

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 1713 of 2010
The Government of Bangladesh, represented by the
Deputy Commissioner, Satkhira and others....Petitioners
-Versus-
Most. Masura Khatun and others....Opposite parties
Mr. Mohammad Mohib Ullah (Maruf), D.A.G with
Ms. Mowsumi Akther, A.A.G with
Ms. Nargis Parvin (Alija), A.A.G
....For the petitioners
Mr. Mohammed Shamsul Alam, Advocate with
Mr. Md. Safed Ali, Advocate
....For the opposite parties
Heard on 23.06.2026
Judgment delivered on 02.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 12 to show cause as to why the impugned judgment and order dated 09.06.2009 passed in Miscellaneous Appeal No. 05 of 2009 by the District Judge, Satkhira reversing the judgment and order dated 30.11.2008 passed by the Assistant Judge, Tala, Satkhira in Title Suit No. 55 of 2008 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 relevant facts for disposal of the Rule are that the opposite party Nos. 1 to 20 filed Title Suit No. 55 of 2008 in the Court of Assistant Judge, Tala, Satkhira praying for a decree of declaration of title in the suit land and that the S.A. Khatian No. 1 was wrongly recorded without any basis and not binding on the plaintiff and inclusion of the suit land in the periphery of the Patkelghata Hut Bazar is illegal, collusive, void and is of no legal effect. During pendency of the suit, the plaintiff-opposite party filed an application under Order 39 Rule 1 and 2 and section 151 of the Code of Civil Procedure, 1908 praying for an injunction restraining the defendant Nos. 1 to 5 from setting hut and bazar in the suit land in connivance with the local Bazar Committee and the lessee stating that Mosharaf Hossain Biswas, Ahed Ali Biswas, Jahiruddin Biswas, Janab Ali Kha and Aftabaddi Kha were the C.S recorded tenants of total .58 decimals of land C.S Khatian Nos. 151, 153, 164 and 148 and Abu Jafar Kha got the oral settlement of .58 decimals of land on 27th Ashar, 1353 B.S from the said C.S recorded owner and after getting settlement, Abu Jafar Kha got the possession in the suit land by cultivating the crops and trees but during S. A operation, S.A khatian No. 11 was wrongly recorded in the name of East Pakistan Government.

The defendant Nos. 1 to 5 filed written objection against the application filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 stating

that the suit land is Bazar and S.A record was prepared in the name of East Pakistan Government which has been given settlement in favour of eighteen businessman by the AC Land and the plaintiff Nos. 1, 6, 8, 9, 10, 11, 12 also prayed for settlement of the land. The defendant Nos. 1 to 5 claimed that the plaintiff had no possession in the suit land.

After hearing the parties, the trial Court rejected the application for injunction holding that the plaintiff claimed the title on the suit land based on the oral settlement and without trial, the possession and title of the plaintiff cannot be determined without trial. The appellate Court granted injunction holding that the plaintiffs are claiming possession through their predecessor Abu Jafar Kha since 1946 and submitted the C.S Khatian Nos. 151, 153, 164 and 148 of the suit land and the genuineness of the documents filed by the plaintiff will be determined at the time of trial and that admittedly several shops are existing in the suit land possessed by the plaintiffs and some of the shops have been demolished by the defendants during the emergency period and that the plaintiffs have prima-facie title and possession on the suit land.

Learned Assistant Attorney General Ms. Mowsumi Akther appearing on behalf of the petitioners submits that the plaintiff has no title on the suit land and only claimed that the predecessor of the plaintiff got the oral settlement from the C.S recorded tenant and no record was prepared in the name of Abu Jafar Kha, predecessor of the plaintiff-opposite parties. She further submits that the suit land is a Bazar and the Assistant Commissioner of Land had given settlement of 14 shops and the defendant Nos. 1 to 5 prayed for settlement of the land and admittedly the plaintiffs are out of possession of the suit land and they are not entitled to get any order of injunction and the appellate Court without any basis or document found that the plaintiff had prima-facie title and possession on the suit land. She prayed for making the Rule absolute.

Learned Advocate Mr. Mohammed Shamsul Alam appearing along with learned Advocate Mr. Md. Safed Ali on behalf of the plaintiff-opposite parties submits that Abu Jafar Kha, predecessor of the plaintiff-opposite parties obtained oral settlement of the suit land from the C.S recorded tenants Mosharaf Hossain Biswas, Ahed Ali Biswas, Jahiruddin Biswas, Janab Ali Kha and Aftabaddi Kha and now in possession of the suit land by constructing shops and the appellate Court below rightly arrived at a finding that the plaintiffs own the suit land and there is no reason to interfere with the judgment and order passed by the appellate Court below. He prayed for discharging the Rule.

I have considered the submission of the learned Assistant Attorney General Ms. Mowsumi Akther who appeared on behalf of the petitioners and the

learned Advocate Mr. Mohammed Shamsul Alam who appeared along with learned Advocate Mr. Md. Safed Ali on behalf of the plaintiff-opposite parties, perused the application filed by the plaintiff-petitioner under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908, written objection filed by the defendant Nos. 1 to 5, the impugned judgment and order passed by the Courts below and the records.

In the application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, it has been stated that Abu Jafar Kha, predecessor of the plaintiffs, obtained settlement of total .58 decimals of land from the C.S recorded tenants Mosharaf Hossain Biswas, Ahed Ali Biswas, Jahiruddin Biswas, Janab Ali Kha and Aftabaddi Kha and possessed the land by cultivating and subsequently constructing shops in the suit land. Nothing has been stated in the said application that after obtaining oral settlement, the suit land was recorded in the name of said Abu Jafar Kha. No rent receipt was filed before the trial Court that Abu Jafar Kha paid the rent.

Admittedly, the suit land was recorded in the name of the East Pakistan Government during S. A and R.S operation. S.A and R.S record is the prima facie evidence of possession of the Government. In the written objection filed by the defendant Nos. 1 to 5, it has been asserted that the suit land is Patkelghata Bazar and 16 shops were given settlement in favour of the businessman of the said Bazar and the plaintiff Nos. 1, 6, 8, 9, 10, 11 and 12 prayed for settlement of the shops to the Assistant Commissioner which has not been disputed by the learned Advocate for the opposite parties. It is found that no khatian was prepared in the name of Abu Jafar Kha and the plaintiff-opposite parties after the alleged oral settlement from the C.S recorded tenant, and subsequent S.A and R.S khatian was prepared in the name of the Government, I am of the view that there is no possession of the plaintiffs in the suit land. To get an order of injunction, the plaintiffs shall prove the possession in the suit land. Admittedly, the defendant Nos. 1 to 5 prayed for settlement to the AC, Land which proved that government own the land.

In view of the above findings, observations and the proposition, I am of the view that the appellate Court below, without any basis, arrived at a finding that the plaintiffs have prima facie title and possession on the disputed land.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order dated 09.06.2009 passed by the appellate Court below is hereby set aside.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

The trial Court is directed to dispose of the suit positively within 6(six) months from the date of receipt of this order.

Send down the lower Court's records at once.