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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 3914 of 2014
With
Civil Revision No. 3915 of 2014

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Mujibur Rahman Chowdhury
... Defendant-Respondent-Petitioner.

-Versus-

Dulal Ahmed and others

... Plaintiffs-Appellants-Opposite parties.
(In Civil Revision No. 3914 of 2014)

And

IN THE MATTER OF:

Mujibur Rahman Chowdhury
... Defendant-Appellant-Petitioner.

-Versus-

Dulal Ahmed and others

... Plaintiffs-Respondents-Opposite parties.
(In Civil Revision No. 3915 of 2014)

Mr. Sheikh Mohammad Morshed, Senior Advocate with
Mr. Md. Anisul Hassan, Advocate with
Mr. Md. Ahsan Ullah, Advocate with
Mr. Mohammad Syeed Abrar, Advocate with
Mr. Abdullah Al Mahmud, Advocate with

Mr. Hossain Mohammad Shahidul, Advocate

... Defendant-Respondent-Petitioner.
(In both Civil Revisions)

Mr. Syed Mohammad Jabed Parvez, Advocate with
Mr. Muhammad Anjarul Hasan, Advocate

... For the Opposite Party Nos. 1-4.
(In Civil Revision No. 3914 of 2014)

Mr. Sheikh Akhtarul Islam, Advocate with
Mr. Abu Sadeque Abdullah, Advocate

... For the Opposite Party Nos. 1-4.
(In Civil Revision No. 3915 of 2014)

Heard on 02.11.2025, 09.11.2025, 11.11.2025 and 13.11.2025;
Judgment on: 20.11.2025

Since both these Civil Revisions have been preferred at the instance of the same petitioner, arising out of the same Title Suit No. 285 of 2006 and involving identical questions of law and fact. The same have been heard together and are being disposed of by this single judgment.

At the instance of the defendant in Title Suit No. 285 of 2006, this Rule was issued in Civil Revision No. 3914 of 2014, calling upon opposite party Nos. 1-4 to show cause as to why the judgment and decree dated 17.07.2014, passed by the learned Joint District Judge, Second Court, Sylhet in Title Appeal No. 122 of 2010, allowing the appeal in part and setting aside the judgment and decree dated 15.04.2010, passed by the Court of the Assistant

Judge, Sadar, Sylhet in Title Suit No. 285 of 2006 dismissing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, operation of the impugned judgment and decree was stayed.

Similarly, in Civil Revision No. 3915 of 2014, the Rule was issued calling upon opposite party Nos. 1-4 to show cause as to why the judgment and decree dated 17.07.2014, passed by the learned Joint District Judge, Second Court, Sylhet in Cross Objection No. 2 of 2010, setting aside the judgment and decree dated 15.04.2010, passed by the Court of the Assistant Judge, Sadar, Sylhet in Title Suit No. 285 of 2006 should not be set aside and/or such other or further order or orders be passed as to this Court may deem fit and proper.

The salient facts, relevant for disposal of the Rules are that one Most. Afsa Khanom as plaintiff, instituted Title Suit No. 101 of 2004 before the Court of Assistant Judge, Golapganj, Sylhet against the defendant-respondent-petitioner seeking the following reliefs:

> (ক) ৩নং বিবাদীনির স্বামী রইছ আলী কর্তৃক ৩নং বিবাদীনি মোছাঃ মতিউন নেছা বরাবরে নালিশা ২য় তপশীল বর্ণিত ভূমি উপলক্ষ্যে বিগত ২১.১১.১৯৭২ইং তারিখের সিলেট সদর সাব-রেজিষ্ট্রি অফিসের ১৮১৩৮/১৯৭২ নং রেজিষ্ট্রি দলিল বেআইনি বেদাড়া, পন্ড,

অকর্মন্য, অকার্যকরী দলিল ও তৎদ্বারা অত্র বিবাদীনি বাধ্য নহেন মর্মে এক ঘোষণা মূলক ডিক্রি দিতে;

