

Present:-***Mr. Justice Mahmudul Hoque*****Civil Revision No.1679 of 2009**

Government of the People's of Republic of
Bangladesh, represented by the Deputy
Commissioner, Chuadanga

... Petitioner

-Versus-

Khesbari Mondal being dead his legal heirs;
1(a) Mst. Rupvan Khatun and others

... Opposite- parties

Ms. Mahabuba Akter Jui, DAG with
Ms. Rashida Alim Oeshi, DAG,
Mr. Mustafizur Rahman Mukul, AAG and
Mr. Abdur Rahim, AAG

...For the petitioner

Mr. Shasti Sarker, Senior Advocate

...For the opposite-
party Nos.1(a)-1(m) and 2-6.

Judgment on 13th July, 2025.

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and decree dated 22.10.2007 passed by the learned Joint District Judge, 2nd Court, Chuadanga in Title Appeal No.77 of 2006 disallowing the appeal and thereby affirming the judgment and decree dated 30.04.2006 passed by the learned Senior Assistant Judge (in charge), Jibon Nagar, Chuadanga in Title Suit No.64 of 2001 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 relevant for disposal of this Rule, in short, are that the opposite party Nos.1-6, as plaintiff, filed Title Suit No.64 of 2001 in the Court of Senior Assistant Judge, (in charge), Jibon Nagar, Chuadanga for declaration of title, claiming that the predecessor of the plaintiffs Nimai Mondal obtained the suit land along with other land by way of pattan on 10th Chaitra, 1358 BS from C.S. recorded tenant Sree Satish Chandra Mal and took possession of the suit land. The predecessor of the plaintiff Nimai Mondal, son of Jadu Mondal filed a suit for declaration of title in respect of “Ka” scheduled land measuring .26 acre of land in Plot No.1404 under C.S. Khatian No.283 corresponding to S.A. Khatian No.265 and .4 acre out of .24 acre of land in Plot No.1405 under C.S. Khatian No.282 wrongly recorded in the name of Nirapada Mal and others for declaration of title against the S.A. recorded persons as defendants including the Government of Bangladesh. The said Title Suit No.1050 of 1976 was decreed ex parte on 08.01.1976. The defendant No.1, Government of Bangladesh claimed the suit land as V.P. Their claim is that S.A.

recorded tenant Nirapada Mal left the then East Pakistan for India during war of 1965 and has been residing there permanently. When the plaintiffs went to Tahshil Office to pay rent on 20.06.2021 then they claimed title of the suit land on the basis of wrong record, hence the suit for declaration of title in respect of .4 acre land.

The defendant No.1 contested the suit by filing a written statement denying all the material allegations made in the plaint contending inter alia, that the suit is not maintainable; the suit land measuring an area of .4 acre under S.A. Khatian No.268 belonged to Nirapada Mal who left this country during 1965 A.D for India and has been residing there permanently. R.S. record published in the name of Government and entered in the gazette as “Kha” schedule as vested property. The Government has right, title and interest in the suit land, as such, prayed for dismissing the suit with costs.

The trial court framed 5(five) issues for determination of the dispute. In course of hearing the plaintiffs examined 3(three) witnesses as P.Ws and the defendant examined 1(one) witness as D.W. Both the parties submitted some documents in support of their respective claim which were duly marked as exhibits. The trial court

after hearing decreed the suit by its judgment and decree dated 30.04.2006.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court the plaintiff preferred Title Appeal No.77 of 2006 before the learned District Judge, Chuadanga. Eventually, the appeal was transferred to the Court of learned Joint District Judge, 2nd Court, Chuadanga for hearing and disposal, who after hearing by the impugned judgment and decree dated 22.10.2007 disallowed the appeal and thereby affirmed the judgment and decree of the trial court. At this juncture, the defendant-petitioner moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Ms. Mahabuba Akter Jui, learned Deputy Attorney General with Mr. Mustafizur Rahman Mukul, learned Assistant Attorney General appearing for the petitioner submit that admittedly the suit property belonged to one Shatish Chandra Mal in whose name C.S. Khatian No.287 correctly recorded. He died leaving son Nirapada Mal in whose name S.A. khatian stand recorded. Present khatian stands recorded in the name of the government as vested and non-resident

property, as Nirapada Mal in 1965 left this country for India. It is submitted that though the plaintiff claimed the suit property by way of settlement from Satish Chandra Mal, S.A. khatian and R.S. khatian has not been prepared in the name of plaintiff. The plaintiffs could not show a single piece of evidence or document how their predecessor acquired the property even could not submit any document showing payment of rents to the government. It is submitted that an ex parte decree alleged to have been obtained by the predecessor of the plaintiffs in Title Suit No.1050 of 1976 was not against the government. But against the person in whose name S.A. khatian was not prepared and said ex parte decree reflects nothing about any document of title, could show by the plaintiffs predecessor. As such, mere obtaining a decree against some persons not at all connected with the suit property is not a decree supported by any evidence and by which the plaintiff acquired no title in the property. But both the courts below most unfortunately only relying on an ex parte decree obtained by the predecessor of the plaintiffs against some unknown persons found title in the suit property and failed to find that the plaintiffs predecessor and the plaintiffs miserably failed to prove title

in the suit property by any document. Even they could not file any document showing settlement of the property to their father by Shatish Chandra Mal, as such, both the courts below committed illegality and error in law occasioning failure of justice.

Mr. Shasti Sarker, learned Senior Advocate appearing for the opposite parties submits that the plaintiff in support of their case examined 3 P.Ws who corroborated each other in respect of possession of the plaintiffs in the suit land on the basis of settlement from C.S. owner Shatish Chandra Mal. He submits that when S.A. khatian stand recorded wrongly in the name of son of Satish Chandra Mal and another S.A. khatian in the name of other persons, father of the plaintiff filed Title Suit No.1050 of 1976 which was decreed ex parte. After obtaining decree plaintiffs father got his name mutated in the khatian and paid rents to the government. He argued that until and unless said ex parte decree is set aside by a competent court it must be considered that the plaintiffs acquired title in the suit property. Besides, the government could not prove that the land has been legally vested in the government under Act 45 of 1974 which provides that after 23.03.1974 no further Vested Property case can be started on the

basis of law which is already dead. In support of such submission he has referred to the case of ***Aroti Rani Paul Vs. Sudarshan Kumar Paul and others*** reported in ***56 DLR (AD) 73***.

He submits that the property in question was enlisted in the “Kha” list of the Arpita Sampatti Portarpon Ain, 2013. Subsequently, by operation of law under Section 28Ka the government cancelled schedule “Kha” releasing the property as if it was never declared vested and entered into the gazette. On that count also the government has no right or locus standi to contest the suit and claim the property to be vested and non-resident property. He submits that all the P.Ws proved that the plaintiffs are in possession of the suit property. In the absence of any contrary evidence on the part of the government, the trial court as well as the appellate court rightly decreed the suit and dismissed the appeal. It is argued that where possession of the plaintiff has been proved it has presumption of title in the property. Section 110 of the Evidence Act provides for a presumption of the ownership in favour of the persons who is in possession of the property. In this regard he referred to the case of ***Hajee Abul Hossain and others Vs. Md. Amjad Hossain and others*** reported in ***15 MLR (AD) 485***.

Mr. Sarker, finally argued that a suit for declaration simpliciter is not barred by proviso to Section 42 of the Specific Relief Act in the absence of prayer for recovery of possession in view of conflicting evidences of the parties with regard to possession should be found to the party having better title in the property. In the instant suit, it appears that the plaintiffs have better title than the petitioner-government. In support of his such submissions he has referred to the case of *Hemayet Uddin and others Vs. Md. Rustam Ali and others* reported in **4 LM (AD) 228**.

Heard the learned Advocates for both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and documentary available in the lower court records and the impugned judgment and decree of both the courts below.

As per plaint plaintiffs filed the suit for simple declaration of title claiming that the suit property according to C.S. khatian stands recorded in the name of one Shatish Chandra Mal (Exhibit-1), C.S. Khatian No.287 shows that Plot No.1405 measuring 24 sataks out of which 4 sataks land recorded in the name of Shatish Chandra Mal.

Father of the plaintiffs named Nimai Mondal obtained settlement of said 4 sataks of land from Shatish Chandra Mal on 10 Chatra 1358 B.S. But the plaintiffs could not produce such document before the trial court as well as in the appellate court and before this Court to show that at any point of time their predecessor Nimai Mondal obtained settlement from Shatish Chandra Mal. It is claimed that Shatish Chandra Mal died leaving only son Nirapada Mal in whose name S.A. Khatian No.268 stands recorded wrongly instead of recording the same in the name of Nimai Mondal. The plaintiff-opposite party did not file said khatian showing the name of Nirapada Mal. But the plaintiff filed S.A. Khatian No.268 which stand recorded in the name of Baghi Mal and 8 others for 20 sataks of land in Plot No.1405 out of total 24 sataks. The plaintiffs claimed the property on the basis of an ex parte decree passed in Title Suit No.1050 of 1976 on 08.01.1979, decree drawn on 15.01.1979 [Exhibits-3 and 3(Ka)].

From perusal of decree, it appears that C.S. Khatian No.282 was mentioned wrongly, 5 persons including Nirapada Mondal were made principal defendants and 3 were made proforma-defendants including the present petitioner-government against whom no relief

was sought for. Persons made defendant in Title Suit No.1050 of 1976 are found to be non recorded owners in S.A. Khatian No.268 (Exhibit-1(Ka)). Nothing found in the record why the said title suit was instituted against those persons, in whose names S.A. Khatian No.268 Exhibit-1(Ka) has not been recorded. Furthermore, the plaintiffs claimed that after obtaining an ex parte decree by their father Nimai Mondal in the year 1979 he got his name mutated in S.A. Khatian No.268 and paid rents to the government. But no such khatian in the name of Nimai Mondal has been submitted before this Court to prove such contention of the plaintiffs. The plaintiffs could submit single rent receipts of the year 1989 showing payment of rent Tk.9.30/- for Khatian No.265/1, not at all relating to the suit property (Exhibit-2). Present R.S. Khatian No.346 submitted by both the parties as Exhibits-1(Kha) and (Ka) showing the same recorded in the name of the government, noting the fact in the remark column “১৯৭৪ স-নর ৪৫নং আই-নর বিধা-ন সরকার-রর অর্পিত সা-বক মালিক নিরাপদ মা-লা, পিতা-সতীশ চন্দ্র।”

It is true that after 23.03.1974 with the repeal of Ordinance No.1 of 1969 no further Vested Property case can be started. Here the petitioner-government could not substantiate their claim that the

property was legally declared vested property and recorded in the name of government. Moreover, the suit property was entered in the vested property gazette under schedule “Kha” land, subsequently, the government under Section 28Ka of the “অর্পিত সম্পত্তি প্রত্যাপন (দ্বিতীয় সং-শোধন) আইন, ২০১৩” released and cancelled the list treating the property not vested and non-resident property as if the same never declared vested property.

In view of the above provisions of law and cancellation of the schedule “Kha” property gazette, the petitioner-government, in fact, has no locus standi or right to claim the property as vested and non-resident property on the basis of R.S. record. But it is the established provision of law that plaintiffs are to prove their case to get a decree from court independent of the case of the defendants. In the instant case though the plaintiffs obtained an ex parte decree against the some persons not connected or recorded in the khatian, but could not substantiate their basis of title submitting any document either in the earlier suit or in the present suit as appearing from the evidences in the record. Ex parte decree passed in Title Suit No.1050 of 1976 is in telegraphic word which reflects nothing how the plaintiffs acquired

title, on the basis of what document and the persons as appearing from decree were not the persons recorded in S.A. khatian. This ex parte decree is not above the questions as stated above. As per record of right the suit property earlier recorded in the name of Shatish Chandra Mal and S.A. khatian though claimed by the plaintiffs, recorded in the name of Nirapada Mal, but said khatian has not been filed and exhibited. Name of Nirapada Mal and other persons, defendants in earlier suit are totally absent in S.A. Khatian No.268 (Exhibit-1(Ka)).

In this Court's view, Title Suit No.1050 of 1976 would not have decreed ex parte if the persons recorded in S.A. Khatian No.268 made parties in Title Suit No.1050 of 1976. However, P.Ws adduced by the plaintiffs, in the absence of any contrary evidence, stated before the trial court that the plaintiffs are in possession of the property, but this Court finds no basic document for claiming title. In the case of ***Hajee Abul Hossain and others Vs. Md. Amjad Hossain and others*** reported in ***15 MLR (AD) 485***, the plaintiffs could file document in support of title which were not original, but secondary evidence which was not objected by other party and those document was followed by possession. Facts and circumstances of the said case is totally

different from the instant case, here the plaintiffs could not produce a single document showing title except an ex parte decree obtained in the manner mentioned above.

Relying on the case of *Hemayet Uddin and others Vs. Md. Rustam Ali and others* reported in *4 LM (AD) 228*. Mr. Sarker tried to impress upon the court that the plaintiffs could able to prove better title in the suit property than the petitioner-government by adducing evidences both oral and documentary, as such, the suit for declaration is maintainable as the possession follows title. In this cited case question of possession was not clearly established by evidence, in that situation, the court considered better title of the party between the plaintiffs and defendants and ultimately held that though conflicting evidence with regard to possession led by the parties, the possession should be found with the party having better title. Fact of the present case is not same. In the instant case, admittedly, R.S. khatian stands recorded in the name of the government as vested property owned by Nirapada Mal whose whereabouts not known to the plaintiffs or the government. It is fact that the property entered into “Kha” list which was subsequently cancelled, meaning thereby, the suit property is not

vested and non-resident property and it is backed to the original owner, i.e. Nirapada Mal.

To claim title by the plaintiffs against Nirapada Mal they have to prove that the suit property once transferred to the plaintiffs or their predecessor, but no such evidence is forthcoming from the plaintiffs side. The trial court as well as the appellate court failed to find the basic document of the plaintiffs even did not discuss on that point. Since the government cancelled “Kha” list the property cannot be treated as vested property. But to get the S.A. khatian and R.S. khatian corrected the plaintiff is to satisfy the Court as well as about their title by producing documentary evidence. In the instant case only sheet anchor of the plaintiffs is an ex parte decree passed in Title Suit No.1050 of 1976, which was obtained against the persons not recorded owner in S.A. Khatian No.268. Had the decree acted upon Nimai Mondal would have mutated or corrected the khatian in his name and paid rents to the government, no such rent receipts or khatian has been filed by the plaintiffs to prove that by virtue of ex parte decree their father Nimai Mondal got the S.A. khatian corrected. In the absence of chain of title, it cannot be said that the plaintiffs

acquired title in the suit property. Ex parte decree shows that it is seriously wanting requisite character of a decree as all the ingredients are totally absent in the said decree as provided under Order 20 Rule 4 of the Code of Civil Procedure. It is lacking from minimum observations in respect of claim of the plaintiffs.

In this situation, this Court finds that since the plaintiffs are in possession, they can continue with possession until the true owners of the property claim the same and the government initiates any proceedings for taking over the property by process of escheatment, however, in that case if the government lease out the same, the plaintiffs will get preference.

In view of the above, I find that the plaintiffs acquired no title in the property, but they have possession of the same, therefore, both the courts committed error finding title of the plaintiffs in the suit property and decreeing the suit. However, the plaintiffs may continue possession of the suit property until true owners claim title in the property or in the absence of true owner and claimant government can take over possession of the property following the process of escheatment.

Therefore, I find no title of the plaintiffs in the suit property, except their possession. With this observation I am inclined to dispose of this Rule.

Accordingly, the Rule is disposed of, however, without any order as to costs.

The judgment and decree of both the courts below are hereby set aside. The suit is dismissed.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.