

District-Kurigram.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3425 of 2019.

Md. Hafez Uddin and others

----- Defendants-Respondents-Petitioners.

-Versus-

Md. Jafor Ali and others.

----- Plaintiffs-Appellants-Opposite Parties.

Mr. M.G. Mahmud Shaheen, Advocate with

Mr. Md. Emran Hossain,

Ms. Anika Tabassum,

Mr. Abdul Kader Swapon, Advocate

----- For the Defendants-Respondents-Petitioners.

Mr. Md. Asaduzzaman Ansari,

----- For the Plaintiffs-Appellants-Opposite Parties.

Heard On: 24.06. 2025 &15.07.2025.

And

Judgment Delivered On: 21st Day of July 2025.

Md. Toufiq Inam, J.

The present opposite party Nos. 1–9, as plaintiffs, instituted Other Class Suit No. 73 of 2007 on 09.05.2007 before the Court of Assistant Judge, Fulbari, Kurigram, against the present petitioners and opposite party Nos. 10–14, as defendants, seeking a decree of permanent injunction in respect of the suit land described in the schedules to the plaint.

From the averments in the plaint, it appears that S.A. Khatian No. 355, measuring a total of 4.08 acres (408 decimals), stood recorded in the names of Rohomot Ali, Saiyad Ali, Mohammad Ali, Samad Ali,

Ahad Ali, and Jobed Ali, each having 68 decimals. Out of this, Mohammad Ali sold 66 decimals to Abdus Samad, the predecessor of the plaintiffs, by a registered deed dated 13.10.1983. Subsequently, Jobed Ali also sold 66 decimals to Abdus Samad by another registered deed dated 26.10.1983. Thus, Abdus Samad acquired title and possession over a total of 132 decimals of land. Following his death, plaintiff Nos. 1–5, as his legal heirs, mutated their names, paid rents, and claimed to have continued in possession. The cause of action for the suit allegedly arose on 07.11.2000, when the defendants attempted to dispossess them from the suit land.

The present petitioners, as defendant Nos. 3 and 4 in the trial court, contested the suit by filing a written statement denying the material allegations in the plaint. They specifically disputed the plaintiffs' title and possession over the suit land and asserted that S.A. Khatian No. 355, comprising 4.08 acres, was jointly recorded in the names of the original tenants, including Rohomot Ali and Saiyad Ali. It was claimed that Rohomot Ali sold 19 decimals to defendant Hafez Uddin on 12.03.1979 and another 13 decimals on 17.03.1979. Saiyad Ali allegedly sold 32 decimals to the same purchaser, and thereafter, in 2005, Rohomot Ali and Saiyad Ali jointly sold 21 decimals to defendant Kosoner Bibi. The defendants thus claimed ownership and possession of 85 decimals of land and contended that the plaintiffs' claim was false and the suit was liable to be dismissed.

At trial, the plaintiffs examined two witnesses, including plaintiff No. 1, while the contesting defendants examined three witnesses and produced documentary evidence to substantiate their respective claims.

Upon hearing the parties and examining the materials on record, the learned Assistant Judge, Fulbari, Kurigram, by judgment and decree dated 20.09.2015 (decree drawn on 06.10.2015), dismissed Other Class Suit No. 73 of 2007. The trial court found that although Abdus Samad, the plaintiffs' predecessor, had purchased 132 decimals through two registered deeds (Exhibits 1 and 2) covering four Dags (Nos. 226, 245, 260, and 261) under S.A. Khatian No. 355, the deeds did not specifically indicate that the entirety of the purchased land was located in Dag Nos. 260 and 261. The plaintiffs failed to produce any clear boundary description or conclusive proof of exclusive possession in those Dags. Mutation records and rent receipts indicated fragmented holdings, and the plaintiffs' witnesses were unable to specify the extent or location of their possession. In contrast, the defendants' claim of possession over 66 decimals in Dag Nos. 260 and 261 was found to be more specific, supported by documents, and corroborated by oral testimony. Consequently, the trial court held that the plaintiffs failed to establish exclusive possession and accordingly dismissed the suit.

Being aggrieved, the plaintiffs preferred Other Appeal No. 75 of 2016 before the Court of District Judge, Kurigram. The appeal was eventually heard and disposed of by the learned Joint District Judge, 1st Court, Kurigram, who, upon hearing both sides, allowed the appeal by judgment and decree dated 02.04.2019 (decree drawn on 07.04.2019), thereby reversing the judgment and decree of the trial court.

Aggrieved by the appellate judgment and decree dated 02.04.2019 (decree drawn on 07.04.2019), the petitioners filed this revisional application with a delay of 104 days. The delay was attributed to a bona fide communication lapse: the petitioners relied on assurances

from their conducting Advocate that their *tadbirker* would be informed of the appellate outcome. However, the Advocate mistakenly assumed the information had been conveyed. Upon learning of the judgment on 15.07.2019, the *tadbirker* promptly applied for certified copies, received on 30.09.2019, and travelled to Dhaka on 03.10.2019 to initiate the revision through learned Advocate Mr. M.G. Mahmud Shaheen. The application was thereafter filed without undue delay. As the delay was neither deliberate nor negligent, and finding the explanation satisfactory, this Court provisionally condoned the same at the time of issuing the Rule.

Mr. M.G. Mahmud Shaheen, the learned Advocate appearing on behalf of the defendant-petitioners, submits that the learned appellate court committed a manifest error of law in reversing the well-reasoned judgment of the trial court, which had rightly dismissed the suit for permanent injunction. He contends that the burden of proving exclusive, clear, and identifiable possession over the suit land lay entirely on the plaintiffs. However, the plaintiffs failed to discharge this burden. Instead of holding the plaintiffs to this legal obligation, the appellate court erroneously shifted the onus onto the defendants to disprove the plaintiffs' possession, an approach that is contrary to the established principles of law governing injunction suits.

Elaborating further, Mr. Mahmud submits that although the plaintiffs claim to have purchased a total of 132 decimals of land from four separate Dag numbers (Dag Nos. 226, 245, 260, and 261), their suit was based solely on their alleged possession over only Dag Nos. 260 and 261, without providing any specific demarcation or explanation as to which portion of their purchased land relates to these particular plots. No credible evidence, whether in the form of a sketch map, site plan, survey report, or any other reliable demarcation, was presented to establish the plaintiffs' exclusive and continuous possession over

the suit land. In such absence, their vague and general claim could not lawfully sustain a decree of permanent injunction.

He also submits that the appellate court failed to comply with the mandatory requirement under Order XLI Rule 31 of the Code of Civil Procedure, which obligates the appellate court to frame the points for determination, render decisions on those points, and assign reasons therefor. The judgment under revision, however, contains a summary and conclusionary finding without addressing the core legal issue, namely, whether the plaintiffs proved specific and exclusive possession over the land in suit. In support of this contention, he refers to the case reported in 15 BLD (HCD) 96, wherein it was held that appellate judgments must contain clearly framed points of determination, followed by decisions and accompanying reasons; failure to do so renders the judgment unsustainable in law.

Mr. Mahmud further argues that the judgment of the appellate court is based on conjecture and misreading of evidence. In particular, it overlooked the qualified and inconclusive admission of DW-3 (a defense witness), who stated that the plaintiffs “may have possessed about 2 bighas”, yet without identifying or connecting that possession to any specific Dag or plot. Such vague evidence cannot form the legal basis for granting a decree of permanent injunction, which requires clarity, certainty, and exclusivity of possession. Citing established authority, he reiterates that in a suit for permanent injunction, title is not in issue, but the factum of possession must be clearly established.

He places reliance on the case reported in 19 ADC (2022) 674, where the Appellate Division held that a decree of permanent injunction cannot be granted in respect of vague or unspecified land, and that mere mutation or purchase of land does not, by itself, prove

possession, particularly where the pleadings and evidence are inconsistent or lacking in specificity. In conclusion, Mr. Mahmud submits that the appellate judgment is legally flawed, procedurally deficient, and factually unsustainable. He prays that the judgment and decree passed by the appellate court be set aside and that the well-reasoned judgment of the trial court be restored.

In reply, Mr. Md. Asaduzzaman Ansari, the learned Advocate appearing on behalf of the plaintiff-opposite parties, supports the impugned judgment and decree passed by the appellate court and submits that the plaintiffs successfully established their lawful possession over the suit land through registered purchase and subsequent mutation in the revenue records. He emphasizes that such possession was not only evidenced through documentary records but was also admitted by the defense witnesses during cross-examination.

He argues that the trial court adopted a hyper-technical approach by applying the standard applicable in a title suit, rather than in a suit for permanent injunction. In this regard, he relies upon the decision reported in 8 BLC (AD) 10, wherein the Hon'ble Appellate Division held that in a suit for permanent injunction, the plaintiff is not required to prove title, but must establish exclusive possession. Mr. Ansari submits that in the present case, the plaintiffs' evidence remained consistent, credible, and supported by documentary proof, and was not dislodged in cross-examination.

He further contends that the trial court erred in disbelieving the plaintiffs' case, particularly in light of the categorical admissions made by DW-2 and DW-3 during cross-examination, wherein they acknowledged the plaintiffs' possession over the suit land. On the contrary, the defendants failed to produce material title documents, including the deed dated 12.03.1979, upon which they relied, and

could not specify the extent or location of their possession by Dag number, plot, or boundaries. Thus, their claim remained vague and unsupported by substantive evidence.

Mr. Ansari also submits that the plaint contains a clearly defined schedule describing the suit land by Dag number, area, and boundary, in conformity with Order VII Rule 3 of the Code of Civil Procedure. Therefore, the plaintiffs met all legal requirements for seeking permanent injunction, and the appellate court rightly appreciated the evidence and corrected the erroneous findings of the trial court. Accordingly, he prays that the Rule be discharged.

Having heard the learned Advocates for both sides and upon perusal of the record, this Court is of the considered view that the impugned appellate judgment and decree cannot be sustained in law for the following reasons.

It appears from the materials on record that there was a delay of 104 days in filing the present revisional application. However, upon a careful consideration of the explanation offered in the petition and the supporting affidavit, this Court is satisfied that the delay was occasioned due to a bona fide communication lapse between the petitioners' *tadbirker* and their engaged Advocate. As soon as the petitioners came to know about the appellate judgment and decree, they acted with due diligence by applying for certified copies and taking steps for filing the revision. There being no evidence of willful default, deliberate inaction, or negligence, and the delay having been provisionally condoned at the time of issuance of the Rule, the same is now formally condoned.

Turning to the merits of the case, the core question before the appellate court was whether the plaintiffs had succeeded in proving

their *exclusive possession* over the suit land so as to be entitled to a decree of permanent injunction. The law is well settled that in a suit for permanent injunction, the plaintiff must prove clear, definite, and exclusive possession over the suit land, irrespective of the strength or weakness of the defendant's title or possession. This burden rests squarely on the plaintiff, and cannot be shifted onto the defendant.

In the instant case, the plaintiffs claimed to have purchased 132 decimals of land from the recorded tenants Mohammad Ali and Jobed Ali, and accordingly mutated their names in respect of four distinct Dag numbers. However, their suit for permanent injunction was confined solely to Dag Nos. 260 and 261, with no clear explanation as to how the entire purchased land was traceable to those two Dags alone. The plaintiffs did not produce any *site map, sketch, field book, survey report, or other credible evidence* to demarcate or identify the precise land they claimed to possess. This internal inconsistency in their pleading and evidence remained unexplained, and the lower appellate court failed to address this crucial gap.

In a suit for permanent injunction, the plaintiff must establish exclusive possession over the suit land with clarity, consistency, and certainty. Mere proof of purchase or mutation in respect of multiple plots (Dags) does not *ipso facto* establish exclusive possession over a portion thereof. The plaintiff must specifically identify, by credible evidence such as survey, sketch, boundary description, or oral testimony, the exact land possessed and its correspondence with the land described in the schedule of the plaint.

Where the plaintiff's title extends over several plots but the injunction is sought only in relation to specific Dags, the onus lies squarely on the plaintiff to demonstrate that the suit land falls within the

purchased area and that possession is exclusive, peaceful, and ascertainable. In the absence of such clear demarcation or identification, the plaintiff fails to discharge the initial burden of proof, and the court cannot grant relief based on presumptions, general admissions, or weakness of the defence. The court's inquiry must focus on the factum of possession, not the validity of title, unless title is directly in issue. However, when possession is claimed by virtue of title over multiple Dags, and the injunction relates to fewer Dags, the extent of title becomes relevant only to the extent that it informs and defines the area allegedly possessed.

The mutation, though relevant, does not ipso facto establish possession. The trial court rightly noted that there was no convincing proof, either documentary or oral, to show that the plaintiffs had exclusive possession over the suit land described in the schedule of the plaint. Instead of scrutinizing the plaintiffs' evidence with the required rigor, the appellate court erroneously placed undue emphasis on the defendants' failure to produce their own title documents or to prove their possession. Such an approach is legally unsustainable. A plaintiff cannot succeed solely on the weakness of the defence; he must independently prove the strength of his own case.

Moreover, the appellate court failed to comply with the mandatory requirements under Order XLI Rule 31 of the Code of Civil Procedure, which obliges the appellate court to frame the points for determination, record findings on each of those points, and assign reasons for its decision. A bare reading of the appellate judgment reveals a lack of issue-wise discussion and absence of any formulated points of law or fact. The judgment proceeds in a generalized fashion without grappling with the core controversy, whether the plaintiffs' proved possession over the suit land described in the schedule.

The absence of proper framing of issues and the failure to analyze the evidentiary inconsistencies between the plaintiffs' claim and their supporting documents renders the appellate judgment procedurally deficient and legally unsustainable. The Appellate Division, in multiple decisions including 15 BLD (HCD) 96, has emphasized the need for compliance with Order XLI Rule 31 CPC to ensure reasoned and lawful adjudication. That standard has not been met in this case.

Further, the appellate court's reliance on the deposition of DW-3, who admitted that the plaintiffs might be in possession of about 2 bighas, was misconstrued. Such an admission, without reference to specific plot numbers or boundaries, does not meet the legal threshold of *exclusive possession* over a defined area of land. A decree of permanent injunction cannot be granted on such vague and uncorroborated assertions, as reiterated in 19 ADC (2022) 674, where the Apex Court held that a decree of injunction must be based on precise and specified land, not general or ambiguous claims.

Accordingly, this Court is constrained to hold that the appellate court committed material irregularity, misdirection in law, and failed to exercise jurisdiction properly. The judgment suffers both from legal infirmity and procedural impropriety, warranting interference under Section 115 of the Code of Civil Procedure.

In view of the above, **the Rule is made absolute.**

The judgment and decree dated 02.04.2019 (decree drawn on 07.04.2019) passed by the learned Joint District Judge, 1st Court, Kurigram, in Other Appeal No. 75 of 2016 is hereby set aside. Consequently, the judgment and decree dated 20.09.2015 (decree drawn on 06.10.2015) passed by the learned Assistant Judge, Fulbari, Kurigram, in Other Class Suit No. 73 of 2007 is hereby restored.

There shall be no order as to costs.

Let the Lower Court Records be sent back forthwith along with a copy of this judgment.

(Justice Md. Toufiq Inam)

Ashraf /ABO.