

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.803 of 2018.**

In the matter of:

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

And

Md. Jalal Sheikh and others

**...Petitioners**

-Versus-

Md. Basutullah Mia being dead  
his legal heirs:

1(a) Most. Saleha Begum and  
others

**...opposite parties**

Mr. Golam Rabbani, Advocate

**...For the petitioners**

Mr. Md. Abdullah Al Mamun,  
Advocate

**..For the opposite parties**

**Heard on: 15.12.2024, 17.02.2025 & 18.11.2025.**

**Judgment on: 19.11.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.11.2017 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kurigram in Other Appeal No.153 of 2013 dismissing the appeal thereby affirming the judgment and decree dated 24.10.2013 passed by the learned Senior Assistant Judge, Court of Senior Assistant Judge, Ulipur, Kurigram in Other Class Suit No.27 of 2009 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.

Facts in short are that the opposite parties No.1-3 as plaintiffs instituted above suit for declaration of title for 65 decimal land as described in the schedule to the plaint alleging that above property belonged to Bahar Sheikh and C.S. khatian No.1494 was rightly prepared. Above Bahar Sheikh sold above land to plaintiff No.1 and delivered possession. But before execution and registration of sale deed above Bahar Sheikh died. During S.A. record plaintiff NO.1 was sick and above khatian was erroneously recorded in the names of two sons of above Bahar Sheikh namely Kalu Sheikh and Bashir Sheikh. But they did not get possession of above land. Above Bahar Sheikh having not paid revenue of above land the Government of East Pakistan filed Certificate Case No.39710 of 60-61 and above property was sold in auction which was purchased by plaintiff No.1 and above auction was made effective on 27.11.1963 and the plaintiff got possession on 14.02.1964. On the basis of above erroneous S.A.

khatian defendants denied plaintiff's title in above property.

Defendant Nos.1-3 contested above suit by filing a joint written statement wherein they have denied all claims and allegations made in the plaint and alleged that Bahar Sheikh was the rightful owner and possession of 65 decimal land and in his name C.S. khatian No.1494 was rightly prepared. Above Bahar Sheikh died leaving two sons Kalu Sheikh and Bashir Sheikh who inherited above property and died leaving the plaintiffs as their successive heirs. Above property was not sold in auction and all documents of the plaintiff as to above certificate of sale and delivery of possession are forged, concocted and ineffective documents.

At trial plaintiff examined three witnesses and defendant examined two. Documents of the plaintiff were marked as Exhibit Nos.1-11 and those of the defendants were marked as Exhibit No.Ka-Neo.

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

Being aggrieved by above judgment and decree of the trial court above petitioner as appellant preferred Other Appeal No.153 of 2013 to the District Judge which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above appellants moved to this court and obtained this rule.

Mr. Golam Rabbani learned Advocate for the petitioner submits that the court of appeal below did not pass the impugned judgment and decree in accordance with the provision of order 41 Rule 31 of the Code of Civil Procedure. Instead of an independent assessment of the evidence on record and arrive at his own decision the learned the Judge of the court of appeal below has disposed of above appeal in a slip sod manner by a non speaking judgment and order which is not tenable in law. The learned Advocate further submits that the learned Judge of the trial court rightly mentioned at paragraph No.16 of his judgment that the stamp of the sale certificate (Exhibit No.1)

of the plaintiff was purchased on 14.12.1964 but the certificate of sale prepared with above stamp was signed on 20.12.1963. Above findings of the learned Judge of the trial court was enough for dismissal the suit but the learned Judge most illegally shifted the onus to prove the correctness and effectiveness of above sale certificate on the defendants and decreed above suit since the defendants did not call for the original record of above certificate case which is not tenable in law.

Mr. Md. Abdullah Al Mamun learned Advocate for the opposite party submits that on consideration of facts and circumstances of the case and materials on record the learned Judge of the court of appeal below rightly found that the judgment and decree of the trial court was based on correct appreciation of materials on record and accordingly dismissed the appeal and affirmed the judgment and decree of the trial court 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 above 65 decimal land belonged to Bahar Sheikh and in his name C.S. khatian No.1494 was rightly prepared. It is also admitted that above 65 decimal land was recorded in S.A. khatian No.153 in the name of two sons of above Bahar Sheikh namely Kalu Sheikh and Bashir Sheikh. Plaintiff has claimed that Bahar Sheikh soled above land to plaintiff No.1 and delivered possession but before execution and registration of a kobla deed Bahar Sheikh died. But the plaintiff did not make any endeavor to prove above claim by legal evidence.

The plaintiff has on the contrary claimed to have purchased above property in auction vide Certificate Case No.39710/60-61 due to non-payment rent by Bahar Sheikh. Since the S.A. khatian was prepared in the name of Kalu sheikh and Bashir Sheikh it is not understandable as to how the question of payment or non-payment of rent by Bahar Sheikh to the Government arise. If a C.S. recorded tenant failed to pay rent of the land then Zamindar had a right to file a rent suit for recovery of outstanding rent. The Government of East Pakistan was entitled to file a certificate case for recovery of outstanding

rents only against the S.A. recorded tenants. The learned Judge of the trial court held at paragraph No.16 of the judgment that the date of purchase of the stamp of above sale certificate of the plaintiff (Exhibit No.1) was 14.12.1964 but the certificate officer signed above certificate of sale on 20.12.1963 which means that the certificate of sale was prepared before purchase of the stamp. The learned Advocate for the petitioner submits that although above sale certificate was issued by the certificate officer of Kurigram and the seal of certificate officer of Rangpur was stamped on above sale certificate.

It turns out that the learned Judge of the trial court illegally shifted the burden upon the defendants to prove that above property was not lawfully sold in auction. But in a civil suit the initial onus always lies with the plaintiff which shifts upon the defendant only after successful discharge of initial onus by the plaintiff.

It appears from the impugned judgment and decree of the court of appeal that the learned Judge did not make an independent assessment of the evidence on record nor he arrived at his own findings on the basis of above assessment. The

learned Judge of the court of appeal below has disposed of above appeal in a slip sod manner by a non speaking judgment and order. The impugned judgment and decree of the court of appeal below fails to fulfill the requirement of a judgment of a court of appeal as has been provided in order 41 Rule 31 of the Code of Civil Procedure and above judgment and decree of the court of appeal cannot be designated as a lawful judgment of a court of appeal.

On consideration of above facts and circumstances of the case and evidence on record I hold that the ends of justice will be met if the impugned judgment and decree of the court of appeal below is set aside and above appeal is remanded to the court of appeal below for rehearing after giving both parties an opportunity to amend their respective pleadings and adduce further evidence, if any.

In above view of the materials on record I find substance in this civil revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.



The impugned judgment and decree dated 12.11.2017 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kurigram in Other Appeal No.153 of 2013 is set aside and above appeal is remanded to the court of appeal below for rehearing after giving both parties an opportunity to amend their respective pleadings and adduce further evidence, if any.

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

Md. Kamrul Islam  
Assistant Bench Officer