(খ) ৩নং বিবাদীনি মোছাঃ মতিউন নেছা কর্তৃক ১নং বিবাদী মুজিবুর রহমান চৌধুরী বরাবরে নালিশা ২য় তপশীল বর্ণিত ভূমি উপলক্ষ্যে বিগত ১১.১১.১৯৭৭ ইং তারিখে সম্পাদিত ঢাকা দক্ষিণ সাব-রেজিষ্ট্রি অফিসের ২৯৮৪১/১৯৭৭ নং রেজিষ্ট্রি দলিল বেআইনি বেদাড়া, পন্ড, অকর্মন্য, অকার্যকরী দলিল ও তৎদ্বারা বিবাদীনি বাধ্য নহেন মর্মে এক ঘোষণা মূলক ডিক্রি দিতে;

(গ) বিগত ০৮.১১.১৯৬৪ ইং তারিখের ৯৮০২ নং নিবন্ধিত কবালায় বাদীগণের খরিদা স্বত্ব ঘোষণা হওয়ার;

(ঘ) আদালতের ন্যায় বিচারে বাদীপক্ষ আর যে যে প্রতিকার পাওয়ার অধিকারী তাহারও ডিক্রি দিতে;

(ঙ) সম্যক আদালত ব্যয় পাওয়ারও এক ডিক্রি দিতে মাননীয় আদালতের বিহিতাদেশ হয়।

Upon the death of Afsa Khanam, her legal heirs were substituted as plaintiff Nos.1-4. Subsequently, the suit was transferred to the Court of the Assistant Judge, Sadar, Sylhet and renumbered as Title Suit No. 285 of 2006.

The case of the plaintiff, in short is that the suit land measuring 0.30 acre out of 0.60 acre under District-Sylhet, Police Station- Golapganj, Mouza Fulbari, J.L. No. 29, former *Khatian*

No. 331/1 and present *Khatian* No. 520, S.A. plot No. 2722 originally belonged to two C.S. tenants, namely Rois Ali and Monir Ali in equal shares. During the operation of Survey settlement the Schedule 1 land of the plaint was recorded equally in the names of two brothers. Upon amicable partition, Monir Ali obtained 0.30 acre land in the southern side and Rois Ali obtained 0.30 acre land in northern side. While in possession, Rois Ali sold his 0.30 acre land from the northern side of the suit plot to Afsa Khanom by registered Deed No. 9802 dated 08.11.1964. She possessed and enjoyed title, interests and rights in the suit land until her death, thereafter her heirs continued such possession. The defendant disclosed in May, 2002 that he had purchased the suit land from the wife of Rois Ali by Deed No. 29841/1977 dated 11.11.1977 and the plaintiffs came to know for the first time that the defendant created the deed collusively. They allege that defendant No. 6 fabricated deed No. 18138/1972 in her favour showing Rois Ali and Monir Ali as vendors of the suit land. The said deed never acted upon, as the said Rois Ali sold the suit land to the mother of the plaintiff in 1964. The plaintiffs came to know that the defendant mutated the suit land in his name in Mutation Case No. 618/77-78. The plaintiffs filed objection in the said mutation case in the office of the Assistant Commissioner (Land), Golapganj on 22.04.2004. The

defendant threatened Afsa Khanom to dispossess, leading to the institution of the suit.

The petitioner, as defendant, entered an appearance and contested the suit by filing written statement denying the material averments made in the plaint stating *inter alia* that the land measuring 0.60 acre of S.A. plot No. 2722; 0.36 acre land of S.A. plot No. 2723 and 0.10 acre land of S.A. plot No. 2724 originally belonged to Rois Ali and Monir Ali and the land was recorded equally in their names in S.A. *Khatian* No. 520. While possessing and enjoying the land, the said Rois Ali and Monir Ali sold 0.60 acre land of S.A. plot No. 2722 along with other land to defendant No. 3, Most. Motiunnessa by registered deed No. 18138/1972. Thereafter, Motiunnesa sold and transferred 0.50 acre land out of the 0.60 acre land to defendant No. 1 by registered deed No. 29841/1977. The defendant has been possessing, enjoying rights, titles and interests and mutated his name in Mutation Case No. 618/77-78 in mutation *Khatian* No. 587 and has transferred 0.10 acre land out of the said 0.50 acre to one Nazma Begum. He asserts that Deed No. 9802 dated 08.11.1964 is forged and fabricated. The predecessor of the plaintiffs, Afsa Khanom sold 0.0750 acre land of S.A. plot No. 2723 of *Khatian* No. 331/1 by deed dated 24.10.75 and 0.0750 acre land in S.A. plot No. 2723 by deed dated 12.07.76

to Most. Moina Bibi mentioning the land purchased by dint of deed dated 08.11.1964. Thus the said Afsa Khanom had no right, title and interest over the land of S.A. plot No. 2722. The said Afsa Khanom never obtained possession of the land under the deed of 08.11.1964 and the same was not acted upon. So, the suit is liable to be dismissed.

