Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1059 of 2019
Md. Zakir Hossain
.....petitioner
-Versus-
Md. Syedur Rahyman and others
.....opposite parties

Mr. Md. Golam Faruque Bhuiyan, Advocate
.....for the petitioner

Mr. Mr. Alamgir Kobir with
Mr. Mohammad Shaifuddin (Roton), Advocate
.....for opposite parties

Heard on: 09.07.2026 and 16.07.2026

Judgment on: 29.07.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.11.2018 passed by the learned Joint District Judge, Additional Court, Cumilla in Title Appeal Number 235 of 2013 dismissing the appeal thereby affirming the judgment and decree dated 29.08.2013 passed by the learned Assistant Judge, Homna, Cumilla in Title Suit Number 24 of 2009 dismissing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioners as plaintiffs filed Title Suit Number 24 of 2009 on 17.03.2009 in the Court of the Assistant Judge, Homna, Cumilla seeking declaration of title and recovery of possession by evicting the defendants and removing their structures from the suit land measuring 5 decimals appertaining to C.S. Plot Number 1197 under C.S. Khatian Number 97 as described in the schedule to the plaint with boundaries.

The plaintiffs' case in short is that the suit land originally belonged to Ishwar Chandra Bhowmik. Ishwar Chandra transferred the suit land to the plaintiffs' predecessors named Aftab Uddin and Abdul Hamid by registered Kabala Deed Number 2178 dated 30.06.1970. Aftab Uddin died leaving behind plaintiff 1 Zakir Hussain who inherited 2.50 decimals of land. Abdul Hamid died leaving behind two sons namely Habibur Rahman plaintiff 2 and Abdul Khalek. By an amicable partition Habibur Rahman exclusively acquired 2.50 decimals of land. Thereafter Habibur Rahman sold 2 decimals of land to Abdur Rob by registered deed dated 05.09.2000 and subsequently repurchased the same land from Abdur Rob by a registered deed dated 19.11.2001. The plaintiffs obtained

separate records-of-right in their names under Khatian Number 419/1 and continued to possess the suit land by regularly paying rent.

According to the plaintiffs on 15.04.2000 the defendants forcibly dispossessed them from the suit land by constructing shops and other structures thereon. The wife of plaintiff 1 lodged General Diary Number 373 with the concerned police station which was subsequently registered as Non-FIR Case Number 6 of 2000. Plaintiff 2 also lodged General Diary Number 185 with the same police station. As the defendants forcibly dispossessed the plaintiffs and asserted a false claim of title over the suit land the plaintiffs were constrained to file the present suit.

Defendants 1-4 and 6-9 contested the suit by filing a written statement denying the material contentions made in the plaint. Their case in brief is that the suit land originally belonged to Ishwar Chandra Bhowmik who died leaving behind his son Nimchan Bhowmik. Nimchan Bhowmik also died leaving behind his son Nishikanta Bhowmik who transferred 5 decimals of land to Abdul Majid by registered Kabala Deed Number 475 dated 23.01.1982. By virtue of the said purchase Abdul Majid became the owner in possession of

the disputed 5 decimals of land. Thereafter on 28.02.1996 Abdul Majid transferred 1 decimal of land to defendant 1 by registered Deed Number 961, 2 decimals of land to defendants 5, 6 and 7 by registered Deed Number 962 and the remaining 2 decimals of land to defendants 2, 3 and 4 by registered Deed Number 963.

The defendants further stated that defendants 1-4 constructed a pucca building comprising six shop rooms over their 3 decimals of land and have been carrying on business therein while letting out a portion to tenants. Defendants 5-9 constructed tin-shed shops over their 2 decimals of land and have also been carrying on business thereon while letting out a portion to tenants. When D.P. Khatian was prepared in the names of the defendants the plaintiffs unsuccessfully challenged the same in proceedings under Section 30 on 26.11.2000 and under Section 31 on 21.05.2002. According to the defendants the plaintiffs fraudulently created a forged deed by falsely impersonating Ishwar Chandra Bhowmik. The alleged story of dispossession on 15.04.2000 is wholly false and fabricated. Accordingly the suit is liable to be dismissed with costs.

Defendant 10 also entered appearance and contested the suit by filing a separate written statement. His case is that defendants 8 and 9 transferred 0.50 decimal of land in his favour by Heba-bil-Ewaz Deed Number 4394 dated 11.05.2011. He also denied the plaintiffs' allegation that the defendants dispossessed them on 15.04.2000 and asserted that the said allegation is entirely false.

The trial Court reframed four issues for determination. The plaintiffs examined three witnesses while the defendants also examined three witnesses. The learned Advocate Commissioner Mr. Anwar Hussain was examined as Court Witness Number 1 (C.W.1). Both parties adduced oral as well as documentary evidence in support of their respective cases. Upon consideration of the pleadings and the oral and documentary evidence and after hearing the parties the trial Court dismissed the suit by judgment and decree dated 29.08.2013.

Being aggrieved thereby plaintiffs preferred Title Appeal Number 235 of 2013 before the District Judge, Cumilla. On transfer the appeal was heard by the Joint District Judge, Additional Court, Cumilla who by judgment and decree dated

12.11.2018 dismissed the appeal and thereby affirmed the judgment and decree of the trial Court.

The plaintiffs thereafter preferred the present civil revision before this Court and Rule was issued on 15.04.2019.

Mr. Md. Golam Faruque Bhuiyan, the learned Advocate appearing on behalf of the petitioners submits that the courts below committed error of law resulting in failure of justice by failing to consider that the plaintiffs produced the original deed dated 30.06.1970 which is more than thirty years old. According to him the deed attracts the presumption under Section 90 of the Evidence Act and therefore carries substantial evidentiary value which could not legally be discarded merely by describing it as forged or not genuine. He further submits that Exhibit-3 is fully corroborated by Exhibits 5 and 6 and the finding of the courts below that the deed was not duly registered under the Registration Act is based upon a complete misreading and non-consideration of the material evidence on record. He contends that the said findings are perverse and liable to be set aside.

He next submits that although both the courts below found that the defendants failed to prove their title but they nevertheless dismissed the suit upon an erroneous view of the

law which is wholly unsustainable. He further submits that the plaintiffs successfully proved their previous possession and subsequent dispossession by cogent and reliable evidence but the courts below misconstrued the evidence and dismissed the suit on fanciful and erroneous considerations. He also argues that Exhibit-3 dated 30.06.1970 is prior in point of time to the defendants' title deeds and clearly establishes the plaintiffs' earlier title and possession. According to him the evidence on record further proves that the plaintiffs were subsequently dispossessed. Therefore the impugned judgments and decrees suffer from serious errors of law resulting in failure of justice. He finally prays that the Rule be made absolute.

On the other hand learned Advocate Mr. Alamgir Kobir along with Mr. Mohammad Shaifuddin (Roton) appearing on behalf of the opposite parties submits that both the Courts below upon proper appreciation of the evidence and law rightly dismissed the suit after finding that Exhibit-3 is a forged and fabricated document. He contends that once Exhibit-3 is found to be forged the plaintiffs cannot challenge the defendants' title. He further submits that the plaintiffs' assertion that Ishwar Chandra had no son named Nimchan is directly contradicted by the documentary evidence namely

Exhibits Kha and Ga series produced by the defendants. He also submits that the defendants produced in original the registered deed dated 23.01.1982 Exhibit-Kha which evidences Abdul Majid's title and carries the statutory presumption of correctness. Therefore the adverse findings recorded by the courts below against the defendants' title are erroneous and liable to be expunged.

He further submits that the defendants have successfully proved their continuous possession of the suit land since their respective purchases which is well supported by the rent receipts marked as Exhibits Uma series. He argues that both the courts below rightly found that the plaintiffs failed to prove their alleged previous possession followed by dispossession. As there has been neither any misreading nor any non-consideration of the material evidence on record the concurrent findings of fact recorded by the courts below do not call for interference by this Court in its revisional jurisdiction. He finally prays that the Rule be discharged.

I have heard the learned Advocates for both sides and perused the materials on record and gone through the judgments and decrees passed by the courts below.

The plaintiffs filed the suit seeking declaration of title and recovery of khas possession by evicting the defendants from the suit land. The plaintiffs claimed title to the suit land measuring 5 decimals appertaining to C.S. Plot Number 1197 on the strength of registered Kabala Deed Number 2178 dated 30.06.1970 which is Exhibit-3 allegedly executed by the original owner Ishwar Chandra Bhowmik. They sought declaration of title solely on the basis of the said deed and produced its original before the trial Court.

However the plaintiffs did not examine either the scribe or any attesting witness to the deed. Nor did they examine any identifier referred to in Rule 46 of the Registration Rules. Although Section 3 of the Transfer of Property Act defines "attestation" and Section 68 of the Evidence Act prescribes the mode of proving execution of documents required by law to be attested the plaintiffs did not adduce any direct evidence to establish the due execution of Exhibit-3.

It is true that Section 90 of the Evidence Act permits the Court in an appropriate case to draw a rebuttable presumption that a document more than thirty years old was duly executed and attested. More importantly Section 90 does not authorize the Court to presume that the document itself is genuine or its

contents are true merely because it is more than thirty years old. Accordingly the mere age of Exhibit-3 does not by itself establish its authenticity or correctness.

Upon careful scrutiny Exhibit-3 appears to be highly suspicious for several reasons. Firstly the deed bears the Bengali date "15 Magh 1377" while the corresponding English date is stated as 30.06.1970 which is plainly inconsistent. The Bengali equivalent of 30.06.1970 is 16 Ashar 1377 B.S. whereas 15 Magh 1377 B.S. corresponds to 29.01.1971. This patent discrepancy casts serious doubt upon the authenticity of the document.

Secondly the signature of the Sub-Registrar appearing on the first page materially differs from the signatures appearing on the reverse of the first page and on the reverse of the last page. Such noticeable variations remain wholly unexplained.

Thirdly the official seal contains the word "Sub-Registar" instead of "Sub-Registrar". Such a glaring spelling error in an official seal used in the registration office is highly unusual and seriously undermines the credibility of the document.

Fourthly every thumb impression of the alleged executant given under Rule 48 of the Registration Rules

appears blurred and smudged with what seems to be a chemical coating making the impressions indistinct and incapable of proper identification.

The trial Court also considered Memo Number 136(R) dated 24.01.2013 issued by the Officer-in-Charge of the Sadar Record Room, Cumilla stating that all registration records relating to the years 1970-1971 were destroyed by fire during the War of Independence and therefore the relevant volume could not be produced. Consequently apart from the original deed itself no contemporaneous official record was available to verify the authenticity of Exhibit-3.

Furthermore the signatures given in the endorsements appearing on the reverse of the first page purportedly made under Rule 45(2) of the Registration Rules is written in red ink instead of black ink. Such a feature is wholly inconsistent with a regularly registered deed. Moreover the seals affixed to the endorsements are blurred and illegible.

Exhibit-5 produced in support of Exhibit-3 is a separate Khatian bearing Number 419/1 which does not bear the signature of the competent authority. Likewise Exhibit-6 being a rent receipt contains an overwritten and illegible plot number thereby substantially diminishing its evidentiary value.

The plaintiffs further alleged that they were dispossessed on 15.04.2000. But Exhibit-4 shows that plaintiff 2 Habibur Rahman repurchased the very 2 decimals of land from Abdur Rob on 19.11.2001. This circumstance is wholly inconsistent with the plaintiffs' assertion that they were dispossessed from the suit property on 15.04.2000.

Apart from the evidence of P.W. 1 the plaintiffs did not examine any independent witness to substantiate their claim of title. In the circumstances the plaintiffs have utterly failed to prove their title to the suit land in accordance with law.

P.W. 2 deposed in support of the plaintiffs' alleged possession over the suit land. However during cross-examination he admitted that he could not say when the plaintiffs' predecessor first entered into possession of the suit land. He thereafter stated that they came into possession in the year 1970. The said witness admittedly being a cousin of the plaintiffs his evidence cannot be treated as that of an independent witness. Had the plaintiffs in fact remained in continuous possession of the suit land for such a long period at least one independent local witness could reasonably have been expected to support their claim. The absence of any such

independent evidence materially weakens the plaintiffs' case regarding their alleged possession.

Exhibit-Gha being the report of the Appellate Settlement Office further reveals that the plaintiffs had not been in possession of the suit land since 1970. The said report is also inconsistent with the plaintiffs' assertion that they were dispossessed by the defendants on 15.04.2000. The documentary evidence therefore substantially discredits the plaintiffs' pleaded case of previous possession followed by subsequent dispossession.

Under Article 142 of the Limitation Act the burden squarely lies upon the plaintiffs to establish their previous possession followed by subsequent dispossession. Unless such burden is discharged by the plaintiffs through reliable and convincing evidence no obligation arises upon the defendants to explain or justify their possession. Upon a careful evaluation of the entire evidence on record I find that the plaintiffs have miserably failed to discharge the burden cast upon them by law.

P.W. 3 sought to challenge the defendants' chain of title by deposing that the father of Nimchan Bhowmik was Pandab Bhowmik and not Ishwar Chandra Bhowmik. On that basis he

asserted that the defendants' claim of title was false. Although nothing material could be brought out from him in cross-examination on that point the defendants also failed to produce satisfactory oral or documentary evidence conclusively establishing that Nimchan Bhowmik was the son of Ishwar Chandra Bhowmik. Consequently some doubt remains regarding the continuity of the defendants' title.

The defendants have their admitted possession over the suit land. Such possession is entitled to protection under the law and cannot be disturbed otherwise than in due course of law by a person who establishes a better title in an appropriate proceeding. Since the plaintiffs have failed to prove either their title or their previous possession followed by subsequent dispossession they are not entitled to the reliefs claimed in the suit.

I further find that the concurrent findings of fact recorded by both the Courts below are based upon proper appreciation of oral and documentary evidence on record. No misreading of the evidence or non-consideration of any material evidence or error of law occasioning failure of justice has been pointed out so as to warrant interference by this Court in the exercise of its revisional jurisdiction.

In the result the Rule is discharged.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

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