

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 4319 of 1997

In the matter of:

Government of Bangladesh and others

.....Defendants-Appellants

Petitioners

-Versus-

Afsaruddin Beg and others

...Plaintiffs-Respondents

Opposite parties

Mr Md. Zahirul Islam, Deputy Attorney
General, assisted by

Mr Md. Ferdous Sarker, Assistant Attorney
General

....*For the Petitioners*

Mr Ahmed Noused Jamil, Advocate

...*For the opposite parties*

Date of Hearing: 19.7.2026 and 29.7.2026 A.D.

Date of Judgment: 04.08.2026 A.D., Tuesday;

২০ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ ।

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 the Records be called for, and a Rule be issued calling upon the plaintiffs-appellants-opposite party Nos. 1 and 2 [Sic] to show cause as to why the judgment and decree dated 5.1.97 and 7.1.97 respectively passed by the learned Subordinate Judge, 1st Court, Bagerhat in Title Appeal No. 33 of 1992, reversing the judgment and decree dated 12.8.91 and 18.8.91 respectively passed by the Additional Assistant Judge, Court No.2, Bagerhat, Sadar in Suit No. 44 of 1991 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper."

The **nucleus of the facts** of the instant Rule is that the plaintiffs instituted **Title Suit No. 44 of 1991** for a

declaration of title in the scheduled land. The plaintiffs' claims rested on the fact that the suit property originally belonged to Kesab Lal Chowdhury, Laxsmi Kanto Roy, and others, and that Laksman, Shashadher, Lakkhi, and Ramchandra Das have been possessing the same in ejmali. Ramchandra Das & other used to run their business in different ferry ghats by transporting, and they gave settlement the suit land in the month of Baisak, 1354 in favour of plaintiffs and possession was also handed over to them, and after taking delivery of possession they dug a pond and constructed a paca ghat in plot No. 304, and also constructed building in plot No. 305 and have been possessing the same by giving let out, by rearing up fishes and by growing up crops, trees etc., and subsequently, it has been wrongly recorded in Khas Khatian No. 1. During the liberation war and for other reasons they could not manage to get the suit land recorded in the Khatian. However, they came to know of the wrong recording from notices of the defendant-petitioners Nos. 3 and 5 on

24.11.86 and 15.12.86, respectively, which clouded the title to the plaintiff's suit land; hence the suit.

Conversely, the defendants contested the suit by filing written statements. Their case, in substance, is that the property originally belonged to the Zamindar of Gobardanga, and under the State Acquisition and Tenancy Act, the Zamindari has been abolished, and the suit land was rightly recorded as Khas land of the government, and the Zamindari building and construction is still standing thereon, and the Tahosildar has been residing there, and the plaintiffs have got no right, title and interest in the suit land; hence the suit is liable to be dismissed.

Thereafter, the learned Additional Assistant Judge, Bagerhat, after completing the lawful formalities, concluded the trial and was pleased to dismiss the suit vide its judgment and order dated 12.08.1998 (Decree drawn up thereunder and signed on 18.08.1991) on contest.

Thereafter, the plaintiffs preferred an appeal before the District Judge, Bagerhat and on transfer the learned

Subordinate Judge, 1st Court, Bagerhat, heard the appeal and by its judgment and order dated 05.01.1997 (decree drawn up thereunder and signed on 07.01.1997), was pleased to allow the appeal in Title Appeal No. 33 of 1992, reversing the judgment and decree passed in Title Suit No. 44 of 1991.

Hereunder, the defendants-respondents being aggrieved by and dissatisfied with the decision of the learned appellate Court preferred to invoke the revisional jurisdiction of this Court.

Mr Md. Zahirul Islam, learned Deputy Attorney General appearing for the petitioners, submits that the plaintiffs-opposite parties have miserably failed to establish, by cogent and reliable evidence, the alleged *pattan* on the basis of which they have asserted their right, title and interest in the suit land. According to him, apart from making a bare assertion as to the alleged *pattan*, the plaintiffs could neither produce the original *pattan* nor any

other dependable documentary or oral evidence sufficient to prove the same.

It is further submitted that the plaintiffs have also failed to produce any rent receipts or other documentary evidence showing payment of rent to the Government in respect of the suit land. In such circumstances, the learned Court of Appeal below, while holding that non-payment of rent would not extinguish the right, title and interest of the plaintiffs in the suit land, failed to appreciate and properly construe the evidence and materials available on record and, consequently, arrived at an erroneous finding.

The learned Deputy Attorney General further contends that the judgment and decree passed by the learned appellate Court below are founded substantially upon conjectures and surmises rather than upon a proper appreciation and assessment of the evidence on record. It is argued that the appellate Court, being the final Court of fact, was under a legal obligation to independently scrutinize the oral and documentary evidence and to assign

cogent reasons for differing from the findings recorded by the learned trial Court. Instead, the appellate Court, without adequately dealing with or dislodging the findings of the trial Court on the basis of the evidence available on record, proceeded to reverse the same. Such an approach, according to the learned DAG, amounts to a failure to exercise the jurisdiction vested in the appellate Court in accordance with law and has occasioned a serious miscarriage of justice.

It is further submitted that the R.S. record-of-rights was correctly prepared and finally published in the name of the Government, and that the plaintiffs have failed to adduce any satisfactory and corroborative evidence to rebut the presumption or evidentiary value attached to such record. The learned DAG draws particular attention to the deposition of PW-1, who admittedly stated that he did not even know the measurement or extent of the land in question. According to him, such admission materially weakens the plaintiffs' claim of title and possession and casts serious doubt upon the very foundation of their case.

Nevertheless, the learned Court of Appeal below, without properly discussing, analyzing or reconciling the material portions of the evidence, proceeded to record a finding in favour of the plaintiffs. Thus, although the appellate Court is ordinarily the final Court of fact, its findings, having been recorded without proper consideration of the material evidence, are vitiated by an error of law warranting interference in revisional jurisdiction.

The learned DAG next submits that the suit itself is barred by limitation and is otherwise not maintainable in view of the provisions of section 42 of the Specific Relief Act, 1877. According to him, the plaintiffs, having sought a declaration of their alleged title without establishing a subsisting and enforceable legal right in the suit property and without seeking appropriate consequential relief, cannot maintain the suit merely on the basis of an alleged defect in the record-of-rights. He submits that the learned appellate Court failed to properly appreciate these legal objections and thereby committed an error of law in decreeing the suit.

In support of his submissions, the learned Deputy Attorney General has referred to the decision reported in **56 DLR (AD) 53**, particularly in relation to the provisions of sections 144 and 144A of the State Acquisition and Tenancy Act, 1950. He has also placed reliance upon the decision reported in **15 MLR (AD) 17**, concerning the settled principle governing the maintainability of a declaratory suit under section 42 of the Specific Relief Act, 1877. On the strength of the aforesaid submissions and authorities, the learned DAG submits that the judgment and decree of the learned appellate Court below cannot be sustained in law and, accordingly, prays that the Rule be made absolute.

Conversely, **Mr Ahmed Nowshed Jamil**, learned Counsel appearing on behalf of the opposite parties, submits that the learned trial Court erred both on facts and in law in dismissing the suit. According to him, the trial Court failed to appreciate the materials on record in their proper perspective and misconceived the factual foundation of the plaintiffs' case as well as the applicable principles of law. He contends that the learned Court of

Appeal below, upon a proper, independent and comprehensive assessment of the oral and documentary evidence, rightly reversed the erroneous judgment of the trial Court and decreed the suit. Therefore, the findings arrived at by the appellate Court, being findings of fact based on evidence, ought not to be interfered with in revisional jurisdiction unless the same are shown to be perverse, based on no evidence, or otherwise vitiated by an error of law.

Learned Counsel further submits that the suit is not barred by limitation in the facts and circumstances of the present case. According to him, a mere erroneous entry in a record-of-rights does not, by itself, furnish an absolute or automatic cause of action so as to render a suit for declaration barred by limitation, particularly where the plaintiff continues to remain in possession of the property, and his possession has not been effectively disturbed or threatened on the strength of such erroneous record. It is his contention that, in the instant case, no *Kacharighar* was recorded in the C.S. Khatian and that the relevant entry in

the C.S. record has remained unrebutted. Unless the said entry is displaced by cogent evidence, the same cannot lightly be disregarded. On that premise, learned Counsel submits that the learned appellate Court below rightly held that the suit was maintainable and was not hit by limitation.

Learned Counsel next submits that although the R.S. record was subsequently prepared and published in the name of the Government, such subsequent record, by itself, cannot constitute the foundation of a valid claim of title unless the basis upon which such entry was made is established in accordance with law. He argues that the party who relies upon a particular record or entry must establish the foundation of the same where such entry is challenged. In the present case, according to him, the S.A. record was prepared in the name of the predecessors of the plaintiffs, thereby lending substantial support to their claim of title. He further submits that the plaintiffs have been continuously possessing the suit property pursuant to the alleged *pattan*, have constructed their homestead thereon and have planted trees upon the land, all of which

constitute material circumstances corroborating their claim of possession.

