

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3159 of 2018.

In the matter of:

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

And

Kazi Moinul Islam and others

...Petitioners

-Versus-

Mrs. Moriom Begum and others

...opposite parties

Mr. Md. Salim Reza Chowdhury, Adv.

...For the petitioners

Ms. Preyanka Mohalder, Advocates

...For the opposite party

Nos.1-2.

Heard on 30.10.2024

Judgment on: 07.11.2024.

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the judgment and decree dated 06.06.2018 (decree signed on 14.06.2018) passed by the learned Joint District Judge, 1st Court, Khulna in Title Appeal No.14 of 2014 disallowing the appeal and thereby affirming the judgment and decree dated 25.11.2013 (decree signed on 01.12.2013) passed by the learned Senior Assistant Judge, Daulatpur, Khulna in Title Suit No.637 of 2007 dismissing 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 in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 28 decimal land alleging that above land belonged to Jurai Sheikh and Kasem Sheikh in equal shares and the same was accordingly recorded in C.S. khatian No.806. Above Jurai Sheikh transferred his 14 decimal land to Kashem Sheikh by oral gift on 1 February 1945 and transferred possession. Above Kasem transferred 28 decimal land to Abdul Gani Sarder by registered kobla deed dated 20.04.1949 who in his turn transferred the same to the plaintiffs namely Kazi Monsur Ai, Kazi Shamsur Rahman and Kazi A. Hanif by registered kobla deed dated 24.06.1974. By amicable partition disputed land was held and possessed by plaintiff No.2 Kazi Shamsur Rahman by excavating tank and constructing dwelling house. But in S.A khatian No.304 above land was erroneously recorded in the name of Abdul Hanif and Atiar Rahman predecessors of the defendants.

The suit was contested by defendant Nos.6-7 by filing a joint written statement alleging that Jurai Sheikh and Kasem Sheikh were the owners and possessors of disputed 28 decimal land but subsequently pursuant to dakhila and settlement Case No.167 of 54-55 above land was acquired by

Kazi Abdul Hakim and Kazi Oliar Rahman and in their names S. A. khatian No.304 was correctly recorded. Kazi Oliar Rahman transferred his 14 decimal land to Sheikh Ali Akbar by registered kobla deed dated 22.02.1965 and Sheikh Ali Akbar, predecessor of the defendants acquired above 28 decimal land from Kazi Oliar Rahman and Kazi Abdul Hakim by two registered kobla deeds dated 22.02.1965 and 17.01.1966 respectively. Defendants are in possession in above land by excavating tank and constructing dwelling house. Plaintiffs do not have any title and possession in the disputed land. In the R.S. khatian above land has been correctly recorded in the name of the defendants.

At trial plaintiffs examined 03 witnesses and defendants examined five. Documents produced and proved by the plaintiffs were marked as Exhibit No.1-7 and those of the defendants were marked as Exhibit Nos.Ka-kha series.

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

Being aggrieved by above judgment and decree of the trial court plaintiffs preferred Title Appeal No.14 of 2014 to the District Judge, Khulna which was heard by the learned Joint District Judge, 1st

Court, Khulna who dismissed the appeal and affirmed the impugned 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. Salim Reza Chowdhury learned Advocate for the petitioner submits that the defendants could not prove by legal evidence there are case of certificate sale or surrender of the disputed joma by the previous tenants and subsequent purchase by the predecessors of the defendants. But the learned Judge of the court of appeal below had most illegally held that the defendants had succeeded to prove their title in the disputed property which is not tenable in law. The learned Advocate further submits that the petitioners submitted a petition under Order 6 rule 17 of the Code of Civil Procedure for amendment of the plaint for incorporating a claim that Kasem Sheikh inherited the property of his brother Jurai Sheikh but erroneously in the plaint a claim of oral gift was made. The plaintiffs also challenged the legality of all the documents produced by the defendants at trial. Above petition for amendment may be allowed

and the suit may be remanded to trial court for retrial for the ends of justice.

Ms. Preyanka Mohalder learned Advocate for the opposite parties submits that on consideration of facts and circumstances of the case and oral and documentary evidence adduced by both the parties at trial the learned Senior Assistant Judge rightly found that the plaintiffs could not prove their lawful title and possession in the disputed land by legal evidence and the learned Joint District Judge on an independent assessment of materials on record rightly found that above findings of the trial court was based on evidence on record and accordingly dismissed the appeal and affirmed the judgment and decree of the trial court which calls for no interference.

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

It is admitted that disputed 28 decimal land belonged to Jurai Sheikh and Kasem Sheikh in equal share and C.S. khatian No.806 was correctly prepared and in S.A. khatian No.304 and R.S. khatian No.241 above land has been recorded in the names of predecessors of the defendants.

Plaintiffs claim that Jurai Sheikh transferred his 14 decimal land to Kashem Sheikh by oral gift on first of February 1945 but no evidence oral and documentary was adduced at trial to substantiate above claim. P.W.1 Kazi Moinul Islam who is a son of plaintiff No.1 expressed his ignorance about above oral gift. As such the concurrent findings of the learned Judges of the courts below that the plaintiffs could not prove the alleged oral gift of 14 decimal land by Jurai Sheikh to Kasem Sheikh is based on legal evidence on record.

Plaintiffs claim that above Kasem alone transferred disputed 28 decimal land to their predecessors Abdul Gani Sarder by registered kobla deed dated 20.04.1949 who in his turn transferred the same to now deceased plaintiff No.1 Kazi Mansur Ali, P.W.2 Kazi Shamsur Rahman and plaintiff No.3 Kazi Abdul Hanif by registered kobla deed dated 24.06.1974. P.W.1 Kazi Moinul Islam has produced a certified copy of above kobla deed dated 20.04.1949 executed by Kasem to Gani Sarder. There is no explanation as to why above original kobla deed was not produced and proved.

Defendants claim that their predecessor Kazi Abdul Hakim and Kazi Oliar Rahman acquired above land by settlement case No.167 of 54/55. Above

mentioned S. A. recorded tenant Kazi Abdul Hakim gave evidence as D.W.2 and stated that C.S. recorded tenants Jurai Sheikh and Kasem Sheikh having failed to give paddy to the jomindars namely Jadu Nath and Robindra Nath Basu they took back above land and gave settlement to him and Oliar Rahman Kazi. The learned Judge of the trial court called for original volume book of the S.A. Khatian of the disputed land from the District record room, Khulna and found that at page No.815 the names of Kazi Abdul Hakim and Kazi Oliar Rahman were written instead of the names of the Jurai Sheikh and Kasem Sheikh with comments that pursuant to S.C. Case No.167 of 54/55 above changes were made.

On consideration of above evidence on record the learned Judge of both the courts below rightly held that the S.A. khatian which stands in the name of Kazi Abdul Hakim and Kazi Oliar Rahman could not be said to be without any basis at all.

As far as possession of the disputed land is concerned at paragraph No.2 of the plaint plaintiffs have stated that pursuant to an amicable settlement among three plaintiffs disputed land was possessed by the plaintiff No.2 Kazi Shamsur Rahman alone. But plaintiff No.2 Kazi Shamsur Rahman or any of his heir did not give evidence in this suit

and claimed that they were in possession of the disputed land. P.W.1 Kazi Moinul Islam is a son of plaintiff No.1 Kazi Mansur Ali and in his evidence he stated that they were in possession of the disputed land. But he could not mention the mode or manner of possession of the plaintiffs in above land. In cross examination he stated that there is a tank in the disputed land which was excavated before. But in the plaint plaintiffs have claimed that they excavated above tank in the disputed land.

On the other hand S. A. recorded tenant Kazi Abdul Hakim while giving evidence as D.W.2 stated that he and his brother Kazi Oliar Rahman after purchasing the disputed land excavated a tank in the same. Above D.W. was cross examined by the plaintiff but he was not cross examined on his above evidence. The defendants have produced a bunch of rent receipts showing payment of rent to the government on the basis of the S.A. and R.S. khatians of the suit land which stands in their names.

On a detailed analysis of the oral and documentary evidence adduced by the parties at trial the learned Judges of the courts below concurrently held that the plaintiffs could not

prove their possession in the disputed land but defendants continuous possession in above land was proved. Above concurrent findings of the courts below being based on legal evidence on record this court cannot in its revisional jurisdiction interfere with the same.

In above view of the facts and circumstances of the case and materials on record I am unable to find any infirmity or illegality in the impugned judgment and decree passed by the learned Judge of the court of appeal below nor I find any substance in this revision under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let the lower courts' records along with a copy of this judgment be transmitted down at once.