

Present:
Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 1880 OF 2019

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Syed Ali and others

...defendant No. 1, 2(a)-2(f), 3-4-
appellants-petitioners

Versus

Mohammad Ali and others

...Plaintiff-respondent-opposite parties

Mr. Md. Hamidur Rahman with

Mr. Md. Shahinozzaman with

Mr. Md. Delwar Hossain with

Mr. Ramesh Chandra Roy and

Ms. Shahinur Akter, Advocates

... for the petitioners

Mr. Md. Abdul Kader Bhuiyan, Advocate

..for the opposite parties

Heard on: 02.02.2026, 02.03.2026,

19.04.2026, 26.04.2026 & 05.05.2026.

Judgment on: 14.06.2026

Md. Mansur Alam, J:

The Rule was issued calling upon the opposite party
Nos. 1-3 to show cause as to why the judgment and decree
dated 28.05.2019 (decree signed on 03.06.2019) passed by
the learned Joint District Judge, 3rd Court, Cumilla in Title
Appeal No. 128 of 2016 dismissing the appeal thereby

affirming the judgment and decree dated 18.04.2016 (decree signed on 24.04.2016) passed by the Assistant Judge, Burichang, Cumilla in Title Suit No. 64 of 2013 decreeing the suit should not be set aside, perusal of the records and cause shown, if any and after hearing the parties make the Rule absolute and /or pass such other or further order or orders as to your Lordship deem fit and proper.

2. The case of the plaintiff's are, in short is that inter alia that the C.S. khatian Nos. 108, 109 and 110 of Mouza –Sikarpur under Police Station –Burichang within District-Cumilla was prepared and published in the name of Alam Gazi and the suit land was included in the said katians; that said Alam Gazi died leaving behind 2 (two) daughters namely, Joydhan and Sayera Bibi; that said Joydhan died leaving behind one son named Abdul Amid and said Sayera Bibi died leaving behind her husband Ohab Ali; that said Abdul Hamid and Ohab Ali obtained the suit land by way of inheritance; that one Faizuddin, the nephew of said Alam Gazi, married to said Joydhan, daughter of said Alam Gazi; that after the death of said Joydhan, said faizuddin married to Korfulernesa and a son named Bazlu

Mia was born in their conjugal life; that Abdul Hamid, Ohab Ali, Bazlu Mia, Anjut Ali, Sayed Ali and sajat Ali entered into a partition deed on 03.03.1956 wherein said Bazlu Mia got his share as nephew of said Alam Gazi; that said Sayera Bibi had no children and thus her husband got 8 anna share by way of inheritance from his deceased wife and said Abdul Hamid, Anjut Ali, Sayed Ali, Bazlu Mia and Sajot Ali together obtained the rest 8 anna share in the land left by Sayera Bibi; that said Abdul Hamid obtained the entire property left by his mother Joydhan and accordingly S.A. khatian Nos. 112 and 114 of the said Mouza was prepared and published in his name; that according to said partition deed, Bazlu Mia obtained 6 (six) Kara of dwelling house and 8 decimals of land in S.A. plot NO. $\frac{203}{4}$; that said Abdul Hamid obtained 12 decimals of land in S.A. plot Nos. 123 & 125 and 22 decimals of land in S.A. plot No. $\frac{203}{4}$ with said Ohab Ali and obtained 4.5 decimals of land from S.A. plot Nos. 123 & 125; that said Abdul Zabbar purchased 3 decimals of land from S.A. plot NO. 123 from said Korfulernesa

vide sale deed dated 07.04.1945; that said Sajat Ali sold out 1.5 decimals of land from S.A. plot Nos. 123 & 125 in favor of Abdul Hamid, Mohammad Ali and Abdul Zabbar; that after the death of Abdul Zabbar, his legal heirs Mohammad Ali, Cherag Ali and Liakat Ali obtained the suit land and erected dwelling house thereon; that the defendant Nos. 1-4 threatened the plaintiffs to construct the building in the land as described in the 1st schedule of the plaint and on 04.02.2013 they threatened that they will dispossess the plaintiffs from the land as described in the 2nd schedule of the plaint; that thereafter the plaintiff NO. 2, Cherag Ali filed a C.R. Case being NO. 243 of 2013 in the Court of Additional District Magistrate, Cumilla wherein the officer-in-charge of Burichang Police Station submitted his report; that the defendant No.3, Anwar Hossain dispossessed the plaintiff from the suit land on 12.04.2013 and hence the suit.

3. On the other hand, defendant Nos. 1-4 and 9, 12, 22-24, 26, 34, 35, 40-41, 50, 55, 56 entered appearance in the suit and contested the suit by filling separate written statement.

