

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 3278 of 2019**

Sree Swapan Kumar Das @ Swapan Kumar  
and others

Defendants-Appellants-Petitioners

Versus

Sree Thakur Pada Biswas

Plaintiff-Respondent-Opposite-Party

Mr. Shaikh Forhadul Haque, Advocate  
For the defendants-appellants-petitioners

Mr. G. M. Azizur Rahman, Advocate  
For the plaintiff-respondent-opposite-party

**Judgment on: 09.6.2022**

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned Judgment and Decree dated 14.10.2019 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Satkhira in Title Appeal No. 58 of 2018 dismissing the appeal and thereby affirming the Judgment and Decree dated 22.5.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Satkhira in Title Suit No. 72 of 2015 decreeing the suit should not be set aside and/ or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No. 1 as plaintiff instituted the Title Suit No. 72 of 2015 in the 1<sup>st</sup> Court of learned Joint District Judge, Satkhira against the defendant-petitioners praying for declaration

of title and recovery of khas possession of the Ka schedule land measuring an area of .56 acres of land and for eviction of the defendants from the Kha schedule land measuring an area of .03 acres of land by evicting the defendant No. 8 and breaking down the homestead therein.

The Case of the plaintiff, in short, is that in District-Satkhira, Upazilla-Satkhira Sadar, under Mouza Jograjpur, C.S. Khatian No. 1323 measuring 56 decimals of land belonged to Mohirangini Dashi and thereafter at the S.A. operation the said land was recorded in her name in S.A. Khatian No. 1322. Mohirangini Dashi while became the owner and in possession, the then Government of East Pakistan filed Certificate Case No. 88 of 1962-63 in the Court of Certificate Officer, Satkhira for recovery of the arrear rent and after serving of notices upon Mohirangini Dashi when she failed to pay the arrear rent then her land was put into certificate sale and the plaintiff as a highest bidder purchased the same on 27.7.1964 and after having confirmed of the sale the plaintiff obtained a sale certificate from the Certificate Court and thereafter the possession of the suit land was delivered to the plaintiff through the said Court on 29.4.1966 in accordance with law. The plaintiff has been possessing the same since that time by constructing houses and living therein and he has a pond and also mull land where he produces the paddy. The plaintiff mutated his

name and he has been paying rents to the Government and got several rent receipts. At the Bangladesh Revisional Settlement operation maximum portion of land was recorded in the name of the plaintiff in D.P. Khatian No. 781 but at the last time of the year 2013 the defendant No. 8 dispossessed the plaintiff from an area of 03 decimals of land out of the suit land and on 15.10.2015 the defendants threatened to disturb the peaceful possession of the plaintiff and hence the suit.

The defendant Nos. 1-8 contested the suit by filing written statement denying all the material allegations contending inter alia that the suit is barred by limitation and res-judicata. The suit land measuring an area of .56 acres of S.A. Plot Nos. 3019 and 3968 of S.A. Khatian No. 1322 of mouza Jograjpur belonged to Mohirangini and said Mohirangini died leaving behind 2 sons namely Basanto Kumar Biswas and Debendra Biswas and 2 daughters namely Kantomoni Biswas and Subashini Biswas as her heirs. After death of his mother Basanta Kumar Biswas getting the land left by her mother Mohirangini sold .23 acres of land in favour of the defendant Nos. 1-3 by registered Kabala deed No. 5416 dated 27.7.1976 and handed over possession thereof. Mohirangini's another son Debendranath Biswas after death of his mother sold .28 acres of land in favour of the plaintiff by registered Kabala deed No. 5930 dated 1.9.1976 and handed over possession

thereof. The defendant Nos. 1-3 have been owning and possessing .23 acres of land out of .56 acres by constructing houses and planting different trees. In the recent survey the suit land was recorded in the names of the defendant Nos. 1-3 i.e. in D.P. Khatian No. 1275, 1189 and 505. The defendants are in possession by paying rents to the Government and thus the Title Suit was filed by the plaintiff is liable to be dismissed.

The learned Joint District Judge, 1<sup>st</sup> Court, Satkhira by its Judgment and Decree decreed the suit on 22.5.2018. Against this, the defendants as appellants preferred appeal being Title Appeal No. 58 of 2018 before the Court of learned District Judge, Satkhira and the said appeal was transferred to the Court of learned Additional District Judge, 2<sup>nd</sup> Court, Satkhira who dismissed the appeal on 14.10.2019 and thus the defendants-appellants as petitioners moved this application under section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Shaikh Forhadul Haque, the learned Advocate for the defendants-appellants-petitioners, submits that during Trial the defendants-petitioners filed an application for calling record of Certificate Case (CC) No. 88 of 1962-63 from the Office of the Deputy Collector, Satkhira stating that the alleged Certificate Case (CC) No. 88 of 1962-63 was forged and no case like this was ever filed and the said application was allowed by the Trial Court by

Order No. 17 dated 26.7.2016 directing the petitioners to deposit an amount of Taka 300/- as cost of calling record and accordingly the petitioners deposited the said money but subsequently no steps was taken for calling the record of the said Certificate Case. He lastly submits that Auction Purchase Certificate Officer, Satkhira gave a Certificate of Sale of land or Boynama dated 10.5.1965 on two stamp papers in favour of the plaintiff but the stamps in which the Certificate of Sale of land or Boynama was written it transpires that one of the said two stamp papers was purchased on 22.4.1965 and another on 22.8.1965 which itself proved that those papers are created and forged and both the Courts below did not follow the provisions of law and as such the same cannot be sustainable in law and is liable to be set aside for ends of justice.

Mr. G. M. Azizur Rahman, the learned Advocate for the plaintiff-respondent-opposite-party, opposes the Rule.

Heard the learned Advocates for both the parties and perused the record.

From the record it appears that the Certificate of Sale dated 10.5.1965 of the plaintiff is issued by the Auction Purchase Certificate Officer, Satkhira on two stamp papers, one of the said two stamp papers was purchased on 22.4.1965 and another on 22.8.1965 which is doubtful and at this stage it is difficult to ascertain whether the Certificate of Sale of the plaintiff-opposite

party is genuine or not as such I hold that both the Judgment and Decree passed in Title Appeal No. 58 of 2018 and Title Suit No. 72 of 2015 are set aside and therefore, I am sending it back on remand to the Appellate Court below to ascertain the Certificate of Sale of the plaintiff whether it is genuine or not if necessary by calling record of the said Certificate Case i.e. (C C) No. 88 of 1962-63 from the concerned office i.e. Office of the Deputy Collector Satkhira and adducing evidences within 06 (six) months from the date of receipt of this order and pass a judgment afresh after discussing all the oral and documentary evidences of the parties.

**In the result, the Rule is made absolute on remand.**

Let the record be sent down to the Appellate Court below to dispose of the suit with the observation as made above.