The learned Counsel further argues that the plaintiffs have succeeded in establishing their possession over the suit land on the touchstone of the preponderance of probabilities. According to him, the evidence, when considered as a whole, supports the plaintiffs' case that they have been in long, continuous and uninterrupted possession of the property. He submits that even where the documents relied upon by a party may be imperfect or defective in some respect, such documentary deficiencies cannot necessarily defeat a claim where long and continuous possession has been established, and such possession has remained adverse to the recorded tenant for the statutory period. It is therefore contended that, upon completion of the requisite period of continuous adverse possession, a title may accrue against the recorded tenant in accordance with law.

In support of his submissions, learned Counsel has relied upon the decision reported in **6 MLR (AD) 267**, relating to section 103B of the Bengal Tenancy Act, 1885. He has further referred to the decision reported in **1988 BLD 497, Vol. VIII**, concerning the question of commencement of limitation in a suit for declaration of title, and to the decision reported in **67 DLR (AD) 243**, with regard to the period of limitation applicable to a declaratory suit. He has also placed reliance upon the decision reported in **31 BLC (2026) 118**, concerning the basis and legal effect of a Khas Khatian and its application in the facts and circumstances of the case.

Relying upon the aforesaid facts, evidence and authorities learned Counsel submits that the learned Court of Appeal below committed no illegality or material irregularity in allowing the appeal and decreeing the suit. He accordingly contends that the impugned judgment and decree are sustainable in law and calls upon this Court, in exercise of its revisional jurisdiction, to refrain from

interfering with the findings of the final Court of fact. He therefore prays that the Rule be discharged.

Having heard the learned Counsels appearing for the respective parties, perused the revisional application, the impugned judgment and decree, the judgments and decrees of the Subordinate Courts, the pleadings, the oral and documentary evidence brought on record, and the other materials annexed to the revisional application, this Court is required to examine whether, in reversing the judgment and decree of the learned Trial Court, the learned Appellate Court correctly appreciated the evidence on record and applied the settled principles of law governing the determination of title and possession.

At the outset, it is necessary to observe that the learned Trial Court did not decree or dismiss the suit mechanically, nor did it arrive at its conclusion merely upon an examination of the documentary evidence. On the contrary, the judgment demonstrates that the learned Trial Court carefully scrutinized the oral testimony adduced by both sides and assessed the documentary evidence in the

light thereof. The findings recorded by the learned Trial Court, therefore, cannot be characterized as having been reached without consideration of the material evidence on record.

The learned Trial Court particularly noticed material infirmities in the testimony of the plaintiffs' witnesses. P.W.-3, in his deposition, stated that he could not say how many plots were comprised in the suit or even who had instituted the suit. Such evidence, in the considered view of this Court, materially affects the credibility and probative value of his testimony regarding the plaintiffs' alleged title and possession. The principal plaintiff also stated in his evidence that the relevant rent receipts had been produced and that he would be able to state the necessary particulars. The evidence on record, however, does not support such an assertion; rather, it discloses material inconsistencies concerning the production, execution, and identification of the alleged rent receipts.

The discrepancy becomes more apparent upon examination of the evidence relating to the principal rent

receipts relied upon by the plaintiffs. The rent receipt marked Exhibit- 3 and 3/A, which was produced for identification, appears to have been seen on the 2nd day of Chaitra, 1408 B.S. In contrast, P.W.-2 stated in his deposition that, on the 10th day of the same month, at about 10–11 A.M., the two rent receipts had been seen simultaneously. The two statements, when considered conjointly, are plainly inconsistent. If Exhibit-3/A had already been seen on the 2nd day of Chaitra, it could not, consistently with that evidence, have been produced or seen simultaneously with the other receipt on the 10th day of the same month. The learned Trial Court was therefore justified in scrutinizing the testimony of P.W.-2 in light of this material discrepancy, which goes to the root of the plaintiffs' attempt to establish their alleged title and possession through the said documents.

The evidence regarding possession is equally deficient. P.W.-3 asserted in his examination-in-chief that the plaintiffs were in possession of the suit land. Yet, during cross-examination, he candidly admitted that he could not

even state the number of plots comprising the suit property. Such inability to identify the subject-matter of the alleged possession substantially diminishes the evidentiary value of his assertion. Likewise, P.W.-3 admitted during cross-examination that he could not state the particulars of the property situated in the relevant plot. Upon a cumulative assessment of the evidence of the witnesses of both sides, therefore, the learned Trial Court cannot be said to have acted arbitrarily in holding that the plaintiffs had failed to establish their alleged possession over the suit land.

P.W.-1 further stated that the local Tahsildar and the Officer-in-Charge, Bagerhat, had issued notices on 03.12.1986 and 24.11.1986 respectively and that the issuance of those notices occasioned the institution of the suit. In support of that assertion, the plaintiffs produced the notices issued by the revenue authorities, which were duly marked as exhibits. The mere production and exhibition of such notices, however, could not by itself establish the plaintiffs' antecedent title or possession, particularly when

the foundational evidence upon which their claim of title rested was itself found to be inconsistent and doubtful.

On the other hand, D.W.-1, Syed Md. Chhattar, stated that he was the then acting Tahsildar and gave evidence regarding the physical and official features of the property in question. According to him, there was a two-storied office building at the relevant place, and there were no plots corresponding to plot Nos. 302 and 308 as alleged by the plaintiffs. He further stated that there was a pond in plot No. 305 and that the pond situated in plot was being used by them. He also deposed that the pond's ghat was about 100 years old and that the landlords' office and other establishments were occupied by their Nayebs. Significantly, he stated that the names of the plaintiffs had been recorded in the S.A. record, but alleged that the suit had been instituted with a view to manufacturing documents and securing recording of the suit land in the plaintiffs' names in the S.A. khatian. Whatever the ultimate legal effect of that assertion, the testimony of D.W.-1 was undoubtedly relevant

to the factual controversy concerning the identity, possession, and official treatment of the suit land.

The learned Trial Court, upon consideration of the evidence as a whole, ultimately concluded that the plaintiffs had failed to establish their title and possession by cogent, reliable, and legally acceptable evidence. It was on that basis, and not upon any isolated consideration of a single document, that the learned Trial Court dismissed the suit.

The learned Appellate Court, however, took a different view and decreed the suit, principally relying upon the pattannama and the Dhakhilas, or rent receipts, marked as Exhibits 3 and 3(A). The learned Appellate Court considered that the said rent receipts had been proved through the testimony of P.W.-2 and further observed that they were more than forty years old, notwithstanding certain inconsistencies appearing in the deposition of the said witness. The learned Appellate Court also proceeded on the premise that the defendants had failed to establish their own alleged demand and that the plaintiffs' title could not be defeated merely on account of non-payment of rent.

The question, therefore, is not merely whether the rent receipts were old documents or whether they had been formally exhibited, but whether, when considered in their entirety and in conjunction with the oral evidence, surrounding circumstances and subsequent records, those documents were sufficient to discharge the plaintiffs' burden of proving the very foundation of their title and possession.

On a careful sifting and appraisal of the evidence on record, it appears that P.W.-1, Kazi Nur Mohammad, stated that he had received notices dated 24.11.1986 and 03.12.1986 and claimed to have derived title through two Dakhilas, one dated 15 Chaitra 1354 B.S. and the other dated 2 Chaitra 1358 B.S. These documents undoubtedly assume considerable evidentiary significance in the plaintiffs' case. However, their evidentiary value must necessarily be assessed in the context of the testimony concerning their preparation, execution, contemporaneous circumstances and subsequent treatment in the revenue records.

P.W.-2, Nakim Uddin, stated that the Dakhilas for the years 1355-58, marked as Exhibits 3 and 3/A, had been executed by Laxmikanta in his presence. During cross-examination, however, he admitted that he could not state the age of the deeds; that no money by way of 'Selami' had been transacted in his presence; and, most importantly, that both Dakhilas had been written at the same time. This latter assertion assumes considerable importance when tested against the documents themselves. Exhibit-3 appears to have been jointly signed by Laxmikanta Das and Ram Kanta Das on 15 Chaitra 1354 B.S., whereas Exhibit-3/A bears the signature of Laxmi Kanta Das dated 2 Chaitra 1358 B.S. and purports to cover four years' rent. Thus, the documentary contents are inconsistent with the testimony of P.W.-2 that both Dakhilas had been written at the same time.

