

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 4685 of 2010

Md. Badiar Rahman Molla being dead his heirs:

1(a) M M Moniruzzaman and others
.....petitioners

-Versus-

Md. Shah Alom Khan
.....opposite party

Mr. Mohammad Eunus with
Mr. Jahangir Alom and
Mr. Md. Abdus Sabur Khan, Advocates
.....for the petitioners

Mr. Md. Harun-Or-Rashid with
Mr. Md. Mozammel Hossain,
Mr. Manzarul Al Motin and
Ms. Mahfuza Begum, Advocates
.....for the opposite party

**Heard on: 03.09.2025, 26.10.2025,
02.11.2025, 04.11.2025 and 05.11.2025**

Judgment on 06.11.2025

In the instant revision Rule was issued on 12.12.2010 calling upon the opposite party 1 to show cause as to why the judgment and decree complained of in the petition moved in court today should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

Opposite party 1 as plaintiff filed Title Suit Number 174 of 2001 on 30.10.2001 in the Court Assistant Judge, Doulatpur, Khulna for declaration of title.

The case of the plaintiff in short is that Haricharan Sen was owner in possession in 8 annas share and Sattendra Kumar Sen, Sushil Kumar Sen, Profullo Kumar Sen, Bijoy Kumar Sen and Basanto Kumar Sen collectively acquired 8 annas share in C.S. record 1547 corresponding to S.A. record 1457. The father of the plaintiff purchased the suit land which was sold in auction on 05.08.1961 in Certificate Case Number 1076 of the year of 1960-61 which was filed on 15.04.1960. The auction was confirmed on 16.10.1963 and the sale certificate was issued on 19.03.1964. Thereafter plaintiff got possession through Court on 13.06.1964. Plaintiff has been in possession in the auction purchased suit land by erecting fish enclosure and by rearing fish therein and also by cultivating through bargader for a period of more than 12 years. Thereafter plaintiff came to know that there was a fraudulent Mutation Case 25 of 1980-81 filed by defendant 2 Jutiproakash Mitra with respect to .67 acres of land and defendant 1 also claimed .66 acres of land through Miscellaneous Case 316 of 1998-99 and both the cases are false, fraudulent and collusive.

Those mutation cases were challenged by the plaintiff before ADC (Revenue) in Miscellaneous Appeal Number 01 of 2000 but the papers relating to those mutation cases were not found out. The defendants stole and took away paddy from the suit land at night. Defendants have no title and possession in the suit land and they denied the title of the plaintiff on 21.10.2001 for which plaintiff filed this suit.

Defendant 1 appeared and contested the suit by filing written statement denying the material statements made in the plaint contending *inter alia* that the previous owner of defendant 1 named Jotiprokash Mitra who is defendant 2 in this suit obtained judgment and decree passed in a Probate Case 76 of 1976 in respect of .67 acres of land and subsequently defendant 2 filed Title Suit 452 of 1984 in the then Munsif Court of Doulatpur, Khulna in respect of .67 acres of land along with other lands for partition and recovery of possession and also for permanent injunction and obtained decree. Defendant 2 then sold the same to one Jobeda Khatun by registered kabala and subsequently defendant 1 purchased the same from Jobeda Khatun by registered kabala dated 20.12.1998 and accordingly mutated his name and has been maintaining possession upon payment of rent. The rest .66

acres of land belonged to Fazlur Rahman and he by kabala dated 14.07.1998 transferred the same to defendant 1. It is further stated that earlier when Fazlur Rahman claimed that .66 acres of land an arbitration was held in presence of the local respectable persons where plaintiff was also present and signed in the award. Defendant 1 has been maintaining title and possession in the suit land upon payment of rent. Plaintiff claimed the land on the basis of certificate case which is false, forged and concocted. Plaintiff has no title and possession in the suit land. The suit being false is liable to be dismissed with cost.

Trial Court framed as many as five issues and during the course of trial plaintiff examined three witnesses and defendant 1 also examined three witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

Trial Court upon perusal of the pleadings and hearing the parties and considering both oral and documentary evidence adduced by the parties dismissed the suit on the finding that the auction as claimed by the plaintiff is false and the oral evidence of defendant on question of possession is better than that of the plaintiff.

As against the same plaintiff preferred Title Appeal Number 143 of 2004 before the District Judge, Khulna which on transfer was heard by the Additional District Judge, 2nd Court, Khulna who was pleased to allow the appeal on the finding that plaintiff bears no responsibility for the mistake committed by the officials in his document of title and he has got better title and primary possession.

Being aggrieved by and dissatisfied with the judgment passed by the appellate court defendant 1 as petitioner came before this court with this revision and obtained the instant Rule on 12.12.2010.

Mr. Jahangir Alam, learned Advocate appearing on behalf of the petitioner submits that the appellate court committed error of law resulting in an error in such decree occasioning failure of justice in decreeing the suit upon wrongful consideration and the impugned judgment being perverse and misconceived is liable to be set aside outright. He submits that the entire judgment shows that appellate court was in dilemma to ascertain the title and possession of the respective parties and consequently upon surmise and conjecture allowed the appeal. He contends that the finding arrived at by the trial court was not at all reversed by the

appellate court following the provision laid down in order 41 rule 31 of the Code of Civil Procedure and decreed the suit upon some fallacious reasons thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice. He further submits that the documentary evidence filed by the plaintiff apparently shows that the auction was definitely fraudulent but the appellate court decreed the suit without reversing the judgment passed by the trial court which was passed showing lawful reasons and upon proper appreciation of evidence. He very strongly submits that the rent receipts filed by the defendant were not even noticed by the appellate court and finding on possession arrived at by the appellate court is absolutely featherbrained and such wrong finding cannot be sustained in accordance with law. He lastly submits that the appellate court failed to appreciate that the claim by declaration of title and also by adverse possession cannot run together simultaneously and the appellate court also wrongly held that since the title of the plaintiff is better than defendant possession is presumed to be in his favour and with this submissions he prays for making the Rule absolute.

On the other hand Mr. Md. Mozammel Hossain, learned advocate along with Mr. Md. Harun-Or-Rashid, Mr. Manzarul Al Matin and Ms. Mahfuza Begum, learned Advocates appearing on behalf of the opposite party submits that the court of appeal while reversing the decision of the trial court duly considered the evidence on record and assigned cogent reasons for its finding. He then submits that since the finding of the trial court is based on misreading and non-consideration of material evidence the appellate court rightly reversed the finding of the trial court in accordance with the provisions of order 41 rule 31 of the Code of Civil Procedure. He then very candidly contends that since the certificate case was started in 1960 after vesting the suit land in government by virtue of State Acquisition and Tenancy Act the same is explicitly genuine and the appellate court rightly decreed the suit but the trial court without adverting to the materials on record and the concerned law wrongly dismissed the suit which is not tenable under the law and the trial court committed error of law resulting in an error in such decree occasioning failure of justice. He also submits the certificate case claimed by the plaintiff shall remain intact until the adversary shows that the same is false by calling the suit register from the concerned

office and it was the absolute duty of the defendant to call for such record when defendant claims that the certificate case is concocted and fabricated. Referring to section 101 of the Evidence Act he submits that the initial onus was never upon the plaintiff to prove the genuinity of the sale certificate rather it was upon the defendant to show that the sale certificate is not genuine but the trial court failed to appreciate this aspect of the case and wrongly dismissed the suit. He also refers to the evidence of PWs and submits that possession claimed by the plaintiff through bargaders is lawfully proved following the provisions of section 2 of the Land Reforms Ordinance 1984 and appellate court being the last court of fact since correctly considered the evidence on record and came to a right decision this Court cannot interfere with such decision while exercising revisional jurisdiction. He finally submits that there is no misreading and non-consideration of material evidence or misconstruction of document in the judgment passed by the appellate court touching the root and merit of the case and as such the same having been passed following the provisions of law stands good and he finally prays that the Rule may be discharged.

Heard the learned Advocates for both sides and gone through the judgment of the courts below and perused the materials on record as well as the revisional application with the documents appended thereto.

This is a suit for declaration of title simpliciter. In this case the guiding principle is that whether plaintiff has been able to prove his title and possession in the suit land. In the instant case plaintiff claims the suit land through auction. It is the specific case of the plaintiff that his father purchased the suit land through auction on 05.08.1961 by Certificate Case Number 1076 of 1960-61 filed on 15.04.1960 which was confirmed on 16.10.1963 and plaintiff obtained the sale certificate on 19.03.1964 and got possession through court on 13.06.1964.

