

District-Satkhira.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 520 of 2021.

Md. Nazrul Islam and others.

----- Defendants-Appellants-Petitioners.

-Versus-

Md. Alauddin Gazi and others.

----- Plaintiffs-Respondents-Opposite Parties.

Mr. Sarwar Ahmed, Senior Advocate with

Mr. Shudenda Kumar Biswas, Advocate

----- For the Defendants-Appellants-Petitioners.

Mr. Md. Abdus Salam, Advocate with

Mr. Nikhil Kumar Biswas, Advocate

----- For the Plaintiffs-Respondents-Opposite Parties.

Heard On: 31.08.2025, 02.09.2025.

And

Judgment Delivered On: 04.09.2025

Md. Toufiq Inam, J.:

This Civil Revision is directed against the judgment and decree dated 08.12.2020 (decree signed on 15.12.2020) passed by the learned Additional District Judge, 1st Court, Satkhira in Title Appeal No. 73 of 2017, whereby the appeal was disallowed and the judgment and decree dated 17.05.2017 (decree signed on 23.05.2017) passed by the learned Senior Assistant Judge, Shyamnagar, Satkhira in Title Suit No. 18 of 2008 decreeing the suit, was affirmed.

The opposite party Nos. 1–12 and others, as plaintiffs, instituted Title Suit No. 18 of 2008 on 31.01.2008 in the Court of Senior Assistant

Judge, Shyamnagar, Satkhira against the petitioners and opposite party Nos. 13–23 as defendants. They sought a declaration of title over 2.61 acres of land described in the schedule to the plaint, together with a further declaration that Kabala Nos. 3350 and 3351, both dated 25.04.1980 and registered at the Sub-Registry Office, Kaliganj, were forged, collusive, without consideration, and not binding on them.

The plaintiffs' case is that one Madar Ali Mollah, recorded tenant of S.A. Khatian No. 668 of Mouza Kashimari, was in possession during his lifetime. Upon his death, his heirs—plaintiff No. 21 Asia Khatun (widow), son Abul Hossain, and four daughters—inherited the land, and thereafter plaintiff Nos. 1–20 became heirs. Plaintiff No. 22, G.M. Anisur Rahman, subsequently acquired 2.23 acres through four kabalas dated 15.05.2010, 17.08.2010, 05.09.2011, and 07.04.2012. They claimed to have been in possession of 2.61 acres on the eastern side of Plot No. 4419 out of 3.44 acres, cultivating vegetables since the time of their predecessor. According to them, defendants Nos. 1–5, who are related to Madar Ali Mollah by affinity, collusively manufactured Kabala Nos. 3350 and 3351 dated 25.04.1980 through false personation, purporting to show Madar Ali Mollah as executant. The alleged fraud surfaced on 03.11.2007 when the defendants threatened dispossession. On obtaining certified copies of the kabalas, the plaintiffs discovered their forged nature and filed the suit.

Defendants Nos. 1–3 and Nos. 4(gha), 4(chha), 4(jha), and 5 contested the suit by filing written statements denying the material allegations. Their defence was that the suit had no cause of action, was barred by limitation, and otherwise not maintainable. According to defendants Nos. 1–3, Madar Ali Mollah himself executed Kabala Nos. 3350 and 3351 on 25.04.1980 in their favour for valuable consideration and duly delivered possession. They claimed mutation of their names in the khatian, payment of rent, erection of homestead structures, excavation of ponds, plantation of trees, and cultivation of the land, asserting open possession for more than 12 years. They argued that even if plaintiffs had any claim, it was extinguished by adverse possession.

Defendants Nos. 4(gha), 4(chha), 4(jha), and 5 similarly asserted that the kabalas were genuine and duly executed. They highlighted that the plaintiffs themselves had transferred portions of the land to plaintiff No. 22, and even plaintiff No. 22 subsequently transferred parts to them, thereby showing that plaintiffs were aware of the kabalas and defendants' possession. They contended that the plea of forgery and want of knowledge was false and that the suit was hopelessly barred by limitation.

The trial court framed five issues and, upon consideration of evidence, decreed the suit in part on 17.05.2017, declaring Kabala Nos. 3350

and 3351 dated 25.04.1980 not binding upon the plaintiffs. The defendants preferred Title Appeal No. 73 of 2017 which was dismissed by the learned Additional District Judge, 1st Court, Satkhira by judgment dated 08.12.2020, thereby affirming the trial court's decree. Aggrieved, the defendants as petitioners obtained this Rule.

During hearing, the petitioners filed an application under Order XLI, Rule 27 CPC to adduce additional evidence in the form of a death certificate of Madar Ali Mollah, allegedly showing that he died on 01.06.1980, i.e., after execution of the kabalas.

In support of the Rule, Mr. Sarwar Ahmed, learned Senior Advocate appearing with Mr. Shudenda Kumar Biswas, Advocate for the defendants-petitioners, submits that both courts below committed errors of law and misappreciated evidence. He contends that the defendants had lawfully purchased the disputed land (plot No. 4419) through Kabala Nos. 3350 and 3351 dated 25.04.1980 executed by Madar Ali Molla for valuable consideration, entered into possession, developed the land, and secured mutation. He emphasizes that plaintiff No. 22, G.M. Anisur Rahman (P.W.-1), during cross-examination, did not dispute these facts, which amounts to implied acknowledgment of defendants' possession and ownership.

