

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 928 of 2018

In the matter of:

Nitai Chandra Roy and others

.....Defendants-Appellants

Petitioners

-Versus-

Vanu Chandra Sarker and others

...Plaintiff - Respondent

Opposite parties

Mr Md. Zakir Hossain, with

Mr. Ram Chandra Das, Advocate

.....For the Petitioners.

Mr Mohammad Shamsul Alam, Advocate

...for the opposite parties.

Date of Hearing: 24.6.2026 and 25.06.2026 A.D.

Date of Judgment: 07.07.2026 A.D., Tuesday,

23 Ashar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 20.4.2017 passed by the learned Additional District Judge, 5th Court, Dhaka in Title Appeal No. 03 of 2016 dismissing the appeal by setting aside (Sic) the judgment and decree dated 15.10.2015 passed by the learned Senior Assistant Judge, Nababgonj, Dhaka in Title Suit No. 689 of 2010 decreeing the suit should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper."

At the time of issuance of the Rule, this Court also stayed the operation of the impugned judgment and decree for a period of one year. The said order of stay

was subsequently extended from time to time and remained in force until the disposal of the present Rule.

Facts

The facts, shorn of unnecessary details, are that the opposite party, as plaintiff, instituted Title Suit No. 689 of 2010, seeking a decree of perpetual injunction in respect of 21 decimals of land described in the schedule to the plaint. The plaintiff asserted that the original owner of the suit property was one Sharashati. According to the plaintiff, he acquired title and possession of 14 decimals of land appertaining to S.A. Plot No.575, and another 7 decimals from S.A. Plot No.574, corresponding to R.S. Plot Nos.983 and 981, respectively. The plaintiff's grievance was that, although he had been peacefully possessing the suit property, the defendants, claiming title to a portion thereof, attempted to forcibly dispossess him on 27.08.2010, compelling him to institute the instant suit for a perpetual injunction.

The contesting defendants entered an appearance and filed separate written statements denying the material allegations made in the plaint. Their principal defense was that

the suit was devoid of a cause of action, not maintainable in law, and liable to dismissal.

The defendants further contended that S.A. Khatian No. 244, including Plot No. 574, originally belonged to Radhika Mohan Roy and others. Upon successive inheritance, defendant Nos. 1-5 became owners of the property and subsequently obtained mutation in respect of five decimals of land under Plot No. 574. They claimed continuous possession by planting trees and asserted that the plaintiff neither acquired title nor possession over the suit land.

Defendant Nos.6-9 also filed a written statement substantially denying the plaintiff's claim but did not seriously contest the proceeding.

Upon recording oral and documentary evidence adduced by the respective parties, the learned Senior Assistant Judge, by judgment and decree dated 15.10.2015, decreed the suit.

Being dissatisfied, the contesting defendants preferred Title Appeal No.03 of 2016 before the learned District Judge, Dhaka, which was subsequently transferred to the learned Additional District Judge, 5th Court, Dhaka.

After hearing both sides, the learned appellate Court dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

Feeling aggrieved thereby, the petitioners have invoked the revisional jurisdiction of this Court.

Submissions

Mr Ram Chandra Das, the learned Advocate appearing on behalf of the petitioners, submits that both the Courts below failed to appreciate the evidence on record in its proper perspective and thereby arrived at erroneous findings of fact, resulting in failure of justice.

He next submits that, admittedly, the suit property remains joint amongst the co-sharers, and there has been no partition by metes and bounds. In such circumstances, no decree for permanent injunction could legally be granted against co-sharers without determination of their respective shares.

The learned Advocate further argues that the schedule of the suit suffers from uncertainty and vagueness, inasmuch as the boundaries of the suit land have not been properly

specified. Consequently, he said the suit itself was not maintainable.

It is further contended that the defendants successfully established their title to and possession of the disputed property through documentary evidence, including mutation records, and that both the Courts below committed a serious illegality in granting a decree of perpetual injunction.

Lastly, he submits that an injunction, being an equitable relief, cannot be granted where the identity of the property itself remains uncertain.

In support of his submissions, the learned Advocate has relied upon the decisions reported in **50 DLR (AD) 6** and **12 BLT (AD) 203**.

Conversely, Mr Md. Shamsul Alam, the learned Advocate appearing for the opposite party, supports the impugned judgment.

He submits that both the Courts below, upon meticulous consideration of the entire oral and documentary evidence, concurrently found that the plaintiff had been in actual

physical possession of the suit property and that such possession was threatened by the defendants.

He further submits that both the plaintiff's witnesses and the defendants' witnesses consistently admitted the location and identity of the suit property. The R.S. tenant, Onushanto Sarkar, also clearly identified the boundaries during his deposition.

He contends that the defendants failed to establish possession over the suit property, whereas their own witnesses admitted the plaintiff's possession by acknowledging the existence of his dwelling house, trees and cultivation on the disputed land.

In support of his submissions, the learned Advocate has referred to the decisions reported in **19 BLC (AD) 139, 1984 BLD (AD) 285, 56 DLR (AD) 22** and **8 BLC (AD) 10**.

Consideration

I have heard the learned Advocates for the respective parties, perused the judgments of both the Subordinate Courts, examined the evidence available on record and carefully considered the submissions advanced at the Bar.

On perusal of the judgment of the learned trial Court, it is found that he observed in the following way:

“উক্ত বিষয়ে মৌখিক সাক্ষ্যের পাশাপাশি তাদের নামজারী উক্ত দাগের ০৫ শতাংশ সম্পত্তির কাতে আছে মর্মে দালিলিক প্রমান উপস্থাপন করা হয়েছে। বিবাদীপক্ষের অপর দাবী হলো ঐ, তাদের দাবীকৃত ৫৭৪ দাগ এবং সংলগ্ন ৫৭৫ দাগের মাঝখানে একটি রাস্তা আছে। উক্ত বিষয়ে ডি ডব্লিউ-২ এবং ডি ডব্লিউ-৩ এর সাক্ষ্য পর্যালোচনায় দেখা যায় ঐ, তারা উভয়ে নালিশী ৯৮৩ এবং ৯৮১নং দাগ দুইটি পাশাপাশি এবং সংলগ্ন মর্মে স্বীকার করেছেন। ডি ডব্লিউ-৪ এর সাক্ষ্য মতে দুইটি প্লটের মাঝখান দিয়ে বড় কোন রাস্তা নেই। তবে দুই বাড়ীর লোকজন চলাচল করে। “

The learned trial Court also observed that,

“অন্যদিকে বিবাদীপক্ষের সমর্থনে সাক্ষী গণের প্রত্যেকেই ৫৭৪ দাগের ০৭ শতাংশের উত্তরের প্লটটি ১৪ শতাংশের ঐখানে বাদীপক্ষের ঘরবাড়ী আছে মর্মে স্বীকার করেন। ডি ডব্লিউ-১ জেরায় বলেন ঐ, ৯৮৩ দাগের সম্পত্তিতে ঘর-দরজা আছে। সেখানে অনুশান্ত বাস করে। সে বাদী ভানু সরকারের স্বশুড়। সম্পত্তির দখল সংক্রান্তে বিবাদীপক্ষের সাক্ষী ডি ডব্লিউ-২ জেরায় পরিষ্কার ভাবে স্বীকার করেন- “বাদীরা নাঃ দাগের একটিতে ঘর-দরজা ও একটি ফলফলাদি লাগিয়েছে-ইহা সত্য।” উক্তরূপ বক্তব্য বাদীপক্ষের কেস কে সমর্থন দান করে। “

Concomitantly, on perusal of the judgment of the learned Appellate Court, observed that:

“অন্যদিকে বিবাদীপক্ষ নালিশী ৫৭৫ দাগের কোন সম্পত্তি নিজ নামে খারিজ করেন নাই এবং খাজনা প্রদান করেন নাই। ঐদিও নালিশী ৫৭৪ দাগে ৫ শতক সম্পত্তি বিবাদীপক্ষ নিজ নামে খারিজ করেছে মর্মে দেখা যায়। কিন্তু নালিশী ৫৭৪ দাগ ঐ আর,এস ৯৮১ দাগ তা পর্যালোচনায় দেখা যায় উল্লেখিত দাগে জমির পরিমাণ ৩০ শতক। কাজেই উল্লেখিত দাগে ৫ শতক জমি বিবাদীপক্ষ নিজ নামে খারিজ করলেও তা বাদীর দাবীকৃত সম্পত্তি নয় মর্মে প্রতীয়মান হয়। এছাড়া বিবাদীপক্ষের সাক্ষীগন স্বীকার করে ৫৭৪ দাগের ৭ শতাংশের উত্তরের প্লটটি ১৪ শতাংশ এবং সেখানে বাদীপক্ষ ঘরবাড়ি করে আছে। ডি,ডব্লিউ-১ জেরার জবাবে বলে ৯৮৩ দাগের সম্পত্তিতে ঘর দরজা আছে এবং সেখানে অনুশান্ত বসবাস করে এবং অনুশান্ত বাদীর স্বশুড়। ডি, ডব্লিউ-২ জেরার জবাবে স্বীকার করেন নালিশী দাগের সম্পত্তিতে ঘর দরজা আছে এবং ফসল আছে। কাজেই বাদীপক্ষ ঐ নালিশী সম্পত্তি দখল করে তা বিবাদীপক্ষের সাক্ষীদের সাক্ষ্য হতে প্রতীয়মান হয়। ফলে নালিশী সম্পত্তিতে বিবাদীপক্ষের দখল নাই মর্মে সাব্যস্ত করা হল। বিজ্ঞ বিচারক তর্কিত রায়ে ঐ উল্লেখ করেছেন বিবাদীপক্ষের নালিশী সম্পত্তিতে দখল নাই তা সঠিক। উল্লেখিত সিদ্ধান্ত হস্তক্ষেপযোগ্য নয়।”

From the above observations, it is found that the learned trial Court, after discussing the evidence in detail, observed that although the defendants claimed mutation in

respect of five decimals of land under S.A. Plot No.574, their own witnesses admitted that R.S. Plot Nos.983 and 981 are adjacent to each other and that no substantial road exists between them. More importantly, the defendants' witnesses admitted the existence of the plaintiff's dwelling house and fruit-bearing trees over the disputed property.

Similarly, the learned appellate Court independently reassessed the entire evidence and concurred with the findings of the trial Court. It categorically found that although the defendants obtained mutation for five decimals under Plot No. 574, such mutation did not correspond to the land claimed by the plaintiff. The appellate Court further noticed that the defendants themselves admitted the plaintiff's actual possession of the suit land.

The concurrent findings recorded by both the Courts below are based upon proper appreciation of oral and documentary evidence and cannot be said to be either perverse or unsupported by the materials on record.

The principal argument advanced by the petitioners is that since the property remains unpartitioned amongst the co-

sharers, no decree for permanent injunction could have been granted.

The contention, attractive at first blush, does not withstand close scrutiny.

It is now a settled principle that a decree for perpetual injunction merely protects existing lawful possession against unlawful interference. Such decree neither determines nor declares absolute title, nor does it operate as a decree of partition. A decree of injunction simply preserves the existing state of possession until the rights of the parties are finally adjudicated in an appropriate proceeding.

The Appellate Division has consistently held that where a plaintiff establishes lawful possession and proves interference or threatened dispossession, a decree for permanent injunction is maintainable notwithstanding the existence of complicated questions of title, provided the plaintiff is not required to seek a declaration of title as an indispensable relief. Equally well settled is the proposition that a co-sharer cannot, under the guise of joint ownership, forcibly dispossess another co-sharer who is in settled

possession. Such disputes must be resolved through due process of law, including partition where necessary.

The authorities reported in **1984 BLD (AD) 285, 19 BLC (AD) 139** and **56 DLR (AD) 22** reiterate that possession constitutes the primary consideration in a suit under section 54 of the Specific Relief Act and that a person in settled possession is entitled to judicial protection against unlawful interference.

The contention regarding the absence of partition also cannot advance the petitioners' case. Even assuming the property remains joint, the decree under challenge does not confer exclusive ownership on the plaintiff, nor does it extinguish the defendants' rights. The decree merely restrains unlawful interference with the plaintiff's established possession. The defendants remain at liberty to work out their respective rights in accordance with law by seeking partition or other appropriate relief before the competent forum.

It is equally settled that mutation neither creates nor extinguishes title; it is merely maintained for fiscal purposes. Therefore, the defendants' mutation records by themselves

cannot displace the concurrent findings regarding actual possession.

The decisions relied upon by the petitioners are distinguishable on the facts. Those authorities deal with circumstances where the plaintiff failed to establish possession or where an injunction was sought despite the existence of legal bars contemplated under section 56 of the Specific Relief Act. The factual foundation of the present case is entirely different because both the Subordinate Courts concurrently found, on evidence, that the plaintiff was in actual possession of the disputed property.

Furthermore, this Court is exercising revisional jurisdiction under section 115 of the Code of Civil Procedure. The jurisdiction is supervisory in nature. Unless the findings recorded by the Subordinate Courts suffer from jurisdictional error, material illegality, perversity or non-consideration of material evidence occasioning failure of justice, this Court would not ordinarily interfere with concurrent findings of fact. This principle has repeatedly been affirmed by the Appellate Division.

Having examined the entire record, I find no misreading or non-reading of evidence, nor any jurisdictional infirmity or legal error warranting interference in revisional jurisdiction.

Accordingly, I am of the considered opinion that both the Subordinate Courts rightly appreciated the evidence and correctly decreed the suit for perpetual injunction. The impugned judgment does not suffer from any illegality, impropriety or material irregularity calling for interference by this Court.

Result

As a result, the Rule is discharged.

There shall, however, be no order as to costs.

The order of stay granted earlier by this Court stands recalled and vacated.

Let the Subordinate Courts' Records be transmitted forthwith to the Courts concerned together with a copy of this judgment.

(Abdur Rahman, J.)