

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

Present:
Mr. Justice Md. Bashir Ullah

Civil Revision No. 2870 of 2023

In the matter of:

An application under Section 115(1) of the
Code of Civil Procedure.

And

In the matter of:

Sree Hori Sarker

... Plaintiff-Appellant-Petitioner

-Versus-

Sree Dhirendra Nath Sarker and others
... Defendants-Respondents-Opposite parties

Mr. Md. Abul Kalam Patwary, Advocate with
Mr. Sanowar Rahman, Advocate

... For the Petitioner

Mr. Md. Khalilur Rahman (Helal), Advocate
... For the Opposite party Nos. 1-2

Heard on 06.11.2025, 04.12.2025, 14.12.2025
17.12.2025 and 18.12.2025
Judgment on 09.02.2026

At the instance of the plaintiff in Other Class Suit No. 128 of 2014, this Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the judgment and decree dated 22.01.2023 passed by the learned Joint District Judge, Second Court, Sirajganj in Other Class Appeal No. 97 of 2020 dismissing the appeal and affirming the judgment and decree

dated 28.09.2020 passed by the Court of learned Assistant Judge, Roygonj, Sirajganj in the aforesaid suit dismissing the same should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The salient facts for disposal of the Rule are that the plaintiff instituted the suit seeking declaration of title over 16 decimals of land appertaining to Plot No. 484 under Mouza-Ichhalidigor, Police Station-Royganj, District-Sirajganj. The plaintiff's case in short is that the suit land belonged to one Mohadeb Chandra Das who died leaving behind his wife namely Dhorjobala Dashi. Her name was recorded in S.A. *Khatian* No. 333 and R.S. *Khatian* No. 125, S.A and R.S Plot No. 476. Dhorjobala Dashi died leaving behind her only heir her cousin namely Mongala Chandra Das who subsequently died leaving behind his only son Khudiram Das. Khudiram Das died leaving behind his only son Uzzal Kumar Das who transferred the suit land measuring 16 decimals to the plaintiff Sree Hori Sarker by deed No. 10178 dated 12.12.2012. Thereafter, Uzzal Kumar Das made affidavit vide Affidavit No. 206 dated 24.12.2012. On 18.08.2013, when he went to pay rent at the Local Tohshil Office, the tahashilder refused to accept rent, whereupon he came to know that

defendant Nos. 1 to 4 had created forged documents, and mutated their names in Mutation Case No. 559/2008-2009 and were paying rent. It is mentioned that predecessor of Khudiram Das transferred 79 decimal land to one Habibur Rahman by deed No. 2665 dated 06.04.1981 from R.S. *Khatian* No. 319, R.S. plot No. 319. Mongal Chandra Das father of Khudiram Das transferred 79 decimals of land to Brindabon Das by deed No. 3654 dated 01.08.1942. The defendants have no title or possession and hence the plaintiff filed the suit.

On the other hand, defendant Nos. 5 and 6 contested the suit by filing written statement denying all material allegations of the plaint stating that Mohadeb Chandra Das was the original owner of 16 decimals of land appertaining to C.S. *Khatian* No. 283, C.S plot No. 484. Subsequently, Mohadeb Chandra Das died leaving behind his wife Dhorjobala Dashi who recorded her name in S.A. *Khatian* No. 333. During R.S. Operation her name was also recorded in R.S. *Khatian* No. 125, R.S Plot No. 484 for 16 decimals of land who subsequently died leaving behind her heir namely Mongala Chandra Das. Mongala Chandra Das died leaving behind his two daughters namely Shoilobala and Hemangini Dassya. Hemangini died leaving behind her two sons

namely Aradhon and Pujan. Aradhon, Pujan and Soilobala jointly mutated their names in Mutation Case No. 859/2008-2009 and they transferred 05 decimals land out of 16 decimals to defendant No. 5, Sree Girendra Nath Sarker by deed No. 9670 dated 02.12.2009. Soilobala died leaving behind her two sons namely Poresh Chandra and Sonaton. Sonaton died leaving behind his heir namely Dibosh Das. Aradhon and Pujan transferred 10 decimals of land to Md. Khaibor Ali and 4 others by deed No. 11118 dated 29.12.2021 from S.A plot No. 484, R.S. plot No. 476. Defendant No. 5 and 6 by way of purchase got title $7\frac{1}{2}$ decimals of land. Earlier the plaintiff created a false deed no. 7541 and mutated his name under Mutation Case no. 337/ 03-04. Paresh Chandra Das and Aradhan Das filed an objection and upon hearing the mutation was rejected by the then Assistant Commissioner (land). There is no existence of the said deed. Later the plaintiff fabricated a fictitious person named Uzzal Das and created a forged deed No. 10178 dated 12.12.2012 and instituted the suit. The plaintiff has no title and possession in the suit land and hence the suit shall be dismissed.

In order to dispose of the suit, the trial Court framed as many as 05 (five) different issues. To support the case, the

plaintiff examined 02 (two) witnesses and the defendant examined 03(three) witnesses to prove their respective case.

Upon hearing the parties, the trial Court dismissed the suit by judgment and decree dated 28.09.2020.

Challenging the judgment and decree, the petitioner as appellant preferred Other Class Appeal No. 97 of 2020 in the Court of District Judge, Sirajganj and on transfer, the learned Joint District Judge, Second Court, Sirajganj dismissed the appeal by judgment and decree dated 22.01.2023.

Being aggrieved by and dissatisfied with the judgment and decree dated 22.01.2023, the petitioner preferred the revisional application and obtained the Rule.

Mr. Sanowar Rahman, learned Advocate appearing on behalf of the petitioner submits that the burden of proof lies upon the defendant to prove that alleged deed No. 10178 dated 12.12.2012 was executed by false personification by the name of Uzzal, son of Khudiram.

He further submits that both the Courts below failed to discuss possession of the parties, in the absence of any discussion on possession, the findings on possession so arrived at is vitiated by an apparent error of law and is liable to be set aside.

He next submits that the vendor, Uzzal was in Bangladesh in 2014, at the time of national election that also corroborated by PW1. But it was not considered by the lower Courts below. Non consideration of the oral evidence the Court becomes functios officio and in case of non consideration of oral evidence in passing the judgment the law empowers the High Court Division to reverse the judgment. The appellate Court being last Court of facts in case of affirming or reversal of judgment ought to have discussed the reason to come in its decision. Decision without giving cogent reason or any judgment without supported by the evidence on record is not proper Judgment.

Mr. Sanowar Rahman contends that the findings made by the trial Court regarding National Identity Card (NID) of Uzzal, the vendor of deed No. 10178 was sole ingredient to execute and register the sale deed. The above finding was misconceived of law. To execute and register the sale deed, the executants have to show NID or birth certificate according to manual of the Registration Act, as because NID cannot become sole ingredient for the executants to execute and register the sale deed.

He further argues that the defendant did not make any attempt to produce the succession certificate of Khudiram that he

died having no heir. In absence of this, the claim of the plaintiff remained unchallenged.

Learned Advocate next argues that unchallenged issue (Uzzal, son of Khudiram) does not require to prove as per section 58 of the Evidence Act, wherein provides that doctrine of evasive denial is no denial in the eye of law and that also can be treated as admission.

He next submits that the deed of defendants as Exhibit-'Ka' and 'Uma' were executed and registered by the daughter of Mongol Chandra Das (Sister of Khudiram). In presence of brother no sister in Hindu Law is entitled to any property. Hence, Uzzal did not require to get relief against the aforesaid deed in the appropriate Court. The findings of the trial Court Uzzal willingly did not come before the Court against the deed in question. Deed by unauthorized person is void deed which does not pass any title and possession in favour of the vendee. As such the findings of the Court below are not sustainable because void is always void that cannot be declared by the Court to that effect.

He further submits that the appellate Court while affirming the judgment and decree of the Court below did not discuss oral and documentary evidence adduced by the parties. The appellate

Court without giving his independent findings dismissed the appeal by simply observing that “ বাদীপক্ষ দাবী করেছে ক্ষুধিরামের পুত্র উজ্জ্বলের কাছ থেকে তারা দলিল মূলে সম্পত্তি প্রাপ্ত হয়েছে কিন্তু উজ্জ্বলের কোন জাতীয় পরিচয় পত্র বা ক্ষুধিরামের কোন ওয়ারিশ সনদপত্র বাদীপক্ষ দাখিল করে নাই।”

In support of his contention learned counsel refers to the cases of *Lutful Karim and others Vs. Shahidullah and others* reported in 19 BLC (AD)(2014)84; *Md. Soleman Ali Akan being dead his heirs: Md. Saymuddin and others Vs. Mst. Taramon Bewa and others* reported in 21 ALR (AD)(2021) 56; *Md. Shamsuddin and others Vs. Md. Nowsher Ali Fakir and others* reported in 8XP (AD)(2015)31 and *Begum Monowara Vs. Engineer Kazi Tanvir Shahid and others* reported in 67 DLR (2015) 534.

Per contra, Mr. Md. Khalilur Rahman, learned Advocate appearing on behalf of the defendant-opposite party Nos. 1 and 2 submits that the Courts below concurrently found that the plaintiff failed to prove his title and possession over the suit land, as such, the revisional Court should not interfere over the concurrent finding of facts if the petitioner failed to show any misreading and non-consideration of evidence and misconception of law.

He further submits the Courts below concurrently found that Khudiram died as unmarried before his father and he had no

son namely Uzzal Kumer, as such, the plaintiff did not acquire any title over the suit land by way of purchase on false personification.

He next contends that the plaintiff failed to prove the existence of Uzzal Kumar by producing any oral and documentary evidence, as such, his title cannot be accrued over the suit land in any way.

Mr. Khalilur Rahman contends that the plaintiff failed to prove his possession over the suit land, as such, the suit is not maintainable without prayer for recovery of possession.

He further submits that the defendant's deeds are earlier than that of the Plaintiffs and it is settled Principle that earlier deed will prevail over the later deed and since the plaintiff did not challenge the deed of the defendants he cannot get any decree in present suit.

He next contends that the plaintiff stated in his plaint that Mongla had a son namely Khudiram and Khudiram had a son namely Uzzal from whom the plaintiff purchased the suit land as such the plaintiff is bound to prove the existence of Uzzal, since it is a pleading case and the defendants did not file any suit challenging the sale deed executed by Uzzal as such the

defendants are not bound to prove the existence of Uzzal. It is a settled principle that plaintiff has to prove his own case, upon weakness of the defendant, plaintiff will not get any benefit.

He next submits that both the Courts below considering the oral and documentary evidence concurrently found that there was no existence of Uzzal as such the plaintiff-petitioner is bound to show that both the Courts below passed the impugned judgment and decree by mis-reading of evidence or non-consideration of evidence otherwise the revisional Court will not interfere over the concurrent findings of fact.

He further submits that the plaintiff tried to prove his possession by oral evidence, on the other hand, defendant Nos. 5 and 6 produced oral and documentary evidence to prove their possession and both the Courts below considering the documentary evidence that is DCR, land development tax receipt and mutation *Khatian* concurrently found that the defendants are in possession (Exhibits- 'Cha-(৮) series). The documentary evidence will prevail over the oral evidence. In this connection it is stated that since the oral evidence is before this Court, this Court may discuss the oral evidence.

In support of his contention learned counsel refers to the cases of *Abdul Gafur and others Vs. Md. Abdur Razzak and others*

reported in 62 DLR(AD)(2010) 242; ***Delipjan being dead her heirs: Fazal Haque and others Vs. Shahed Badsha and others*** reported in 66 DLR(AD)(2014)176; ***Abdus Samad Khan and others Vs. Wazedali Fakir and others*** reported in 44 DLR (1992) 495 and ***Md. Naimuddin Sarder @ Naimuddin Sarder Vs. Md. Abdul Kalam Biswas @ Md. Abul Kalam Basiruddin @ Abul Kalam Azad and another*** reported in 39 DLR (AD)(1987) 237.

With those submissions, the learned counsel finally prays for discharging in the Rule.

I have considered the submissions so advanced by the learned Advocates for both parties at length and perused the revisional application, the impugned judgments and decrees passed by the Courts below and other materials on record.

It appears from the record that Aradhon, Pujan and Soilobala jointly mutated their names in Mutation Case No. 859/2008-2009 and they transferred 05 decimals of land out of 16 decimals to defendant No. 5, Sree Girendra Nath Sarker by deed No. 9670 dated 02.12.2009. After purchase, defendant No. 5 mutated his name under Mutation Case No. 557/2010-2011. Defendant No. 6 with 4 others purchased 10 decimals of land from Paresh Chandra, Dibash Das, Aradhan and Puzan Das by

deed No. 11118 dated 29.11.2011. After having mutation defendant No. 5 has been paying Land Development Tax.

On the other hand, the plaintiff purchased 16 decimals of land from Uzzal Kumar Das by Deed No. 10178 dated 12.12.2012. He failed to have mutation in his name.

In the trial, defendant Nos. 5 and 6 produced documentary evidence to prove their possession. Both the Courts below considered the documentary evidence that is DCR, land development tax receipt and mutation *Khatian* and concurrently found that the defendants are in possession (Exhibits- ‘Cha-(ঃ) series). Rent receipts and Duplicate Carbon Receipt etcetera are important items of evidence in support of possession and may be used as collateral evidence of title and possession generally follows title. This view gets support from the case of *Erfan Ali vs. Joynal Abedin Mia*, reported in 35 DLR (AD) 216.

The Courts below concurrently found that the plaintiff failed to prove his title and possession over the suit land, as such, this Court has nothing to interfere over the concurrent findings of facts in the absence of misreading or non-consideration of the evidence on record. This view gets support from the cases of *Abdul Gafur and others Vs. Md. Abdur Razzak and others*, reported in 62 DLR(AD)(2010) 242.