Such inconsistency cannot be brushed aside as a mere trivial discrepancy. The testimony of P.W.-2 was relied upon to establish the authenticity and execution of the very documents upon which the plaintiffs substantially founded their claim of title. When the witness's assertion as to the

manner and time of preparation of those documents is demonstrably at variance with the documents themselves, the credibility of the testimony and, consequently, the evidentiary weight attributable to the documents are materially impaired. The learned Appellate Court, in our view, ought not to have treated the mere antiquity or formal exhibition of the Dakhilas as sufficient to overcome such intrinsic inconsistency.

There is another significant circumstance which cannot be overlooked. The subsequent S.A. record was not prepared in accordance with the alleged patta relied upon by the plaintiffs. The absence of corresponding reflection of the alleged transaction in the subsequent revenue record constitutes a material circumstance requiring proper explanation. P.W.-1 himself stated that he could not give the measurements of the lands comprised in plot Nos. 304 and 305. He further admitted that the plaintiffs had not paid the rents and that he had approached the Tahsil Office for payment of rent only about four or five years before receiving Exhibit-4 notice. These admissions, when

considered together with the uncertainty regarding the identity and extent of the land and the inconsistencies surrounding the Dakhilas, materially weaken the plaintiffs' claim of continuous title and possession.

The evidence of P.W.-3 also fails to supply the deficiency. His inability to ascertain or state the essential particulars of the plaintiffs' case, including the number of plots comprised in the suit property, substantially detracts from his assertion regarding possession. A claim of possession over specific immovable property cannot ordinarily be established by a vague or general assertion divorced from identifiable particulars of the property.

It is true that the defendants examined three witnesses in an attempt to establish the Government's possession over the suit land. Their evidence, however, does not appear to have been founded upon, or adequately corroborated by, the R.S. record. The mere assertion of governmental possession, therefore, cannot, by itself, constitute an independent and conclusive foundation of title. The defendants may have had their own case

concerning long-standing arrears of rent or land revenue, or there may have been circumstances relating to the alleged owner's absence or unavailability that subsequently affected the preparation or maintenance of the R.S. record. Nevertheless, such circumstances cannot automatically cure the fundamental evidentiary deficiencies in the plaintiffs' case.

The governing principle remains that the plaintiffs, being the persons asserting title and seeking a decree founded thereon, must succeed on the strength of their own case and not merely on the perceived weakness of the defense. Where the documentary evidence relied upon to establish title is itself attended by material inconsistencies, where the oral testimony concerning its execution is inconsistent with the contents of the documents, where the subsequent revenue record does not correspond with the alleged transaction, and where the evidence of possession is vague and uncertain, the Court cannot legitimately infer title merely from the production or antiquity of the documents.

In the circumstances, the learned Appellate Court, while reversing the well-considered judgment of the learned Trial Court, appears to have attached undue importance to the antiquity and exhibition of the Dakhilas without adequately addressing the material contradictions in the evidence, the discrepancies between the documents and the testimony of P.W.-2, the plaintiffs' own admissions regarding rent and identification of the suit land, and the subsequent S.A. record. The reversal, therefore, cannot be sustained merely on the ground that the rent receipts were old documents or that the defendants failed to establish their own case with equal force.

The material question was whether the plaintiffs had discharged the initial and essential burden of establishing a lawful and identifiable title to the suit land by reliable and cogent evidence. Based on a cumulative assessment of all the evidence, the answer must be negative. The learned Trial Court, having considered both the oral and documentary evidence and having assigned reasons for disbelieving the plaintiffs' claim of title and possession,

arrived at a conclusion which cannot be characterized as perverse, arbitrary or contrary to the evidence on record.

Accordingly, the learned Appellate Court, in reversing the judgment and decree of the learned Trial Court principally on the basis of the pattannama and the Dakhilas, without properly reconciling the material contradictions and surrounding circumstances, committed an error in appreciation of evidence and law. The findings of the learned Appellate Court, being unsupported by a proper and holistic evaluation of the evidence, cannot be allowed to stand.

Be that as it may, the defendants have failed to prove the basis of the record, and this weakness of the defendants cannot cure the defect of the plaintiffs' case. The yardstick answer would be nothing but negative. The fundamental principle is that **title must be determined by examining the continuity, legality, and extent of the chain of title, rather than relying exclusively on a single khatian or document.**

However, the learned appellate Court attached considerable importance to the Dakhilas of the plaintiffs,

wherein doubt was cast upon the credibility, and the same concomitantly failed to create a bridge to the subsequent S.A. record. This kind of shaky document does not create any legal foundation of title. Besides, the Appellate Court failed to consider the Advocate Commissioner's report, and DW3, Ajit Kumar Paul, ascertained the government's possession through his commission report.

Learned Counsel for the opposite parties strongly argued that there was no mention of Kachharighar in the C.S. khatian, which indicated that the suit property derived from an exclusive private ownership, and thus the Government had no nexus to the basis of R.S. record. In this context, he referred to the decision as reported in **6 MLR (AD) 267**, in the case of Hriday Ranjan Dey and another Vs. Niranjan Dey being dead, his heirs Orobat Dey and others, where their Lordships held that-

“Bengal Tenancy Act, 1885-

Section 103-B- Presumption as to the correctness of the record of rights-

There is a presumption as to the correctness of the record of rights finally published under section 103-B of the Bengal Tenancy Act, 1885, until such presumption is rebutted by showing the contrary.

The presumption of the C.S. Khatian under section 103(B) of the Bengal Tenancy Act is that every entry in a record of rights finally published shall be the evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved to be incorrect. ---(Para 11)"

As per the provisions of Section 103(5) of the Bengal Tenancy Act, 1885, such an entry, being an old record-of-rights, carries evidentiary value and gives rise to the statutory presumption attached to a properly prepared record-of-rights, subject to rebuttal in accordance with law. Thus, the case in hand does not warrant any issue of admission and non-admission of the C.S. Khatian. Therefore, the aforesaid pivotal decision of our Apex Court does not aid the case of the plaintiffs.

Moreover, the other claim of the plaintiffs is that even where the documents relied upon by a party may be imperfect or defective in some respect, such documentary deficiencies cannot necessarily defeat a claim where long and continuous possession has been established, and such possession has remained adverse to the recorded tenant for the statutory period. **But the present case does not demonstrate that it has been instituted after 12 years of adverse possession against the recorded tenants or after 60 years against the Government. It is therefore my considered view that, upon completion of the requisite period of continuous adverse possession, a title may accrue against the recorded tenant in accordance with law; otherwise, legal foundation of title and possession are required to get the ownership.**

Thus, neither side is entitled to rely upon a khatian as though it were, by itself, the source of title. The correct approach is to examine the record of rights together with the deeds, succession, possession, surrounding circumstances, and the chain of title. If the defendants' R.S.

and S.A. entries are supported by an antecedent lawful conveyance, those entries acquire greater evidentiary significance. Conversely, if no lawful title is established in the predecessor, the subsequent entries cannot independently cure the defect in the root of title.

In the present case, the learned Appellate Court wrongly noticed the existence of Dakhilas but, in my considered view, the Dakhilas have not been proved as per law, and the same did not sufficiently undertake the further exercise of determining whether the subsequent records covered by that instrument corresponded with the disputed land claimed by the plaintiffs.

The defendants relied principally upon the decision reported in 15 MLR (AD) 17, in the case of Nurul Islam & others Vs. Lal Miah and another, where their Lordships held that,

"The cardinal principle of law is that the plaintiff has to prove his case with cogent evidence. He cannot rely on the weakness of the defendant's case."

Conversely, the plaintiffs-opposite parties relied upon the decision as reported in 31 BLC (2026) 118, in the case of Government of the People's Republic of Bangladesh represented by the Deputy Commissioner, Chattogram and others Vs Syed Ahmed Chowdhury and others, where a Division Bench of the Supreme Court of Bangladesh comprising their ***Lordships Mr Justice Bhismadev Chakraborty and Mr Justice AKM Zahirul Huq*** was pleased to hold that-

"The record of rights prepared in the name of the government in khas khatian appears without any basis. Leasing out the property on the basis of such erroneous record of rights is found without any legal basis which cannot be allowed and accepted. --- (12)"

The core facts of the aforesaid case are that the original owners of the suit property were Barada Charan and others, who mortgaged the property to one Bank,

which, as per law, sold the property by auction to Syed Ahmed through a Kabala dated 23.01.1945. Subsequently, he sold it to Hariranjan Biswas vide Kabala dated 20.12.1946, who settled it with the plaintiff through a pattan on 08.12.1953. Thereafter, the R.S. record was wrongly published in the name of the defendant. So, it is manifest that a series of documents establishing a chain of title was “compiled” before the wrong record was prepared. Whereas, the instant case demonstrates that only the dakhilas which entail suspicion to be genuine documents to culminate in title.

In the aforesaid context, I am of the firm view that a **doubtful, unproved or legally infirm document cannot constitute the *juridical foundation* of title, and, in the absence of a *prima facie* title, an adverse entry in the record-of-rights, even if alleged to be erroneous, cannot *ipso facto* confer upon the plaintiff any declaratory or possessory right. *Qui sentit commodum, sentire debet et onus* (i.e., he who enjoys the benefit must also bear the**

burden) has no application to create a proprietary right where its legal source itself remains unproved.

Upon consideration of the facts and circumstances of the case and the principles of law discussed hereinbefore, I find that the learned Appellate Court fell into error in treating the Patta and Dakhilas as sufficient, if not conclusive, evidence of the plaintiffs' title merely on the ground that the same stood in their favour. The mere existence of such documents does not, by itself, establish the title of the executants or transferees. The Court was required to trace the root of the plaintiffs' title, examine the title of the C.S. tenants from whom the alleged right originated, and ascertain whether the land covered by the Patta and Dakhilas was, in fact, comprised within the property lawfully acquired by the plaintiffs. In the absence of such an exercise, the subsequent documents could not, in law, be elevated into independent proof of title.

At the same time, it cannot be gainsaid that possession constitutes an important evidentiary

circumstance in a civil action relating to immovable property. Where title is seriously in dispute, long, continuous and exclusive possession, when duly established by reliable evidence, may furnish a relevant circumstance in assessing the probabilities arising out of competing claims. Possession, however, cannot ordinarily be divorced from the question of title; its evidentiary value must necessarily be assessed in the context of the source, nature, continuity and legal character of such possession.

In the case at hand, as noticed hereinbefore, the plaintiffs failed to establish a consistent and credible chain of possession in respect of the suit land. The learned Trial Court, upon careful consideration of the evidence on record, specifically adverted to the material deficiencies in the plaintiffs' case and, upon such assessment, dismissed the suit. Those findings were not founded upon mere conjecture or surmise; rather, they proceeded from an appreciation of the oral and documentary evidence placed before the Court.

In reversing the judgment and decree of the learned Trial Court, the learned Appellate Court, being the final Court of fact, was therefore required to address the material and substantially unshaken pieces of evidence which weighed with the Trial Court and to assign cogent and intelligible reasons for differing from the conclusions reached thereon. A mere re-appraisal of the evidence, without demonstrating why the findings of the Trial Court were erroneous either on facts or in law, does not sufficiently discharge the obligation of an appellate Court.

There can be no dispute that an appellate Court possesses ample jurisdiction to reappraise the evidence and, upon such reappraisal, arrive at a conclusion different from that of the Trial Court. Such jurisdiction, however, is required to be exercised judicially, rationally and in accordance with the settled principles governing appellate adjudication. Where the Trial Court has founded its conclusion upon material oral and documentary evidence, the appellate Court, while reversing such conclusion, is expected to indicate with reasonable clarity why the

evidence relied upon by the Trial Court was legally inadmissible, factually unreliable, or otherwise insufficient to sustain its findings.

The obligation assumes greater significance where the appellate Court reverses a judgment based upon a detailed appreciation of the evidence. A reversal which neither adequately notices nor effectively answers the material reasoning of the Trial Court may, in an appropriate case, amount to failure to exercise appellate jurisdiction in the manner required by law.

It is well settled that the first appellate Court is ordinarily the final Court of fact. It is, therefore, under a legal duty to independently examine the pleadings and evidence, address the material findings of the Trial Court, determine the issues arising for adjudication, and record reasons for accepting or rejecting the evidence upon which the rival claims rest. The appellate jurisdiction to reverse a judgment is undoubtedly wide; nevertheless, such power is not unguided or arbitrary. There must exist a rational and

demonstrable nexus between the evidence considered, the reasons assigned and the conclusion ultimately reached.

In the instant case, however, the learned Appellate Court does not appear to have undertaken such a comprehensive exercise. In particular, the Patta and Dakhilas were accorded substantial weight without a sufficient examination of the root of the plaintiffs' title, the identity of the land covered thereby, the continuity of possession claimed by the plaintiffs, and the evidentiary value of the R.S. Khatian and the Commission Report. Equally, the oral testimony of PW-1, PW-2 and PW-3, which constituted a material part of the evidentiary foundation of the plaintiffs' case, required a closer and more reasoned examination in the context of the findings recorded by the Trial Court.

It is true that the revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure, 1908, is not intended to convert a revision into a second appeal or to permit a mere substitution of one possible view of the

evidence for another. Nevertheless, the restraint imposed upon the revisional Court does not extend to cases where the subordinate Court has committed a material error of law, misread or misconstrued a material document, omitted to consider vital evidence, proceeded upon an erroneous legal premise, or arrived at a conclusion which is demonstrably inconsistent with the evidence on record. In such circumstances, interference in revision is not only permissible but may become necessary to prevent an erroneous exercise of jurisdiction from resulting in failure of justice.

The present case, in my considered view, does not involve a mere substitution of the view of this Court for another equally plausible view taken by the learned Appellate Court. The question is rather whether, in reversing the well-considered judgment of the learned Trial Court, the learned Appellate Court properly discharged its appellate duty by considering the material evidence and by furnishing adequate reasons for departing from the findings of the Court of first instance.

Upon a careful and anxious examination of the entire materials on record, I am unable to subscribe to the conclusions arrived at by the learned Appellate Court. I am, therefore, agreed to disagree with the view taken by that Court, particularly because decisive significance appears to have been attached to a document which, at best, furnished only a *prima facie* and clouded basis of the plaintiffs' claim of title, without satisfactorily tracing the complete chain of title and without adequately addressing the material evidence which had persuaded the learned Trial Court to dismiss the suit.

A document of doubtful or unestablished provenance cannot, by its mere production, supply the missing foundation of title. The evidentiary value of the Patta and Dakhilas had to be considered in conjunction with the source of title, the identity and continuity of the land, the antecedent title of the C.S. tenants, the subsequent transactions, the evidence of possession and the relevant survey records. That comprehensive exercise is

conspicuously absent from the impugned appellate judgment.

The learned Appellate Court also appears to have failed to reconcile the material documentary evidence with the oral testimony and the findings recorded by the Trial Court. The R.S. Khatian and the Commission Report, in particular, could not properly be brushed aside without assigning adequate reasons, especially when the same had a direct bearing upon the identity and possession of the disputed land. Likewise, the testimony of PW-1, PW-2 and PW-3 required assessment not in isolation but in the context of the entire evidentiary matrix and the deficiencies already noticed by the Trial Court.

Upon a cumulative appraisal of the pleadings, oral testimony and documentary evidence, I find that the plaintiffs failed to establish a legally coherent and convincing foundation for their claim. The deficiency is not confined to any isolated document; rather, it permeates the alleged chain of transactions, the asserted title and the

evidence concerning possession. The weaknesses in the defendants' case, even if assumed to exist, could not, by themselves, relieve the plaintiffs of their primary obligation to establish their own title and entitlement by legally acceptable evidence.

The learned Appellate Court, therefore, committed a material error in law in treating the subsequent records as without foundation and the existence of the Dakhilas as sufficient to displace the findings of the learned Trial Court, without undertaking a complete and legally sustainable examination of the chain of title, the identity of the suit land and the evidence relating to possession. The approach adopted by the learned Appellate Court thus resulted in a material misappreciation and incomplete consideration of the evidence.

Having considered the pleadings, the oral and documentary evidence, the judgments of the Courts below and the applicable principles of law, I am of the considered view that the learned Appellate Court failed to accord due

and adequate consideration to the material evidence on record. It further failed to properly appreciate the Patta, Dakhilas, the testimony of the material witnesses, the R.S. Khatian and the Commission Report, and thereby failed to furnish sufficient and cogent reasons for overturning the well-reasoned judgment of the learned Trial Court. The findings of the learned Appellate Court, having been arrived at upon an incomplete and erroneous appreciation of the material evidence, cannot, therefore, be sustained in law.

For the reasons stated above, the impugned judgment and decree passed by the learned Appellate Court are liable to be set aside. Consequently, the judgment and decree passed by the learned Trial Court, whereby the suit was dismissed, deserve to be restored and affirmed.

In view of the facts and circumstances of the case, the pleadings of the parties, the evidence on record and the principles of law discussed above, I find sufficient merit in the Rule.

Accordingly, **the Rule is made absolute.**

The judgment and decree passed by the learned Appellate Court are hereby **set aside**, and the judgment and decree passed by the learned Trial Court dismissing the suit are **restored and affirmed**.

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

The Office is directed to transmit the **Subordinate Courts Records (SCR)** forthwith, along with a copy of this judgment, to the Court concerned for information and necessary action.

Before parting with the case, I record my appreciation for the diligent assistance, persuasive submissions and valuable efforts rendered by the learned Counsels appearing for both sides. Their assistance has been of considerable value to the Court in arriving at a just, lawful and reasoned determination of the issues involved.

(Abdur Rahman, J)