barman leaned Advocate for the opposite party submits that admittedly the plaintiff executed and registered above deed of exchange for his 43 decimal land with 60 decimal land of Abu Taher, predecessors of the defendants. The plaintiff could not prove by legal evidence that above deed was not acted upon. The claim of the plaintiff that he sold 3 decimal land to Monoronjan remains not proved by legal evidence. Abu Taher transferred above land to Monoranjan. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the court of appeal below rightly allowed the appeal set aside the flawed judgment and decree of the trial court and dismissed the suit which calls for no interference.

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

It is admitted that 43 decimal land of S. A. khatian No.8193 belonged to the plaintiff and undisputed 60 decimal land belonged to Abu Taher, predecessor of the defendants. It is also admitted that the Plaintiff and Abu Taher exchanged their above land by registered deed of exchange dated 04.03.1986 and Monoranjan, husband of the sister of the plaintiff purchased 03 decimal land out of above 43 decimal land and living there by constructing dwelling house. Plaintiff has by amendment of the plaint sought a declaratory relief against above deed of exchange dated 04.03.1986 but the plaintiff did not produce above deed of exchange or a certified copy of the same at trial. I have carefully examined the plaint and evidence of P.W.1 but I did not find any specific allegation that above deed of exchange was obtained by Abu Taher by fraud or above deed of exchange was an outcome of mistake or error.

Learned Advocate for the petitioner submits that Monoranjan purchased above land from the plaintiff on payment of consideration money. But

above kobla deed was executed by Abu Taher to avoid future complications. Above claims of the plaintiff is contrary to the written terms and contents of above kobla deed of Monoranjan and the plaintiff could not prove the claim of receipt of consideration money from Monoranjan by legal evidence.

Plaintiff has sought declaration of title for 43 decimal land but at paragraph No.6 of the plaint he has stated to have transferred some land out of above 43 decimal to several persons by separate sale deeds without making any specific mention as to what quantity of land the plaintiff has transferred and who were the purchasers.

As a party to the registered deed of exchange the plaintiff cannot orally deny the effectiveness of above deed in the absence of a claim of fraud or error. The claim of the plaintiff as to the deed of Monoranjan is against the contents of above registered deed of sale to which plaintiff is not a party.

The defendant cross examined above P.Ws but did not adduce any oral or documentary evidence. But since the plaintiff has sought a remedy against above deed of exchange it was the duty of

the plaintiff to produce above document at trial and prove his claim by legal evidence.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality and irregularity in the impugned judgment and decree passed by the learned Judge of the court of appeal below nor I find any substance in this civil revisional application and the rule issued in this connection is liable to be discharged.

In the result, the rule is discharged without any order as to cost.

Let the L.C.R. along with a copy of this judgment be transmitted down to the Court concerned at once.