4. The facts of the written statement filed by the defendant numbers 1-4 are, in short inter alia that the suit is not maintainable in its present form and manner; that the suit is barred by limitation; that the suit is bad for defect of parties; that real fact is that the C.S. khatian No. 109 of Mouza Sikarpur under Police Station-Burichang within District-Cumilla was prepared and published in the name of Alam Gazi and Kader Box, both sons of Ala Box and 16 decimals, 3 decimals, 3 decimals of land were recorded in C.S. Plot Nos. 123, 124 & 125 of that khatian respectively wherein they owned equal share; the C.S. khatian no. 110 of the said Mouza was prepared and published in the name of said Alam Gazi and Kader Box and 115 decimals of land was recorded in C.S. plot No. $\frac{203}{4}$ of that khatian wherein they owned 57.5 decimals of land each in equal share; that subsequently in respect of the land as described in the 1st schedule of the plaint, Alam Gazi got 8 decimals, 1.5 decimals & 3 decimals of land in the southern side of C.S. plot Nos. 123, 124 & 125 and Kader Box got 8 decimals, 1.5 decimals & 3 decimals of land in the northern side of C.s. plot Nos. 123, 124 & 125

on compromise; that in respect of the land as described in the 2nd schedule of the plaint, said Alam Gazi & Kader Box owned 57.5 decimals of land each; that said Alam gazi died leaving behind his 2 (two) daughters namely Joydhan Bibi and Sayera Bibi, 1 (one) full brother Kader Box ; that said Joydhan Bibi, Sayera Bibi & Kader Box obtained the respective share in the land of both schedules of the plaint by way of inheritance; that said Kader Box owned total 76 decimals in the suit land; that said Faizuddin married to said Joydhan and a son namely Abdul Hamid; that said Joydhan died leaving behind one son named Abdul Amid and husband Faizuddin; that said Sayera Bibi died leaving behind her husband Ohab Ali; that said Abdul Hamid and Ohab Ali obtained the suit land by way of inheritance; that after the death of said Joydhan, said faizuddin married to Korfuler Nessa and a son named Bazlu Mia was born in their conjugal life; that said Faizuddin, being owner of 92.33 decimals of land, sold out 28 decimals in favour of Ibrahim Master, Abdul Mazid & others from C.S. plot No. $\frac{203}{4}$; that said faizuddin transferred total 61 decimals of land i.e. 16

decimals, 7 decimals, 3 decimals & 24 decimals of land in favour of his wife Korfuler Nessa by way of heba-bil-ewaj vide registered deed dated 16.10.1944 from C.S. plot Nos. 123, 124, 125 & $\frac{203}{4}$ respectively; that said Ohab Ali, Anjut Ali, Syed Ali, Abdul Hamid, Bazlu Mia & Sajat Ali entered into a deed of partition on 26.02.1956, but said Korfuler Nessa & Ibrahim Master were not party in that partition deed; that said Korfuler Nessa died leaving behind her only son Bazlu Mia; that said Bazlu Mia inherited property from his deceased mother and on the other hand he got 33 decimals of land vide said partition deed and subsequently said Bazlu Mia died leaving behind his 4 (four) sons (the defendant Nos. 1-4), 2 (two) daughters namely Rokeya & Hasina and wife Achhia; that said Anjut Ali, Sajto Ali, Sued Ali and Sujat Ali sold out 4 decimals of land vide registered deed No. 4080 in favour of Bazlu Mia and another by which the defendant Nos. 1-4 obtained 2 decimals of land; that the defendant Nos. 1-4 have been owning and possessing 15 decimals of land in C.S. & S.A. Plot Nos. 123, 124 & 125 as well as 4 decimals of land in C.S. & S.A. Plot No. 156 by erecting

dwelling houses thereon; that there are 10 houses, kitchen and toilets in that land; that the defendant Nos. 1-4 have been possessing the suit land as described in the 1st & 2nd schedule of the plaint and accordingly the latest khatian covering the suit land have been prepared and published in their names ; that the plaintiffs raised objection against the draft publication of the latest survey, but the same were rejected; that the defendant Nos. 1-4 have mutated the suit land vide mutation case and the plaintiffs have no title and interest in the suit land and in the circumstances stated above the suit is liable to be dismissed.

5. Upon hearing the parties, the learned Assistant Judge, Burichang, Cumilla after considering the facts and circumstances of the case and pleadings of the parties and also considering the materials on record decreeing the suit vide judgment and decree dated 18.04.2016 (decree signed on 24.04.2016),

6. Being aggrieved by and dissatisfied with the said judgment and decree dated 18.04.2016 (decree signed on 24.04.2016) passed by the learned Assistant Judge, Burichang, Cumilla, the defendant number 1, 2(a)2(f), 3-4 as appellants preferred Title Appeal Being No. 128 of

2016 before the Court of learned District Judge, Cumilla which on transfer was heard by the learned Joint District Judge, 3rd Court, Burichang, Cumilla who without considering the facts, circumstances and the materials on records and without proper shifting of the evidence on record was pleased to dismiss the appeal and thereby affirming the judgment and decree of the trial Court.

7. Being aggrieved by and dissatisfied with the judgment and decree of learned Appellate Court the plaintiff respondent petitioner moved this revision and obtained Rule.

8. Learned Advocate appearing for the defendant appellant petitioners argues that the plaintiffs claimed that CS Khatian Nos. 108, 109 & 110 of Mouza-Shikarpur under Police Station-Burichong within District-Cumilla were prepared and published in the name of Alam Gazi and on the contrary the defendants contended that the aforesaid Khatian were prepared and published in the names of Alam Gazi and Kadir Baksh, both sons of Ala Baksh and the documents i.e. C.S. Khatian Nos. 108, 109 & 110 (exhibits-1 series) prove the contention of the defendants and in that view of the matter it is obvious that

the distribution of the property of suit Khatian as arrived by the plaintiffs is not correct which proves that the plaintiffs could not establish their title over the suit land, but both the Courts below erroneously decided the case in favour of plaintiffs and thus committed error of law resulting in an error in the decision occasioning failure of justice.

9. The plaintiffs claimed that Alam Gazi died leaving behind 02 (two) daughters named Joydhan and Sayera Bibi and amongst them said Joydhan died leaving behind her 01 (one) son named Abdul Hamid, and on the contrary the defendants claimed that said Joydhan died leaving behind her 01 (one) son named Abdul Hamid and husband Foizuddin and the evidence on record and the plaint clearly show that the plaintiff claimed that after death of Joydhan, said Foizuddin married to Korfulernessa which supports the contention of the defendants to effected that Joydhan died leaving behind her 01 (one) son named Abdul Hamid and husband Foizuddin and in that view of the matter the genealogy as shown by the plaintiffs is nto true as well as the story of acquiring 29.50 decimals of land by the plaintiffs is not tenable in law and on fact, but

both the courts below erroneously decided the case in favour of plaintiffs and thus committed error of law resulting in an error in the decision occasioning failure of justice.

10. He next argues that the materials on record show that the latest khatian covering the suit land has been prepared and published in the name of the defendant and thus the presumption as to possession of the suit land as in favour of the defendants and that the presumptive possession of the defendants in the suit land is the proof of their title, but both the courts below committed error of law resulting in an error in the decision occasioning failure of justice in not considering such legal position of the case and as such the impugned judgment and decree is liable to be set aside.

11. The plaint itself shows that there is no specification as to identification of the said land and also there is not boundary of the suit land, but both the courts below committed error of law resulting in an error in the decision occasioning failure of justice in not appreciating that the plaintiffs having failed to comply with the mandatory requirement of law in giving full description

sufficient to identify the suit land, they are not entitled to any decree and also in not considering the evidence on record in their trust perspective and as such the impugned judgment and decree is liable to be set aside.

12. He further argues that in the plaint, the plaintiffs asserted that Abdul Jabbar, the processor of the plaintiffs purchased 1.5 decimals of land from Korfulernessa, wife of Foizuddin which denotes that the plaintiffs admitted the facts that said Korfulernessa got 61 decimals of land from her husband Foizuddin and the defendants produced the deed being No. 4463 dated 30.06.1951 (exhibit-Ga) and the defendants obtained 58 decimals of land out of said 61 decimals since said Korfulernessa transferred 03 decimals of land out of 61 decimals and it is apparent from the latest B.S. khatian being No. 127 (exhibit-Ja) that 57 decimals of land have been recorded in the names of successors-in-interest of the present defendant-petitioners and that the petitioners are in exclusive possession over said 57 decimals of land and in that view of the matter judgment and decree passed by the Courts below is not maintainable in law.

13. Both the courts below committed error of law resulting in an error in the decision occasioning failure of justice in misreading, misconstruing, misinterpreting, non-reading and non considering the evidences on record and thereby erroneously decided the suit against the defendant-petitioners and as such the impugned judgment and decree is liable to be set aside.

14. The finding of both the courts below is not based upon the proper appreciation of the materials on record and the same is perverse and thus the impugned judgment and decree is liable to be set aside.

15. Being the final court of fact, the Appellate Court must not record general expression of concurrence with the trial court's judgment, rather must give reason for its decision on each points independently, but in the present case, the Appellate Court below did not discuss the evidences on record at all rather the Appellate Court copied the judgment of the trial court in cyclostyle manner and in that view of the matter the impugned judgment and decree is not a proper judgment of affirmance within the meaning of Order KLI, Rule 31 of the Code of Civil Procedure.

16. He lastly argues that the trial court committed error of law resulting in an error in the decision occasioning failure of justice in holding that: "the defendants have dug the disputed land and a case have been filed for this soil-digging which thoroughly supports the statement of P.W.1, Cherage Ali" and the Appellate Court most illegally affirmed the judgment of the trial court without discussing the evidence on record and in that view of the matter the impugned judgment and decree is liable to be set aside. In a suit for recovery of khas possession, the plaintiffs are to prove their possession in and dispossession from the suit land and in the case in hand, the plaintiffs failed to prove their possession in and dispossession from the suit land by creditable evidences, but both the courts below wrongly decide the suit in favour of the plaintiffs and thus the impugned judgment and decree is liable to be set aside.

17. Learned counsel appearing for the plaintiff respondent opposite parties draws my attention on plaint, written statement, evidence and materials on records, impugned judgment and decree, and the proposition of law and submits that against said judgment and decree of

affirmance defendants No. 01-04 filed the instant Civil Revision without any specific grounds, for which need any interference of the Hon'ble Court.

18. Decision reported in 04 MLR (AD) Page 330- is as follows: "Code of Civil Procedure-1908-Section 115- **Interference with concurrent findings-** when the trial court as well as the appellate court on proper appreciation of evidence on record arrived at the concurrent findings on fact and such findings are also upheld by the High Court Division in revision, the Appellate Division declined to interfere with such findings of facts."

19. Another decision of our apex court reported in **04 MLR(AD) Page 362** is as follows: "Code of Civil Procedure-1908-Court of appeal is the final Court of fact. The High Court Division being the final court of fact in appeal decided correctly the question of settlement upon proper assessment of evidence on record. The factual question having been decided correctly by appellate court i.e., the High Court Division, the Appellate Division found nothing to interfere with the same and dismissed the petition for leave to appeal."

20. He lastly argues that in the instant Civil Revision, the Petitioners failed to show any specific error committed by the trial court and court of appeal below, therefore there is no ground to interfere with the concurrent findings of trial court and court of appeal below and as such the instant Rule is liable to be discharged.

21. Having heard the arguments advanced by the learned Advocate from both the sides and having perused the evidence both oral and documentary the question's are to be ascertained by this court whether the suit property is inherited by Alam Gazi and Kadir Baksh, heirs son of Alam Bakash and whether the plaintiff opposite party would possess the suit land alone and have been dispossessed by the present defendants appellant petitioner on the on the date and time as alleged.

22. On analysis of the above submissions advanced by both the parties and on perusal of the evidence and materials on record, it is documentarily appeared that the suit land was originally belonged to Alam Khan, the father of Alam Gazi and Kadir Bakes. C.S. khatian Nos. 108, 109 and 110 substantiated that contention of the defendant

appellant petitioner. The plaintiff opposite party brought in the plaint that the C.S. khatian is prepared only in the name of the Alam Gazi but the C.S. khatian marked as exht. 1(A) series enumerates that those khatians are prepared in the name of Alam Gazi and others; not only in the name of Alam Gazi. The definite case of the defendant petitioner is that the aforesaid C.S. records are prepared in the name of Alam Gazi and Kadir Bakesh. Also it is found that R.S. khatian No. 114 in pursuant to the aforesaid C.S. khatian is prepared by the predecessor of the plaintiff and defendants.

23. The plaintiff opposite party stated in their plaint that Alam Gazi died leaving behind two daughter's namely Joydhan and Sayera Bibi, Joydhan died leaving behind her one son Abdul Hamid and husband Faizuddin. Also it appears from evidence on record and the plaint that after the death of Joydhan, Foizuddin married to Korfulernessa which discloses the contention of the defendant to the effect that Joydhan died leaving behind her son Abdul Hamid and husband Foizuddin. Though the plaintiff opposite party claimed that the Joydhan died leaving behind her son Abdul Hamid only ; but the

defendants petitioners claimed that Joydhan died leaving behind her son Abdul Hamid and husband Foizuddin. The plaint and the evidence on record demonstrated that after the death of Joydhan, Foizuddin married to Korfulernessa. So in that view of the matter the geneology as stated by the plaintiff opposite party is not supported by the evidence on record and as such the contention of acquiring 29.50 decimals of land by the plaintiff opposite party is not sustainable in law and on fact. Also it is admitted by the plaintiff opposite party that Abdul Jabbar, the predecessor of the plaintiffs purchased 1.5 decimals of land from Korfulernessa which denotes that Korfulernessa got .61 decimals of land Foizuddin and the defendant's petitioner produced the deed no. 4463 dated 30.06.1951 and the defendants obtained .58 decimals of land out of said 61 decimals. B.S. khatian 127 (Exht Ja) for 57 of land have been recorded in the name of successor-in-interest of the defendant petitioner.

24. As regards the possession upon the suit land it is seen that the latest khatian in pursuant to the suit land has been prepared and published in the name of the defendant.

So the presumptive possession of the defendants in the suit land is well proved in favor of the defendant's petitioner.

25. The plaintiff opposite party instituted the present suit praying for the declaration of title and for recovery of khas possession. But the plaintiff opposite party did not provide specification to identify how much land and wherefrom they have been dispossessed. The plaintiff opposite party sought title declaration for .22 decimals of land from 2nd schedule and stated that this .22 decimal is located within .30 decimal of land of Plot No. $\frac{203}{4}$ but this .22 decimal of land is not specified. So the plaintiff opposite party have failed to comply with the mandatory requirement of law in providing full description sufficient to identify the alleged dispossessed land.

26. The defendant appellant opposite party contended that Foizuddin being owner of 92.33 decimals of land gifted .61 decimal to his wife Korfulernessa on 16.10.44 by a registered heba bil ewaj deed. Some .50 decimals of land from this .61 decimals are from the suit plot No. 123, 124, 125 and 203/4. The recent record of right No. 127 is prepared in pursuant to this .50 decimals

of land in the name of the present defendant petitioner but the plaintiff opposite party did not seek declaration of title in the instant suit. As this submissions is not addressed by the plaintiff, so this court finds that the instant suit is not maintainable for not seeking declaration against the aforesaid khatian No. 127.

27. So from the above facts and circumstances it easily can be concluded that both the courts below committed error of law resulting in an error in the decision occasioning failure of justice in misreading, misconstructing, misinterpreting, non-reading and non-considering the evidences on record and thereby erroneously decided the suit against the defendant petitioner's and as such the impugned judgment and decree is liable to be set aside.

28. It is settled principle of law that the Appellate Court must not record general expression of concurrence with the trial court's judgment, rather must give reason for its decision on each points independently, but in the present case, the appellate court below did not discuss the evidence on record at all; rather the Appellate Court copied the judgment of the trial court in cyclostyle manner

and in that view of the manner the impugned judgment and decree is not a proper judgment of affirmance within the meaning of Order XLI Rule 31 of the Code of Civil Procedure.

29. Rule 31 reads as follows: “The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reason for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein.”

30. In the light of above proposition of law it is manifestly proved that learned Appellate Court is quite unjustified and indiscreet in affirming the findings of the learned trial court without complying the mandatory requirements of the provision of Order XLI Rule 31 of the Code of Civil Procedure.

31. Learned Advocate for the plaintiff respondent referred the decision of Mahmud Ali vs Sree Radha Krishna Bigrah, reported in 4 MLR (AD) at page 330

where it is adopted that: “When the trial court as well as the appellate court on proper appreciation of evidence on record arrived at the concurrent findings on fact and such findings are also upheld by the High Court Division in revision, the Appellate Division declined to interfere with such findings of facts.”

32. Learned Advocate further argues that the aforesaid decision is also followed by the Appellate Division in deciding the findings of the High Court Division. But on appreciation of the judgment and decree of the learned Appellate Court it is explicit that the learned Appellate Court below did not discuss the evidence on record at all and without giving any reason for its decisions on each points independently affirmed the judgment of the trial court arbitrarily.

33. From the above facts and circumstances it has demonstrated that the plaintiffs opposite party have failed to prove his right, title and possession and dispossession from the suit land and therefore the impugned judgment and decree by the learned Appellate court is not sustainable.

34. In view of the above I am inclined reversing the judgment and decree of the learned Appellate Court dated on 28.05.2019 and as such the impugned judgment and decree warrants interference.

35. In the result, the Rule is made absolute without any order as to cost.

36. The impugned judgment and decree dated 28.05.2019 (decree signed on 03.06.2019) passed by the learned Joint District Judge, 3rd Court, Cumilla in Title Appeal No. 128 of 2016 is hereby set aside.

The interim order passed at the time of issuance of the Rule stands vacated.

Let the lower Court's records along with a copy of this judgment be transmitted down to the concerned Court below at once.