Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.3504 OF 2013.

Joinal Abedin Doctor
..... Defendant-Petitioner.
-VERSUS-
Munsi Humayun Kabir
..... Plaintiff-Opposite party.

Mr. Md. Mostafa with
Ms. Sharmin Akter, Advocates
--------For the defendant-petitioner.

Ms. Suria Begum, advocate
----For the plaintiff-opposite party.

Heard on 10.08.2025, 13.08.2025, 18.11.2025 and 23.11.2025.

Judgment on 24.11.2025.

By this Rule, the opposite party was called upon to show cause as to why the impugned Judgment and decree dated 04.06.2013 passed by the learned Joint District Judge, 2nd Court, Barishal in Title Appeal No.23 of 2012 decreed the suit in allowing the appeal and reversing the Judgment and decree dated 29.11.2011 passed by the learned Assistant Judge, Muladi, Barishal in Title Suit No.12 of 2008 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.

The facts, in brief, for the disposal of Rule are that the opposite party herein, as plaintiff, instituted Title Suit No.12 of 2008 before the Senior Assistant Judge, Muladi, Barishal, for eviction of the defendant from the land described in the schedule of the plaint, contending inter alia that the land appertaining to S.A. Khatian No.597 bearing Plot No.2525 and 2540 measuring an area of 1.31 acre belonged to Prohallad Chandra and Gopal Chandra in equal share; that Prohallad Chandra died leaving behind son Jotindra Nath and Jotindra Nath transferred land of plot No.2525 of S.A. Khatian No.597 along with other lands to the plaintiff and registered kabala deed dated 22.06.1978 the plaintiff obtained .17 acre of land of plot No.2525; that the plaintiff has 8 (eight) brothers and they purchased the land along with other land for making house. After buying the land, the plaintiff filled it with earth, but the plaintiff's father, an older man, would not allow the plaintiff to build a house. However, after raising the land, the plaintiff planted various types of trees about 12/13 years ago. The plaintiff resides about 15 km far away from the suit land. The defendant's house was washed away into the river, as a result of which defendant No.1 came to the plaintiff's house at Muladi and prayed for

permission to live on the suit land after temporarily erecting a house. The plaintiff, on humanitarian grounds, allowed him to remain on the suit land on the condition that the defendant would leave the suit land within 3/4 years. On 10.02.2007, the plaintiff requested the defendant to remove his house from the suit land; however, the defendant filed M.P. Case No. 124 of 2007 beyond the plaintiff's knowledge. As a result, the plaintiff again requested the defendant to remove the house on 10.01.2008, but he refused, and hence the suit.

The petitioner herein, as defendant, contested the suit by filing a written statement denying all material allegations, contending inter alia that the plaintiff took Tk.20,000/- from the defendant for the sale of the suit land and inducted the defendant into possession of 24 decimals of the suit land on 14.02.1990. The defendant lives on the land, has created a garden there, and has planted various types of trees. The plaintiff being greedy filed the instant suit with ill motive and the defendant filed M.P. Case No. 124 of 2007 and the plaintiff with a view to get rid of from the case instituted the instant suit; that the plaintiff claimed 3 decimals of land but the defendant is possessing 24 decimals of land and the

description of the scheduled land is vague; that the defendant has 2 (two) dwelling houses on the suit land and the defendant's son-in-law also reside in a house of the suit land; that the defendant is also paying tax; that there was arbitration over the matter and arbitration asked the plaintiff to transfer the suit land by deed of transfer.

The learned Assistant Judge, Muladi, Barishal, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Assistant Judge, Muladi, Barishal, by the Judgment and decree dated 29.11.2011, dismissed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree dated 29.11.2011, the plaintiff, as appellant, preferred Title Appeal No.23 of 2012 before the District Judge, Barishal.

Eventually, the learned Joint District Judge, 2nd Court, Barishal, by the Judgment and decree dated 04.06.2013, decreed the suit, allowing the appeal and reversing those passed by the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendant, as petitioner, preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of stay.

Ms. Sharmin Akter, the learned Counsel appearing on behalf of the defendant-petitioner, submits that the appellate court below misread and misconstrued the evidence on record, both oral and documentary, and thereby committed an error of law, resulting in an error in the decision occasioning failure of justice in allowing the appeal. She then submits that the trial Court below very rightly and justifiably found that the plaintiff could not prove that the defendant is a licensee under him, and further found that the arbitration was held due to the non-execution of the kabala deed in favour of the defendant rather, the appellate court below without reversing those findings allowed the appeal and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Ms. Suria Begum, the learned Counsel appearing on behalf of the opposite party, opposes the contention so made by the learned advocate for the petitioner. She then submits

that the Court of Appeal below, by very judiciously discussing the evidence on record, proved that the defendant is a licensee of the plaintiff and that no such arbitration was held; thus, the Rule is liable to be discharged.

We have anxiously considered the submissions advanced by the Bar, perused the Judgment of the courts below, and examined the oral and documentary evidence on the record. It appears that the plaintiff instituted the instant Title Suit for eviction of the defendant from the land described in the schedule of the plaint. On the contrary, the defendant claimed that he is not a licensee of the plaintiff; moreover, he obtained the suit land by settlement and has been living thereon by erecting houses, a garden, and a vast plantation of various trees.

To prove the case, the plaintiff side examined as many as 4 (four) witnesses and exhibited the relevant documents; on the other hand, the defendant side, to prove its case, examined 4 (four) D.Ws and exhibited the necessary documents.

Analyzing the evidence on record, it appears that the plaintiff, to prove his case, was examined himself as P.W.1, who stated in line with the plaint, but he denied the

suggestion that, after receiving taka 20000/- from the defendant, he handed over the possession of the suit land to the defendant. He knew nothing about the arbitration. He has no signature on the sale agreement. Defendant has been temporarily living on the suit land for 3-4 years. P.W. 2 is within the kinship of the plaintiff; however, this witness admitted in cross-examination that the defendant has been residing on the suit land for about 8 to 10 years. Defendant and his son-in-law reside on the suit land and have erected two dwelling houses, planted trees, and dug a pond. He knew nothing about arbitration. P.W.3 admitted in his cross-examination that the arbitration was held for non-execution of the deed by the plaintiff. P.W.4, in his examination-in-chief, stated that he was present at the time the plaintiff gave permission to the defendant to reside on the suit land, and that he was present at the spot where the plaintiff asked the defendant to leave the suit land. In the cross-examination, he admitted that his dwelling house is far away from the suit land. Defendant resides on the suit land after erecting two dwelling houses and a kitchen. On the other hand, the defendant was examined as D.W. 1, who deposed in line with his plaint. D.Ws. 2-3, in their evidence, supported the

defendant's case and, in cross-examination, stated that they knew the arbitration was held between the plaintiff and the defendant.

From the above, it cannot be presumed that the defendant came into possession of the suit land of the plaintiff by way of a licence from the plaintiff. Therefore, it appears that the plaintiff has failed to prove that there was a tenement on which the defendant was a licencee under the plaintiff's ownership. The plaintiff also failed to prove that the defendant acquired possession of the suit land by illegal means or that the defendant dispossessed the plaintiff. The defendant does not appear to be a trespasser, nor does the plaintiff appear to have failed in this suit within the six months from the ascertained date of knowledge.

Notably, the plaintiff instituted the instant suit under section 8 of the Specific Relief Act; therefore, it should be governed by the Code of Civil Procedure. Having considered the plaint and evidence on record, it appears that the plaintiff has not sought any declaration of his title to the suit land. Therefore, the relief sought, being only a simple suit for recovery of khas possession of the suit land, is incomplete, defective, and legally untenable.

It is well established principle of law that when a plaintiff omits to seek a necessary consequential relief arising from his cause of action, the suit becomes hit by the provisions of Section 42 of the Specific Relief Act, 1877, and thus the suit is not maintainable. Therefore, the instant suit filed by the plaintiff without any consequential relief is misconceived in law and barred under Section 42 of the Specific Relief Act.

Notably, it is the cardinal principle of law that the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. This principle has been reaffirmed in the case of Moksed Ali Mondol -Vs- Abdus Samad Mondol, reported in 9 BLC (AD) 221, wherein it was held that:

> The plaintiff is to prove his case, and he must not rely on the weakness or defects of the defendant's case.

Similarly, in the case of Md. Naimuddin Sarder-Vs- Md. Abdul Kalam Biswas and another reported in 39 DLR (AD) 237 and Bangladesh -Vs- Israil Ali and others reported in 1981 BLD (AD) 371. In the aforesaid two cases, their Lordships of the Appellate Division observed that:--

> The plaintiff, in order to succeed, must establish his own case, and the weakness of the defendant's case is no ground for passing a decree in favour of the plaintiff.

In the present suit, the plaintiff has failed to discharge the burden of proof cast upon him by law, as none of his witnesses established delivery of possession of the suit land to him or his possession thereof.

In view of the above facts and circumstances, it appears that the trial court below, having carefully considered the evidence on record, found that the plaintiff failed to prove the case. On the contrary, the court of appeal below failed to adequately address, discuss, and determine the finding and reasoning of the trial court below as required under Order XLI Rule 31 of the Code of Civil Procedure,1908. Under the said provision, the court of appeal below, while disposing of an appeal, is mandatorily required to frame the points for determination, record its decision thereon, and state the reasons for such decision. The object of the Rule is to ensure that the Judgment of the judicial mind advert to and deal with the specific findings of the trial court. This view gets support in the case of Jahanara Begum vs. Md. Aminul Islam

Chowdhury, and others reported in 8BLC (AD)77, wherein it was observed that:-

> "The lower appellate court, being the final court of fact, will have to discuss and reassess the evidence on record independently while either reversing or affirming the findings of the trial court."

In the instant case, it appears from the record that the court of appeal below summarily reversed the trial court's findings without assigning cogent reasons or properly analyzing the evidence. Such omission constitutes a material irregularity and a violation of the mandatory provision of Order XLI Rule 31 of the Code of Civil Procedure, thereby rendering the Judgment of the court of appeal below unsustainable in law. Thus, the Judgment and decree of the appellate court below is not a proper judgment of reversal and has occasioned a failure of justice.

Considering the above facts and circumstances, we are of the firm view that the appellate court below misconstrued the documents and materials on record and allowed the appeal, decreeing the suit. Consequently, we find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned Judgment and decree dated 04.06.2013 passed by the learned Joint District Judge, 2nd Court, Barishal in Title Appeal No.23 of 2012 allowing the appeal is hereby set aside and the Judgment and decree 29.11.2011 passed by the learned Assistant Judge, Muladi, Barishal in Title Suit No.12 of 2008 is affirmed.

Communicate the Judgment and send down the Lower Court Records at once.

.....
(Md. Salim, J).

Kabir/BO