In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:
Mr. Justice Md. Lutfor Rahman

Civil Revision No. 3853 of 2009

In the matter of:

Deputy Commissioner, Naogaon.
.... Plaintiff-Appellant-Petitioner.

-VERSUS-

Wazed Ali Mondal being dead his legal heirs Razia Bewa and others.
....Defendants-Respondents-Opposite parties.

Mr. A.K.M. Ehsanur Rahman, D.A.G.

Mr. Md. Ashraful Haque,A.A.G.

.... for the State.

Mr. Md. Tasak Kharul Islam, Advocate

...for the defendants-respondents-opposite parties.

Heard on 19.10.2025, 20.10.2025, 21.10.2025, and judgment on: 13.11.2025.

Md. Lutfor Rahman, J.:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 01.11.2007 (Decree signed on 08.11.2007) passed by the learned Additional District Judge, 1st Court Naogaon in Title Appeal No. 201 of 2005 dismissing the appeal and thereby affirming the Judgment and Decree dated 29.09.2005 (Decree signed on

05.10.2005) passed by the learned Senior Assistant Judge, 1st Court, Naogaon in Other Class Suit No. 94 of 2004 dismissing 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.

The facts relevant for the purpose of disposal of the rule are that the petitioner as plaintiff filed Title Suit No.94 of 2004 before the learned Senior Assistant Judge, 1st Court, Naogaon for declaration of title to the suit land described in the schedule of the plaint.

The case of the plaintiff in brief, is that the suit is for declaration of title to the suit land stated in the schedule of the plaint measuring 57 decimals of land. The suit land comprises two C.S. plots namely 1159 and 1229 having 23 decimals and 34 decimals respectively. That the suit land was recorded in C.S. Khatian no. 2 in the name of the Emperor of India and subsequently S.A. Khatian was prepared accordingly in the name of the Government of East Pakistan. In the remark column of the C.S. Khatian of the suit land it was mentioned as “used by the public”/ “for public use”. The local people have been using the suit land as matial (tank) for seasoning jute and for irrigation

since before the preparation of the C.S. Khatian. During the continuance of the public enjoyment of the suit land as matial, suddenly on 06-04-2002 defendants claimed the suit land to be of their own by way of erroneous R.S. record in their names and they forbade the people to use the suit land for irrigation and for seasoning jute. This is why plaintiff's title to the suit land has been cloud-cast. Defendants have no title and possession in the suit land. Thus the Government as plaintiff instituted a suit for title being Other Class Suit no. 94 of 2004 on 02.05.2004 against defendants-respondents-opposite parties.

On the other hand, defendant Nos.1-3 contested the suit by filing a written statement denying material averments made in the plaint and contending inter alia that the suit is not maintainable and it is barred by law of limitation, that government has neither any title, nor any possession etc. The fact remains that the suit land originally belonged to Bolihar Raj Estate. That on 3rd Chaitra/1351, Bengali year, defendant’s father Basir Uddin took settlement of the suit land from the zaminder by a **Hukumnama** and had been paying rents to the zaminder. At the time of S.A. survey Bosir Uddin being ill and defendants being

minor S.A. Khatian of the suit land was erroneously prepared in the name of government inadvertently. Bosir Uddin died leaving behind the defendants as his heirs. Thereafter R.S. khatian of the suit land was prepared in the name of the defendants on the basis of their possession and documents of title. Defendants have been in possession of the suit land by constructing dwelling house and four shops, planting trees and farming fish. Moreover, they had been paying taxes. That the defendants had filed Other Class Suit no. 158 of 2003 and 198 of 2001 against some persons who persuaded government to file this false suit and accordingly the defendants prayed for dismissing the suit.

The trial court dismissed the suit by finding and holding that the plaintiff failed to prove title and possession of the government over the suit land.

The trial court, moreover, found that both the parties failed to prove their title to suit land but the defendants have been able to prove their possession in the suit land. Since the plaintiff failed to prove their title and possession in the suit land, the trial court dismissed the suit by judgment and decree dated 29.09.2005.

Being aggrieved, the plaintiff i.e. the government preferred Title Appeal being no. 201 of 2005 before the District Judge, Noagaon and the appeal was heard by the Additional District Judge, 1st Court, Noagoan and was dismissed by judgment and decree dated 01.11.2007. Both the courts below concurrently found that the plaintiff-petitioner miserably failed to prove its title to and possession in the suit land and accordingly dismissed the suit as well as the appeal. Moreover, the appellate court below further observed that the plaintiff petitioner filed the suit for declaration of title to the suit land without any application for recovery of Khas possession. Since the plaintiff petitioner failed to prove the possession of the government in the suit land, a suit for mere declaration of title is not maintainable.

Being aggrieved the plaintiff has moved this court and obtained the instant Rule.

Mr. A.K.M. Ehsanur Rahman, the learned Deputy Attorney General for the State submits that the suit land measuring 57 decimals belongs to C.S. khatian no. 2 which was prepared in the name of the Emperor of India and S.A. khatian was prepared in the name of the Government of East Pakistan. In the remark

column of the C.S. khatian of the suit land, it was mentioned as ''used by the public''. The local people have been using the suit land as matial for seasoning jute and for irrigation since before the preparation of the C.S. khatian. During the continuance of the public enjoyment of the suit land as matial, suddenly on 06-04-2002, defendants claimed the suit land to be of their own and they forbade the people to use the suit land as matial for irrigation and for seasoning jute. This is why plaintiff's title to the suit land has been cloud-cast. Defendants have no title and possession in the suit land. On these, among other counts, the learned Deputy Attorney General for the petitioner submits that the Rule should be made absolute.

The Rule has been opposed by the opposite parties by filing a counter affidavit.

Mr. Md. Tasak Kharul Islam, the learned advocate appearing for the opposite parties submits that the suit land originally belonged to Bolihar Raj Estate and on 3rd Chaitra/1351 Bengali year, defendant's father Basir Uddin took settlement of the suit land from the zaminder by a **Hukumnama** (Exhibit-Ga). Bosir Uddin had been paying rents to the zaminder. At the time

of operation of S.A. survey, Bosir Uddin being ill and defendants being minor S.A. khatian of the suit land was erroneously prepared in the name of government. Bosir Uddin died leaving behind the defendants as his heirs. Thereafter R.S. khatian of the suit land was prepared in the name of the defendants on the basis of their possession and documents of title. Defendants have been in possession of the suit land by constructing dwelling house and four shops, planting trees and farming fish. Moreover, they had been paying land taxes to the government for the period from 1379 to 1412 Bangali year corresponding to 1972 to 2005 AD. Learned advocate further submits that government had accepted land development taxes for a long period (34 years) from the defendants-opposite-parties, hence, the government can not challenge the title of the defendants-opposite-parties as being barred by the Principle of law of estoppel, laid down under Section 115 of the Evidence Act, 1872.

The learned Advocate cited a decision of the High Court Division **in the case of Osimuddin-VS-Bangladesh and others** reported in **1 BLC (1996) page 375** in which it was held that-***"As the ADC (Rev) directed the payment of rent of the suit land by the***

defendant and the Government having accepted the rent from the defendant for which the Government was estopped from challenging the title of the defendant.”

Thus a person cannot deny something he previously said or did if another person relied on it. In the instant case the Government had accepted the land development tax from the defendants-opposite parties for the period from 1379 to 1412 Bengali year corresponding to 1972 to 2005 AD, that is for a long period of time and it has stopped itself from challenging the title of the defendant-opposite parties.

Learned counsel submits that the Union land Assistant Officer, Mr. Md. Shamim Ehsan in his cross-examination as P.W.1 admits that he had visited the suit land and found the defendants-opposite parties to be in possession of the suit land by constructing dwelling house and shops thereon. He further admits that Government took tax (khajna) from the defendants as per R.S. record. It transpires from the deposition of the P.W.1 that the defendants have been in possession of the suit land. Since the plaintiff has failed to prove possession of the government in the suit land, the suit for declaration simpliciter

without a prayer for consequential relief is hit by proviso to Section 42 of the Specific Relief Act, 1877 and as such the suit is not maintainable. The learned Advocate cited a decision **in the case of Kabir Ahmed and others –Vs- Manohar Ali and others reported in 76 DLR(AD)99** wherein it was held by the Hon'ble Apex Court that

"Since the plaintiffs have failed to prove their possession in the suit land, the suit for declaration simpliciter without a prayer for consequential relief is hit by proviso to section 42 of the Act and, as such, the suit is not maintainable."

Learned advocate for the opposite parties also submits that the learned trial court as well as the learned appellate court below rightly dismissed the suit as well as the appeal because the suit is for declaration of title but the plaintiff did not exhibit any C.S. or S.A. Khatian before the learned trial Court for the establishment of title of the government to the suit land.