In order to dispose of the suit, the learned Assistant Judge of the trial Court framed as many as 03 (three) different issues and the plaintiff examined 04 (four) witnesses and defendant examined 08 (eight) witnesses in support of their respective cases. Apart from that the plaintiffs and the defendant produced several documents which were marked as exhibit Nos. 1-5 (ka) and exhibit Nos. A-L as well.

The learned Assistant Judge, Sadar Court, Sylhet after conclusion of the trial and upon considering the materials and evidence on record dismissed the suit on contest against defendant No. 1 and *ex parte* against the rest by judgment and decree dated 15.04.2010.

Challenging the said judgment and decree passed in Title Suit No. 285 of 2006 the plaintiff Nos. 1-4 as appellants filed Title Appeal No. 122 of 2010 before the Court of learned District Judge,

Sylhet which was transferred to the Joint District Judge, 2nd Court, Sylhet.

The defendants also preferred Cross Objection No. 02 of 2010 against the judgment and decree dated 15.04.2010 contending that the defendant has been prejudiced as the trial Court failed to address and decide upon the defendant's plea in the impugned Judgment.

The learned Joint District Judge upon hearing the parties allowed the appeal in part and dismissed the cross objection case by judgment and decree dated 17.07.2014.

Being aggrieved by and dissatisfied with the judgment and decree dated 17.07.2014 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Appeal No.122 of 2010, the defendant-respondent as petitioner preferred Civil Revision Nos. 3915 of 2014 and 3914 of 2014 and obtained Rules and order of stay.

Mr. Sheikh Mohammad Morshed, the learned Senior Advocate assisted by Mr. Md. Anisul Hassan, Advocate appearing on behalf of the defendant-petitioner contends that the Advocate Commissioner, Md. Akmol Khan, (DW7) and the son of Rois Ali (DW6) proved the possession and supported the case of the defendant and the validity of the deed Nos. 29841/1977 and 18138/1972. On the other hand, the plaintiffs-opposite party Nos. 1-4 failed to prove their possession under deed No. 9802/1964 and as

such the judgment and decree passed by the appellate Court is liable to be set aside.

He further contends that admittedly the defendant-petitioner has mutated his name and has been paying revenue of the suit land for over 35 years and the trial Court rightly found that the plaintiff does not have any title over the suit property and in such situation the appellate Court has committed an error in decreeing the suit which is based on a gross misreading of facts and evidence even.

He further contends that the plaintiffs failed to identify and specify the suit land with proper boundaries and as such no decree can be passed in respect of the unspecified land.

He next contends that the appellate Court has committed an error in shifting the burden of proof upon the defendant-petitioner despite contradictions in plaintiffs' deeds Nos. 26248/75 and 16476/76 which they owned by purchase by deed No. 9802/64.

He next contends that the appellate Court below has committed gross illegality in determining the prima facie possession of the opposite party Nos. 1-4 ignoring the fact that the Suit filed by the opposite party Nos. 1-4 was for declaration of title of the opposite party Nos. 1-4 in deed No. 9802/1964 and for a further declaration that the deed Nos. 29841/1977 and 18138/1972 are not binding upon them where the petitioner was in possession of the

suit land and therefore, the judgment and decree passed on such erroneous findings are nothing but an error of law, resulting in an error in the decision, occasioning failure of justice committed by the appellate Court below.

He next contends that the question of reliability of the witness statements from PW1 to PW4 recalling events from a time as early as the year 1964 can be questioned in usual course long after 50(fifty) years and as such the appellate Court below has passed the judgment and decree most illegally for which it has caused an error of law, resulting in an error in the decision, occasioning failure of justice.

He further contends that the petitioner is in possession of the suit land and if the opposite party Nos. 1-4 obtain a declaration of title over the suit land then, the very purpose of the suit as well as this revision application shall be frustrated and the petitioner shall suffer irreparable loss and damage.

In support of his contention learned senior counsel refers to the cases of ***Ratan Chandra Dey and others Vs. Jinnator Nahar and others,*** reported in 61 DLR (AD) (2009) 116; ***Erfan Ali Vs. Joynal Abedin Mia (late) represented by his legal heirs Golenur and others*** reported in 35 DLR (AD) (1983) 216; ***Momtaz Begum and others Vs. Md. Masud Khan ,*** reported in 52 DLR (AD) (2000)

46 and ***Jashimuddin Kanchan (Md) Vs. Md. Ali Ashraf*** reported in 42 DLR (AD) (1990) 289.

He finally prays for making the Rule absolute by setting aside the impugned judgment and decree passed by the appellate Court below.

Per contra, Mr. Muhammad Anjarul Hasan, learned Advocate appearing on behalf of the opposite party Nos.1-4 contends that the suit land along with the other lands including 0.60 acre land under S.A. *Khatian* No. 2722 belonged to Rois Ali and Monir Ali in equal share and was recorded in their names in D.P. *Khatian* No. 331/1, Hal *Khatian* No. 520. Afsa Khanom purchased the suit land appertaining to plot No. 2722 and deed No. 9802/64 will be predominating, not the deed Nos. 26248/75 and 16476/76. The defendant-respondent-petitioner has failed to prove that the executants of the deed No. 9802/64 Rois Ali filed any petition regarding correction of any entry in the said deed at any time after executing the same nor he did not transfer the suit land to the said Afsa Khanom.

He next submits that legal heirs and successors of Rois Ali have been made parties as defendants to the Title Suit No. 285 of 2010 but they never denied transfer of the suit land to the said Afsa Khanom and volume/Balam book was called and PW4, the bearer

of the volume/Balam book proved that deed No. 9802/1964 is genuine and in the said deed plot No. 2722 is written and thereby title and possession of the present plaintiffs-appellants-opposite parties are proved by the learned appellate Court.

The learned counsel contends that by selling the schedule land at northern portion of plot No. 2722 by deed No. 9802/1964 and handing over possession of the same to the buyer Afsa Khanam which is evident from deed No. 18136/72 (Exhibit 5) the original owner Rois Ali exhausted his all right, title and interest in the suit land and execution of the later deed No. 18138/72 dated 21.11.1972 by the said Rois Ali to his wife Motiunnesa is *void ab initio* and that doesn't confer any right title and interest in the suit land and next selling of the said land to defendant No.1 by deed No. 29841/77 dated 11.11.1977 by the said Motiunnessa to defendant No. 1 also *void ab initio* and that doesn't confer any right title and interest to defendant No. 1 in the suit land. By dint of doctrine of priority right as stipulated in Section 48 of the Transfer of Property Act, the plaintiffs-appellants-opposite parties are the owner and possessor of the suit land because the earlier deed must prevail over the subsequent deed regarding the same property where the seller is the same. Therefore, the learned appellate Court rightly decreed the suit

in favour of the plaintiffs-appellants-opposite parties and no error has been committed in passing the judgment and decree in appeal.

He next submits that deed of the plaintiffs-respondents-opposite parties is the earlier one and their possession has been affirmed by the original recorded owner of the suit land Rois Ali by recitation of possession of Afsa Khanom in the schedule land within the boundaries stated in deed No. 18138/72. Therefore, registration of deed No. 9802/1964 has duly been acted upon.

He argues that defendant No.1-petitioner has shown mutation paper and tax receipt but these documents do not confer right, title and interest in any land and these are not conclusive proof of possession. When the original owner admits possession of Afsa Khanom in the suit land then those mutation related documents carry very weak value in determining possession.

Mr. Anjarul Hasan submits that the plaintiffs-appellants-opposite parties are the owner of the schedule land by the earlier deed No. 9802/1964 and they are in possession and therefore, filing of the suit with prayer for declaration of deed Nos.18138/72 and 29841/77 to be void, inoperative and illegal and those two deeds are not binding upon the plaintiffs is the primary or substantive relief and prayer for title is the secondary or consequential relief which depends and varies case to case. When on plain reading of the

prayer portion of the plaint together with the contents of the plaint, it is evident that the prayer of the plaintiff for relief is complete and exclusive then there is no scope to hold that the suit is bad for want of seeking necessary consequential relief. In the instant case since the present plaintiff-appellants-opposite parties are in possession of the suit land therefore, the mere prayer for declaration of deed Nos. 18138/72 and 29841/77 to be void, inoperative and illegal and those two deeds are not binding upon the plaintiffs is well enough for their relief though they have also prayed for declaration of title on the basis of deed No. 9802/1964.

The learned Advocate contends that AC land's order is an administrative order and thus that cannot determine right, title and possession of the land which can only be determined in a judicial proceeding and title and possession of the suit land have already been proved by a judicial proceeding in the instant title appeal and order of the appellate Court is passed later than the AC land order. So judgment and decree passed by the appellate Court, being a judicial proceeding, will prevail over the administrative proceedings.

In support of his contention learned counsel refers to the cases of ***Shahani Bibi being dead her heirs Mohammad Azim and others Vs. Nur Islam being dead his heirs Doly Islam and others***,

reported in 4 BLC (1999)195 and ***Aftabuddin Ahamed, Executive Director, UCEP, Dhaka Vs. Md. Shamsul Alom and others***, reported in 2 ALR (2013) 348 and ***Nur Mohammad Vs. Serajul Islam and others***, reported in 64 DLR (2012) 491. With those submissions the learned Advocate finally prays for discharge of the Rule.

Mr. Abu Sadeque Abdullah, the learned Advocate appearing on behalf of the Opposite Party Nos. 1-4 in Civil Revision No. 3915 of 2014 adopted the submissions advanced by Mr. Muhammad Anjarul Hasan, learned Advocate appearing on behalf of the opposite party Nos.1-4, in Civil Revision No. 3914 of 2014.

I have heard the learned Advocates for both sides, perused the civil revisions, impugned judgments and decrees and other materials on record.

The suit was filed seeking declaration that deed Nos. 18138/72 and 29841/77 are void, collusive, inoperative and those are not binding upon the plaintiffs and further declaration that the plaintiffs have title acquired by purchase deed No. 9802/64. However, no prayer was made for declaration of title. Thus, the plaintiffs-opposite parties are not entitled to the relief granted. In this regard, the appellate Court below correctly held that there is no

scope for declaring title in favour of the plaintiffs under a prayer framed in such defective terms.

The learned Joint District Judge, 2nd Court, Sylhet (lower appellate Court) very rightly observed that:

> "অন্যদিকে The Specific Relief Act, 1877 এর ৪২ ধারার বিধান অনুযায়ী কোন সম্পত্তিতে কোন ব্যক্তির স্বত্ব আছে মর্মে ঘোষণা করা যায়। ৪২ ধারার বিধান অনুযায়ী ঘোষণা অবশ্যই সম্পত্তি হইতে হইবে। ৪২ ধারার ভাষ্য অনুযায়ী ঘোষণা অবশ্যই কোন সম্পত্তিকে উদ্দেশ্যে করিয়া হইতে হইবে... দলিলকে উদ্দেশ্য করিয়া নহে। "৯৮০২/৬৪ নং কবলায় বাদীগণের খরিদা স্বত্ব আছে" মর্মে ঘোষণা প্রদানের সুযোগ নাই।"

In this regard, reliance may be placed upon the decision passed in the case of ***Jashimuddin Kanchan (Md) Vs. Md. Ali Ashraf*** reported in 42 DLR (AD) (1990) 289, the Apex Court held:

> *"Respondent filed his suit for simple declaration that the appellant's kabala (Ext. 1a) was false and fraudulent. This declaration the plaintiff-respondent was not entitled to without first establishing his title to the land."*

Similar views were taken in ***Ratan Chandra Dey and others Vs. Jinnator Nahar and others,*** reported in 61 DLR (AD) (2009) 116 wherein Apex Court held:

> *"The plaintiff is not entitled to a simple declaration that appellant's kabala is false and fraudulent without first establishing his title to the suit land."*

In view of the above-mentioned decisions, a plaintiff cannot obtain a declaration that a defendant's deed is void without first establishing title.

