

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 804 OF 2018

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Jalal Sheikh and others

... Petitioners

-Versus-

Md. Basutullah Munshi being dead his legal heirs-
Most. Saleha Begum and others

... Opposite parties

Mr. Md. Golam Rabbani, Advocate with

Mr. Abdullah Abu Sayeed, Advocate

... For the petitioners.

Mr. Abdullah Al Mamun, Advocate

... For the opposite parties.

Heard on 15.12. 2024 and 18.11.2025.

Judgment on 19.11.2025

On an application under Section 115(1) of the Code of Civil Procedure the Rule was issued against the impugned judgment and decree dated 12.11.2017 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Appeal No.152 of 2013 dismissing the appeal thereby affirming the judgment and decree dated 24.10.2013 passed by the learned Senior Assistant Judge, Ulipur, Kurigram in Other Class Suit No.71 of 2012 dismissing the suit and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title and recovery of possession for 25 decimal land as described in the “Ka” scheduled to the plaint alleging that 65 decimal land including above 25 decimal belonged to Basir Sheikh and Kalu Sheikh. Plaintiff No.1 Jalal Sheikh a successive heir of Kalu Sheikh acquired 43 decimal land by purchase by two registered kabla deeds dated 20.10.2009 and 20.09.1975 and inherited $\frac{3}{4}$ decimal land and remaining $19\frac{1}{5}$ decimal was owned held and possessed by plaintiffs Nos.2-13. The heirs of Bashir Sheikh and Kalu Sheikh raised 20 decimal land for constructing dwelling house and possessed remaining 45 decimal by cultivation. The defendants claimed title of above property on the basis of forged and ineffective auction purchase vide Certificate Case No.39701 of 1960-61 and the defendant forcibly disposed the plaintiffs on 04.02.1990 from above 25 decimal land.

Defendant No.1-3 contested above suit by filling a joint written statement alleging that the registered kabla deeds of plaintiff No.1 were created and without any lawful basis nor above kabla deeds were acted upon. Defendants purchased above land in auction pursuant to Certificate Case No.39710 of 1960-61 and got certificate of sale and certificate of delivery of possession and they were in

possession in above 65 decimal land by mutating names and constructing rice mills, boiler and shades. S. A. Khatian No.15 of 1931 was erroneously recorded in the names of Kalu Sheikh and Bashir sheikh who had no possession in above land and defendants did not dispossess the plaintiff from above land.

At trial plaintiffs examined two witnesses and defendants examined 3. Documents of the plaintiffs were marked as Exhibit Nos.1-11 and those of the defendants were marked as Exhibit Nos.“Ka”-“Jha”.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as appellants preferred Other Appeal No.152 of 2013 to the District Judge, Kurigram which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the Court of appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Golam Rabbani, learned Advocate for the petitioners submits that undisputedly 65 decimal land appertaining to C. S.

Khatian No.1494 belonged to Bahar Sheikh, Kalu Sheikh and Bashir Sheikh. after demise of Bahar Sheikh his share was inherited by Basir Sheikh and Kalu Sheikh in equal shares. It is also admitted that S. A. Khatian No.1531 of above property was recorded in the name of Kalu Sheikh. Bashir and plaintiffs are successive heirs of Kalu Sheikh and Bashir Sheikh and plaintiff No.1 alone acquired 43 decimal land by purchase and $3\frac{1}{5}$ decimal land by inheritance and remaining $19\frac{1}{5}$ decimal land was owned held and possessed by plaintiff Nos.2-13. Plaintiffs raised 25 decimal land for constructing dwelling houses and defendants forcible dispossessed them from above land on 04.02.2009. Defendants claimed to have purchased above 65 decimal land by Certificate Case No.39710 of 1960-61 but all documents of auction purchase were forged, concocted, created and not acted upon. The defendants could not prove by legal evidence that rent of above property fell due and the same was sold in auction and defendants purchased above auction and went into possession. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge should have allowed above appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit but the learned Joint District

Judge most illegally dismissed above appeal by a non speaking judgment and order which is not tenable in law.

On the other hand Mr. Abdullah Al Mamun, learned Advocate for the opposite parties submits that plaintiff No.1 has claimed to have purchased 43 decimal land by two registered kabla deeds dated 01.10.2007 and 20.09.1975 (Exhibit Nos.10 and 11 respectively) and in both above kabla deeds defendants have been mentioned to be the owners of the contiguous land. Above admission of plaintiff No.1 in above kobla deeds show peaceful possession of the defendants in above land on the basis of auction purchase. The plaintiffs could not prove their previous possession and subsequent dispossession from 25 decimal land by legal evidence. On consideration of above facts and circumstances of the case and evidence on record learned Senior Assistant Judge rightly dismissed above suit. The learned Joint District Judge instead of reassessment of the evidence on record dismissed above appeal by a non speaking order but the judgment of the learned Judge of the Court of appeal below is sound which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that 65 decimal land including disputed 25 decimal belonged to Bahar Sheikh, Bashir Sheikh and Kalu Sheikh

and the same was rightly recorded in C. S. Khatian No.1494 and above Bahar Sheikh was the father of Bashir Sheikh and Kalu Sheikh and above 65 decimal land was recorded in S. A. Khatian No.1531 in the name of above Basir Sheikh and Kalu Sheikh and plaintiffs are successive heirs of above Bashir Sheikh and Kalu sheikh.

Plaintiff No.1 alone claims $46\frac{3}{4}$ decimal land out of 65 decimal by purchase by two registered kabla deed dated 20.09.1975 and 20.10.2009 and inheritance. It has been alleged that remaining $19\frac{1}{5}$ decimal land was owned, held and possesses by plaintiff Nos.2-13. This is a suit for declaration of title and recovery possession for 25 decimal land but in the plaint the plaintiff did not make specific mention as to which plaintiffs possess above 25 decimal land and the manner of their possession. It is not mentioned if above 25 decimal land falls in 46 decimal land of plaintiff No.1 or 19 decimal land of other plaintiffs falls in above 25 decimal.

At Paragraph No.2 of the plaint plaintiffs claimed that they raised 20 decimal land out of 65 decimal by earth filing for construction of dwelling huts and possessed remaining 45 decimal by cultivation. But in the later part of above Paragraph it has been alleged that plaintiffs raised 25 decimal land by earth filing for construction of dwelling huts and from above 25 decimal land

defendants dispossessed them on 02.04.2009. While giving evidence as PW1 plaintiff No.1 Jalal stated in his evidence that the defendants have dispossessed them from 20 decimal land. The learned Advocate for the petitioners submits that since plaintiffs title in 65 decimal land is clear they may be given a part decree for 20 decimal land. In the plaint the plaintiffs have provided boundaries of 25 decimal land and sought ejection of the plaintiff from above land. In the plaint there is no specification of 20 decimal land in respect of which a decree for declaration of title and recovery of possession could be passed.

It turns out from the impugned judgment and decree of the Court of appeal below that the learned Judge instead of making an independent assessment of the evidence on record and giving his own findings on the basis of above assessment has dismissed above appeal in a slip sod manner by a non speaking judgment. Above judgment and decree of the learned Judge of the Court of appeal below does not fulfill the criteria as specified in Order 41 Rule 31 of the Code of Civil Procedure and the same cannot be designated as a lawful judgment of a Court of appeal.

On consideration of above facts and circumstances of the case and evidence on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and above appeal is remanded to the Court of appeal below for rehearing after giving

both parties an opportunity to amend their respective pleadings and adduce further evidence.

In the result, the Rule is made absolute. The impugned judgment and decree passed by the learned Judge of the Court of Appeal below is set aside and above appeal is remanded to the Court of Appeal below for rehearing after giving both parties an opportunity to amend their respective pleading and adduce further evidence, if any.

However, there is not order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER