

Present:

MR. JUSTICE MD. SALIM

CIVIL REVISION NO.628 OF 2020.

Md. Sultan Mia and others

..... Plaintiff-Petitioners.

-VERSUS-

Omar Kitab and others

..... Defendant-Opposite parties

Mr. Saifur Rashid, Advocate with

Mr. Shahin Alam, Advocate

..... For the Petitioners

Mr. Rafiqul Islam Mehedi, Senior Advocate

..... For the Opposite Parties.

**Heard on 27.08.2025, 01.09.2025,
02.09.2025 and 03.09.2025**

Judgment on 04.09.2025

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 05.01.2020 passed by the learned Additional District Judge, 1st Court, Kishoreganj in Other Appeal No. 407 of 2011, allowing the appeal and reversing the Judgment and decree dated 23.10.2011 passed by the learned Senior Assistant Judge, Sadar, Kishoreganj in Other class Suit No.58 of 2003 decreeing 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.

Facts, in brief, for disposal of the Rule, are that the petitioners, along with pro-forma opposite parties as plaintiffs, instituted Title Suit No. 58 of 2003 before the Senior Assistant Judge, Sadar, Kishoreganj against the opposite parties praying for permanent injunction regarding the suit land described in the schedule of the plaint contending, inter alia is that, the suit settlement record no. 8167 was duly recorded in the name of jote Mukendra Kishore Mojumdar and possessor his son Monindra Kishore Mojumdar. As Monindra Kishore Mojumdar is the possessor of the suit land through barga, Abdul Gafar and Abdul Mannan, so the settlement record No. 8168 was recorded in their names as barga possession. Afterwards, Monindra Kishore Mojumdar released the barga possessions and later on he gave jote settlement of 25 decimal land in plot No. 1636 to one Sayed Banu and Roymonnesa, in whose name the S.A. record was not recorded. As the S.A. record was mistakenly recorded in the name of Monindra Kishore Mojumdar in S.A. record No. 6472, Sayed Banu and Roymonnesa got an order

for record correction, filing a Misc. Case No. 98/68 in the 1st Munsif Court, Kishoreganj. As per such order names of Sayed Banu and Roymonnesa were joined in the S.A. record No.6472 in account No. 11879. Afterwards, by a family partition, Sayed Banu got 12½ decimals of land in the western side and Roymonnesa for 12½ decimals of land in the eastern side. It shall be noted that Sayed Banu and Roymonnesa were sister in law of each other. In that way, being owner and possessor of the 12 ½ decimal land in the western side, Sayed Banu sold (5+5+2½) decimal land by three saf kabalas Deed Nos. 5575, 7016, 7032 dated 23/06/86, 07/09/87, and 07/09/87 respectively to the plaintiff Nos. 5, 6, and 7 and delivered possession. In that way, getting the 12½ decimal land in the western side in the suit plot No. 1636 has been possessed by cultivation. As the wrong plot and record number were mistakenly recorded in the said saf kabalas dated 03/06/86 and 07/09/87, after knowing it, the plaintiff Nos. 5-7 filed a suit No. 52/03 in this court. Being owner and possessor of the 12½ decimals of land in the eastern side of the suit plot, Roymonnesa paid revenue to the Govt. and later on died, leaving behind the

plaintiff No. 4 as her only son and heir, who has been possessing it by cultivation. Being the owner and possessor of the land in suit plot No. 1635, Monindra Kishore Mojumdar borrowed some money from one Abdul Gafar. When Monindra Kishore failed to repay, he got a decree after filing a money suit in the 1st Munsif Court, Kishoreganj. He then filed execution case No. 148/69 and purposed the suit land by an auction sale on 31/11/69. Abdul Gafar got a certificate of sale through the court and got possession on 21/09/70. It shall be noted that mistakenly the plot No. 1665 was stated instead of 1635 in the sale and possession certificate, but the record number, northern plot number, name of the possessor in the northern plot, nature, and area were correctly stated, and Monindra Kishore Mojumdar went to India during the Liberation War year 1971 with his family and never came back. In that way, being the owner and possessor of 26 decimals of land in suit plot No. 1635, Abdul Gofur sold it to Abdul Hashim, predecessor of the plaintiff Nos. 1-3 by a saf kabala No. 10826 dated 16/11/70 and delivered possession. Abdul Hashim died, leaving behind Bachu Miah as his only son and heir. It shall be noted that as that said deed was

written as per the sale and possession certificate of auction, so the plot No. 1635 was written in it instead of 1635, knowing which Bachu Mia filed a suit No. 125/2001, rectified the said deed dated 16/11/70 as per Judgment dated 17/02/02 and decree dated 25/02/2002 of this suit. Afterwards, Bachu Mia sold that 26 decimals of land in plot No. 1635 by a saf kabala No. 3325 dated 10/05/01 to the plaintiff Nos. 1.3 and delivered possession. There is a bamboo bunch in the middle on the eastern side in this plot. There is a road on the northern side of the suit plot No. 1636. The plot No. 1635 is on the southern side of the plot No. 1635, with a total of 51 decimal land in the suit plot Nos. 1635 and 1636 were recorded in plot No. 2555 during the S.A. record survey. None but the plaintiffs has title to the suit land and possession thereof. The defendants threatened the plaintiffs on 09/03/2003 by saying that they would dispossess the plaintiff from the suit land with force. If they do so, it will cause irreparable loss to the plaintiffs. The defendant built a 10X5 cubits house on $\frac{1}{2}$ decimal land in the suit plot on 28/03/2003 at night so the plaintiff filed a violation case No. 11/03. Afterwards, the defendants took away the house from

the suit land. Now the plaintiffs have exclusive possession of the suit land. The plaintiffs have prayed for a decree of permanent injunction against the defendants in respect of the suit land, along with costs and other remedies as the court thinks fit.

Defendant Nos. 1-3 have contested this suit by filing a joint written statement contending inter alia that being the rayat jote owner and possessor on the suit land, Mukendra Kishore Majumder died, leaving behind one son, Monindra Kishore Majumdar. Afterwards, Monindra Kishore gave barga of the suit land to Abdul Gafar and Abdul Mannan. In this regard, the barga record No. 8168 in the name of bargar Nasar Uddin Munshi, Barga Nasar Uddin Munshi, Barga possessors Abdul Gafar and Abdul Mannan, under the cadastral survey record No. 8167 in the names of jote Mukendra Kishore Mojumdar and possessor Manindra Kishore Majumdar. Afterwards, Abdul Gafar and ors surrendered their barga possession to the superior owner who possessed it by cultivation. In that situation, the suit 51 decimal land was recorded in S.A. plot No. 2555 in the name of Monindra Kishore Majumder.

After the death of Monindra Kishore Majumder his daughter Renu Bala Majumder, alias Chino Bala Majumder, who had one son, Manik Chandra Sen, got the suit land as a life interest. It shall be noted that Monindra Kishore gave in marriage his daughter Chinu Bala to Dewan village at Mohanganj in Netrokona. As it was not possible to cultivate the suit land from such Dewangong so she possessed the suit land through bargadars. Monindra Kishore went to her daughter's house some years before his death and died there. Later on, the R. S. record was recorded in the name of Monindra Kishore Majumdar in the absence of Renu Bala Mojumdar in respect of 37 decimal land. The remaining 14 decimal land in the suit plot was mistakenly recorded in the names of Sayed Banu and Hasen Ali in the new record. As Renu Bala knew nothing about that field record, she did not file any case on objection under section 30. After the death of Renu Bala, Manik Chandra's son got the suit land by inheritance. In that way, getting the suit land Monindra Kishore possessed it through bargadar, and for the need of money, he proposed to sell it through his one relative, namely Pronob Majumdar, for which the defendants agreed to

purchase it. After negotiation, the consideration value was fixed for TK. 90,000/- and getting it from the defendant in cash, Manik Chandra Sen registered the saf kabala No. 1413 dated 08/03/03 and delivered possession of the suit land. After purchasing the property, the defendants converted it into one plot, removing the bank in tit, and on 10/03/03 built a house in the middle and planted banana trees on the southern and western side. The defendant No. 3 has been in possession for more than twelve years. None but the defendants has title to the suit land and possession thereof, before purchasing the defendant Nos. 2/3 was bargadar in that land and Manik Sen. They have cultivated borro on the eastern side in the suit plot No. 1636. The plaintiffs have filed this suit with the evil intention of misappropriating the suit land. So this suit will be dismissed, and the defendants will be entitled to get heavy compensatory costs under section 35 (ka) of the Code of Civil Procedure.

The learned Assistant Judge, Sadar, Kishoreganj, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Assistant Judge of Sadar, Kishoreganj, by the Judgment and decree dated 23.10.2011, decreed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants preferred Other Class Appeal No.407 of 2011 before the learned District Judge, Kishoreganj. Eventually, the learned Additional District Judge of the 1st Court, Kishoreganj, by the Judgment and decree dated 05.01.2020, allowed the appeal, setting aside the Judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiffs, as petitioners, 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.

Mr. Saifur Rashid, the learned Counsel appearing on behalf of the petitioners, submits that the appellate court below, being the last court of facts, did not discuss the evidence at all. Moreover, the appellate court below, without reversing the trial court's findings, abruptly allowed the appeal; therefore, the Rule is liable to be made absolute. He

next submitted that the plaintiffs, by producing oral and material evidence before the trial Court below, rightly proved their prima facie title as well as possession over the suit land.

Mr. Rafiqul Islam Mehedi, the learned Senior advocate appearing on behalf of the defendants-opposite parties, opposes the contention so made by the learned advocate for the petitioners and submitted that the plaintiffs have failed to give any specification and boundary of the suit land; the appellate court below, after considering all the materials on record found that the defendants successfully proved their possession in the suit land by producing and adducing oral and documentary evidence. So, the Rule is liable to be discharged.

We have enviously considered the submission advance for both parties, reviewing the impugned Judgment and the oral and documentary evidence on the record. It appears that the petitioner herein, as the plaintiff, instituted the instant suit for permanent injunction in respect of the suit land described in the plaint.

In order to prove the case, the plaintiff's side examined as many as three (3) witnesses and exhibited the necessary

documents. On the other hand, the defendant's side also produced three (3) witnesses and exhibited material evidence to support their respective case.

In a suit for a permanent injunction, the court may incidentally inquire into the prima facie title of the parties, unless the plaintiffs' possession is clearly established by the evidence, in which case the plaintiffs cannot obtain a decree for a permanent injunction.

Analyzing the oral and documentary evidence on record, it manifests that the plaintiff-petitioner claimed that their predecessor, Syed Banu and Roymonesa, took jote pattan of the suit property from Monindra Kishore Mojumdar. However, in support of this claim, the plaintiff did not produce any documents. It also appears that Abdul Gofur's predecessor became the owner of the suit land through an auction. But the plaintiff did not produce the same to prove his case. Therefore, it appears that the plaintiff failed to prove his prima facie title to the suit land.

It is the settled proposition of the law that if the dispute involves complicated questions of title, the plaintiff must establish his title by filing a regular suit for declaration of

title. A simple suit for permanent injunction should not be allowed to be used as a testing device for the ascertainment of title. This view gets support in the case of Rafizuddin Ahmed Vs. Mongla Barman and others reported in 43 DLR (AD) 215 wherein their Lordship observed that:-

A simple suit for a permanent injunction should not be allowed to be used as a testing device for ascertaining title.

In the instant case, we have already noted that the predecessor of the plaintiff, Syed Banu and Roymonnesa, took jote pattan of the suit property from Monindra Kishore Mojumdar. However, in support of this claim, the plaintiffs did not produce any documents. Moreover, the plaintiff also claimed that Abdul Gofur, the predecessor, became the owner of the suit land through an auction. In this regard, they also failed to produce any document to prove their claim. It also appears from the record that the plaintiff was unable to submit the papers of S. A. Khatian, the amended of 1968, but they did not file Khatian No. 6472. to prove their claim. It also appears from the record that Exhibit No.4 contained the land of different plots, but not the suit plot.

Considering the above facts and circumstances, it is manifest that the appellate court below properly evaluated the evidence on the record and ruled that the plaintiffs had failed to establish their prima facie title to the disputed land, and since there are disputed questions of title involved in the suit, the instant suit, as a simple suit for permanent injunction, is not maintainable.

Considering the above facts and circumstances, we are of the firm view that the learned Judge of the appellate court below, after properly assessing the evidence and other materials on record, very rightly and justifiedly reversed the Judgment and decree of the trial court below. On the other hand, the learned Judge of the trial Court below, without considering all aspects of the case and without properly evaluating the evidence on record, simply decreed the suit. Therefore, the impugned Judgment and decree of the appellate Court below, based on a correct evaluation of the facts and materials on the record and proper appreciation of the evidence on record, is an appropriate judgment of reversal which does not deserve to be interfered with.

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

The impugned Judgment and decree dated 05.01.2020, passed by the learned Additional District Judge, 1st Court, Kishoreganj, in Other Appeal No. 407 of 2011, allowed the appeal and reversed the Judgment and decree dated 23.10.2011, passed by the learned Senior Assistant Judge, Sadar, Kishoreganj, in Other Class Suit No. 58 of 2003, is hereby affirmed.

The order of status-quo granted at the time issuance of the Rule is hereby vacated.

Communicate the Judgment and LCR to the Courts below at once.

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(Md. Salim, J).