

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 3747 of 2015

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Abdul Mazid and others.

---- Defendant-Appellant-Petitioners.

-versus-

Md. Jahangir Alam and others.

---- Plaintiff-Respondent-Opposite Parties.

Mr. Md. Zahangir Alom, Advocate

---- For the Petitioners.

Mr. Mazedul Islam Patwary, Advocate

--- For the Plaintiff- O.P No. 1.

Heard On: 08.01.2026 and 13.01.2026.

Date of Judgment: 19.01.2026.

S. M. Saiful Islam, J.

Upon an application under section 115(1) of the Code of Civil Procedure, 1908, this Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 21.05.2015 (decree signed on 26.05.2015) passed by the learned Joint District judge, 1st Court,

Lalmonirhat in Title Appeal No. 55 of 2010 dismissing the appeal and thereby affirming those dated 25.04.2010 (decree signed on 30.04.2010) passed by the learned Assistant Judge, Kaligonj, Lalmonirhat in Other Class Suit No. 76 of 2006 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1 as plaintiff instituted Other Class Suit No. 76 of 2006 in the Court of the learned Assistant Judge, Kaliganj, Lalmonirhat praying for declaration of title and recovery of khas possession of the suit land as described in the schedule to the plaint. The plaint case in short is that total 2.79 acre of land appertaining to C. S. *Khatian* No. 92 of Mouja- *Dakkhin Mushrat Modati* under P S- Kaliganj, District- Lalmonirhat belonged to Faimuddin Dalal and others who gifted the property in favour of a mosque called *Srutidhar Dalalpara Jame Masjid*. Thus, the property became *Wakf* property and accordingly in the C S *Khatian*, it was recorded in the name of Abdul Karim Munshi and Safor Uddin Munshi who were *Mutawallis*. After their death Mohammad Ali, son of Faimuddin was appointed as *Mutawalli*. He continued to possess the land in favour of the mosque. Montaj and Motiar Rahman were brothers of Mohammad Ali who were entrusted with the duty to record the property in the S. A. *Khatian*. But they abused the trust and collusively recorded .81 acre of land in the name of Mantaj Ali in S. A. 82 *Khatian*, .27 acre of land in the name of Motiar Rhaman in S. A. 84 *Khatian*, .31 acre of land in the name of Razfun Nnessa in S. A. 83 *Khatian* and they kept these records secret. The rest 1.40 acre of land was recorded in the name of mosque in S. A. 81 *Khatian*. That 1.39 acre of land recorded in

S. A. 82, 83 and 84 *Khatians* is the suit land. Plaintiff-Mosque was possessing the suit land for a long period of time. Defendant Nos. 1-3 previously dispossessed the plaintiff from the suit land, but under the pressure of the village community, they left the possession and plaintiff-Mosque committee resumed the possession. Again on 02.02.2005 the defendant Nos. 1-3 dispossessed the Plaintiff- Mosque from the suit land. Hence, the Plaintiff Mosque instituted the suit praying for declaration of title along with recovery of khas (খাস) possession of the suit land.

Defendant Nos. 1-3 contest the suit by filing a written statement contending *inter alia* that the suit is not maintainable in its present form and it is barred by the law of limitation. They further contended that the C. S. recorded tenant Faimuddin died leaving behind his sons and daughters who as heirs owned and possessed that portion of land of Faimuddin and accordingly that portion of land was correctly recorded in the name of the heirs of Faimuddin in the S A record. Thereafter, the successive heirs of Faimuddin have transferred the land to defendant Nos. 1-3 and accordingly they are possessing the suit land. Hence, the defendants prayed for dismissal of the suit.

For disposal of the suit, Trial Court framed following four issues, namely:

- 1) Whether the suit is maintainable under the present status;
- 2) Whether the plaintiff has title and the defendant denied the title thereof;
- 3) Whether the plaintiff has been dispossessed from the suit land;
- 4) Whether the plaintiff is entitled to the relief they claimed;

Learned Trial Court, considering the oral and documentary evidence adduced by both the parties, decided all the issues in favor of the plaintiff and decreed the suit. Trial Court held that

according to C. S. *Khatian*, the suit property belongs to Mosque. The record of 1.39 acre of land in the name of Montaj and Motiar was erroneous as the defendants failed to prove that the suit property was lawfully transferred by Mosque to Motiar and Montaj. The *plea* of inheritance by Montaj and Motiar is not tenable because they cannot inherit the property of their father that he gifted during his lifetime. Mentioning these reasons, the learned Trial Court decreed the suit by the judgment and decree dated 25.04.2010.

Being aggrieved by that judgment and decree, the defendants as appellants filed Title Appeal No. 55 of 2010 in the Court of the learned District Judge, Lalmonirhat and that Appeal was transferred to the Court of the learned Joint District Judge, 1st Court, Lalmonirhat. Learned Joint District Judge upon hearing of both the parties dismissed the Appeal by the impugned judgment and decree dated 21.5.15 (decree signed on 26.05.2015) and affirmed the judgment and decree passed by the Trial Court. Being aggrieved from the impugned judgment and decree, the defendant-petitioners filed this revisional application and obtained the Rule.

At the time of issuance of the Rule on 17.09.2015, the parties were directed to maintain *status quo* in respect of possession and position of the suit property till disposal of the Rule.

Learned Advocate Mr. Md. Jahangir Alam appearing on behalf of the defendant-petitioners submits that the impugned judgments and decree passed by both the Courts below are wrong, improper, bad in law and these have been passed without application of judicial mind. Both the Courts below committed error of law occasioning failure of justice. The suit property was correctly recorded in the S. A. *Khatian* in the names of the heirs

of Faimuddin and the defendant-petitioners purchased it from them by registered *kabla* (কবলা) deeds. Though the plaintiff claims that the S A Record was wrongly prepared, but they did not file any suit for correction of the record, rather they filed the instant suit for recovery of *khas* (খাস) possession. Both the Courts below committed an error of law by non-consideration of material evidence and documents which resulted in an error in the decision occasioning failure of justice. Upon these grounds learned Advocate for the defendant-petitioners prayed for making the Rule absolute by setting aside the impugned judgment and decree.

On the other hand, learned Advocate Mr. Mazedul Islam Patwary along with the learned Advocate Mr. Rashedul Islam appearing on behalf of the plaintiff-opposite party submits that the learned Courts below have rightly decreed the suit in favour of the plaintiff. The suit property is *Wakf* property for Mosque and was wrongly recorded in the name of the heirs of Faimuddin. Defendants have no title to the suit land and they are forcibly possessing the land. There is no legal ground to interfere with the concurrent findings of the Courts below. For these reasons, learned Advocate for the plaintiff-opposite party prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the revisional application along with the annexures, the impugned judgment and decree and the lower Court records. It is admitted by both the parties that the suit land originally belonged to Faimuddin and others. Plaintiff claims that Faimuddin and others gifted the property in favour of a Mosque called *SrutidharDalalpara Jame Masjid* and thus the property became *Wakf* property and accordingly in the *C S Khatian*, it was recorded in the name of Abdul Karim Munshi and Safor Uddin

Munshi who were *Mutawallis*. This claim of the plaintiff is supported by the C. S. *Khatian*. Both the parties have filed the C. S. *Khatian* No. 92 which has been marked as Exhibit No. 2 and Ka (1). On perusal of the C. S. *Khatian* No. 92, it is found that Faimuddin and others were settled *rayat (rayatsthitiban)* in the total 2.79 acre of land in that *Khatian* and at the same time it has been mentioned regarding the possession of the land “দান দং গ্রাম্য সাধারনের পক্ষে মসজিদের মতোয়াল্লী আব্দুল করিম মুঙ্গী ॥ পিং- টোল্যামুঙ্গী, ছপারদিন মুঙ্গী ॥ পিং- রহিমুল্লা মুঙ্গী”। Defendant-petitioners do not deny the correctness of the C. S. *Khatian*. Thus, it is proved by the C. S. *Khatian* that the C S tenants gifted the property to a Mosque before the C. S. Record and accordingly the total 2.79 acre of land was then *Wakf* property for Mosque. Learned Court below has rightly held that the claim of inheritance by the heirs of Faimuddin is not tenable because Faimuddin himself gifted the property during his life time. So, S. A. Record in the name of the heirs of Faimuddin has no legal basis.

Of Course, on perusal of Exhibits- 1/1, 1/2 and 1/3 it appears that *Mutawalli* of that *Wakf* property created some under tenancies regarding 1.39 acre of land (suit land) which was recorded in C. S. 92/1, 92/2 and 92/3 C. S. *Khatians* in favour of the heirs of Faimuddin as *korfa rayat (কোরফা রায়ত)*. But it may be mentioned here that the defendants do not claim the property on the basis of such under tenancies. The claim of the defendants is that the heirs of Faimuddin inherited the suit property from Faimuddin and they transferred it to them by registered deeds. But such claim of the defendants is not tenable because Faimuddin lost his right, title to the suit property after making gift to the Mosque. As neither party speaks nothing regarding the under tenancies as shown in exhibits 1/1, 1/2 and 1/3, it appears that such under tenancies were extinguished.

Thus on perusal of the evidence on record, it appears that the plaintiff has successfully proved his title to the suit land. Plaintiff claims that the defendants once handed over the possession of the suit land to the Mosque and again they dispossessed the Mosque on 02.02.2005. All the PWs have supported that particular date of dispossession in their deposition and there is no reason to disbelieve the testimony of those witnesses.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in an error which occasioned failure of justice and when the lower Court has acted illegally or with material irregularity in exercise of law or has committed an error in procedure during the course of trial and such breach or error has affected the ultimate exercise of the jurisdiction of the Court. In revision under section 115(1) concurrent findings of fact cannot be disturbed unless those are manifestly perverse. In the instant suit both the Courts below decided that the plaintiff has title to the suit land and he has been dispossessed by the defendants from the suit land as claimed in the plaint and accordingly the suit was decreed. Nothing is found in the impugned judgment of the Appellate Court which is unlawful or is based on non-consideration or misreading of any evidence. The impugned judgment of the Court of Appeal does not suffer from any legal infirmity or impropriety and, as such, no interference is called for by this Court.

Considering the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

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

The order of *status quo* passed earlier by this Court is hereby vacated.

Concerned section of this Court is hereby directed to send down the lower Courts Records to the concerned Courts below along with a copy of this judgment and order immediately.