

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.509 OF 2021

In the matter of:

An application under Section 25 of the Small Causes Courts Act, 1887.

And

Dr. Mohibul Anuwar Eazub and others
... Petitioners

-Versus-

Mohammad Rofikul Islam
.... Opposite party

Mr. Faisal Muhammad Faizi with
Mr. SK. Md. Jahangir Alam and
Ms. Shyla Jahan Shathi, Advocates
....For the petitioners.

Mr. Apurba Bhattecharjee with
Ms. Preyanka Mohalder, Advocates
.... For the opposite party.

Heard on 06.01.2025.

Judgment on 18.02.2025.

On an application under Section 25 of the Small Causes Courts At, 1887 this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 07.01.2021 passed by the learned Senior Assistant Judge, Rowzan, Chattogram and small causes Court, Rowzan, Chattogram in Small Causes Suit No.1 of 2008 should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit in the Small Causes Court for evection of his monthly tenant

defendant No.1 Dr. Mohibul Hasan from the disputed premises on the ground of default in paying of rent. It was claimed that the defendant did not pay any rent after June, 2007 and above premises was required for reconstruction of the stairs of above building.

Defendant Nos.1 and 2 contested above suit by filling a joint written statement alleging that defendant No.2 is the tenant of the plaintiff for above premises and defendant No.1 was his brother and a physician who was sitting in above medicine shop and running his business. The plaintiff issued notice under Section 106 of the Transfer of Property Act, 1982 against defendant No.1 who was not a tenant of above premises. Defendant No.1 replied to above notice stating that he was not the tenant of the plaintiff for above premises and his brother defendant No.2 was the monthly tenant of above premises under the plaintiff. It was further stated that due to refusal of the plaintiff to receive rent defendant No.2 deposited rent to the Rent Controller.

At trial plaintiff and defendants examined two witnesses each and documents of the plaintiff were marked Exhibit Nos.1-4 and those of the defendants were marked Exhibit No. "Ka".

On consideration of facts and circumstances of the case and evidence on record learned Judge of the Small Causes Court decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree above defendants as petitioners moved to this Court with this

revisional application under Section 25 of the Small Causes Court Act, 1887 and obtained this Rule.

Mr. Faisal Muhammad Faizi, learned Advocate for the petitioners submits that admittedly plaintiff is the lawful owner of the disputed premises and defendant No.2 Shafiqul Anwar was his monthly tenant since 1991 and the plaintiff served a notice under Section 106 of the Transfer Property Act, 1882 for termination of above tenancy upon the defendant No.2 but the same was addressed and served upon his brother defendant No.1 Dr. Mohibul who was not at all a tenant of above premises. As such the tenancy of defendant No.2 is still in force. The plaintiff cannot institute this suit for ejection without termination of tenancy of defendant No.2. On receipt of above notice under Section 106 of the Transfer of Property Act, 1882 defendant No.1 Dr. Mohibul sent a reply to the plaintiff stating that he was not the tenant of above premises and his brother defendant No.2 Shafiqul was the tenant. In spite of that the plaintiff did not issue or serve any notice under Section 106 of the Transfer of Property Act, 1882 upon defendant No.2 and terminate his tenancy. As far as default in the payment of the rent is concerned the plaintiff having refused to receive rent of above premises for the month of July 2007 defendant No.2 filed Case No.2 of 2007 to the Rent Controller and deposited rent of above premises. The learned Judge of the Small Causes Court utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally decreed the suit which is not tenable in law.

On the other hand Mr. Apurba Bhatteerjee, learned Advocate for the opposite party submits that admittedly defendant No.1 is the brother of defendant No.2 and he is a physician and in fact he is running a medical clinic in the disputed premise. Defendant No.2 was the tenant of the plaintiff from 1991 until 1994 but since the business was being run by defendant No.1 the plaintiff adopted him as the monthly tenant instead of his brother. Defendant No.1 defaulted in paying rent and he served a notice under Section 106 of the Transfer of Property Act, 1882 terminating above tenancy and then filed the suit. It will appear from the evidence of the defendants that they failed to pay rent for the month of June 2007 nor they transmitted above outstanding rent by money order. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Small Causes Court rightly decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that plaintiff is the rightful owner of the disputed premises and defendant No.2 was his monthly tenant since 1991. It is also admitted that defendant No.1 Dr. Mohibul Anwar is the brother of defendant No.2 and he is running his medical clinic in the above premises. It is also admitted that the plaintiff served a notice upon defendant No.1 Dr. Mohibul Anwar under Section 106 of the Transfer of Property Act, 1882.

It is well settled that in a suit for eviction of monthly tenant only the tenant is a necessary party and no other person but in this suit the plaintiff has made three persons as defendants including two brothers defendant Nos.1 and 2

It is admitted that on receipt of notice under Section 106 of the Transfer of Property Act, 1882 defendant No.1 replied to the plaintiff that he was not the tenant of the disputed premises but his brother defendant No.2 was the tenant.

In the plaint there is no statement that defendant No.2 Shafiqul surrendered his tenancy or the plaintiff terminated his tenancy or evicted him from the above premises and then the plaintiff created a new monthly tenancy with defendant No.1. It has been stated that the plaintiff transferred "Temporary Title" (অস্থায়ী স্বত্ব) of above premises to defendant No.1 Dr. Mohibul Anwar Eaquab. It is not understandable what is "temporary title" and how alleged transfer of temporary title creates a monthly tenancy.

On consideration of above facts and circumstances of the case and materials on record I hold that the plaintiff could not prove by legal evidence that defendant No.1 was his monthly tenant for the disputed premises but it has been proved that defendant No.2 was the monthly tenant of the plaintiff. This suit for eviction of defendant No.1 Dr. Mohibul Anwar is not tenable in law for the simple reason that he is not the monthly tenant of the disputed premises under the plaintiff.

In above view of the facts and circumstance of the case and evidence on record I hold that the learned Judge of the Small Causes Court committed an error in decreeing the the suit which is not tenable in law.

In the result the Rule is made absolute. The impugned judgment and decree dated 07.01.2021 passed by the learned Senior Assistant Judge, Rowzan in Small Causes Suit No.1 of 2008 is set aside and above suit is dismissed on contest against defendant No.1 and 2 and ex-parte against the rest without any cost.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER