

**Present:**

**Mr. Justice Md. Salim**

**CIVIL REVISION NO.3594 OF 2008.**

Abdul Sattar Md. Ansar Ali, being dead,  
his heirs:

Faridunnesa and others

..... Defendant-Petitioners.

-VERSUS-

Shamsuzzaman Khondaker and another

..... Plaintiff-Opposite parties.

Dr. Kazi Aktar Hamid, Senior advocate  
with

Mr. Khursida Akter, advocate

-----For the petitioners.

Mr. Rais Uddin Ahmed, Senior Advocate  
With Mr. Mohammad Mostafezur Rahman  
Miah

For the plaintiff-opposite parties.

**Heard on 27.01.2025, 10.02.2025,  
24.02.2025, 13.05.2025, 18.05.2025,  
21.05.2025 and 15.07.2025**

**Judgment on 15.07.2025.**

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 31.07.2008 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Narayanganj in Title Appeal No.91 of 2007 decreeing the

suit by allowing the appeal and setting aside the Judgment and decree dated 09.05.2007 passed by the learned Senior Assistant Judge, 4<sup>th</sup> Court, Narayanganj in Title Suit No.152 of 2003 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts, in brief, for the disposal of Rule are that the opposite party No.1 herein as plaintiff instituted the Title Suit No.152 of 2003 before the Senior Assistant Judge, 4<sup>th</sup> Court, Narayanganj for declaration of title, and the R. S. Khatian is prepared inaccurately regarding the suit land, contending inter alia, that, the suit property originally belonged to C. S recorded tannent Ibrahim Khondaker. He died, leaving three (3) sons, namely, Abdul Aziz Khondaker, Md. Hossain Khondaker and Fazlur Rahman Khondaker and three (3) daughters named Bashirun Nessa, Amirun Nessa, and Najimun Nessa as his heirs and successors. They, being in the ownership and possession of the land of the C.S. Khatian No. 274 by way of inheritance, amicably partitioned the land amongst them. Shamsuddin Khandoker, by way of inheritance from his father and by amicable family partition with his brothers and sisters, became the exclusive owner and possessor of 30 decimals of land in the western part of the plot No. 836. He sold out 30 decimals of land by a Sab-Kabala deed No. 3503 dated 22.04.1967 AD to

Abdur Rahman Khan and delivered possession. Thus, Abdur Rahman Khan, being in the ownership and possession of 30 decimals of land in the western part of the suit plot No.836, which was sold out vide the Sab-Kabala deed No.6248 dated 26.08.1967 to the plaintiff Shamsuzaman Khandoker and Tofazzal Khandoker and delivered possession. Tofazzal Hossain Khandoker and the plaintiff Shamsuzzaman Khandoker, by way of amicable partition of that 30 decimals of land, each got 15 decimals; Abdul Aziz Khandoker, being in the ownership and possession of 20 decimals of land on the eastern part of the suit plot No. 836, died, leaving one son Awlad Hossain Khondaker and two daughters, namely Momena Khatun and Shahara Khatun. They being in the ownership and possession of that 20 decimals of land on the eastern portion of the plot No. 836 sold out the same to Abdus Sattar Bhuiyan by a Sab-Kabala deed No. 1288 and delivered possession. However, in the said deed, 34 decimals of land were shown to have been sold, yet Abdus Sattar Bhuiyan got possession of only 20 decimals of land. Abdus Sattar Bhuiyan sold out 19 decimals of land, out of 20 decimals of land in suit plot No. 816, to the plaintiff Shamsuzzaman Khondaker by a deed dated 31.12.2002. Thus, the plaintiff became the owner of 34 decimals of land in the Suit Plot No.836, and he had been possessing the same. The total

quantity of land in plot No. 836 is 50 decimals, which was divided into two plots in two separate Khatians during the R.S. operation. The two plots, numbered 660 and 569, have an area of 34 decimals each. The plot No. 660 has been recorded in the RS Khatian No. 414, and the suit plot No. 659 has been recorded in the R. S. Khatian No. 134. Therefore, the suit plot No. 569 has been erroneously recorded in R.S. Khatian No. 134, in the name of defendant No. 1, Abdus Sattar Bhalyan.

The defendant No.1 Abdus Sattar Bhuiyan, the predecessor of the present petitioners contested the suit by filing a written statement denying the all the material allegation made in the plaint contended inter alia, that after the death of Ibrahim Khondaker, an amicable family partition took place amongst his heirs and by way of that family partition, Abdul Aziz Khondaker got 34 decimals of land on the eastern part of the suit plot No. 836 out of 50 decimals, and Mohammad Hossain Khondaker got the rest 16 decimals on the western part of the plot. The 34 decimals of land were correctly recorded and finally published in the S.A. Khatian No. 292. Abdul Aziz Khondaker died, leaving one son named Awlad Hossain Khondaker and two daughters, Momela and Sahara Khatun. The heirs of Abdul Aziz Khondaker sold out 34 decimals of land to the defendant No. 1 (predecessor of the present petitioners)

by a Sab-Kabala deed No. 1288 dated 06.03.69 and delivered possession. Accordingly, a separate R.S. Kahtian No. 134 was prepared in his name and finally published correctly. A separate R.S. plot, No. 359, was also created for the 34 decimals of land. For the rest of the suit land, the C.S and S.A plot No. 836, a separate plot No. 660 recorded in the R.S Khatian No. 414 in the name of Tofazzal Hossain and others, the heirs of Mohammad Hossain Khondaker in Ejmali. This R.S. Khatian No. 414, prepared in Ejmali in the name of the heirs of Mohammad Hossain Khondaker, proves that the Kabala No. 3503 dated 22.04.67 and the Kabala No. 6248 dated 26.08.67 of the plaintiff are nothing but paper transactions, and the recipients of those Kabalas did not get possession of the suit property. The plaintiff's claim that the suit property was wrongly recorded in R.S. Khatian No. 134 is untrue.

The learned Senior Assistant Judge, 4<sup>th</sup> Court, Narayangonj framed the necessary issues to determine the dispute among the parties.

Subsequently, the learned Senior Assistant Judge, 4<sup>th</sup> Court, Narayangonj, by the Judgment and decree dated 09.05.2007, dismissed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiff, as appellant, preferred Title

Appeal No.91 of 2007 before the District Judge, Narayangonj. Eventually, the learned Joint District Judge, 1<sup>st</sup> Court, Narayangonj, by the Judgment and decree dated 31.07.2008, decreed the suit by allowing the appeal and thereby reversed those passed by the trial Court below.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants as petitioners, preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this Court and obtained the instant Rule with an order of stay extended time to time.

Dr. Kazi Aktar Hamid, the learned Senior advocate appearing on behalf of the defendant-petitioners, taking me through the judgments, evidence, and other materials on record, submits that the suit is barred by limitation, but the appellate Court below without considering the same erroneously allowed the appeal after setting aside the Judgment and decree passed by the trial Court. He also submits that the suit is defect of parties, but the appellate Court below as the last court of fact did not at all consider the evidence on record decreed the suit thereby committed an error of law resulted in an error in the decision occasioning failure of justice in allowing the appeal.

Mr. Rais Uddin Ahmed, the learned Senior advocate appearing on behalf of the opposite parties, opposes the

contention so made by the learned advocate for the petitioner and submits that the appellate Court below, after assessing all the evidence on record have very rightly and justifiedly passed the impugned Judgment and decree and as such the Rule is liable to be discharged.

I have anxiously considered the submissions advanced by the learned advocate for both parties, perused the Judgment of the courts below, and oral and documentary evidence on the records. It appears that the opposite party No.1, herein as plaintiff, instituted the instant suit for declaration of title, and the R. S. Khatian is prepared inaccurately regarding the suit land. The specific case of the defendant is that the R. S. Khatian has been prepared correctly based on S. A. Khatian, that the suit is barred by limitation, defect of parties, and the plaintiff has no title and possession of the suit land.

In order to prove the case, the plaintiff side examined as many as 3 (three) witnesses and exhibited the material evidence; on the contrary, the defendant side also examined 3(three) witnesses to prove the case and exhibited the material evidence.

I have anxiously scrutinized each deposition and cross-examination of the witnesses. It appears that the trial Court, considering the above evidence on record, dismissed the suit

with the observation that the plaintiff has neither title nor possession over the suit land, the suit is barred by limitation and defect of parties.

It is the settled proposition of law that against the wrong record of rights, the person whose interest is affected is entitled to file suit within six years from the date of final publication or the date of knowledge of such wrong records of rights as per provision so enumerated in Article 120 of the limitation Act. This view gets support from the case of the Government of Bangladesh, represented by the Additional Deputy Commissioner Vs. AKM Abdul Hye and others reported in 56 D L R (AD) 53 wherein their lordships of the Appellate Division held that:--

“The law is now settled that against the wrong record of rights the person whose interest is affected by such wrong recording need not file suit questioning legality of the record of rights so prepared and finally published within 6 years from said date or from the date of knowledge of such wrong record of rights, but he is required to file the suit seeking declaration of title within six years from the date the person in whose name record has been wrongly prepared and finally published rises claim denying his claim on the basis of wrong record. But if the entry in the



record of rights is made the cause of action on has to file the suit within 6 (six) years from the date of final publication of the record of rights and not from the date of the certificate of the final publication. In view of the said position of law the learned Counsel for the appellant has not taken exception to the finding of the High Court Division that the suit was not barred by limitation.”