It transpires from exhibits 'I' and 'J' that the predecessor of the plaintiffs, Afsa Khanom, purportedly alienated 0.075 acres of land in S.A. plot No. 2723 appertaining to Khatian No. 331/1 to one, Most. Sayan Bibi by registered deed No. 26248/75 and a further 0.075 acres to one Mayan Bibi by deed No. 16476/76. Significantly, in both aforementioned conveyances, the vendor (Afsa Khanom) traced her title to the base deed No. 9802/64. These subsequent recitals create a manifest ambiguity and cloud the plaintiff's title, as they raise a substantive question of fact as to whether the land originally purchased under deed No. 9802/1964 was situated in S.A. plot No. 2722 or S.A. plot No. 2723.

DW1, Muzibur Rahman stated in his examination-in-chief that "...আমি মতিউন্নেছার খরিদা ৫০ শতক ভূমি ৪টি পিলার ৪ কোনায় স্থাপন করে জমি চিহ্নিত করি ও মাটি ভরাট করিয়া উহাতে কৃষি ক্ষেত করি, উক্ত ভূমির নামজারী করাই ও ৬৭৮/৭৭-৭৮ নং মোকদ্দমা মূলে ৫৮৭ খতিয়ানে নামজারী করি, উক্ত নামজারী খতিয়ানের সি সি দাখিল করেছি। আমার খরিদা ভূমির খাজনা পরিশোধ করিয়া আসিতেছি, রশিদ দাখিল করেছি ১৪ ফর্দ, প্রদ-ই সিরিজ।" DW2, Md. Shaleah Ahmed Chowdhury corroborated the evidence adduced by DW1 and stated that "...খরিদের পর ৪ কোনায় ৪টি পিলার স্থাপন করে বিবাদী মুজিবুর রহমান, শুনেছি তিনি মাটি ভরাট করেন।" DW3, Gias Uddin also corroborated the above-mentioned evidence. He stated in his examination-in-chief that "...নালিশী দাগের ৬০ শতক হতে ৫০ শতক ১নং বিবাদির নিকট বিক্রয় করে, ক্রেতা ১নং বিবাদি ৪ কোনায় ৪টি পিলার বসান ও মাটি কাটান, তিনি মানুষ দিয়া ক্ষেত করান, আমি ক্ষেত করতে সোনা মিয়াকে দেখেছি, বর্গাদার হিসাবে ১০/১২ বছর চাষ করে, তারপরে বিবাদি পক্ষে বর্গাচাষ করছে আনিস (বা রানিস), আলী মূল বাদিনী আফসা খানম আমার চাচাত ভাইয়ের স্ত্রী, তিনি মারা যান ৬/৭ মাস আগে তিনি নালিশী দাগে কখনো দখল করেন নাই, তার সন্তানেরা দখল করে নাই।" DW4, Aanish Ali corroborated the above-mentioned evidence and deposed that "... নালিশী ভূমি ১নং বিবাদি দখল করে, আমি ১নং বিবাদিপক্ষ নালিশী ভূমিতে বর্গাচাষ করি, নালিশী দাগে উত্তরাংশে ৫০ শতক ভূমি তিনি দখল করে, উহাতে ৪ কোনায় ৪টি পিলার আছে, আমি উহাতে ১৯/২০ বছর ধরে চাষ করি।"

The Advocate Commissioner, Md. Akmol Khan, DW7, stated in his cross examination in reply to the question of the learned Advocate of the opposite party Nos. 1-4 that the opposite party No. 1 himself stated that the defendant-petitioner is the owner of the paddy of the suit land.

Furthermore, exhibit 'G' reveals that the plaintiffs preferred Objection Case Nos. 611, 816 and 1079 under Rule 30 of the Tenancy Rules, 1955, all of which were rejected on 17.07.2006. In the respective rejection orders the concerned objection officer categorically observed that "বাদীপক্ষ নালিশী জমিতে দখলে নাই বলে স্বীকার করেন।" The officer further opined that "বাদীপক্ষ ৯৮০২ তাং ০৮.১১.১৯৬৪ নং রেজিষ্ট্রি দলিল মূলে নালিশী জমি ক্রয় করিলেও নালিশী জমি দখলে নাই। দীর্ঘ ৪২ বৎসরেও দলিল একজিবিট করাতে পারেন নাই।" Consequently, it stands judicially established that the plaintiffs never held *khas* possession of the suit property. Unfortunately, the appellate Court below failed to discuss regarding exercise of possession of the parties.

Record shows that the defendant- respondent-petitioner has been paying rent for the suit land from 1977-2009 in the local Tahshil Office. Defendant No.1 proved his case by adducing Exhibits 'E'-series. On the other hand, the plaintiffs-opposite parties never paid the rent since 1964. Thus, in the absence of payment of rent, possession of the plaintiffs was not proved. Rent-

receipts are evidence of possession and follow title unless proven otherwise. This view is supported by the decision passed in the case of ***Erfan Ali Vs. Joynal Abedin Mia (late) represented by his legal heirs Golenur and others*** reported in 35 DLR (AD)(1983) 216.

The trial Court observed that the suit land was unidentified and unspecified. The Advocate Commissioner as DW7 proved his report as exhibit 'K' and 'K-1' wherein it is found serious inconsistencies between schedule No. 1 of the plaint and physical position of disputed land. So, the trial Court very correctly held:

> *"The burden is upon the plaintiff to specify her suit land but she has failed. An order cannot be passed on an unspecified and unidentified land. Thus, the suit is liable to be dismissed."*

The lower appellate Court also observed:

> "তবে পক্ষগণ কর্তৃক উপস্থাপিত বিভিন্ন দলিল পর্যালোচনায় পাওয়া গিয়াছে যে, পরবর্তী বিক্রয় দ্বারা ২৭২২ দাগের উত্তরাংশের ৩০ শতক ভূমির আশেপাশের ভূমিতে বর্তমানে ভিন্ন ভিন্ন ব্যক্তি স্বত্ববান ও দখলকার। বাদীপক্ষ আরজীতে ২৭২২ দাগের উত্তরাংশের ৩০ শতক ভূমির হাল নাগাদ চতুঃসীমা উল্লেখ করেন নাই। ৯৮০২/৬৪ নং দলিল

সম্পাদনের সময় হস্তান্তরিত ভূমির যে পরিচিতি ছিল বর্তমানে সেই পরিচিতি বিদ্যমান নাই।”

In this connection, reliance may be placed on the decision passed in ***Amulla Kumar Bairagi and others Vs. Chitta Ranjan Biswas and others*****,** reported in (2011) 19 BLT (AD) 118, wherein our Apex Court held that the High Court Division made the rule absolute mainly on the ground that the suit land is totally undemarcated and unspecified in the schedule of the plaint and thus a Court shall not be able to pass an executable decree. The Apex Court found no illegality in the judgment of the High Court Division since the lower appellate court had passed a decree over unspecified and undemarcated suit land which is not executable.

Given the above facts and circumstances, I am of the view that the appellate Court below did not properly evaluate the commissioner’s findings, rent-receipts, possession, boundary discrepancies etcetera. Such non-consideration amounts to an error of law and has occasioned failure of justice and hence, I find substance in the Rule issued in Civil Revision No. 3914 of 2014.

As a result, the Rule in Civil Revision No. 3914 of 2014 is made absolute, however without any order as to costs.

The judgment and decree dated 17.07.2014 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Appeal

No.122 of 2010 is hereby set aside so for as it relates to the effect that deed Nos. 18138/72 and 29841/77 are void, illegal and not binding upon the plaintiffs.

The judgment and decree dated 15.04.2010 passed by the learned Assistant Judge, Sadar Court, Sylhet in Title No. 285 of 2006 is restored.

Title Suit No. 285 of 2006 was dismissed on contest by the judgment and decree dated 15.04.2010, passed by the Court of the Assistant Judge, Sadar, Sylhet. Despite this dismissal, the defendants filed Cross Objection No. 02 of 2010 alleging that the defendant has been prejudiced by the trial Court due to non-consideration of the evidence adduced by the defendant's witnesses (DWs) and pleas. Upon hearing the learned Joint District Judge, 2nd Court, Sylhet (the lower appellate Court) rejected the Cross Objection. Being aggrieved the petitioner preferred Civil Revision No. 3915 of 2014 before this Court and obtained the Rule. Since, the original suit was dismissed on contest and the judgment and decree passed by the trial Court is restored by this Court and the grounds for the current revision no longer exist. So, there is no substance in the Rule issued in Civil Revision No. 3915 of 2014 and is liable to be discharged.

Accordingly, the Rule in Civil Revision No. 3915 of 2014 is discharged, however without any order as to costs.

The order of stay granted at the time of issuance of the Rules stands recalled and vacated.

Let a copy of this judgment be communicated to the concerned Court forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer.