

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 940 of 2020

In the matter of:

Madhov Kumar Das @ Khokan

.....Plaintiff-Appellant

Petitioner

-Versus-

Government of Bangladesh, represented by the
Deputy Commissioner, Chuadanga and others

...Defendants- Respondents

Opposite parties

Mr Shasti Sarker, with

Ms Lily Rani Saha, Advocate

.....For the Petitioner

*Mr Md. Zahirul Islam, Deputy Attorney General,
with*

*Mr Md. Ferdouse Sarker, Assistant Attorney
General*

...for the opposite parties.

Date of Hearing: 25.06.2026, 13.07.2026, and

14.07.2026 A.D.

Date of Judgment: 19.07.2026 A.D., Sunday,

04 Shrabon, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioner, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite party Nos. 1 to 4, 5(Ka) to 5(Neo), and 6 to show cause as to why the Judgment and Decree dated 28.11.2019 passed by learned District Judge, Chuadanga in Title Appeal No. 87 of 2015 disallowing the appeal and affirming the Judgment and Decree dated 20.08.2015 passed by the learned Assistant Judge, Jibonnagar, Chuadanga in Title Suit No. 189 of 2014 dismissing the suit should not be set aside, and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper."

At the time of issuance of the Rule, this Court was also pleased to direct the parties to maintain *status quo* with respect to possession of the suit land for a period of 06 (six) months. Subsequently, the said order of *status quo* was no longer extended.

Facts:

The facts, shorn of unnecessary details but sufficient for the disposal of the Rule, are that the petitioner, as plaintiff, instituted Title Suit No. 189 of 2014 before the Court of the learned Assistant Judge, Jibonnagar, Chuadanga, seeking a declaration of title in respect of 100 decimals of land more fully described in the schedule to the plaint, together with ancillary reliefs.

The plaintiff's case, in substance, is that C.S. Khatian No. 99 of Mouza Badanpur, under the District of Chuadanga, originally comprised 1.00 acre of land belonging to one Shasador Ghose, while the tenancy thereof was held by the plaintiff's paternal uncle, Nilmoni Das. During the S.A. operation, the tenancy was duly recorded in the name of Nilmoni Das. Upon his death without leaving any issue, he was allegedly succeeded by his three brothers, namely Benari Das, Kedar Das and Nandalal Das. Subsequently, Benari Das died issueless and, according to the plaintiff, his share devolved upon Kedar Das. Nandalal Das also died leaving behind his only son, namely the present plaintiff, who claims to have inherited the suit property through succession.

The plaintiff further asserted that he and his mother had long been under the *bona fide* impression that the R.S. record had

also been correctly prepared in their name. However, on 07.02.2006, upon verification of the finally published R.S. record, he allegedly discovered that the suit land had erroneously been recorded in the name of the Government as vested and non-resident property. According to the plaintiff, such recording was wholly illegal, without any lawful basis and contrary to the true state of affairs, inasmuch as the suit property had never vested in the Government. It was further pleaded that the Government acquired neither title to nor possession of the suit property, and that the R.S. entry was liable to be declared as a wrong record.

The plaintiff further alleged that defendants 1 & 2 were asserting an unfounded claim over the suit land and that defendant Nos. 3 to 6, in collusion with others, had fraudulently created a registered deed of exchange on the strength of forged and fabricated documents without the knowledge or consent of the plaintiff. Since the alleged transferors had no valid right, title or interest in the suit property, the exchange deed was asserted to be void, fraudulent, inoperative and not binding upon the plaintiff. Hence, the suit was instituted seeking a declaration of title and appropriate consequential relief.

The contesting defendants entered an appearance and filed separate written statements denying all material allegations made

in the plaint. Their common defense was that the suit was false, frivolous, speculative, devoid of any cause of action, barred by law and facts, and liable to be dismissed.

Defendant Nos. 1 and 2, representing the Government, specifically contended that the recorded S.A. tenant had migrated to India in or about the year 1965, whereupon the suit property lawfully came under the custody and management of the Government as vested property. Thereafter, the land was correctly recorded in R.S. Khatian in favour of the Government. According to them, the plaintiff had neither inherited nor acquired any right, title, interest, or possession in the suit property and was therefore not entitled to have any declaration.

Defendant Nos. 3 to 6 contested the suit on an altogether different factual foundation. According to them, although the suit land originally stood recorded in the name of Nilmoni Das under C.S. Khatian No. 99, Nilmoni Das was survived not by the persons claimed by the plaintiff but by his two brothers, namely Sheetal Das and Fakir Das. Thereafter, Sheetal Das died, leaving behind three sons, namely Balaram, Kanai and Jagannath, while Fakir Das died, leaving behind his son Rakhal, prior to the partition of the Subcontinent. It was their further case that the predecessors of defendant Nos. 3 to 6 had orally exchanged the suit land with one

Engil Hossain Biswas, who had migrated to India, and subsequently executed a power of attorney in his favour. The said exchange was later regularized through Exchange Case No. 893(C)/70-71 and validated by the Government through the Deputy Commissioner, Chuadanga, culminating in the execution and registration of Deed No. 392 of 1993 in favour of nineteen persons. They further asserted that although the S.A. record had remained in the name of Nilmoni Das and his heirs, those heirs had already lost whatever title they once possessed. The defendants claimed continuous possession over the suit land as co-sharers and further pleaded that the plaintiff had earlier unsuccessfully filed Title Suit No. 1 of 2001 and Title Appeal No. 90 of 2002 relating to the same property. Accordingly, they prayed for dismissal of the suit.

Upon consideration of the oral and documentary evidence adduced by both sides, the learned Assistant Judge, Jibonnagar, Chuadanga, by its judgment and decree dated 20.08.2015, the decree having been drawn up and signed on 25.08.2015, dismissed the suit on contest.

Being aggrieved thereby, the plaintiff preferred Title Appeal 87 of 2015 before the learned District Judge, Chuadanga. Upon reappraisal of the evidence and hearing the learned Advocates appearing for the parties, the learned Appellate Court, by its

judgment and decree dated 28.11.2019, the decree having been drawn up and signed on 06.01.2020, dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

Feeling dissatisfied with the concurrent findings and decisions of the Courts below, the plaintiff has invoked the revisional jurisdiction of this Court under section 115(1) of the Code of Civil Procedure, 1908.

Submissions:

Mr Shasti Sarker, the learned Senior Advocate appearing on behalf of the petitioner, submitted that both the Courts below failed to appreciate the oral and documentary evidence in their proper legal perspective and consequently arrived at erroneous findings of fact, occasioning a grave failure of justice. He also contended that the Appellate Court failed to discharge its statutory obligation under Order XLI Rule 31 of the Code of Civil Procedure by omitting to formulate the points for determination and by affirming the trial Court's judgment without independently appraising the evidence.

He further submitted that the plaintiff successfully established his title by way of inheritance through cogent oral and documentary evidence, including the succession documents

relating to Nilmoni Das, but both the Courts below completely overlooked those materials. According to the learned Senior Advocate, the findings recorded by the Courts below are the result of misreading, non-reading and misappreciation of material evidence.

Mr Sarker further argued that the Courts below wrongly inferred the absence of possession merely because the plaintiff's address in the plaint was mentioned as Islampur, Chuadanga, whereas the suit land is situated at Mouza Badanpur. Referring to the evidence of P.W.1 and P.W.2, he submitted that both witnesses consistently deposed regarding the plaintiff's possession, but the Courts below wholly ignored such evidence.

He next contended that although defendant Nos. 3 to 6 claimed title on the basis of an alleged exchange deed validated by the Deputy Commissioner, but they failed to prove either the exchange proceedings or the registered documents in accordance with law. On the contrary, Exhibits Ka and Ka-1, if properly appreciated, clearly demonstrate that the documents relied upon by the defendants are fabricated and unreliable.

Mr Sarker further submitted that the Appellate Court erroneously relied upon the depositions of the defence witnesses

while ignoring material contradictions appearing therein, thereby arriving at findings based upon misreading and non-consideration of evidence. He also argued that the additional evidence of P.W.4 and P.W.5 recorded before the Appellate Court was not considered in its true perspective.

Finally, he submitted that the Government completely failed to establish that the suit property had ever lawfully vested in the State and that the plaintiff's claim, being founded upon inheritance, could not have been rejected merely because of an erroneous R.S. entry. Accordingly, he prayed for setting aside the impugned judgments and decrees.

In support of his submissions, the learned Senior Advocate has placed reliance upon the decisions reported in **16 BLD (1996) 519**, relating to the burden of proof, and **56 DLR (AD) 73**, concerning the legal effect of the repeal of Ordinance No. I of 1969, further referred to the decision as contained in **6 MLR (AD) 49** in respect of the starting point of limitation in the suit for declaration of title due to cloud by wrong record of entry.

Conversely, Mr Md. Jahirul Islam, the learned Deputy Attorney General, assisted by Mr Md. Ferdouse Sarker, the learned Assistant Attorney General, appearing on behalf of opposite party

Nos. 1 and 2, supported the concurrent judgments and decrees passed by the Courts below.

The learned Deputy Attorney General submitted that both the Courts below, upon comprehensive evaluation of the entire evidence on record, concurrently found that the plaintiff utterly failed to establish either his title or his actual possession over the suit property.

He further submitted that the plaintiff's witnesses could not even identify the precise location and boundaries of the disputed land. While P.W.1 claimed that roads existed on both the eastern and western sides of the property, such evidence was not corroborated by the other prosecution witnesses. Moreover, the plaintiff admittedly paid no rent after the property was vested and failed to seek a local investigation through a Survey Commissioner to identify the land; accordingly, the suit is barred by limitation and also under Section 42 of the Specific Relief Act, 1877.

Learned Deputy Attorney General further submitted that the plaintiff had previously instituted Title Suit No. 1 of 2001 and pursued Title Appeal No. 90 of 2002 on the basis of an entirely different genealogy, thereby seriously undermining the credibility of his present claim. He also contended that the suit suffers from

non-joinder of necessary parties insofar as it relates to the parties to the challenged exchange deed 392 of 1993, and from the absence of any genuine cause of action.

Finally, the learned DAG posited that the concurrent findings recorded by the Courts below are based on a proper appreciation of the evidence and disclose neither any illegality nor any jurisdictional error warranting interference under revisional jurisdiction. He, therefore, prayed that the Rule be discharged.

Consideration:

I have heard the learned counsels appearing for the respective parties at length, carefully perused the impugned judgments and decrees of both the Subordinate Courts, examined the pleadings, oral and documentary evidence available on the record and considered the submissions advanced at the Bar.

On perusal of the judgment of the learned trial Court, it is found that it was observed in the following way:

“PW-1 তার জ্ঞানানুসারে বলেন যে, নীলমনি দাস নিঃসন্তান অসুস্থ মারা যান। তার অংশের জমি তার তিন ভাই ওয়ারিশ হিসেবে প্রাপ্ত হন। এদীপক্ষ তার ঐচ্ছিক সমর্থনে কোন সাক্ষ্য প্রদান করেন নাই। অপরদিকে PW-1 তার জেরায় বলেন যে, নীলমনি মারা যাওয়ার সময় তার তিন ভাই ছিলেন যা মইনুদ্দিন জানেন। অত্র মোকদমায় মইনুদ্দিন জানেন। অত্র মোকদমায় মইনুদ্দিন সাক্ষ্য প্রদান করেন নাই।

এছাড়াও PW-2 তার জ্ঞানানুসারে তিন ভাইয়ের মধ্যে নরেন দাস জীর্ণিত থাকে উল্লেখ করলেও নন্দলাল দাস ব্যতীত অন্য তিন ভাইয়ের কোন ওয়ারিশ ছিল না যা নন্দলাল দাস ওয়ারিশ হিসেবে নালিশী জমি প্রাপ্ত হয় তদমর্মে কোন সাক্ষ্য প্রদান করেন নাই।

এমতাবস্থায় ঐদীর পূর্বাধিকারী নন্দলাল বা নন্দরাম দাস নালিশী জমিতে উত্তরাধিকারসূত্রে স্বত্ত্ব অর্জন করেছিল তা ঐদীপক্ষ প্রমান করতে ব্যর্থ হয়েছে। কিন্তু ঐদীর দাটী ঐদীকেই প্রমান করতে হলে। অন্যদিকে PW-1 তার জেরায় বলেন যে, নালিশী জমি ক্রয়কৃত সম্পত্তি। সুতরাং নালিশী জমিতে ঐদীপক্ষের স্বত্ত্ব অর্জন প্রমান হয় নাই মর্মে প্রতীয়মান হয়।”

From the above observations and evidence on the face of the record, it can be presumed that the plaintiff failed to establish his successorship connection with the original owner of the suit property.

However, the learned trial Court also noticed at the time of delivering judgment that,

“PW-1 তার জ্ঞানানুসারে নালিশী জমি ঐদী দখল করে দাটী করলেও জেরায় ঐদীরা সাহাম মতে ২৫ শতক জমি পেয়ে ভোগ দখল করে কিনা প্রশ্ন করা হলে তিনি নীরব থাকেন।

PW-2 তার জেরায় বলেন যে, ঐর্তমানে নালিশী জমিকে দখল করে তা আমি জানিনা। PW3- তার জেরায় বলেন যে, আমি মাধবকে (ঐদী) নালিশী জমিতে কাজ করতে দেখি নাই।

পক্ষান্তরে DW-1 তার জ্ঞানানুসারে বলেন যে, আমি নালিশী জমি সর্পদক্ষিণে দখল করি।

DW-2, আঃ ওহা, তার জ্ঞানপ্ৰদীপে বলেন যে, দাদী মাধু কুমার কোন দিন জমি দখল করে না। আমি দাদীদের নালিশী জমি ৩০ বছরের বেশি সময় দখল করতে দেখছি।

উপর্যুক্ত প্রত্যয় পর্যালোচনায় ইহা প্রতীয়মান হয় যে, দাদীপক্ষ নালিশী জমিতে দাদীপক্ষের দখল প্রমাণ করতে ব্যর্থ হয়েছেন। “

Concomitantly, on perusal of the judgment of the learned Appellate Court, observed that:

“দাদী পি.এল্লিউ- ১ তাহার জেরার একপর্যায়ে বলেন আমমোক্তার সূত্রে যে দলিল ৩-৬ নং দাদীদের নামে হয়েছে তা আমি দাখিল করি নাই। পি.এল্লিউ- ১ তাহার জেরার এক পর্যায়ে আরও বলেন নালিশী জমি ক্রয়কৃত সম্পত্তি। পি.এল্লিউ- ১ তাহার জেরার একপর্যায়ে আরও বলেন দেশ স্বাধীনের পর নালিশী জমি অর্পিত সম্পত্তিতে পরিণত হওয়ায় খাজনা দেওয়া সম্ভব হয়নি। দাদীপক্ষ নালিশী জমি সংক্রান্তে খাজনা প্রদানের কোন দাখিলা দাখিল করেন নাই। দাদী পি.এল্লিউ- ১ এর পূর্ণর্ণিত ঐ প্রত্যয় হইতে নির্ধারণ করা যায় যে, দাদী দেশ স্বাধীন অর্থাৎ ১৯৭১ এর পরপর নালিশী জমি অর্পিত সম্পত্তি তালিকাভুক্ত হয় বিষয় অপ্রতিত ছিলেন, ঐ সময় দাদী নালিশী জমি অর্পিত সম্পত্তি তালিকা হইতে অপ্রমুক্ত করিবার ঐ তালিকা ভুক্তির প্রকল্পে প্রতিকার প্রার্থনা করেন নাই, প্রকৃত দখলদার থাকিলে প্রয়োজনে প্রত্যয় হইয়া অর্পিত সম্পত্তি কর্তৃপক্ষ হইতে লীজ লইয়া দখল অপ্রহত রাখিয়া দখল পূর্ণর্ণীতে আমল হইতে অপ্রহত আছে মর্মে আদালতকে দেখাইতে পারেন নাই।”

Learned Appellate Court further observed that,

“দাদীপক্ষ যে দলিল বিষয়ে প্রতিকার প্রার্থনা করিয়াছে ঐ দলিলের জায়েদা নকল দাদী দাখিল করেন নাই। দাদীপক্ষ তাহা দাখিল করিলেও প্রদর্শনী চিহ্নিত করেন নাই। ঐ দলিল নথিতে আছে ঐটে, সেখানে অন্যান্য মোট ৫৪.২৫ একর জমাজমি মোট ১৯ জন প্রক্তি প্রিনিময় সূত্রে পায়, সরকারি তদন্তে তাহাদের সেখানে প্রিনিময়ে দখলে পাওয়া

যায় কথা এলা আছে। ঐ জমি নির্দিষ্ট জমি নির্দিষ্টজন দখল করে এলা নাই। এদী তাহার মোকদমায় ঐ দলিলের সমুদয় ১৯ জন গ্রহীতাকে এই মোকদমায় পক্ষভুক্ত করেন নাই। ঐর্ণিত যুক্তিতে মোকদমাটি তামাদি ঐরিত ও পক্ষদোষে দুষ্টও ঐটে।

উপরের আলোচনার আলোকে এদীপক্ষ সাএক প্রজাদের ওয়ারিশ সাজিয়া ঐভিন্ন সময়ে ঐভিন্ন জমি দাটী করিতে থাকিএর একটি নিরন্তর চেষ্টার অংশ হিসাবে এই নালিশী জমি প্রাপ্ত হইএরও আশায় পরীক্ষামূলক মোকদমা করিয়াছেন নির্ধারণ করা যায়। নালিশী জমিতে এদীপক্ষের স্বত্ব দখল নাই, তাহাতে পক্ষভুক্ত ঐএদীগণের স্বত্ব দখল আছে নির্ধারণ করা যায়।”

However, it is evident that the learned trial Court, upon a detailed analysis of the evidence, found that the plaintiff failed to establish the alleged chain of inheritance from Nilmoni Das, failed to prove lawful possession over the suit property and failed to substantiate the very foundation of his claim.

The learned Appellate Court, upon independent reappraisal of the evidence, concurred with those findings and further observed that the plaintiff neither challenged the enlistment of the property as vested property at the appropriate time nor produced reliable evidence demonstrating continuous possession. The Appellate Court also noticed material deficiencies regarding the genealogy, the exchange deed, the non-joinder of necessary parties and the maintainability of the suit.

Having independently scrutinized the record, I find that the concurrent findings recorded by both the Courts below are

founded upon proper appreciation of the oral and documentary evidence and cannot be characterized as perverse, arbitrary or unsupported by the evidence on record.

The principal contention advanced on behalf of the petitioner is that the plaintiff inherited the suit property from his predecessor Nilmoni Das and the Government failed to establish its claim to the property. Attractive though the argument may appear at first blush, it does not survive close judicial scrutiny.

It is a well-settled principle of law that a plaintiff seeking a declaration of title must succeed on the strength of his own case and not on the weakness of the defence. The burden squarely rests upon the plaintiff to establish his lawful title, identity of the property and actual possession by reliable and convincing evidence. A declaratory decree cannot be granted merely because the defendants have failed to prove every aspect of their defense.

At this juncture, I need to discuss the referred-to decisions as contained in 16 BLD (1996) 519, in the case of Sreejukta Haladhar Karmakar and others Vs Bangladesh and others, His Lordship Mr Justice Md. Hamidul Haque, in explanation of the provisions of Section 103 of the Evidence Act, 1872, held that –

"A statement in the plaint or in the written statement is no evidence in the eye of law unless it is proved by examining a witness on oath. In the instant suit, the defendant claimed that the original owners had left this country before 1965 and the suit property became enemy property by operation of law. The onus was upon the defendant to prove that fact either by examining any witness or by producing any reliable documentary evidence establishing that the real owners had left this country before 1965. In the absence of such evidence, the property in question cannot be treated as enemy property or vested property. (Para-8)"

Upon a perusal of the above decision referred to, the judgment found that the facts of the said case were that the plaintiffs had been in possession of the suit land in ejmali. While they were in possession, it was learnt that the property had been declared enemy property. The plaintiffs then filed a suit for permanent injunction against the defendants, and the suit was decreed on contest, where there was no question as to the possession. Thus, in the case at hand, the plaintiff has not been able to prove his bona fide genealogy and possession by adducing credible evidence. The settled principle of law is that where the plaintiff successfully discharges the initial burden cast upon him

under section 101 of the Evidence Act, 1872 by establishing, through cogent and reliable evidence, an unbroken chain of title together with lawful possession over the disputed property, the evidential burden thereafter shifts to the defendant under section 103 of the Act. In such circumstances, if the defendant sets up a rival title, denies the plaintiff's ownership or possession, or asserts any fact inconsistent with the plaintiff's case, the onus lies upon the defendant to substantiate such affirmative defense by credible and convincing evidence. Mere denial of the plaintiff's claim, without proof of the facts specifically asserted by the defendant, is insufficient in law to displace the case established by the plaintiff. So, the aforesaid important decision referred to by the petitioner does not help the instant particular facts of the plaintiff.

In this context, I am also in firm conviction that, **once the plaintiff has discharged the burden imposed by section 101 of the Evidence Act, 1872 by proving a complete and uninterrupted chain of title coupled with possession, the burden of proof shifts under section 103 of the Act to the defendant who asserts a contrary title or any fact inconsistent with the plaintiff's case. Such assertion must be affirmatively established by the defendant through legally admissible evidence, and cannot rest upon a mere denial of the plaintiff's claim.**

However, the petitioner referred to another decision as contained in 56 DLR (AD) 73, in the case Aroti Rani Paul Vs Sudarshan Kumar Paul and others, where their Lordships were pleased to hold that,

"Since the law of enemy property itself died with the repeal of Ordinance No. 1 of 1969 on 23-3-1974, no further Vested Property case can be started thereafter on the basis of the law which is already dead. ---(17)"

The facts of the instant case are quite distinguishable from the cited case, as the defendants 1 & 2 did not provide any credible information in respect of enemy or vested property. More particularly, the defendants 3-6 introduced a different case, i.e., Exchange Case No. 893(C)/70-71, which was validated by the Government through the Deputy Commissioner, Chuadanga, culminating in the execution and registration of Deed No. 392 of 1993 in favour of nineteen persons. But these 19 persons were not made parties to the suit.

Finally, the petitioner referred to another decision as contained in 6 MLR (AD) 49, in the case Government of Bangladesh, represented by Additional Deputy Commissioner,

Bogra Vs Md. Mahirudding Sarker and others, where their Lordships were pleased to hold that,

"Both the trial court and appellate court concurrently found the plaintiff to have title and possession in the suit land. But the trial court dismissed the suit on ground of limitation which the appellate court reversed with the finding that there was no question of limitation so long the plaintiffs title and possession was not disputed or disturbed. So long any dispute as to title and possession is not raised, there was no reason to institute suit. Mere wrong record of right by itself does not constitute ground of limitation. The trial court on consideration of the materials on record dismissed the suit only on the ground of limitation and against that the plaintiff preferred Other Class Appeal No.18 of 1985 and the appellate court decreed the suit holding that the suit is not barred by limitation. It appears from the judgment of the trial court that the plaintiff's right, title and possession on the basis of Pattan from Jatindra Nath Majumder was found by the trial court but dismissed the suit only on the ground of limitation. The appellate court it appears concurred M. with the finding of the trial court on the right, title and possession of the plaintiff over the suit land but held that the suit is not

barred by limitation as wrong recording in the name of the original owner has not created any obstruction in the right, title and possession of the plaintiff. The appellate court also found that when the plaintiff is in possession and when nobody earlier raised any objection or created problem in the enjoyment of the suit property, the plaintiff had no reason to file a suit but when the present petitioner tried to disturb the plaintiff the suit was instituted. So question of limitation does not arise in such circumstances. ---(Para-4)"

From a plain reading of the aforesaid decision, it is manifest that both the trial court and appellate court concurrently found the plaintiff had title and possession in the suit land. But the trial court dismissed the suit on the ground of limitation. In the case at hand, the concurrent decisions of the Trial Court and the Appellate Court is that the plaintiff hopelessly failed to assert his title and possession over the suit land. More so, the learned Appellate Court specifically endorsed that P.W.1, during the course of his cross-examination, stated that after the independence of the country, the suit property became vested property, and consequently it was not possible to pay rent (land revenue) in respect thereof. The plaintiff did not produce any rent receipts (dakhilas) evidencing payment of rent for the suit land. From the aforesaid admission of

P.W.1, it is evident that the plaintiff was aware that the suit land had been enlisted as vested property immediately after the independence of the country in 1971. Despite such knowledge, the plaintiff did not take any steps at the relevant time either to secure the release of the suit land from the vested property list or to challenge its enlistment therein before the competent authority. Furthermore, had the plaintiff been in actual possession of the suit land, he could, if necessary, have obtained a lease from the Vested Property Authority to continue his possession and thereby demonstrate before the Court that his possession had remained uninterrupted since the earlier period. However, no such evidence has been adduced. So, I do not find any relief as to limitation from the aforementioned potential decision referred to by the petitioner; rather, it helps the opposite parties.

In the present case, both the Courts below concurrently found that the plaintiff failed to establish the genealogy pleaded in the plaint, failed to prove inheritable right, failed to identify the suit property with certainty, and failed to prove actual possession. Such findings are essentially findings of fact based on an appreciation of the evidence.

The authorities relied upon by the learned Senior Advocate are distinguishable on facts. While they correctly state the

principles governing the burden of proof and the legal consequences of the repeal of statutory provisions, those principles do not assist the petitioner in view of the concurrent factual findings recorded and legal proposition against him.

This Court, while exercising revisional jurisdiction under section 115 of the Code of Civil Procedure, does not function as a second Court of appeal. Unless the concurrent findings suffer from jurisdictional error, material illegality, perversity, misreading or non-consideration of material evidence resulting in failure of justice, interference is not warranted.

Having examined the entire record, I find no such infirmity. The findings recorded by the Subordinate Courts are based on evidence supported by reasons and do not disclose any jurisdictional error or material irregularity warranting interference under revisional jurisdiction.

I am, therefore, of the considered opinion that both the Subordinate Courts rightly dismissed the suit upon proper appreciation of the evidence and correct application of the governing principles of law. The impugned judgments and decrees call for no interference by this Court.

Result:

As a result, the Rule is discharged.

There shall, however, be no order as to costs.

The order of *status quo* granted earlier by this Court is hereby recalled and vacated.

Let the Subordinate Courts' Records (SCR) be transmitted to the Courts concerned forthwith together with a copy of this judgment.

(Abdur Rahman, J.)