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

Civil Revision No. 1551 of 2008.

Md. Jalaluddin Sheikh
...Petitioner.
-Versus-
Md. Abdul Jabbar
....Opposite party.
Mr. Faysal Hasan Arif with
Mr. Md. Kaisaruzzaman, Advocates.
...for the petitioner.
Md. Abdul Hamid Shah, Advocate.
...for opposite party No.1

Heard on: 23.11.23, 07.12.2023, 14.12.2023
Judgment on: 17.12..2022.

Present:
Mr. Justice Md. Badruzzaman;

This Rule was issued calling upon party No.1 to show cause as to why judgment and decree dated 16.01.2008 passed by learned Additional District Judge, 2nd Court, Bogura in Other Class Appeal No. 209 of 2006 dismissing the appeal by affirming judgment and decree dated 08.11.06 passed by learned Senior Assistant Judge, Bogura in Other Class Suit No. 257 of 2003 dismissing the suit should not be set aside.

Relevant facts, for the purpose of disposal of this Rule, are that the petitioner as plaintiff instituted Other Class (Eviction) Suit No. 257 of 2003 on 30.11.2003 against the opposite parties in the Court of Senior Assistant Judge, Bogura for a decree of eviction of defendant No.1 from .0175 acre suit land out of .19 acre land of S.A Plot No. 2825 of Khatian No. 531 contending, *inter alia,* that total .29 acre land was owned and possessed by Anisur Rahman and others who vide registered sale deed No. 14587 dated 30.10.1961 (wrongly written as deed No. 3749 dated 10.02.1960) transferred .19 acre land including the suit land to Tofej

Uddin and handed over possession thereof to him. While Tofej Uddin was owning and possessing said .19 acre land by erecting dwelling houses therein died leaving behind 5 sons namely Emdadul, Shahinur, Jalaluddin (Plaintiff), Aynal, Khalil; 3 daughters namely, Piara, Johura, Khudeja and one wife Mojitan to inherit said land and while they were owner in possession of total .19 acre land including the suit land, Mojitan got her share covering the suit land and she transferred .01 acre land to her grand-daughter Salma by registered deeds of heba-bil-ewaj being No. 22974 dated 19.12.1992 and 6680 dated 05.04.1993 and handed over possession thereof to her and thereafter, Salma transferred said .01 acre land to the plaintiff by registered sale deed No. 12068 dated 28.07.1996 and handed over possession thereof to him. Said Mojitan also transferred .0125 acre land by registered sale deed No. 77 dated 02.01.1997 to the plaintiff. Khudeja transferred .0125 acre land by registered sale deed No. 21694 dated 30.12.1999, Piara transferred .0125 acre land by registered sale deed No. 22956 dated 19.12.1992, Emdadul, Khalil and Jahura transferred .0075 acre land by registered sale deed No. 4147 dated 15.02.1992 and Shahinur transferred .0225 acre land by registered sale deed No. 4803 dated 11.03.1995 to the plaintiff and handed over possession thereof him. In the aforesaid way, the plaintiff becomes owner in possession of total of .0775 acre land by purchase and .0250 acre land by inheritance from his father and he has been owning and possessing total .1025 acre of land including the suit land.

Defendant No.1 Md Abdul Jabber is the uterine brother of the plaintiff and son of his mother Mojitan. Before marriage with his father Tofej Uddin, Mojitan got married with Rois Uddin and out of their wedlock defendant No.1 born. Rois Uddin died when defendant No.1

was a child and after death of Rois Uddin, Mojitan got married with Tofej Uddin, the father of the plaintiff and other defendants. Since defendant No. 1, Abdul Jabber, was a minor boy at the relevant time he came with his mother Mojitan Bewa and was staying with her in the house of the father of the plaintiff. Defendant No. 1 and his mother Mojitan Bewa requested Tofej Uddin to allow defendant No.1 to reside in the house of Tofej Uddin and on their request, Tofez Uddin allowed him to reside in a hut standing on the suit land. He was residing therein as a permissive possessor during the lifetime of Tafej Uddin. After death of Tafej Uddin defendant No.1 was allowed to reside in the suit land as permissive possessor with an undertaking that he would leave the suit land when he would be asked to vacate the same but unfortunately, he denied to vacate the suit land on 20.102003 and accordingly, the plaintiff filed the suit for eviction of defendant No.1.

Defendant No.1 contested the suit by filing written statement contending, *inter alia*, that from childhood he was residing with his mother Mojitan under the guardianship of Tofej Uddin. In the middle part of 1963 Tofej Uddin transferred .02 acre suit land out of .19 acre land by way of oral gift to defendant No. 1. At the time of transfer, said land was a low land and he developed the land by filling earth and erected dwelling house at his own cost and he has been owning and possessing the suit land since 1963. As owner in possession of the suit property he has been paying Municipal Holding Tax and also mutated it in the Revenue Office of the Government and paying rents thereof to the Government. Since defendant No. 1 has been residing in the suit land as owner by way of oral gift, question of eviction did not arise at all and as such, the suit is liable to be dismissed with cost.

During trial, the plaintiff adduced three P.Ws and defendant No.1 also adduced three D.Ws and produced documentary evidence to prove their respective case. The trial Court, upon considering the evidence and materials on record, dismissed the suit vide judgment and decree dated 08.11.2006 against which the plaintiff preferred Other Class Appeal No. 209 of 2006 in the Court of learned District Judge, Bogura which was transferred to learned Additional District Judge, 2nd Court, Bogura for disposal who, after hearing the parties, dismissed the appeal by affirming the judgment and decree of the trial Court by its judgment and decree dated 16.01.2008.

Being aggrieved by and dissatisfied with the judgment and decree dated 16.01.2008 the plaintiff has preferred this revision under section 115(1) of the Court of Civil Procedure and obtained the instance Rule.

Defendant-opposite Party No. 1 has entered appearance to contest the Rule.

Mr. Faisal Hossain Arif, learned Advocate appearing for the plaintiff-petitioner submits that admittedly, Tofej Uddin acquired title to .19 acre land including the suit land vide registered sale deed No. 14587 dated 30.10.1961 from Anisur Rahman and others which was produced by the plaintiff and marked as Ext. 5 without any objection of the defendant but inadvertently, in the plaint it was stated that Tofej Uddin acquired title to .19 acre land including the suit land vide registered sale deed No. 3749 dated 10.2.1960 from Anisur Rahman and others. He submits that, in fact, said deed No. 3749 was a registered *baina patra* following which the deed of sale being No. 14587 dated 30.10.1961 was executed and registered by said Anisur Rahman and others in favour of Tofej Uddin but the trial Court by misreading of evidence wrongly held that the plaintiff did not file sale deed No. 3749 dated 10.2.1960 to prove

title of Tofej Uddin. Learned Advocate further submits that the trial Court, upon misconstruction of title deeds of the plaintiff [Exts. 5(Ka)-5(Ja)], came to an erroneous finding that the plaintiff could not prove his title to .1025 acre land by those registered sale deeds (Exhibit-5 series). Learned Advocate further submits that the mother of the plaintiff and defendant No. 1 is a vital witness in this case who deposed as P.W.1 and specifically deposed that on her request, Tofej Uddin gave permission to stay defendant No. 1 with her in his house and her husband Tofej Uddin did not transfer the suit land by any oral gift in favour of defendant No. 1 but the trial Court misread the evidence of P.W.1 and relied upon the evidence of D.Ws. 2 and 3, who were not at all connected with the suit land or with the family of the plaintiff and defendant, and came to erroneous finding that the defendant could able to prove title to the suit land by way of oral gift from Tofej Uddin. Learned Advocate further submits that the Court of appeal, as the last Court of facts, committed the same mistake and upon misreading and non-consideration of vital and material evidence came to erroneous findings and decision and illegally affirmed the findings and decision of the trial Court and as such, committed an error of law resulting in an error in the decision occasioning failure of justice.

As against the above submissions Mr. Abdul Hamid Sha, learned Advocate appearing for defendant-opposite party No. 1 submits that the plaintiff could not prove that defendant No. 1 was a permissive possessor under him and that the defendant could prove by evidence that he became the owner of the suit land by way of oral gift from Tofej Uddin and as such, the Court of appeal committed no illegality in affirming the judgment and decree of trial Court. Learned Advocate further submits that the suit property is joint property and the plaintiff

could not prove that he got exclusive *saham* along with the suit land and that the suit is barred under the provision of section 42 of the Specific Relief Act because of the fact that the defendant is not a licensee or permissive possessor under the plaintiff and he has been owning and possessing the suit land peacefully for more than 12 years. Learned Advocate further submits that being owner in possession of the suit land, the defendant mutated his name in the concerned Revenue Office as well as he had been paying municipal holding tax for years together and as such, he cannot be evicted at the instance of the plaintiff. Learned Advocate further submits that since the plaintiff could not able to prove title to and possession in .1025 acre land including the suit land, he is not entitled to a decree of eviction against the defendant and as such, the Court of appeal committed no illegality in dismissing the appeal by affirming the judgment and decree of the trial Court.

I have heard the learned Advocates and perused the revisional application, judgments of the Courts below, pleadings of the parties, evidence adduced by them and other materials available on record.

It is the case of the plaintiff that Tofej Uddin was owning and possession .19 acre land including the suit land by purchase from Anisur Rahman and others. To prove title of Tofej Uddin to .19 acre land the plaintiff produced original registered sale deed No. 14587 dated 30.10.1961 which was marked as Exhibit 5. Defendant No. 1 did not deny registered sale deed No. 14587 dated 30.10.1961 (Exhibit 5) by which Tofej Uddin acquired title to .19 acre land including the suit land. Defendant No. 1 by admitting the title of Tofej Uddin claimed title to the suit land from him by way of oral gift. It appears that in the plaint, the plaintiff mistakenly stated that Tofej Uddin acquired title to .19 acre land including the suit land vide registered sale deed No. 3749 dated

10.2.1960 from Anisur Rahman and others. In the recital of the deed of sale being No. 14587 dated 30.10.1961 (Exhibit 5), registered deed No. 3749 dated 10.2.1960 was referred to as a *baina patra* following which the deed of sale being No. 14587 dated 30.10.1961 was executed and registered by said Anisur Rahman and others. When the admitted original deed of sale being No. 14587 dated 30.10.1961 was produced and marked as Exhibit 5, the trial Court should have come to the conclusion that Tofej Uddin acquired title to .19 acre land by registered sale deed No. 14587 dated 30.10.1961 (Exhibit 5). Accordingly, the finding of the trial Court that the plaintiff could not produce registered sale deed No. 3749 dated 10.2.1960 to prove title of Tofej Uddin to .19 acre land is against the record. It appears that the Court of appeal, upon misreading the evidence, committed the same error in coming to the conclusion that the plaintiff could not prove title of Tofej Uddin in respect of .19 acre land.

The trial Court further gave findings to the effect that the plaintiff could not prove his title to the suit land by Exhibits 5(Ka) – 5(Ja) because of the fact that Tofej Uddin had no title to said land from whom the plaintiff claimed title. I have already found that Tafej Uddin acquired title to .19 acre land by purchase from Anisur Rahman and others. It is the case of the plaintiff that after death of Tofej Uddin said .19 acre land was inherited by his five sons namely Emdadul, Shahinur, Jalal (the plaintiff), Aynal, Khalil; three daughters Piara, Jahura, Khudeja and one wife Mojitan and every son got .0255 acre, every daughter got .0127 acre and wife got .0237 acre land. Thereafter, Mojitan transferred .01 acre land to her grand-daughter Salma vide heba-bil-ewaj deeds dated 19.12.1992 and 5.4.1993 being Nos. 22974 and 6680 [Exhibits-5(Ka) and 5(Kha)] and then Salma transferred .01 acre land to the plaintiff by sale deed being

No. 12064 dated 28.7.1996 [Exhibit-5(Ga)]. Mojitan also transferred .0125 acre land to the plaintiff by registered sale deed No. 77 dated 2.1.1977 [Exhibit-5(Ja)]. Khudeja transferred .0125 acre land to the plaintiff by registered sale deed No. 21694 dated 30.12.1997 [Exhibit-5(Gha)]. Piara transferred .0125 acre land to the plaintiff by registered sale deed No. 22956 dated 19.12.1992 [Exhibit-5(Uma)], Emdad, Khalil and Jahura transferred .0075 acre land to the plaintiff by registered sale deed No. 4147 dated 15.02.1992 [Exhibit-5(Cha)]. Shahinur transferred .0225 acre land to the plaintiff by registered sale deed No. 4803 dated 11.3.1995 [Exhibit-5(Chha)]. Originals of those sale deeds have been produced by the plaintiff and were marked as Exhibits. 5(Ka)- 5(Ja) without any objection from the defendant. By those sale deeds the plaintiff claimed title to .0775 acre land from the heirs of Tofej Uddin. He also claimed title to .0250 acre land from his father Tofej Uddin. Since those transfer deeds [Exhibits. 5(Ka)- 5(Ja)] have not been denied by defendant No. 1 or he did not make out a case that those deeds were products of forgery, there was no reason on the part of the trial Court to come to the conclusion that by those sale deeds, the plaintiff acquired title to .0775 acre of land by purchase and .0250 acre land by inheritance. It appears that the trial Court without proper assessment and appreciation of the material evidence came to wrong finding that the plaintiff could not prove his title to .1025 acre land including the suit land. The Court of appeal committed the same error in concurring with the finding of the trial Court.

On the other hand, the defendant claimed that he acquired title to the suit land from Tofej Uddin by way of oral gift made in 1963. As D.W.1 defendant No.1 deposed that at the time of the oral gift his mother and two others were present as witnesses. He deposed, " নালিশী দাগের নালিশী

জমিতে সে মৌখিক দান করেন। আমায় ১৯৬৩ ইং সনের মাঝামাঝি হবে। .. ১৯৬৩ ইং সনে মৌখিক দান করেন। তখন রাজ্জাক, হাফিজার ছিলেন। তৌফিজ এর ওয়ারিশ কেউ ছিলেন না। মৌখিক দানটা মা জানতেন। মা সাক্ষ্য দিবে না।'' The defendant adduced one Hafizer Rahman (D.W 2) to support the oral gift who deposed that Tofej Uddin transferred the suit land by way of oral gift to Jabber in the middle part of 1963 and the suit land was a low land and Jobber (defendant) erected house after filling earth therein. Anawer Hossain deposed as D.W.3 who stated that Tofej Uddin gifted .02 acre land to the defendant and he was present there. But in his deposition, defendant No.1 did not mention that D.W. 3 was present at the time of oral gift. Moreover, D.W. 3 did not mention any date of oral gift. On the contrary, Mojitan came forward and deposed as P.W.1. She deposed, '' স্বামী মারা যাওয়ার পর আমি স্বামীর অংশ পাই। আমার অংশ সালমা ও ১ পুত্র শাহিনুরকে দিয়েছি। সালমা ও শাহিনুর তাহাদের অংশ জালালের নিকট বিক্রয় করে। জালাল তাহার ভাই-বোনদের নিকট হতে খরিদ খরিদ করিয়াছে। স্বামী মারা গেলে ৫ ছেলে, ৩ মেয়ে ও আমি থাকি। আমার ছেলে জব্বার অন্যত্র পাকা বাড়ি করে উঠে। জব্বার যে জায়গায় থাকে সেই জায়গা আমার স্বামী মৌখিক দান করে নাই। এই জায়গায় খরিদা জমিসহ আমার ছেলে জালাল মালিক। ইহা সত্য নহে যে, জব্বার গর্ত পূরণ করিয়া বাড়ি করিয়াছে। এই জায়গা জালালের এবং জালালেরই দরকার। জব্বার এই বাড়ি ছাড়িয়া অন্যত্র যাচ্ছে না।'' She was cross-examined by defendant No. 1 but she did not deviate from her statement. At the time of giving deposition Majiton Bewa was a lady of 100 years of age and she is the mother of the plaintiff and defendant No. 1. There was no reason on her part to give false statement on oath before the Court and accordingly, her evidence cannot be disbelieved. From the above testimony of Mojitan Bewa it appears that she not only denied the oral gift, rather stated that the plaintiff is the owner of the suit land by purchase. She denied the suggestion that Jabber developed the suit land by filling earth. When the mother of defendant No.1 deposed that she was residing with Tofej Uddin and her husband did

make any oral gift to her son, the evidence of D.Ws. 2 & 3, who were outsiders, cannot be believed to prove the oral gift.

To substantiate his oral gift, defendant No. 1 in his cross-examination deposed, " তৌফিজ খারিজ করে দেন নালিশী জমি।" But he could not submit any paper or document to prove that Tofej Uddin mutated the suit land in the name of defendant No.1. Rather, the plaintiff produced a rent receipt dated 08.06.2001 which was marked as Exhibit-1. On perusal of Exhibit- 1, it appears that the rent was paid in the name Tofej Uddin in respect of .19 acre land. On perusal of Exhibit- 2, it appears that it is a mutation Khatian by which Tofej Uddin mutated his name in respect of .19 acre land vide order dated 24.05.1997. Such mutation in the name of Tofej Uddin proves that he did not transfer the suit land to defendant No. 1 by oral gift. Rather, it appears that after filing of the suit defendant No.1 mutated his name in respect of the suit land vide order dated 21.12.2003 and the mutation khatian was marked as Exhibit- (Ka). Accordingly, if earlier Tofej Uddin would gift the suit land to the defendant and if he would mutate the same in favour of defendant No. 1, there was no necessity on the part of the defendant to mutate the suit land in his name for the second time in 2003. Further, it appears from the Mutation Khatian of defendant No. 1 [Exhibit- (Ka)] that he by identifying himself as the son of Tofej Uddin mutated the suit land in his name. At the time of mutation the defendant himself did not claim title to the suit land by way of oral gift rather, by false personification as the son and heir of Tofej Uddin, he mutated his name in the Assistant Commissioner (Land) Office which is an apparent fraud committed by defendant No. 1 at the time of mutation.

Defendant No. 1 also claimed that as owner of the suit property, he paid municipal holding tax to Bogura Pourasava and in support of his

contention he produced some Municipal Holding Tax Receipts which were marked as exhibits. On the other hand, the plaintiff produced certified copy of an order passed by the Chairman of Bogura Pourasava dated 24.12.2003 [Exhibit-4] from which it appears that the plaintiff challenged the defendant's municipal holding and the matter was heard by the Chairman of the Pourasava in presence of both parties. During hearing, Mojitan Bewa, the mother of the defendant and the plaintiff, appeared before the Chairman and stated that defendant No. 1 was staying in the suit property as a permissive possessor and her husband did not transfer the suit land by any oral gift in favour of defendant No. 1. After personal hearing and considering the materials on record, the Chairman by order dated 24.12.2003 stayed further collecting of holding tax from defendant No.1. Since the defendant was possessing the suit land the concerned Municipality opened municipal holding in the Municipality Office in the name of the defendant and collected Municipal Holding Tax from him.

It is settled principle of law that rent receipts or municipal tax receipts are not document of title and those do not create or extinguish any title to land. Accordingly, the mutation and payment of rent or tax by No. 1 did not create any title or interest in favour of the defendant in the suit land. In that view of the matter I am of the view that defendant No. 1 could not prove title to the suit land.

Now question arises whether the plaintiff got the suit land in his *saham* and whether defendant No. 1 was a permissive possessor in the suit land or he acquired title therein by way of adverse possession.

It is the case of the plaintiff that .0225 acre land including the suit land was inherited by his mother Majitan from Tofej Uddin and thereafter, she transferred .01 acre land to her grand-daughter Salma

vide heba-bil-ewaj deeds dated 19.12.1992 and 5.4.1993 [Exhibits-5(Ka) and 5(Kha) and she also transferred .0125 acre land to the plaintiff by sale deed dated 2.1.1977 [Exhibit-5(Ja)]. The plaintiff purchased said .01 acre land from Salma vide registered sale deed dated 28.7.1996 (Exhibit 5(Ja)]. The plaintiff specifically claimed that he got the suit land in his *saham* after purchase from Salma and his mother Mojitan. As P.W.1 Mojitan Bewa deposed that after death of her husband, she got her share from her husband and thereafter, she transferred the same to Salma. Thereafter, Salma transferred the same to Jalal. She also deposed, "এই জায়গা খরিদা জমিসহ আমার ছেলে জালাল মালিক।" Moreover, defendant No. 1 in his written statement stated that during the recent survey, the attestation Khatian was prepared in the name of his mother Mojitan Bewa and in the remarks column of the attestation Khatian he has been illegally shown as permissive possessor. Though said Attestation Khatian has not been exhibited but from the L.C.R it appears that said Khatian being No. 9018 was produced by the defendant before the trial Court from which it appears that .0175 acre land was recorded as "টিনসেড হাউজ" in the name of Mojitan Bewa and in the remarks column of the Khatian the name of defendant No. 1 has been recorded as permissive possessor since 1953. The defendant did not challenge said Khatian under any provision of the State Acquisition and Tenancy Act which has been admitted by defendant No. 1 in his cross-examination. Accordingly, I am of the view that after death of Tofej Uddin, Mojitan Bewa got .0225 acre land including .0175 acre suit land in her *saham* and then the plaintiff, after purchase from his mother and sister got it in his *saham* wherein defendant No. 1 is possessing. All other heirs of Tofej Uddin who are co-sharers of the plaintiff were impleaded as defendants in the suit but they did not contest the suit denying the claim of the plaintiff that he got the

suit land in his *saham*. Accordingly, I am of the view that the plaintiff successfully proved that he got the suit land in his *saham.*

It is further case of the plaintiff that defendant No. 1 is permissive possessor in the suit property since his father. To prove such claim the plaintiff as P.W. 2 deposed, "১ নং বিবাদী মায়ের সাথে এসে লালিত পালিত হয়। প্রথমে সে দাদা দাদির সাথে ছিল। ১ নং বিবাদী ১৯৬৪ সালে কাটনার পাড়ায় কলি শেখের কন্যাকে বিবাহ করে ঘর জামাই থাকে। তার শ্বশুর বাড়িতে দ্বন্দ্বের কারণে ১ নং বিবাদী তৌফিজ শেখের বাড়িতে চলে আসে। সেখানে থাকতে চায় এবং মায়ের অনুরোধে একই নালিশী দাগের দক্ষিণ-পশ্চিম অংশে ১টি মাটির ঘরে (টিনের ছাউনি যুক্ত) থাকতে দেয়। শর্ত থাকে যে, অন্যত্র বাড়ি করে চলে যাবে। ঐখানে ১ নং বিবাদী নির্মাণ কাজ করেনি।..... আমি কবলা ও ওয়ারিশ সূত্রে ১০.২৫ শতক জমি নালিশী দাগ হতে প্রাপ্ত হয়েছি। আমি আপোষে এই ১০.২৫ শতক সম্পত্তি দাগের দক্ষিণে প্রাপ্ত হয়ে বাড়ী ঘর নির্মাণ করে বসবাস করছি। আমার অংশের মধ্যে ১ নং বিবাদী ১.৭৫ শতক সম্পত্তিতে অনুমতি সূত্রে দখল করে আসছে। ১ নং বিবাদী তার ছেলের নামে ফুলবাড়ী মৌজায় ২৮১২, ১৩২৩ দাগে ০৬ শতক জমি খরিদ করে তথায় ৪ তলা বিল্ডিং করেছে। বিবাদীকে নালিশী জায়গা ত্যাগ করে তার নিজ জায়গায় চলে যেতে তাগাদা করি। কিন্তু ২০/১০/০৩ ইং তারিখ সে তা অস্বীকার করে।" In cross-examination he did not deviate from his above assertion. To support his case the plaintiff adduced Mojitan Bewa (i.e the mother of the plaintiff and defendant No. 1) as P.W.1 who deposed, "আব্দুল জব্বার কলি শেখের বাড়িতে থাকিত। পরে আমি নিয়ে আসিলে কিছু দিন আমার বাড়ীতে আসিয়া থাকে। পরে বাড়ি করিতে পারিলে সেখানে যাইবে থাকিবে। আব্দুল জব্বার দক্ষিণ-পূর্বে থাকিত। সে যে ঘরে থাকিত সে ঘর আমার স্বামী তৈরি করে। ..... স্বামী মারা যাওয়ার পর আমি স্বামীর অংশ পাই। সালমা ও শাহিনুর তাহাদের অংশ জালালের নিকট বিক্রয় করে। জালাল তাহার ভাই-বোনদের নিকট হতে খরিদ করিয়াছে। .....আমার ছেলে জব্বার অন্যত্র পাকা বাড়ি করেছে। জব্বার যে জায়গায় থাকে সে জায়গা আমার স্বামী মৌখিক দান করে নাই। এই জায়গা খরিদা জমিসহ আমার ছেলে জালাল মালিক। ইহা সত্য নহে যে, জব্বার গর্ত পূরণ করিয়া বাড়ী করিয়াছে। এই জায়গা জালালের এবং জালালেরই দরকার।" In cross-examination she did not state anything reversed to her statement made in her examination-in-chief. P.W.3 Akbar Ali deposed, "নালিশী স্থানের ঘরটি তফিজ উদ্দিন নির্মাণ করেন। এটাতে বেলচা, ঠেলাগাড়ী ইত্যাদি থাকত। ১ নং বিবাদী আব্দুল জব্বার। তিনি থাকেন বর্তমানে। তিনি স্বাধীনের ৩ বছর আগে নালিশী

দাগে আসেন।" In cross-examination he deposed, "জব্বার তার স্ত্রী নিয়ে আসেন। তার ছোট ১টি বাচ্চা ছিল। হেটে বেড়ানো শিশুকে নিয়ে আসেন। .....তার মা বলেন এখানে থাকুক পরে চলে যাবে। জায়গাটি তৌফিজের।"

From the testimonies of the P.Ws, as a whole, it reveals that after the death of the father of the defendant No. 1 his mother Mojiton got married with Tofej Uddin and he took shelter with his mother in the house of Tofej Uddin and on the request of his mother, Tofej Uddin allowed him to stay with his mother in the suit land by erecting a kucha house and after death of Tofej Uddin the plaintiff allowed defendant No.1 to stay therein as permissive possessor. It also reveals that before filing of the suit the defendant never claimed title to the suit land by way of oral gift from Tofej Uddin by denying the title of the plaintiff but during pendency of the suit the defendant obtained mutation from concerned A.C (Land) Office vide order dated 21.12.2003 [Exhibit- (Ka)] by false personification by staging himself as the son of Tofej Uddin. Moreover, the defendant-opposite party No. 1 did not do any positive over act in respect of the suit land which might indicate that such possession became adverse against the plaintiff or his father. It also reveals that the defendant never claimed title to the suit land by way of adverse possession. Even in the written statement defendant No. 1 did not assert title to the suit land by adverse possession.

It is settled principle of law that permissive possession, however long, cannot bestow title upon the possessor or his successors. It is fairly settled that when possession commences in a permissive character it does not become adverse unless by some positive overt act it is indicated that such possession became adverse either in the hands of the successors or even in the hands of the original permissive possessor.

[Ref: Abdus Samad vs. Deputy Commissioner and Custodian of the Vested Property & Non-Resident Property, 52 DLR (AD) 121].

It appears that the plaintiff by adducing sufficient evidence successfully proved that he is the owner of the suit premises wherein the defendant has been possessing as permissive possessor. The plaintiff filed the suit on 30.11.2003 when defendant no. 1 refused to vacate the suit property on 20.10.2003 by claiming title therein. The suit appears to be filed within statutory period of limitation and it is not barred by limitation. Since the plaintiff successfully able to prove his case, he is entitled to the decree as prayed for.

It appears that the trial Court upon considering the long possession of defendant No. 1 in the suit property came to finding that for humanitarian view Tofej Uddin gifted the suit property to the defendant. The trial Court assumed that between 1960 and 1970 Tofej Uddin adopted defendant No. 1 as son and due to love and affection, he gifted the suit property in favour of defendant No. 1. The trial Court also observed that the municipal holding text receipts, exhibits-Kha series, are proof of continuous possession of defendant No. 1 and such possession proved the oral gift and finally came to conclusion that the plaintiff could not prove title to and possession in the suit property and failed to prove that defendant No. 1 was permissive possessor therein. The Court of Appeal took the same view and affirmed the findings and decision of the trial Court and dismissed the appeal.

On perusal of the judgments of the courts below it appears that both the courts below upon misreading and non-consideration of the evidence and misconception of law concurrently came to erroneous findings and decisions and dismissed the suit and thus committed an

error of law resulting in an error in the decision occasioning failure of justice and as such, interference is called for by this Court.

In that view of the matter, I find merit in this Rule.

In the result, the Rule is made absolute however, without any order as to costs.

The judgments and decrees of the courts below are set aside.

The suit be decreed against defendant No.1 on contest and *ex parte* against the rest, however, without any order as to costs.

Defendant No. 1 is directed to vacate the suit premises within 30 (thirty) days from the date of receipt of the copy of this judgment by the trial Court. If the defendant fails to vacate the suit land as aforesaid, the plaintiff would be entitled to execute the decree through execution process of the Court.

Send down the L.C.R along with a copy of this judgment to the Courts below at once.

(Justice Md. Badruzzaman)