

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4615 OF 2016

In the matter of:

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

And

Mamtaz Begum being dead heir legal heirs- Suraiya Akter and others

... Petitioners

-Versus-

Lukman Hossain Bepary and others

... Opposite parties

Mr. Abdul Barek Chowdhury with

Mr. Md. Nawz Sharif, Advocates

... For the petitioners.

Mr. Dipayan Saha, with

Ms. Umme Kulchum, Advocates

....For the opposite party No.1.

Heard on 22.05.2025 and Judgment on 26.05.2025.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 30.08.2016 passed by the learned Additional District Judge, Chandpur in Title Appeal No.85 of 2013 and thereby reversing the judgment and decree dated 30.06.2013 passed by the learned Senior Assistant Judge, Hazigonj, Chandpur in Title Suit No.55 of 2010 decreeing the suit should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that petitioners as plaintiffs instituted above suit for declaration of title and recovery of possession of 8 decimal land

appertaining to Plot No.2505 of C. S. Khatian No.295 corresponding to S. A. Khatian No.400 alleging that above plot comprised a total area of 51 decimal land and 25 decimal land was recorded in C. S. Khatian No.2595 and remaining 26 decimal land was recorded in C. S. khatian No.492. Gobinda Bala Poddar had 8 ana share in above 25 decimal land of Plot No.2505 who died leaving only daughter Krishno Moni Poddar who in her turn died leaving two sons Rada Ramon Poddar and Modon Mohon Poddar as reversioner heirs. Above Rada Mohon Poddar entered into an agreement for sale of above 8 decimal land to the predecessor of the plaintiffs namely Moulana Mohammad Yousuf for Taka 500/- and on receipt on Taka 400/- delivered possession. After demise of above Rada Ramon Poddar his only son Krishno Ramon Poddar on receipt of remaining consideration money executed and registered a kobla deed on 02.05.1991. Above Moulana Yousuf as plaintiff instituted Title Suit No.56 of 2000 for above land which was dismissed on contest on 28.03.2003 and he subsequently filed Title Suit No.90 of 2002 and during pendency of above suit defendant Nos.1-4 dispossessed the plaintiffs from above land on 25.05.2007.

Defendant No.1, 3 and 4 contested above suit by filling a joint written statement alleging that disputed 8 decimal land of Plot No.2505 belonged to C. S. Khatian No.492 which was owned, held and possessed by Hari Narayan Poddar and Jogabondhu Poddar and their successive heirs, namely Brajolah, Shorabala, Jubaraj, Dulal, Makhon and Gonesh who transferred above 8 decimal land by several kabla

deeds to above defendants and they are in possession in above land. Plaintiff was never in possession of above 8 decimal land nor he was dispossessed by above defendants.

At trial plaintiff and defendants examined 3 witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of the defendants were marked as Exhibit Nos. "Ka" - "Dha" series.

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

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Title Appeal No.85 of 2013 to the District Judge, Chandpur which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed above suit.

Being aggrieved by above judgment and decree of the Court of appeal below above respondents as petitioners moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Abdul Barek Chowdhury, learned Advocate for the petitioners submits that admittedly 51 decimal land of Plot No.2505 was recorded in two C. S. Khatians and 25 decimal land of above Plot was rightly recorded in 8 anna share in the name of Gobinda Bala Poddar in C.S. Khatian No.295. The remaining 26 decimal land of above Plot was recorded in C. S. Khatian No.492 in the names of the predecessors of the defendants. Above Govindo Bala Poddar died leaving only daughter

Krisna Moni Podder who died leaving two sons namely Rada Ramon and Modon Mohan. Above Rada Ramon on amicable partition was in possession of disputed 8 decimal land and he contacted to sale above land to Moulana Mohammad Yousuf for Taka 500/- and on receipt on Taka 400/- delivered possession. After demise of above Rada Ramon his only son Krishno Lal Poddar on receipt of remaining Taka 100/- executed and registered kabla to above Moulana Yousuf on 02.05.1991. The plaintiffs previously filed Title Suit No.56 of 2000 for above land erroneously mentioning that Krishno Moni Poddar was adopted daughter of Gobinda Bala Poddar but in this suit on receipt of accurate genology of Gobinda Bala Poddar plaintiffs have rightly stated that Krishno Moni Poddar was biological daughter of Gobinda Bala Poddar. The plaintiffs also filed Title Suit No.90 of 2002 for above 8 decimal land claiming title by adverse possession and withdrew above suit after filing the instant suit. The plaintiffs have succeeded to prove their title and previous possession and subsequent dispossession from above 8 decimal land by consistent and mutually supportive evidence of three competent witnesses.