Mr. Ahmed further argues that the plaintiffs' claim of first knowledge on 03.11.2007 was unproven. P.W.-1 admitted he became aware only after filing of the suit, which undercuts their assertion of cause of action. He stresses that courts below ignored evidence showing defendants' long-standing possession, construction of huts, kitchens, latrines, excavation of ponds, planting of trees, and cultivation since 1980, which clearly established that the kabalas were genuine and acted upon.

Conversely, Mr. Md. Abdus Salam, learned Advocate appearing with Mr. Nikhil Kumar Biswas, Advocate for the plaintiffs-opposite parties, submits that Kabala Nos. 3350 and 3351 are forged and collusive, executed by false personation, since Madar Ali Molla had already died on 23.04.1980, two days prior to the alleged execution. The trial court, relying on the Death Register and corroborative evidence, held that the death preceded the kabalas. No satisfactory explanation was offered by the defendants. Plaintiffs also produced Union Parishad certificates showing that the purported identifier of the kabalas did not exist, further proving the documents were fraudulent.

The trial court, after carefully examining pleadings, oral and documentary evidence, found that the defendants' claim of title and

possession through Kabala Nos. 3350 and 3351 was untenable. Some defendants themselves admitted the deeds to be forged. The court held that the plaintiffs had acted promptly upon discovery of fraud, and there was no basis to hold the suit barred by limitation. It accordingly decreed the suit in part, declaring the kabalas not binding.

The appellate court, on independent scrutiny, concurred. It relied on testimonies of P.W.-1 G.M. Anisur Rahman, P.W.-2 Md. Korban Ali, and P.W.-3, as well as certified copies of S.A. Khatian and registered kabalas of 2010, 2011, and 2012, to hold that the disputed deeds were registered after Madar Ali Molla's death and thus forged and collusive. Finding no error in the trial court's reasoning, the appellate court affirmed the decree.

The petitioners further contend that the suit, framed as a mere declaratory suit without seeking recovery of possession or eviction, is not maintainable. They argue that under settled principles, a bare declaration of title without consequential relief of possession is insufficient.

With respect to the petitioners' application under Order XLI, Rule 27 CPC, this Court finds it unnecessary. The death of Madar Ali Molla prior to 25.04.1980 was conclusively established by primary evidence

in the Death Register corroborated by P.W.-2. Additional evidence at this stage would serve no purpose, as the fraudulent nature of the kabalas is already proven.

It is a settled proposition of law, that a suit for mere declaration of title is maintainable where the plaintiffs are in possession or where their primary object is to remove a cloud from their title. The proviso to Section 42 of the Specific Relief Act is attracted only when a plaintiff, though out of possession or otherwise entitled to consequential relief, deliberately omits to seek such relief. In the instant case, the plaintiffs have demonstrated inheritance and acquisition by kabalas, and the disputed deeds relied upon by the defendants have been proved to be forged. Their declaratory prayer was, therefore, rightly entertained. The possession is not a prerequisite for maintainability of a declaratory suit if the primary purpose is to establish title and invalidate fraudulent documents. The declaratory relief has significant legal value in protecting plaintiffs' ownership, removing clouds on their title, and preventing reliance on fraudulent deeds in future.

In the instant case, the plaintiffs have demonstrated prima facie title through inheritance and subsequent kabalas executed in their favor, and the disputed kabalas relied upon by the defendants have been

proved to be forged, collusive, and executed by false personation. While it is true that they have not sought eviction or khas possession, the declaratory relief itself has an independent legal purpose: to establish the invalidity of the defendants' claim and to protect the plaintiffs' title. Thus, the contention of the defendants that the suit is not maintainable because it does not contain a prayer for eviction or khas possession is without merit. The plaintiffs are entitled to a declaratory decree establishing that Kabala Nos.3350 and 3351 are null and void and that no title passed to the defendants thereunder.

In view of the above, it is manifest that the proviso to Section 42 of the Specific Relief Act is not attracted in the present case. The plaintiffs have not been shown to have been dispossessed of the suit land; rather, they have substantiated their claim of inheritance and possession through credible oral and documentary evidence. Their principal object was to remove the cloud cast upon their title by the forged kabalas. In such circumstances, the suit for declaration without a prayer for khas possession is not only maintainable but also fully consistent with the object and scope of Section 42 of the Act.

Courts have consistently recognized that maintainability of a declaratory suit does not depend on the plaintiff's immediate possession or readiness to seek khas possession. A declaration itself is

enforceable and efficacious to settle disputes regarding rights. Therefore, the contention of the defendants that the suit is not maintainable is unsustainable.

Upon thorough consideration of pleadings, evidence, and arguments, this Court finds that Kabala Nos. 3350 and 3351 dated 25.04.1980 are null and void, executed by false personation, and confer no title upon the defendants. The plaintiffs have prima facie title through inheritance and subsequent valid kabalas. The defendants failed to establish lawful acquisition of title or possession, or to show that the suit was barred by limitation. The findings of both courts below are correct, based on proper appreciation of evidence, and call for no interference.

Accordingly, this Court finds no merit in the Civil Revision. The Rule is discharged.

The judgments and decrees of the learned Senior Assistant Judge, Shyamnagar, Satkhira, and the learned Additional District Judge, 1st Court, Satkhira, are lawful, well-reasoned, and supported by evidence.

The petitioners' application under Order XLI, Rule 27 CPC for additional evidence is rejected as unnecessary.

The order of *status-quo* granted earlier is hereby recalled and vacated.

Let the lower court records be sent down along with a copy of this judgment forthwith.

(Justice Md. Toufiq Inam)