In the instant case, it appears from the record that the defendant-petitioner became the owner of 34 decimals of land vide kabala dated 06.03.1969. Accordingly, a separate R.S. khatian No. 134 plot, being No.359, was created for that 34 decimals of land; on the contrary, the plaintiff claimed that he purchased 19 decimals out of 20 decimals of the suit land from the defendant petitioner vide kabala dated 13.02.2002 because by a Sab-Kabala deed No.1288, 34 decimals of land were shown to have been sold, yet Abdus Sattar Bhuiyan got possession of only 20 decimals of land. Rather, the plaintiff admitted in the cross-examination that the defendant handed over to him his original purchased deed No. 1287 dated 06.03.1969, 15/16 years ago. Moreover, upon reciting the deed dated 13.02.2002, it is found that there is a Kalmi-Naksha (hand-made sketch) regarding the land transferred to the plaintiff and the defendant's possession of the rest of the land,

with the boundary of that land mentioned. It is also noted that the R. S. Khatian was prepared in the name of the defendant. Therefore, it is presumed that the plaintiff has knowledge about the R. S. Khatian No. 135 plot, being No. 359, which was prepared in the name of the defendant-petitioner 15 to 16 years ago, prior to the filing of the instant suit.

Learned trial Judge kept in mind in view of the above provision of law and evidence on record held that:---

“উল্লেখিত দলিলাদি ও সাক্ষ্য পর্যালোচনায় ইহা প্রমানিত হয় আরজি নালিশী তফসিল বর্ণিত ভূমি ৩৪ শতাংশ মধ্যে শুধুমাত্র ১৯ শতাংশ ভূমিতেই বাদীর স্বত্ব ও দখল বিদ্যমান আছে। এমতাবস্থায় ইহা প্রমানিত হয় নালিশী দাবীকৃত সমুদয় ভূমিতে বাদীর স্বত্ব ও দখল বিদ্যমান নাই।”

Further, analyzing the evidence on record, it appears that the trial court justifiedly found that the plaintiff failed to prove his possession of the suit land. Therefore, without making a further prayer for recovery of khas possession of the suit land, the suit is not maintainable.

This view gets support from the case of Bhashani Mondal's death, his heir Nanda Rani Mondal, and another Vs. Md. Abdus Sukur and others reported in 18 BLT (AD) 497, where their Lordships of the Appellate Division held that-

*"In view of the fact that deed dated 14.05.1969 was rightly held to be a forged one and not binding upon*

*the plaintiff of Title Suit No. 51 of 1997, Bhashani Mondal and that the court of appeal below rightly held that the plaintiff's possession was not proved, whereas, the defendant Bhashani Mondal's possession was already proved in the earlier Suit No. 51 of 1997 and in the present suit, a suit for declaration simplicitor is not maintainable."*

Notably, the appellate Court below, considering the evidence on record, thought that there were certain weaknesses in the defence version of the case, but the fact remains that if the plaintiff wants a decree, he must stand on his own legs. It appears that the appellate Court below, while disposing of the matter, did not thoroughly consider the oral and documentary evidence and came to the wrong finding that the trial court had committed an error in dismissing the suit. Further, the learned appellate Judge misdirected himself in his total approach to the question of limitation and cause of action, thus committing a substantial error in decision on the point of the limitation.

Considering the above facts, circumstances of the case, and discussions made herein above, I am of the firm view that the appellate Court below did not correctly appreciate and construe the documents and materials on record in accordance with the law in allowing the appeal, setting aside the Judgment of the trial Court below. Moreover, the appellate Court did not

advert to the reasoning of the trial court below, and this hit the root of the merit of the suit. Therefore, it is not a proper judgment of reversal and has occasioned a failure of justice. Consequently, I find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned Judgment and decree dated 31.07.2008 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Narayanganj in Title Appeal No.91 of 2007 is set aside, and the Judgment and decree dated 09.05.2007 passed by the learned Senior Assistant Judge, 4<sup>th</sup> Court, Narayanganj in Title Suit No.152 of 2003 is hereby affirmed.

Communicate the Judgment and send down Lower Court Records at once.

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**(Md. Salim, J).**