On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly decreed the suit but the learned Judge of the Court of Appeal below utterly failed to appreciate above materials on record properly and most illegally allowed above appeal, set aside the lawful judgment and

decree of the trial Court and dismissed the suit which is not tenable in law.

On the other hand Mr. Dipayan Saya, learned Advocate for opposite party No.1 submits that admittedly 43 decimal land of Plot No.2505 was acquired for construction of a road and only disputed 8 decimal land of above plot was left out. Plaintiffs' claim that Gobinda Bala Poddar had 8 ana share in above plot. As such according to the plaintiffs statement Gobinda Bala Poddar had title in 4 decimal land which was inherited by two brothers Rada Ramon and Modon Mohon equally. As such even if the claims of the plaintiffs are admitted then Rada Ramon predecessor of the plaintiff had title only in 2 decimal land of Plot No.2505. But the plaintiff has claimed title in total 8 decimal by purchase from Krisna Ramon Podder heir of Rada Ramon Poddar by registered kabla deed dated 02.05.1991 which is not tenable in law.

The plaintiffs have claimed to have obtained possession of above 8 decimal land pursuant to an agreement of sale with Rada Ramon Poddar but the plaintiffs could not produce any such bainapatra at trial. The plaintiffs filed several suits on conflicting claims to grab 8 decimal land.

On consideration of above facts and circumstances 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 Plot No.2505 comprised a total area of 51 decimal land and 25 decimal land was recorded in C. S. Khatian No.295 and Gobinda Bala Poddar predecessor of the plaintiffs had 8 ana share in above land and remaining 26 decimal land of above plot was recorded in C. S. Khatian No.492 in the names of the predecessors of the defendants namely Narayan Poddar and Jogomohon Poddar. It is also admitted that out of 51 decimal land of plot No.2505, 43 decimal was acquired for construction of a road and only disputed 8 decimal land remained in above plot. Plaintiffs have claimed above total 8 decimal land on the basis of purchase from the heir of Rada Ramon Poddar, namely Krisna Lal Poddar by registered kabla deed dated 02.05.1991 (Exhibit No.4).

In the plaint and in the evidence of PW1 plaintiffs claim that Gobinda Bala Poddar was owner of 8 ana share of above plot which was inherited equally by his two reversioner heirs namely Rada Ramon Poddar and Modon Mohon Poddar. As such according to above claim of the plaintiff their predecessor Rada Ramon Poddar had title in 02 decimal land and by purchase by kabla deed dated 02.05.1991 plaintiff could claim title only 2 decimal land. There is no legal basis of claim of title of the plaintiff in 8 decimal land.

As far as genology of Gobinda Bala is concerned in Title Suit No.56 of 2000 the plaintiffs claimed that Krishno Moni Poddar was an

adopted daughter of Gobinda Bala Poddar which is further proved from the judgment of Title Suit 56 of 2000 (Exhibit No. "Tha-2"). In this suit plaintiffs claim that above Krishna Moni Poddar was the only biological daughter of Gobinda Bala Poddar. In view of above conflicting claims of the plaintiff as to the status of Krishno Moti Poddar the plaintiff should have adduced legal evidence at trial to substantiate above genealogy of Gobinda Bala Poddar. But the plaintiffs did not adduce any evidence oral or documentary to substantiate their claim that Krishno Moni Poddar was the biological daughter of Gobinda Bala Poddar and she died leaving two sons Rada Ramon and Modon Mohon and Rada Ramon died leaving only son Krishno Lal Poddar.

In the plaint conflicting claims have been made as to the entry of Moulana Yusuf in above land. At paragraph No.5 it has been stated that Rada Ramon Poddar pursuant to an agreement to sale inducted Maulana Yousuf into possession of above land. But at Paragraph No.8 it has been stated that the plaintiffs are in possession in above land since execution and registration of the sale deed by Krishno Lal Poddar on 02.05.1991. While giving evidence as PW1 plaintiff No.7 has claimed that their predecessor Moulana Mohammad Yousuf was inducted into possession on the basis of an agreement of sale. The plaintiffs could not produce any agreement of sale to show that pursuant to above agreement possession of above land was delivered. Nor the plaintiff could mention the exact date of their entry into possession of above land.

In a suit for declaration of title and recovery of possession a plaintiff must prove besides good title his previous possession and subsequent dispossession by the defendants and further prove that the suit has been filed within the statutory period of limitation of 12 years.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of above materials on record rightly allowed the appeal and set aside the flawed judgment and decree of the trial court and dismissed the suit which calls for no interference.

I am unable to find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER