

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

Present:

Mr. Justice Md. Ziaul Haque

Civil Revision No. 3722 of 2014

Md. Abdus Subhan and another  
..... Plaintiff-Respondents -Petitioners.

-Versus-

Md. Gulbar Hossain and another

.... Defendant-Appellant -Opposite-Party.

Mr. Md. Abdul Haque, Advocate

....For the petitioners

Ms. Purabi Saha, Advocate with

Mr. Md. Mubarak Hossain, Advocates

..... For the opposite party

Heard on 30.10.2025, 11.11.2025 and  
Judgment on 13.11.2025.

“Bismillahir Rahmanir Rahim (In the name of Allah, the most merciful and the most magnificent.)”

1. This Rule was issued at the instance of the plaintiffs-respondents-petitioners against the judgment and decree dated 02.07.2014, decree signed on 08-07-2014 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Sirajgonj in Title Appeal No. 58 of 2009 reversing those dated 30-07-2009 decree signed on 09-08-2009 passed by the learned Senior Assistant Judge, Ullapara, Sirajgonj in Title Suit No. 176 of 2005 decreeing the suit in part.
2. That the facts relevant for disposal of the Rule in short are that, the petitioners as plaintiffs instituted Other Suit No. 176 of 2005 before the

learned Senior Assistant Judge, Ullapara, Sirajgonj for declaration of title and recovery of khash possession of the suit land. The plaintiff has stated in the plaint that the property described in the schedule 'Ka' to the plaint belonged to Salonga Fazil Madrasha acquired by kabala deed No. 12782 dated 19-12-1990 and the said Madrasha inducted into possession and then gave it to the plaintiff No. 1 for year to year lease for 53.00 decimals of land of C.S. Khatian No. 357. The property described in schedule 'Ga' to the plaint belonged to Kalu Pramanik who died leaving behind his only son Quddus, who became owner of the said land by way of inheritance and then transferred  $17\frac{1}{7}$  decimals of land to the plaintiff No. 1 vide kabala deed dated 07-05-1991 and further transferred  $9\frac{1}{4}$  decimals of land to the plaintiff No. 2 vide kabala deed dated 25-01-2001. The defendant No. 1 is a neighbor of the adjacent property, who made a homestead in 'Ka' schedule property by taking permission and subsequently, he extended his house covering an area of 7 decimals of land, which is known as to 'Ka' schedule land on 9<sup>th</sup> Chaitro 1407 B.S. The plaintiff had been possessing 'Ka' schedule land and 'Ga' schedule land and the Madrasha authority made a proposal for exchange of 'Ka' schedule land alongwith 13.00 decimals of land of Plot No. 135 with the 'Ga' schedule land of the plaintiffs. the Madrasha Management authority took and Resolution on 06-01.2005 ultimately. The deed of exchange bearing No. 6457 was executed and registered on 29-06-2005. The plaintiffs requested the defendant to vacate the schedule land by removing the structures thereon. The

defendants prayed for time and delayed the matter by applying many tactics. As a result, the plaintiffs requested him to vacate the premises again; and again but the defendants refused to remove the structures from the suit land on 19<sup>th</sup> Bhadra 1412 B.S and then the plaintiffs have instituted the above suit for declaration of title and recovery of khash possession from the 'Ka' schedule land.

3. That the defendant No. 1 contested the suit by filing written statements denying the material allegations brought against him contending inter alia that the suit is not maintainable in the present form and nature and the same is barred by limitation and also barred by defect of parties and also barred by Section 42 of the Specific Relief Act, 1877. Further case of the defendant No. 1 are that Solonga Fazil Madrasha acquired 24.00 decimals of land of Plot Nos. 134 & 135 of Banbaria Mouza vide deed of gift dated 19-12-1990 and 30.00 decimals of land out of 72 decimals of R.S. Plot No. 3051 of Batua Mouza was under Roygonj Police Station belonged to Majid Sheikh, who transferred the said land in favour of his wife Aklima Khatun vide kabala deed No. 3235 dated 25-06-1992. The defendant No. 1 has a homestead over 13.00 decimals of land adjacent on the south eastern corner of the suit land. The defendant No. 1 proposed to exchange of 30.00 decimals of land of Plot No. 3051 with 24.00 decimals of land of Plot No. 135 belonged to the said Madrasha. Accordingly exchange was taken place in January, 1992. The Madrasha agreed to execute and registered a deed of exchange by taking permission of the Madrasha Board. Pursuant to the

said exchange, the defendant No. 1 developed Plot Nos. 134 and 135 at a cost of Tk. 30,000/- and planted some trees thereon. The Madrasha authority took over possession of 30 decimals of land of Plot No. 3051 and has been possessing the same. The Madrasha authority and the plaintiffs in collusion with each other created a deed of exchange on 26-09-2005 which has never been acted upon and the suit land is under possession of the defendant No. 1 and the plaintiff never entered into possession of the suit land and as such, the plaintiff has not acquired any right, title and interest in the suit land by the said collusive deed of exchange, which is a paper transaction only and as such, the plaintiff is not entitled to any relief as prayed for.

4. That the learned trial court below framed as many as 6 numbers of issues as such:
  - I. Is the suit maintainable in it's present form and nature?
  - II. Is the suit barred by limitation ?
  - III. Is there any cause of auction to file the suit ?
  - IV. Has the plaintiff acquired any right, title and possession in the suit land;?
  - V. Had the plaintiff being in possession and title in the suit land before dispossession?
  - VI. Is the plaintiff entitled to any relief as prayed for.
5. That, the plaintiff side adduced as many as 6 numbers of witnesses and produced the papers in support of his case, which have been marked as

Exhibit Nos. 1 and 1(Ka). On the other hand, the defendant No. 1 adduced 5 witnesses and produced documents in support of his defence case, which has been marked as Exhibit No. 'Ka'.

6. That the learned Trial Court below on Threadbare discussions of the evidence on record found that Salonga Fazil Madrasha became owner of the suit land vide registered kabala deed No. 12782 dated 19-12-1990 and inducted into possession and then gave it to the plaintiff to the extent of 53.00 decimals of land for year to year lease and the plaintiff acquired 17 .00 decimals of land from Kalu Pramanik vide registered kabala deed dated 07-05-1991 and the plaintiff No. 1 further acquired 9.25 decimals of land vide kabala deed dated 25-01-2001. The defendant No. 1 constructed a homestead in the adjacent property of 'Ka' schedule land and made a house covering 7.00 decimals of land of 'Ka' schedule property. The plaintiff No. 1 was also in possession of 'Ka' and 'Ga' schedule land. The Madrasha authority proposed to exchange 'Ka' schedule property alongwith 13.00 decimals of land of Plot No. 135 with the 'Ga' schedule property belong to the plaintiffs. Accordingly, deed of exchange No. 6457 was made on 06-01-2005 and registered on 29-06-2005. By the said transaction as well as exchange, the plaintiffs became owner of the suit land. The plaintiffs requested the defendant No. 1 to remove the 'Kha' schedule structures from the 'Ka' schedule property. But the defendant No. 1 ignored all honest efforts and refused to remove the structures.

7. That the learned Trial Court below observed that Salonga Fazil Madrasha was the owner of the suit land and both the parties have admitted this fact. The plaintiffs are claiming the suit land by way of a registered deed of exchange dated 29-06-2005 and the defendant has claimed exchange with the Madrasha without any papers in black and white. The defendant No. 1 could not prove his claim by adducing any oral and documentary evidence.
8. That, the learned Trial court below has relied upon the judgment of the Appellate Division in the case of **Feroja Majid and another vs. Jibon Bima Corporation, reported in 39 DLR(AD) 78** in which their lordships of the Apex Court held that “ **oral or extraneous evidence to contradict the terms of the contents of a document is inadmissible under Section 92 of the Evidence Act**”. The learned Trial Court further relied on the judgment of the Apex Court passed in the case of **Abdul Latif and another vs. Abdul Malek Kazi and others, reported in 38 DLR (AD), 22** in which the Apex Court has held that **possession will always refer to a lawful title. The lawful title of the suit land lies with the plaintiff by the registered deed of exchange and the defendant could not show a single piece of evidence to establish his title in the suit land** therefore, the learned Trial Court below decreed the suit against the defendant No. 1 on contest and ex parte against the rest declaring title of the plaintiffs in the suit land vide judgment and decree dated 30-07-2009.
9. That being aggrieved by and dissatisfied with the said judgment and decree passed by the learned Senior Assistant Judge, Ullapara, Sirajgonj, the

defendant No. 1 preferred Other Appeal No. 58 of 2009 before the learned District Judge, Sirajgonj. The appeal was transferred to the learned Additional District Judge, 1<sup>st</sup> Court, Sirajgonj for hearing and disposal.

10. That, the learned court of appeal below heard the appeal and considering the evidence on record allowed the appeal by setting aside the decree of the learned trial court. The learned Court of appeal below also rejected the counter claim of the plaintiff-respondent made under order 41, Rule 22 of the Code of Civil Procedure as being barred by limitation. The learned Court of appeal below observed that the learned trial court below has committed error of law in decreeing the suit declaring title of the plaintiffs in the suit land, wherein, the plaintiff has claimed recovery of khas possession in 7.00 decimals of land out of 11.00 decimals without describing any boundaries and as such, the suit land is unspecified and Salonga Fazil Madrasha while making exchange of the said land of schedule 'Ka' dated 29-06-2005 had no possession over the said land and the plaintiffs have failed to prove that the suit land was under possession of the defendant by taking permission of the Madrasha authority and the plaintiffs did not get any possession of the said land by the deed of exchange as claimed off and therefore, allowed the appeal by setting aside the decree of the learned Trial Court by judgment and decree dated 02-07-2014.

11. That being aggrieved by and dissatisfied with the said judgment and decree of the learned court of appeal below, the plaintiffs-petitioners moved before this court and obtained the Rule.

12. Heard the learned Advocate for the parties.

Mr. Md. Abdul Haque, the learned Advocate appeared for the petitioner.

The learned Advocate for the petitioner submits that paragraph 1 of the plaint has disclosed that Salonga Fazil Madrasha gave lease of the suit land to the plaintiff on 19.12.1990. He further submits that the boundaries of the suit land have been described very precisely stating that 7.00 decimals of land of the southern part of the suit Plot. He further submits that the plaintiffs have acquired the suit land by way of registered deed of exchange; whereas, the defendant No. 1 has nothing to show in support of his title and he has been occupying the suit land without due process of law. He further submits that the defendant No. 1 has created a got up story of oral exchange with Salonga Fazil Madrasha; whereas, the Madrasha has declined this claim. He further submits that documentary evidence of the plaintiff cannot be overruled by the oral evidence and there was no oral exchange with the defendant No. 1 and the defendant No. 1 is bound to vacate the premises by removing the structures lying thereon.

13. Ms. Purabi Shaha appeared with Mr. Md. Mobarok Hossain for the opposite party No.1. The learned Advocate for the defendant-respondent-

opposite party No. 1. submits that the suit land is un-specified and the suit is not maintainable and the court of appeal below has set-aside the judgment and decree of the Trial Court on proper assessment of the evidence on recor, which calls for no interference. He further submits that the learned trial court below decreed the suit in part declaring title of the plaintiffs without a decree for recovery of khash possession and the cross objection filed by the plaintiff-appellant-petitioner was barred by limitation, which was filed beyond the statutory period of 1(one) month.

He further submits that the plaintiffs have not acquired any valid title in the suit land and never inducted into possession and the deed of exchange without getting possession has not created any lawful title. He further submits that the defendant No. 1 constructed the house in the suit land before entry of the plaintiffs in the suit land and the defendant No. 1 was in permissive possession long before of the so-called deed of exchange and the plaintiffs could not prove that they were dispossessed from the suit land within 12 years of filing the suit. He therefore, prays for discharging the Rule.

14. I have gone through the evidence on record particularly the plaint, written statements, depositions and documents produced by the parties at variance of their respective claim. The learned trial court below decreed the suit in fact in part decreeing title of the plaintiffs without a decree for recovery of khash possession, that means without directing the defendant No. 1 to vacate the suit property premises by removing all structures and obstacles

from the suit land within certain period. This decree will not serve the purpose of the plaintiffs; because without recovery of khash possession, the decree will be a fruitless decree and the plaintiff will never be able to claim recovery of khash possession and any such attempt will operate a legal bar by the principles of res-judicata.

On the other hand, the defendant No. 1 is in possession of 7.00 decimals of land without any lawful title and the defendant No. 1 has failed to prove his oral exchange as pleaded in the written statement **Documentary evidence cannot be overruled by oral evidence.**

Admittedly, the property belonged to Salonga Fazil Madrasha, who made exchange it with the plaintiffs by registered deed of exchange bearing No. 6457 dated 29-06-2005 and the deed of exchange was made by the Madrasha by taking resolution on 06-01-2005. It further appears from the plaint that the boundaries of the suit land has not been properly described; rather made a partial description.

15. In the above context, a decree for declaration of title with recovery of khash possession will be at risk. The defendant No.1 is holding the property without due process of law.

In this pretext, justice will be burried if the suit is dismissed for technical defects in giving proper description of boundaries, despite all other components are present.

16. Considering the facts and circumstances, I hold that proper justice would be met, if the case is sent back on remand to the trial court for hearing afresh and the plaintiff will be at liberty to make necessary amendment in the plaint particularly in the description of boundaries, if so advised. If such attempts are taken by the plaintiffs, the Trial Court will consider for making necessary amendment in the plaint. If the rule is made absolute on merit, any party may be prejudiced.

In view of above, the judgment and decree of the learned court of appeal below is set-aside and the judgment of the trial court is also set aside and the case is sent back on remand to the learned trial court for hearing afresh in the light of the observation given above. The learned trial court is further directed to dispose of suit within 6(six) months from the date of receipt of this judgment by giving proper notice to the contesting parties.

Send down the L.C. Records to the lower court at once.

(Justice Md. Ziaul Haque)