In order to prove the case plaintiff filed the sale certificate and certified copy of the writ of delivery of possession which were marked in evidence as exhibit-3 and 3(ka) respectively. The C.S. record 1547 which was marked as exhibit-2 shows that there was no rent fixed for payment to the superior land lord and the holding is absolutely rent free. So the question of arrear of rent does not arise till final publication of the subsequent record. The S.A. record 1457

which was prepared under the State Acquisition and Tenancy Act was not filed. Part Five of the State Acquisition and Tenancy Act came into force in the concerned area on 29.08.1963 as published in Decca Gazette. Part Five became operative in different areas or districts from the date of publication of notifications and thereupon the Bengal Tenancy Act stood repealed to those areas or Districts. So it appears that the S.A. record was finally published on 29.08.1963 and prior to its final publication the question of arrear of rent was beyond concern. Therefore since the basis of the certificate case is absolutely unfounded the subsequent auction as claimed by the plaintiff is apparently false.

The contesting defendant challenged such auction purchase and made out a definite case that the same was collusively obtained by fraudulent means and methods and accordingly they filed exhibit-Umma which is a information slip. Exhibit-Umma shows that the Certificate Case Number 1076 of the year of 1960-61 is not in the register of 41-A which means that there is no existence of such auction case. Defendant also filed exhibit-Cha which is a certified copy of inquiry report of MP Case 113 of 2001. This exhibit-Cha reveals that when the investigation was going on plaintiff was

asked to produce the sale certificate and writ of delivery of possession but he failed to produce the same. The report also shows that the certificate case is neither found in the office nor in the certificate register. The report was prepared on 14.08.2001 which is about two months earlier of the filing of the instant suit. It is the settled principle of law that findings of the criminal court are not binding on the civil court but law permits that a document containing a fact which is neither the finding nor the decision of the criminal court and which is also admitted into evidence without objection may be considered as good evidence in arriving at a correct decision. This aspect of the case has been decided in Akter Hossain Vs. Akkas Hossain reported in 3 BLD(AD) 334; Delowara Begum Vs. Kazi Mohammad Joynuddin reported in 5 BLD(AD) 4.

Plaintiff produced the sale certificate exhibit-3 on the claim that the suit land was sold in auction in Certificate Case 1076 of 1960-61 but it appears that the S.A. record was not finally published at that relevant time. Until state acquisition record is finally published the holding cannot be sold in auction due to arrear of rent. So it is difficult to rely upon exhibit-3 in support of the case of the plaintiff.

The writ of delivery of possession of that certificate case is exhibit-3(ka) which was issued on 16.08.1964. Defendant collected the calendar of that particular date from the library of the bar and produced the same before the court while cross-examining the PW 1. The calendar shows that 16.08.1964 was actually Sunday which was the weekly public holiday of the then Pakistan. Again exhibit-3(Ka) reveals that the date fixed for notifying the requisite number of stamps and folios was on 14.08.1964 which was the independence day of Pakistan and that was also a public holiday. So it is not difficult to come to a decision that on 14.08.1964 and 16.08.1964 the office and the court remained closed due to public holidays. Thus it is clear that by practising fraud upon the Court plaintiff claims title through exhibit-3 series which is highly reprehensible and cannot be lawfully acceptable.

From reading of paragraph 8 of the written statement it appears that the previous owner of defendant 1 named Jotiprakash Mitra filed Succession Miscellaneous Case 76 of 1976 in the court of the then Subordinate Judge, Khulna and obtained judgment and order and subsequently he also filed Title Suit 452 of 1984 for partition and recovery of possession and also for permanent injunction in respect of the suit land

along with other lands and after having decree from the court he sold the suit land to one Jobeda Khatun by kabala dated 21.08.1990 exhibit-Kha and defendant 1 purchased from Jobeda Khatun by kabala dated 20.12.1998 exhibit-Ga. Defendant 1 mutated his name by exhibit-Ja and exhibit-2(ka). The order of Succession Miscellaneous Case 76 of 1976 and the petition of the same and also the judgment and decree and final decree passed in Title Suit 452 of 1984 were tendered in evidence by defendant 1 which were marked as exhibit-Da series and exhibit-Jha series. Those documentary evidence indicate that Jotiprokash Mitra was owner of the suit land from whom defendant 1 acquired title by exhibit-Ga supported by exhibit-Kha. Plaintiff admitted the mutation khatian exhibit-Ja by documentary evidence exhibit-2(ka) which clearly shows that Jotiprokash Mitra mutated his name in 8 annas share and defendant 1 also mutated his name in 8 annas as well.

The possession of plaintiff was corroborated by PW 2 and PW 3. PW 2 stated in his examination-in-chief that his homestead is flanked by the suit land but in cross-examination he admitted that his house is one and a half miles away from the suit land and he owns no land or property in the vicinity.

He further admitted that three or four years ago he went to the disputed land for two or three times but has not gone there since. Thus it appears that he is not a reliable witness in support of the plaintiff's case on possession. PW 3 claims to be the sharecropper of the plaintiff but in cross-examination he admitted that he does not know as to who cultivated the suit land as sharecropper. So this evidence led by plaintiff is not sufficient to prove his possession in the suit land. DW 1 on question of possession was corroborated by DW 2 and 3. DW 2 is the sharecropper of defendant 1 for the last ten years and DW 3 who admittedly holds land adjacent to the suit land according to the statement of PW 3 has supported the case regarding the possession of defendant 1. The rent receipts exhibit-1 series filed by plaintiff show the payment of the year of 1999-2000 but no rent receipt is filed showing his possession from before 1999. On the other hand exhibit-Sa series filed by defendant show payment of rent by Jotiprokash himself from 1990.

The appellate court considered the information slip exhibit-Umma produced by defendant and found that the certificate case is not in the register. The court also considered exhibit-7 which is also an information slip produced by

plaintiff and found that it was not possible to purvey any correct information about the certificate case because the register was spoiled in different places. Appellate court itself called for the record of that particular Certificate Case 1076 of 1960-61 and it was informed to the court that there was no information about the record of the certificate case in the office of the Khulna collectorate for which the record could not be sent down. In this position appellate court came to a strange and irrational finding that although no remark was sent from the office of Khulna collectorate but that does not mean that the certificate case is nonexistent. Exhibit-3(ka) the writ of delivery of possession was also considered by the appellate court and although court found that 14.08.1964 and 16.08.1964 were public holidays but came to a strange and bizarre finding that how the employees of the record room office carry out their pending work is their own concern and the date written by the employees in any particular column of the folio may be a *bona-fide* mistake on their part and no responsibility on this account can be attributed to the plaintiff and the confusion regarding the date mentioned in the certified copy may have arisen from an error or omission on the part of the concerned authority and thus there is no valid ground to

disregard the case of the plaintiff or statement on that account. This finding is highly digressive and cannot be expected from a responsible judicial officer.

Appellate court referred to a decision reported in 7 DLR page 94 considering that if plaintiff maintains possession for a sufficient length of time as trespasser may have his title perfected. Appellate court thus went against the settled principle of law that claim on declaration of title and adverse possession cannot run together simultaneously. This finding is perverse and wrong because those simultaneous claims conflict each other and relying upon such conflict no correct decision can be made and passed.

It is also the age old principle of law that plaintiff has to prove his own case independent of defence weakness. Weakness of defence does not mean that the case of the plaintiff is proved in evidence and plaintiff is entitled to have a decree on such weakness.

From perusal of the evidence and materials on record it clearly transpires that the judgment passed by the appellate court is not at all a proper judgment of reversal according to the provisions laid down in order 41 rule 31 of the Code of Civil Procedure.

Plaintiff failed to prove his title and possession in the suit land. As discussed above exhibit-3 series are forged, collusive and fraudulent document and it is the duty of the court to bury the suit the moment fraud comes to its notice. Appellate court clearly committed error of law resulting in an error in such decree occasioning failure of justice upon misreading and non-consideration of material evidence and also upon misconstruction of document and came to the finding upon fanciful consideration.

Therefore I find merit in this rule. Accordingly the rule is made absolute. The impugned judgment and decree passed by the appellate court is hereby set aside and those of the trial court is affirmed.

The order of *status quo* passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: