

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

Present:

Mr. Justice Md. Ziaul Haque

Civil Revision No. 5832 of 2002

Madhu Sudhan Das and others

....Defendants-Appellants -Petitioners.

-Versus-

Nytha Lal Das being died of his heirs 1(b)

Haradan Das and others

....Plaintiff-Respondent-Opposite-Parties.

None appears

....For the petitioner

Mr. Shasti Sarker, Advocate with

Mr. Subhas Chandra Saha, Advocate with

Mr. A.Z.M. Morshed Al Mamun, Advocate

..... For the opposite parties

Heard on 26-10-2025, 29-10-2025 and
Judgment on 05.11.2025.

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

This Rule was issued at the instance of the Defendants-Appellants-Petitioners to consider the legality of the judgment and decree dated 27-05-2002 (decree signed on 03-06-2002) passed by the learned Joint District Judge and Court-in-charge of Artho Rin Adalat No. 3, Chattogram in Other Appeal No. 284 of 1997 affirming and modifying those dated 23-06-1997 passed by the learned Senior Assistant Judge, Rawzan Court, Chattogram in Other Suit No. 140 of 1994 decreeing the suit for permanent injunction in part.

Facts necessary for disposal of the Rule are that the suit land described in schedule 1 was under ownership and possession of Akhil Chandra Das R.S. Khatian was published in his name. The schedule Nos. 2 and 3 were under ownership and possession of Akhil Chandra Das and his wife Tuny Dashi. The property describing in schedule 4 was under ownership and possession of Rajoni kanto and Ramoni Kanto having 8 annas share of each. Rajoni Kanto and Ramoni Kanto were the owner of schedule 5 property having 4 annas share of each and R.S. Khatian was duly published in their name. Rajoni Kanto died leaving behind his widow Kunjo Bala and 2 minor daughters that Kunjo Bala for the purposes of religious formalities of her husband and for the maintenance and welfare of 2 minor daughters sold away schedule 4 and 5 in favour of Tuny Dasi vide suf-kabala deed dated 12.11.1941. Ramoni Kanto died leaving behind his wife Manoda and 2 grand son Dukhiram and Parimal Chandra Das. They sold away their shares to the plaintiff vide kabala deed dated 12.05.1973. Mohonbashi being one of the owner of schedule 5 measuring 5.25 decimals of land transferred the same to the plaintiff vide kabala deed dated 27-01-1975. Akhil Chandra Das and Tuny Dashi were husband and wife. She had 1 daughter namely Jaloda Sundari and 1 son Jogesh Chandra Das. Jogesh Chandra Das died leaving behind Akhil Chandra and Tuny Dashi. Subsequently Akhil Chandra died, Tuny Dashi and Jaloda Sundari became the heirs. Jaloda Sundari was married with the plaintiff's father and the plaintiff is the son of Jaloda Sundori. The plaintiff was born in the suit

land. Tuny Dashi died leaving behind the plaintiff and Jaloda Sundari. The plaintiff inherited the property alone left by Akhil Chandra and Tuny Dashi. The plaintiff further purchased a quantum of land of schedule 4 and 5 and has been possessing and enjoying the same peacefully. The property described in schedule A appertaining to R.S. Khatian No. 3200 comprising R.S. Plot No. 3206 are the homestead. The plaintiff converted the said land into nal land. R.S. Plot No. 3177 was a pond which was filled up but the plaintiff's dug it again and converted it into a pond. The plaintiff is living in the schedule property and possessing and enjoying the pond and nal land. During B.S. Survey operation, the suit land has been recorded in the name of the plaintiff. The defendants have no right, title and interest in the suit land. The defendant No. 1 lodged a complain case against the plaintiff before the local Union Parishad and filed some other cases; but lost in all. The plaintiff has been possessing and enjoying the suit land for more than 50 years. The defendant No. 1 through his men and agents gave threat of dispossession to the plaintiff on 10-11-1994, which has created disturbance in the peaceful possession and enjoyment of the plaintiff in the suit land and as such, the plaintiff has been constrained to file the suit for permanent injunction.

That the defendant Nos. 2, 3 and 4 contested the suit by filing written statements denying the material allegation, brought by the plaintiff in the plaint. The defendant No.1 did not contest the suit.

The defense case of the contesting defendants are that the plaintiffs have no possession in the suit land. Akhil Chandra Das being the father of the defendant No. 2 was the owner of the suit land and R.S. Khatian was published in his name. Akhil Chandra Das himself purchased the land in the name of his wife Tuny Dashi and that R.S. Khatian was published in the name of Tunu Dashi. Schedule 4 and 5 were under possession of Rajoni Kanto, who died leaving behind 1(one) wife Kunjo Bala and 2 minor daughters. Tuny Dashi transferred the suit land to the grandfather of defendant No. 2 Akhil Chandra. Akhil Chandra died leaving behind his wife Tuny Dashi and son Jagendra Chandra Das and daughter Manoda. Tuny Dashi died leaving behind 1 son Jagendra and 1 daughter Manoda. Tuny Dashi and Akihl Chandra had another daughter Jaloda, who died during the life time. As a result Jagendra being the only son of Tuny Dahsi inherited the entire property of Tuny Dashi and Akhil Chandra. Jogesh Chandra died leaving behind 5 sons namely Madhu Sudhan, Shudhir, Adhir and others and 1 daughter Pakhi Rani. As per the Hindu law of inheritance Pakhi Rani did get nothing. Brothers and sister of the defendant No. 2 are traceless Sudhir sold his shares to Ranu Prova Das. The defendant has got his own shares and the shares of his brother.

That the contesting defendant started leaving in Jessore since 1985 for business purposes. The defendant No. 1 have been doing business in the suit land by taking permission of the defendant No. 2. The defendant No. 2 further alleged that the plaintiff theft away the documents of the defendant

No.2. The plaintiff actually living in the house of Dashorat Das of the same Mouja, which is located near by Kali Bari. The defendant No. 2 for his extreme necessity of cash money sold away the suit land to the defendant Nos.3 and 4 in 1994. The plaintiff published a notification in the newspaper on 18-06-1994 and the defendant No. 2 raised objection against such false publication. The defendant No. 2 became owner of the suit property form which father. The plaintiffs have no right, title and possession in any portion of the suit land except the homestead and the case has been filed with malafide intention to harass the defendants.

That the defendant Nos. 3 and 4 filed written statements denying the material allegations brought in the plaint and further case of the defendant Nos. 3 and 4 are that the suit property belong to the defendant No. 2 by inheritance of his father and the plaintiff is a mere licensee under the defendant No. 2 and the plaintiff has possession only in the homestead and nothing else. The defendant Nos. 3 and 4 claimed that they are in possession of the suit land legally.

That the learned Trial Court below framed as many as 5 numbers of issues as such:

1. Is the suit maintainable in it's present form and nature ?
2. Has the plaintiff exclusive title and possession in the suit land?
3. Is the suit barred by Section 42, 54 and 56 of the S.R Act, 1877?
4. Is the plaintiff entitled to any relief as prayed for?

The plaintiff side adduced 4 numbers of witnesses as to P.W. 1, 2, 3 and 4. The defendants side adduced 7 numbers of witnesses i.e. D.W Nos. 1, 2, 3, 4, 5, 6 and 7.

That the learned Trial Court below has discussed the issues at length and considering the facts and circumstances of the case and the evidence on record particularly the khatians and deeds of the plaintiff and found that the plaintiff has right, title and possession in the suit land and there is prima facie title and possession in the suit land by way of inheritance from Akhil Chandra and Tuny Dashi and the defendant Nos. 3 and 4 purchased some properties from the defendant No. 2. The main grievance of the plaintiff are that the defendants have given threat to the plaintiff. The defendant No. 1 who contested the suit. The defendant No. 2 adduced witness number D.W.4 Shapon who is a rickshaw puller and he could not produce any witness of his own societies. The D.W.1 admitted that he is a man of 75 years old; but he never did not see Akhil Chandra.

That the learned Trial Court below observed that the evidence of the D.Ws have some contradictions with each others. On the other hand the P.Ws supported the claim of the plaintiff without any contradiction.

Upon threatbear discussions of the evidence on record, the learned Trial Court below arrived at a decision that the plaintiff has been able to prove his exclusive possession in the suit land and the defendants though pleaded that the plaintiff is a licensee under the defendant No. 1; but they could not prove such assertion by adducing oral and documentary

evidence. The learned Trial Court below further observed that there is no prove that the defendants have dispossessed the plaintiff from the suit land. On the contrary, there is threat on the part of the defendants.

The learned Trial Court below further observed that the defendants have admitted the possession of the plaintiff in the homestead.

In a case of permanent injunction the possession should be proved without any shadow of doubt and the suit land should be specified and there should be threat on the part of the defendants, which may cause interference with the peaceful possession and enjoyment of the plaintiff.

The paramount consideration in a suit for permanent injunction is exclusive possession in the suit land which has been decided by the Apex Court in many cases particularly in the case reported in 47 DLR 23 and 42 DLR, 408.

The learned Trial Court below considering the facts and circumstances of the suit passed a decree of permanent injunction in part against the defendant Nos. 2, 3 and 4 on contest and ex parte against the defendant No. 1. The term of restraining order passed by the learned Trial Court below contended as follows:

“নালিশী তপছিলের বাড়ী ভিটি পুকুর ইত্যাদি সম্পত্তিতে বিবাদী (ছেড়া) যাহাতে হস্তক্ষেপ করিতে না পারে বা বাদীকে বেদখল করিতে না পারে বা হস্তান্তর করিতে না পারে এই মর্মে বিবাদীগণকে স্থায়ী নিষেধাজ্ঞার আদেশে বারিত করা হইল।”

The judgment was passed by the learned Trial Court on 23-06-1997 and the decree was sealed and signed on 29-06-1997.

