

District-Chuadanga.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 3635 of 2009.**

Roisuddin @ Md. Rousuddin and others.

---- Plaintiff-Respondent-Petitioners.

-Versus-

Rahanuddin Saha being dead his heirs Md. Hafizur
Rahman and others.

----Defendant-Respondents-Opposite Parties.

Mr. Kamruzzaman Bhuiyan, Advocate

----For the Plaintiff-Respondent-Petitioners.

Mr. Md. Hamidur Rahman, Advocate with

Mr. Md. Faruk Hossain, Advocate

----For the Defendant-Respondents-Opposite Parties.

Heard On: 22.10.2025, 26.10.2025, 05.11.2025.

And

Judgment Delivered On: 09.11.2025.**Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 16.07.2009 (decree signed on 22.07.2009) passed by the learned Joint District Judge, 1st Court, Chuadanga in Title Appeal No.47 of 2008, allowing the appeal; setting aside the judgment and decree dated 16.06.2008 (decree signed on 19.06.2008) passed by the learned Assistant Judge, Jibannagar, Chuadanga, in Title Suit No.12 of 2000 and thereby sending back the case on remand, should not be set aside or such other order passed as to this Court may seem fit and proper.

The petitioners as plaintiffs, along with pro-forma opposite party Nos. 12–13, instituted Title Suit No.12 of 2000 before the Court of Assistant Judge, Jibannagar, Chuadanga, for declaration of title in respect of 26 decimals of land as described in the schedule to the plaint and for a declaration that the S.A. and R.S. records of the suit land were wrongly prepared.

The plaintiffs' case, in short, is that one Washek Shah was the owner of the suit land. After his death, his three daughters- Sottonecha Bibi, Siyatun Necha, and Josho Bibi- became the successors to his property including C.S. Plot No.834. Sottonecha sold $17\frac{1}{3}$ decimals of land to the plaintiffs by a registered deed being No.1236 dated 02.04.1998, and Saleha Khatun, daughter of Josho Bibi, sold $8\frac{2}{3}$ decimals by deed No.2250 dated 21.06.1999. Thus, the plaintiffs claim ownership of 26 decimals out of the total 52 decimals of the said plot.

When the plaintiffs came to know that the S.A. and R.S. records were not prepared in their names, they instituted the suit seeking declaration of title and correction of record.

The defendants Nos.1–8 and 11–13 contested the suit by filing written statements, denying all the material averments and claiming that Washek Shah had settled 44 decimals of land in favour of Afchar Shah, Pagla Shah, and Mojibur alias Motibor Shah—26 decimals from Plot No.834 and 18 decimals from Plot No.855—by a lease dated 22nd Jaistha, 1358

B.S. They contended that after the settlement, S.A. and R.S. Khatians were duly prepared in their names, and the present defendants purchased the land by kabala deeds dated 29.06.1979 and 05.03.1990, and have been possessing the land since.

Upon considering the pleadings, oral and documentary evidence, the learned trial court decreed the suit. The trial court found that the C.S. recorded tenant was Washek Shah, and after his death, his three daughters—Sottonecha, Siyatun, and Josho—became his heirs, which fact was admitted by both parties' witnesses. The plaintiffs purchased the suit land from two of these heirs by registered kabalas dated 02.04.1998 and 21.06.1999.

The defendants failed to produce the alleged settlement deed by which they claimed 44 decimals of land. The court held that their claim of settlement was unproved, as no documentary or credible oral evidence was produced. On the other hand, the plaintiffs established their title by registered documents and corroborative oral testimony.

The court further found that the plaintiffs had possession over the suit land as they had constructed homesteads and planted trees thereon. Consequently, the suit was decreed declaring the plaintiffs' title over 26 decimals of land, and it was further declared that the R.S. record was wrongly prepared.

The defendants preferred Title Appeal No.47 of 2008 before the learned Joint District Judge, 1st Court, Chuadanga. The appellate court found that though the plaintiffs claimed title over 26 decimals, they could only prove purchase corresponding to 13 decimals of land- representing the shares of Sottonecha and Saleha Khatun, daughter of Josho Bibi. The court held that the plaintiffs failed to prove exclusive ownership over 26 decimals, as Jamila Khatun, another daughter of Josho Bibi, was not impleaded, rendering the suit defective for non-joinder of necessary party.

The appellate court further opined that since both parties trace title from the same predecessor, the dispute is essentially one of partition, not of declaration of exclusive ownership. Accordingly, the appellate court set aside the judgment and decree of the trial court and remanded the suit to the trial court for fresh trial with direction to allow amendment of the plaint by including Dag No.855 and by impleading all heirs of Washek Shah.

Against the appellate court judgment, the plaintiff as petitioner moved this court in revision and obtained the present Rule, which is now taken up for disposal.

Mr. Kamruzzaman Bhuiyan, learned Advocate for the petitioners, submits that the learned appellate court committed a gross error of law in reversing the well-reasoned judgment of the trial court. He contends that

the trial court correctly held that the plaintiffs proved title over 26 decimals of land by producing Exhibits 1–3, i.e., the kabala deeds and C.S. Khatian.

He submits that the defendants utterly failed to produce any settlement deed to substantiate their claim, whereas the plaintiffs established their purchase and possession by both oral and documentary evidence. The learned appellate court, instead of deciding the issue on evidence, erroneously remanded the case by misconstruing the provisions of Order XLI Rule 23 and Section 107 CPC.

He further submits that the appellate court's finding limiting the plaintiffs' ownership to 13 decimals is perverse, as the total area of Plot No.834 is 52 decimals, and the plaintiffs' vendors lawfully owned and transferred 26 decimals by two registered deeds. He argues that the appellate court failed to appreciate the consistent evidence of PWs 1–3 who clearly stated that the plaintiffs were in possession by constructing houses and planting trees. Accordingly, he prays that the impugned judgment and decree dated 16.07.2009 be set aside and that the decree of the trial court be restored.

Per contra, Mr. Md. Hamidur Rahman, learned Advocate for the opposite parties appearing with Mr. Md. Faruk Hossain, on the other hand, submits that the learned appellate court committed no illegality in setting aside the decree of the trial court. He contends that the plaintiffs

could not establish exclusive ownership over 26 decimals, as the lands claimed are part of a larger undivided estate left by Washek Shah. He further submits that since one of the heirs, Jamila Khatun, was not made a party, the suit suffers from non-joinder of necessary parties, and the appellate court rightly directed remand for inclusion of all heirs and proper adjudication. He argues that the plaintiffs' deeds cover more land than their vendors could lawfully transfer, and the trial court failed to determine the correct quantum of their share. Hence, the appellate court's direction for retrial was just and proper, ensuring fair adjudication between co-sharers.

This court has considered the submissions of the learned Advocates for both sides, perused the judgments of the courts below, and examined the connected records.

It appears that the trial court based its findings on clear and credible evidence of the plaintiffs' purchase from the admitted heirs of Washek Shah. The defendants' plea of settlement was not supported by any written document, nor by reliable oral testimony. The plaintiffs' title deeds (Exhibits 1 and 1(a)) were proved in accordance with law, and their possession was corroborated by witnesses.

The appellate court, while accepting that the plaintiffs derived title from the heirs of Washek Shah, curiously held that they could prove only 13 decimals, yet did not disbelieve the genuineness of their deeds. The

finding that the plaintiffs ought to have filed a partition suit is misplaced, as the plaintiffs sought declaration only over the specific 26 decimals purchased by them, not over the undivided estate as a whole. There was thus no necessity to convert the declaratory suit into a partition suit.

It further appears that the direction for remand was not based on any procedural defect in the trial, nor on absence of evidence, but merely on a different appreciation of facts. Such remand under Order XLI Rule 23 CPC is unwarranted where the appellate court has all materials to decide the case finally. The learned appellate court therefore exceeded its jurisdiction in remanding the case without legal justification.

Though the judgment of the trial court has been written in a somewhat slipshod manner with limited discussion, yet it reached a correct and lawful conclusion on the basis of proper evidence available on record. The brevity or lack of elaborate reasoning in the trial court's judgment did not occasion any failure of justice, as the material findings are fully supported by the evidence. Accordingly, this Court finds that the learned appellate court committed error of law resulting in an error in the decision occasioning failure of justice.

Where the plaintiffs have established their title and possession by registered deeds executed by the admitted heirs of the original owner, and the defendants have failed to prove their alleged settlement or better title, the plaintiffs are entitled to a declaration of ownership. An

appellate court cannot remand a case merely to reopen issues already decided on evidence unless the trial suffers from a procedural defect or absence of material findings.

As no further evidence is necessary to resolve the issue at hand, remanding the case to the appellate court would serve no useful purpose and would only cause undue delay in the final disposal of the matter, which has already been pending since 2000. It is well-settled that where the record is complete and no additional evidence is required, the revisional court is competent to finally decide the matter rather than remanding it. A remand should be avoided when it would result in unnecessary prolongation of litigation, especially in cases like the present one which has remained unresolved for over 25 years. The interest of justice and the principle of expeditious disposal favour a final adjudication by this Court under its revisional jurisdiction.

In view of the discussions and findings made above, **the Rule is made absolute.**

The judgment and decree dated 16.07.2009 (decree signed on 22.07.2009) passed by the learned Joint District Judge, 1st Court, Chuadanga in Title Appeal No.47 of 2008 are hereby set aside, and the judgment and decree dated 16.06.2008 (decree signed on 19.06.2008)

passed by the learned Assistant Judge, Jibannagar, Chuadanga, in Title Suit No.12 of 2000 are restored.

There shall no order be as to costs.

Let the lower court records be sent down forthwith.

(Justice Md. Toufiq Inam)

ABO/Ashraf.