Learned counsel submits that the plaintiff-petitioner claims that C.S. Khatian no. 2 pertaining to the suit land was prepared in the name the Emperor of India and S.A. Khatian was prepared in the name of the government of East Pakistan. Plaintiff further claims that in the remark column of the C.S. khatian of the suit

land it was mentioned ''used by the public''. However, neither of the parties has produced the C.S. khatian during trial before the court, yet learned trial court called for the concerned volume book to glean the facts for ends of justice. It requires mentioning here that the suit land comprises two C.S. plots, namely 1159 and 1229. The land of C.S. plot No. 1159 is 23 decimals and the land of C.S. plot No. 1229 is 34 decimals. On perusal of the volume book, it was found by the trial court that the total area of the C.S. plot no 1229 is 34 decimals of which 8 decimals pertain to C.S. khatian no. 2 and the rest 26 decimals pertain to three C.S. khatians, namely 121, 256 and 258 but those 3 (three) Khatians have not been brought into the hotchpot of the plaint of the suit by the plaintiff-petitioner. The plaintiff has brought only one C.S. Khatian, namely C.S. Khatian no.2 into the hotchpot of the plaint. Thus plaintiff has failed to bring full acquaintance of the suit land into the hotchpot of the plaint. Moreover, the trial court did not find any such comment or remark in the remark column of the volume book that the suit land had been used by the public or for public use. On the other hand, the left margin of the pages of C.S. khatian no. 2 preserved in the volume book being partially torn, it

is not possible to decide as to whether the C.S. plot no 1159 pertains to C.S. khatian 2 or not.

Learned counsel submits that it is admitted by the plaintiff while being examined in cross as pw-1 that there is a house and shops of the defendant and defendant paid land rent (khajna) to the Government since 1379 to 1412 Bengali year corresponding to 1972 to 2005 AD. The government having accepted the land tax from the defendant-opposite parties for the period of 1379 to 1412 Bengoli year corresponding to 1972 to 2005 AD, it has stopped the government from challenging the title of the defendants-opposite parties. The R.S. record was prepared in the name of the defendants and thereafter the plaintiff had received payment of land rent of the suit land from the defendants for long. In doing so government has recognized the title and interest of the defendant-opposite parties in respect of the suit land.

Learned counsel finally submits that learned trial court on the observations that the plaintiff failed to prove title to and possession in the suit land in favour of the government, dismissed the suit. The appellate court also dismissed the appeal

on concurrent findings which call for no interference by this court and the Rule is liable to be discharged.

I have heard learned Deputy Attorney General for the petitioner and learned counsel for the opposite parties at length. I have also perused the pleadings along with the documents annexed therein and also the judgments and decree passed by the courts below with concurrent findings of facts and circumstances.

It appears to me that both the courts below concurrently found that defendants opposites parties have been in long possession of the suit land by constructing dwelling house and four shops, planting trees and farming fish and they had been paying land taxes to the Government for the period from 1379 to 1412 Bengali year corresponding to 1972 to 2005 AD. As the government had accepted land taxes for a long period (34 years) from the defendants-opposite-parties, the government can not challenge the title of the defendants-opposite-parties as being barred by the principle of law of estoppel, under section 115 of the Evidence Act, 1872. Thus a person cannot deny something he previously said or did if another person relied on it. In the case of

Osimuddin-VS-Bangladesh and others reported in ***1 BLC 1996 page 375*** it was held that ***"As the ADC (Rev) directed the payment of rent of the suit land by the defendant and the Government having accepted the rent from the defendant for which the Government was estopped from challenging the title of the defendant."*** In the instant case, the government had accepted the land development tax from the defendants-opposite parties for a long period of time, thus it has stopped itself from challenging the title of the defendant-opposite parties.

I find that both the courts below observed with concurrent findings that the plaintiff miserably failed to prove title to and possession in the suit land in favour of the government. The Union land Assistant Officer, Mr. Md. Shamim Ehsan while being cross examined as P.W.1 admits that he had visited the suit land and found the defendants-opposite parties to be in possession of the suit land by constructing dwelling house and shops thereon. He further admits that government took tax (khajna) from the defendants as per R.S. record. It transpires from the deposition of the P.W.1 that the defendants have been in possession of the suit land. Since the plaintiff has failed to prove title to and possession

in the suit land in favour of the government, government is not entitled to any decree for declaration of title. Moreover, the suit for declaration simpliciter without a prayer for consequential relief is hit by proviso to Section 42 of the Specific Relief Act, 1877. The trial court, however, held that since government could not establish its title to the suit land, it is the sufficient reason to dismiss the suit for declaration of title, question of maintainability of the suit for not seeking any further relief for recovery of possession is immaterial and not a count for the government.

The learned trial court as well as the learned appellate court below rightly dismissed the suit as well as the appeal because the suit is for declaration of title but the plaintiff did not exhibit any C.S. or S.A. Khatian before the learned trial court for the establishment of title to the suit land in favour of the Government. It is affirmed by the plaintiff in his cross-examination as P.W.1 that there is a house and shops of the defendants on the suit land and they had been paying land rent to the government for a long period. Both the courts below concurrently found that government has neither any title to nor

any possession in the suit land and the appellate court below held that since the plaintiff has failed to prove possession of the government in the suit land, without prayer for recovery of khas possession, the suit for mere declaration of title is hit by the Section 42 of the specific Relief Act. In the light of the decision as enunciated in the case of **Kabir Ahmed and others –Vs- Manohar Ali and others** reported in 76 DLR(AD) 99 being quoted as ***"Since the plaintiffs have failed to prove their possession in the suit land, the suit for declaration simpliciter without a prayer for consequential relief is hit by proviso to section 42 of the Act and, as such, the suit is not maintainable",*** the appellate court below rightly dismissed the appeal and I find no reason to interfere with this finding and decision.

It appears that C.S. Khatian no. 2 pertaining to the suit land was prepared in the name of the Emperor of India and S.A. Khatian was prepared in the name of the Government of East Pakistan. Plaintiff claims that in the remark column of the C.S. khatian of the suit land it was mentioned ''used by the public '' However, neither of the parties produced the C.S. or S.A. khatians during trial before court. Yet learned trial court called for the

volume book related to the suit land and examined the concerned page of the said khatian in the volume but no such remark was found in the volume book by the trial court. That the suit land comprises two C.S. plots, namely 1159 and 1229. On perusal of the volume book it was found by the trial court that the total area of the C.S. plot no 1229 is 34 decimals of which 8 decimals pertain to C.S. khatian no. 2 and the rest 26 decimals pertain to three C.S. khatians, namely 121, 256 and 258. In the instant suit plaintiff claims the total 34 decimals of land of C.S. plot no. 1229 but has brought only one C.S. khatian, namely C.S. khatian no. 2 into the hotchpot of the plaint. Plaintiff has failed to bring full acquaintance of the suit land into the hotchpot of the plaint. Moreover, the left margin of the pages of C.S. khatian no. 2 preserved in the volume book being partially torn the trial court could not decide as to whether the C.S. plot no. 1159 pertains to C.S. khatian no. 2 or not. Thus the trial court below arrived at the correct finding that the plaintiff fails to prove title of the suit land in favour of the government and came to the correct decision that the government is not entitled to a decree of any declaration of having title to the suit land and accordingly dismissed the suit.

The appellate court below with concurrent findings on this point also arrived at the unanimous decision that government failed to prove its title to the suit land and I find no perversity in the decisions taken by the courts below.

In the instant case, the government having accepted the land tax from the defendant-opposite parties for the period from 1379 to1412 Bengoli year corresponding to 1972 to 2005 AD, it has stopped the government from challenging the title of the defendants-opposite parties. The R.S. record was prepared in the name of the defendants and thereafter government received payment of land rents of the suit land from the defendants which has recognized the title and interest of the defendant-opposite parties. Moreover, the trial court found that both the parties to the suit failed to prove their respective claims of having title to the suit land and it is the defendants who have been successful in proving their possession. It is now a settled matter that the plaintiff is to prove its own case and plaintiff must not rely on the weakness or defects of the defendant's case. It was held in the case of **Naimuddin Sarder Vs. Abdul Kalam Biswas** reported in **39 DLR(AD)273** that plaintiff in order to succeed must establish his

own case to obtain a decree and weakness of defendant's case is no ground for passing a decree in favour of the plaintiff. The similar view was taken in the case of **Safiruddin and others Vs. Kulsum Bibi and others** reported in **XIX ADC (2022) page 351**.

It is thus crystal clear that the plaintiff-petitioner could not establish the title and possession of the government in the suit land.

It appears to me that both the courts below arrived at concurrent findings of facts unanimously and correctly decided that plaintiff-government could not prove its title to and possession in the suit land and plaintiff-government is not entitled to get any decree as prayed for.

Considering the facts and circumstances of the case, I find no substance in this Rule, rather I find substance in the submissions of the learned advocate for the defendants-opposite parties.

In the result, the Rule is discharged.

The impugned Judgment and Decree dated 01.11.2007 (Decree signed on 08.11.2007) passed by the learned Second

Additional District Judge, 1st Court, Naogaon in Title Appeal No. 201 of 2005 dismissing the appeal and thereby affirming the Judgment and Decree dated 29.09.2005 (Decree signed on 05.10.2005) passed by the learned Senior Assistant Judge, 1st Court, Naogaon in Title Suit No. 94 of 2004 dismissing the suit is hereby upheld.

The ad-interim order of status-quo granted earlier by this Court at the time of issuance of Rule is hereby vacated.

Send down the lower Court's record with a copy of the Judgment to the courts below at once.

(**Md. Lutfor Rahman.J)**

Md. Atikur Rahman, A.B.O