It also appears that the plaintiff purchased the suit land on 12.12.2012. On the other hand defendant No. 5 purchased a portion of the suit land on 02.12.2009 and defendant No. 6 purchased portion of the suit land on 29.11.2011. The plaintiff did not challenge the deeds of the defendants. Since, the defendant's deeds are earlier than that of the plaintiffs and the earlier deed will prevail over the later deed, the plaintiff cannot get any relief from the Court. It is settled law that earlier deeds prevail over later deeds. In this regard reliance may be placed upon the decision passed in the case of *Abdus Samad Khan and others Vs. Wazedali Fakir and others* reported in 44 DLR (1992) 495.

It further appears from deed No. 10178 dated 12.12.2012 (Exhibit-4) that although the National Identity Card (NID) of purchaser, Sree Hari Sarkar was cited but no NID of vendor, Sree Uzzal Kumar Das was cited.

PW1 in his cross-examination deposed that ‘উজ্জ্বল জীবিত আছে। উজ্জ্বল এখন কোথায় আছে জানি না। এই নির্বাচনের আগের নির্বাচনে উজ্জ্বলকে ভোট কেন্দ্রে দেখেছি। ... তার ভোটার লিস্ট আনতে পারব না।’

PW2, Godadhar Chakrabarti stated in his cross-examination that ‘উজ্জ্বল জীবিত আছে। কোথায় বসবাস করে বলতে পারব না।’

PW1, Md. Khaibar stated in his deposition that “বাদীপক্ষ ভুয়া
ব্যক্তিকে সাজাইয়া ভুয়া দলিল সৃষ্টি করে। মঙ্গল চন্দ্রের পুত্র ক্ষুধিরাম পিতার পূর্বেই মারা
যায় অবিবাহিত অবস্থায়। ক্ষুধিরামের উজ্জ্বল নামে কোন পুত্র ছিল না।”

In cross-examination DW1 deposed that “তবে শুনেছি ক্ষুধিরাম
দাস নাবালক অবস্থায় তার পিতার পূর্বে মারা গিয়েছে।”

However, the plaintiff failed to produce National Identity
Card (NID), voter list of Uzzal Das, even Uzzal Das or his wife
or son, if any was not examined to prove the deed by which the
plaintiff claimed the title which creates doubt that there is no
existence of Uzzal Kumar Das.

Both Courts below concurrently found that Khudiram Das
died unmarried and issueless and that the alleged vendor Uzzal
Kumar Das was a fictitious person. Such findings are based on
appreciation of evidence and do not suffer from misreading or
non-consideration.

It appears from paragraph No.1 of the plaint that the
plaintiff claimed that he purchased the suit land from Uzzal
Kumar Das on 12.12.2012 by registered deed No.10178.
Thereafter, Uzzal Kumar Das executed an affidavit being No.
206 through Notary Public of Sirajganj on 24.12.2012. In the
plaint it is stated that উপরোক্ত প্রকারে উজ্জ্বল কুমার দাস নালিশী দাগ ভূমির

ওয়ারীশ সূত্রে প্রাপ্ত হইয়া স্বত্বানও দখলকার থাকাবস্থায় নালিশী সাবেক ৪৮৪ আর.এস. ৪৭৬ দাগের ১৬ শতক ভূমি গত ইং ১২/১২/১২ বাংলা ১৪১৯/২৮ শে অগ্রহায়ন তারিখে ১০১৭৮ নং বিক্রয় কবলা দলিল মূলে অত্র বাদী শ্রী হরি সরকারের নিকট হস্তান্তর করিয়া দখল বুবাইয়া দেন। উক্ত বিক্রয়ের বিষয়ে উজ্জ্বল কুমার দাস সিরাজগঞ্জ নোটারি পাবলিক কার্যালয় হতে ইং ২৪/১২/১২ তারিখে ২০৬ নং এফিডেভিট সম্পাদন করেন। It appears from the above-mentioned statement that the plaintiff executed affidavit being no. 206 through Notary Public of Sirajganj on 24.12.2012 to strengthen the legality of registered deed no. 10178. However, execution of such affidavit through Notary Public subsequent to registration of a deed is unusual and further weakens the plaintiff's case. The alleged affidavit casts serious doubt on the plaintiff claim.

In view of the above facts and circumstances, I find no illegality or impropriety in the impugned judgments and decrees and as such I do not find any substance in the Rule which is liable to be discharged.

Resultantly, the Rule is discharged, however without any order as to cost.

The judgment and decree dated 22.01.2023 passed by the learned Joint District Judge, Second Court, Sirajganj in Other Class Appeal No. 97 2020 affirming the judgment and decree

dated 28.09.2020 passed by the learned Assistant Judge, Royganj Court, Sirajganj in Other Class Suit No. 128 of 2014 is hereby affirmed.

Let a copy of this judgment along with the lower court records be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)

Md. Sabuj Akan/
Assistant Bench Officer.