Being aggrieved by and dissatisfied with the said judgment and decree of the learned trial court below passed in Other Suit No. 14 of 1994 dated 23-06-1997, the defendants preferred Other Appeal No. 284 of 1997. The learned Court of appeal below considering the evidence on record observed that:

“বাদী নালিশী ভূমিতে দীর্ঘকাল যাবৎ দখলকার রহিয়াছেন। তৎমর্মে বাদী পক্ষের নামে বি,এস, খতিয়ান প্রস্তুত হইয়াছে। বাদী পক্ষ খাজনার দাখিলা, বিদ্যুৎ বিল, চৌকিদারী ট্যাক্স, ইউনিয়ন পরিষদের নোটিশ দাখিল দিয়াছেন; যাহা প্রদঃ ৫-৮ সিরিজে চিহ্নিত করা হইয়াছে। বাদীপক্ষের প্রদত্ত সাক্ষীগণের সাক্ষ্য এবং উক্ত প্রদর্শনী সমূহ পর্যালোচনা করিলে দেখা যায় যে, বাদীপক্ষ নালিশী ভূমিতে দখল কার রহিয়াছেন। ৩, ৪ নং বিবাদী খরিদসূত্রে অদ্যাবধি নালিশী ভূমিতে দখলকার প্রাপ্ত হন নাই।”

Considering the oral and documentary evidence, the learned Court of appeal below dismissed the appeal and upheld the judgment and decree of the learned Trial Court below in modified form restraining the defendants from interfering with the peaceful possession of the plaintiff in the suit land by way of permanent injunction vide judgment and decree dated 27-05-2002.

Being aggrieved by and dissatisfied with the judgment and decree, the defendants-respondents-petitioners have moved before this court and obtained the present rule.

The learned Advocate Mr. Shasti Sarker has appeared for the opposite parties and supported the judgment and decree of the learned courts below. However, in absence of the petitioner, the court cannot pass any judgment or order without touching the merit of the case although, there is judgment of reversal and both the courts below have decided the suit on concurrent findings of facts and law as well. The Rule has appeared on several occasions before this court with the names of the lawyers of both the sides, but none appears for the petitioners and as such there is no alternative but to decide the rule on merit. The petitioners claimed (ground No. 5) that they have purchased the suit land from the defendant No. 2 on 19-11-1994 and they have been impleaded in the suit on 26-11-1994 and there is no justification to pass the decree against them. It appears from the record that the suit was filed on 19-11-1994. The defendants gave threat to the plaintiff for dispossession on 10-11-1994.

I have gone through the evidence on record and perused the judgment and decree of both the courts below. It appears from the record that the plaintiff has submitted a series of document particularly the deed of transfer Exhibit No. 1, Exhibit No. 1 Ka, Exhibit No. 1Ga and Exhibit No. 1Gha and the Khatians in the name of Akhil Chandra, Tuny Dashi Exhibit No. 2 series and khatian prepared in the name of Nittananda Das comprising Plot No. 5991, 5993, 5996, 5202, 5203, 5226 and 5190 Exhibit No. 3 and B.S Khatian No. 2632 and 3112 Exhibit No. 3Ka and 3Kha and further Khatian No. 3111 Exhibit No. 3 Ga and Exhibit No. Umo series of

ROR Khatians and further a series of rent receipt marked as Exhibit No. 5 series and also the Electricity Bill of Pally Biddut Samity Exhibit No. 7 series notice of the Union Parishad Exhibit No. 8 series and kabala deeds Exhibit Nos. 10 and 11 etc.

I have also perused the documents submitted by the defendant No. 2 in Exhibit Nos. Ka, Kha, Ga, Gha, Umo, Ca, Cha and Ja series. The disputed question of title as pleaded by the parties cannot be decided in a suit for simple suit for permanent injunction. The defendants will be at liberty to establish their title in any quantum of land in due process of law; but at this stage the plaintiff has been able to prove his exclusive possession and collateral evidence of title. The rent receipts are prima facie evidence of possession and collateral evidence of title as decided by the apex court reported in 35 DLR (SC) 216. The plaintiff has been able to prove his title and the chain of title of the plaintiff is very clear.

Considering the facts and circumstances and the evidence on record, this court hold that the learned courts below have not committed any error which can be resulted error in the decision occasioning failure of justice.

In view of above, the judgment and decree of the Court of appeal below are modified. The defendants are hereby restrained by permanent injunction not to interfere with the peaceful possession of the plaintiff and not to disturb the plaintiff in any way and further restrained not to transfer the suit land or any part thereon.

With this observation, the Rule is disposed of.

Send down the Lower Courts Records at once.

(Justice Md. Ziaul Haque)