

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.3246 OF 2019.

Khairul Basar and others
..... Defendant-Petitioners.
-VERSUS-
Jotirmoy Saha Ray and others.
..... Plaintiff-Opposite parties.

Mr. Mohammad Khorshed Alam, advocate
-----For the defendant-petitioners.

Mr. Shishir Kanti Mazumder, advocate
----For the plaintiff-opposite parties.

Heard on 24.08.2025,
25.08.2025 and 27.08.2025.

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 31.07.2019 passed by the learned Senior Assistant Judge, Sadar, Netrokona in Other Class Suit No.242 of 2018 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.

The facts, in brief, for the disposal of Rule are that the opposite party herein as plaintiff, instituted Title Suit No.242 of 2018 before the learned Senior Assistant Judge, Sadar, Netrokona under section 9 of the Specific Relief Act for

recovery of khas possession of the suit property as mentioned to the plaint of the suit contending inter alia, that on 22.07.1969 Nares Chandra Roy transferred the suit land with possession to the Jogesh Chandra Roy vide a register Sub-Kabala deed being No. 4891, thereafter Jogesh Chandra Roy paid land rent to the Government Office and enjoying the suit property peacefully and rightly his name has been published in the BRS record; thereafter Jogesh Chandra Roy leased out the suit land infavour of the Mortoza Ali; thereafter on 1969 Jogesh Chandra Roy died behind his three sons Jotirmoy Saha Roy, Pijus Saha Roy and Amrita Saha. Subsequently, by an amicable partition, the plaintiff Jotirmoy Saha Roy and Pijus Saha Roy became the owners of the suit land, which they had possessed by giving adi borga to Sajahan, son of Mortoza Ali. Thereafter, on 18.07.2014 at about 8/9 am, the defendants forcefully dispossessed the plaintiffs by forcibly removing their bargader, Shahajan, from the suit land and, hence, the suit.

The defendants Nons. 1-3 contested the suit by filing a joint written statement denying all the material allegations of the plaint, contending, inter alia, that the land originally belonged to Ramjan, the suit land, i.e., 23 decimals, was

correctly recorded in his name in C. S. plot No. 179. The said land had been recorded in the B. R. S. Khatian under R. O.R. plot Nos. 266 and 209. Ramjan Ali died, leaving two sons named Abdur Rahim and Kari Abdul Aziz. Abdur Rahim died, leaving one son, Khairul Bashar, and one wife, Rong Banue. They also sold four decimals of land to Abdul Barek. Thereafter, Kari Abdul Aziz died, leaving one wife, Jubeda Khatun, and two sons, Abul Bashar and Mahbub Islam. Thereafter, Jubeda Khatun died, leaving two sons, Abul Bashar and Mahbub Islam. However, they peacefully possess the suit land by cultivating various crops and by erecting a tea stall therein. That on 30.03.2014, they came to know through the AC land office that BRS Khatian of the suit land was wrongly recorded in the name of Jugesh Chandra instead of their name.

The learned Assistant Judge, Sadar, Netrokona, framed the necessary issues to substantiate the dispute among the parties.

Subsequently, the learned Assistant Judge, Sadar, Netrokona, by the Judgment and decree dated 31.07.2019, decreed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants, 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 status quo extended from time to time.

Mr. Mohammad Khorshed Alam, the learned Counsel appearing on behalf of the defendant-petitioners, submits that the learned Assistant Judge committed a serious error of law, resulting in an error in the decision, occasioning failure of justice in holding that the defendant dispossessed the plaintiff, which is absent in the evidence.

Mr. Shishir Kanti Mazumder, the learned Counsel appearing on behalf of the opposite parties, opposes the contention so made by the learned advocate for the petitioner and submits that the trial court below, by discussing the evidence on record very justifiedly found that the defendants dispossessed them and therefore, the trial Court below, very judiciously and rightly passed the Judgment. Thus, the Rule is liable to be discharged.

We have anxiously considered the submissions advanced by the Bar, perused the impugned Judgment, and examined the oral and documentary evidence on the record. It

appears that the plaintiffs filed the instant suit under section 9 of the Specific Relief Act for recovery of the khas possession of the suit property.

In order to prove the case, the plaintiff's side examined as many as six (6) witnesses and exhibited the necessary documents. On the other hand, the defendant also produced three (3) witnesses and exhibited material evidence to support their case. It is evident to note that P.W.1 – P.W.6, in their examination-in-chief, tried to corroborate the plaintiff's case, but all of them were discarded in their cross-examination. Besides this, having reviewed the testimonies of D.W. 1 – D.W. 3, they corroborated one another in respect of the defendant's case. Except for some minor discrepancies, no such material contradiction or omission is noticed, by dint of which these witnesses can be disbelieved. However, analyzing the deposition of the witnesses, it appears that P.W.1 in his examination in chief stated that- “১৪২১ সালের ৩রা শ্রাবন ৮/৯ টায় (সকাল) শাহজাহান রোয়া লাগাতে গেলে বিবাদী বেদখলের হুমকি প্রদান করে, পরে বেদখল করে।” In cross examination he stated that- “আমাদের ২০১৪ সনে বেদখল করেছে।” P.W.2 in his examination in chief stated that- “১৪২১ সনের ৩ আষাঢ় বিবাদীরা আমাকে বাঁধা দেয় এবং ক্ষেত থেকে আমাকে উঠিয়ে দেন।” P.W.3 in his deposition stated that- “বিবাদীরা ২ বছর আগে ভাদ্র মাসে বাদীদের বেদখল করে। তারিখ

জানি না।" P.W.4 in his deposition stated that-"২ বছর আগে বিবাদীরা বেদখল করে। তারিখ জানি না। In cross examination he stated that- "নালিশী জমি নিয়ে ঝামেলার সময় আমি ছিলাম না।" P.W.5 in his deposition stated that "আমি ঘটনা তেমন কিছু জানি না"; P.W.6 in his deposition stated that- "বিবাদীরা শ্রাবণ মাসে ২ বছর আগে শাহজাহানকে নিষেধ দেয় এবং নালিশী জমি বেদখল করে।"

In view of the above, it appears that the plaintiffs' side witnesses gave a series of contradictory statements regarding their possession and dispossession from the suit land by the defendant.

It is the settled cardinal principle of law that, in order to succeed in a case under Section 9 of the Specific Relief Act, the plaintiff must prove his dispossession from the suit land, and the suit must be filed within 6 (six) months from the alleged dispossession from the suit land. It is also notable that the trial Court committed a serious misreading of the evidence of D.W.5, failing to consider that he stated in his deposition that the plaintiff was dispossessed of the suit land 15 years before.

In the instant case, it appears that, in the absence of any clear evidence of the plaintiffs' possession prior to the dispossession by the defendant from the suit land, the trial court's decreeing the suit committed a serious error of law,

resulting in a decision that occasioned a failure of justice. Therefore, we are of the firm view that the trial court below misconstrued and misread the oral evidence and materials on record in decreeing the suit. Consequently, we find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned Judgment and decree dated 31.07.2019, passed by the learned Senior Assistant Judge, Sadar, Netrokona, in Other Class Suit No.242 of 2018, is hereby set aside.

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

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(Md. Salim, J).

Kabir/BO