

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1873 OF 2021

In the matter of:

An application under Section 25 of the Small Cause Court Act, 1887.

And

Mst. Rezia Khatun and others

.... Petitioners

-Versus-

Feroze Uddin Mia

.... Opposite party

Mr. Shasti Sarker, Advocate

.... For the petitioners.

None appears

.... For the opposite party.

Heard on 19.02.2025 and 20.02.2025.

Judgment on 10.03.2025.

On an application under Section under Section 25 of the Small Cause Court Act, 1887 this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 21.05.2017 passed by the learned S.C.C. Judge, Sadar, Kushtia in S.C.C. Suit No.03 of 2005 dismissing the suit 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 petitioners as plaintiffs instituted above Small Causes Court Suit No.3 of 2005 for eviction of the defendant from

the disputed premises as described in the schedule to the plaint. It was alleged that the defendant was a tenant of the plaintiffs for above shop and on 16.05.1986 the defendant his brother Rafiz Uddin and Sontosh Kumar Sen three tenants of the plaintiffs executed a new deed of tenancy which was made effective from 01.04.1986. Pursuant to above deed of tenancy defendant paid rent at the rate of Taka 50/- per month until June 1986 but thereafter the defendant stopped payment of rent. Above Rafiz Uddin a tenant of a different shop of the same premises filed Title Suit No.260 of 1987 claiming title in above shop against the plaintiffs which was dismissed on contest. Moreover, the title of the plaintiffs in the disputed premise was finally determined by the High Court Division in the judgment of F. A. No.248 of 1970. The plaintiffs terminated above tenancy by service of a notice upon the defendant under Section 106 of the Transfer of Property Act, 1882 on 30 November 2004.

Defendant No.1 contested above suit by filing written statement alleging that the defendant is in possession in above shop for more than 25 years and plaintiffs were never the owner and possessor of the disputed premises and this suit was barred by limitation. Defendant was never a tenant under the plaintiffs nor the defendant executed a deed of tenancy with the plaintiffs on 16.05.1986.

At trial plaintiffs and defendant examined one witness each. Documents of the plaintiffs were marked as Exhibit Nos.1-8 and those

of the defendant were marked as Exhibit Nos."K" series and "Kha" series.

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

Being aggrieved by above judgment and decree of the Small Causes Court above plaintiffs as petitioners moved to this with this petition under Section 25 of the Small Causes Courts Act, 1887 and obtained this Rule.

Mr. Shasti Sarker, learned Advocate for the petitioners submits that in a suit under the Small Causes Courts Act the learned Judge does not have any authority to determine the dispute of title. The title of the plaintiffs in the disputed land has been conclusively determined by the High Court Division in F. A. No.248 of 1970. The full brother of the plaintiff and another tenant of the plaintiff of a separate shop in the same premise under the same tenancy agreement dated 01.04.1986 namely Rafiz Uddin as plaintiff instituted Title Suit No.260 of 1987 against the plaintiffs claiming title in the above premises and challenging the legality of above tenancy agreement dated 01.04.1986 but above suit was dismissed on contest and Title Appeal No.149 of 1993 filed by above plaintiff namely Rafiz Uddin challenging the judgment and decree of the trial Court was also dismissed. In above judgments plaintiff's title in the disputed land was determined and it was further held that deed of tenancy dated 16.05.1986 was genuine

and Rafiz Uddin was a tenant under the plaintiff. The defendant is also a tenant of the plaintiff under above tenancy agreement dated 16.05.1986 and the plaintiff produced above original tenancy agreement at trial which was marked as Exhibit No.7. The defendant did not make any endeavor to disprove his signature in above tenancy agreement by obtaining expert opinion. The plaintiff also produced rent receipt showing payment of rent by the defendant to the plaintiff for above premises. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial Court should have decreed the suit. But the learned Judge of the Small Causes Court utterly failed to realize the legal meaning of the evidence on record and most illegally dismissed above suit which is not tenable in law.

The opposite party did not enter appearance in this Civil Revision despite service of notice nor anyone appeared on their behalf at the time of hearing of this Rule.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record including the pleadings, judgment of the Court below and evidence.

It has been alleged in the plaint that the title of the plaintiffs in the disputed premises were finally determined by the High Court Division in F.A. No.248 of 1970. It has been further stated that the brother of the plaintiff and a tenant under the same tenancy agreement dated 16.05.1986 Rafiz Uddin claiming title in the disputed premises filed Title Suit No.260 of 1987 which was dismissed on contest and and Title

Appeal No.149 of 1993 preferred by the plaintiff of above suit was also dismissed. While giving evidence as PW1 Mokhesur Rahman produced certified copies of judgment of F.A. No.248 of 1970 and Judgment of Title Suit No.260 1987 and Title Appeal No.149 of 1993 which were marked as Exhibit Nos.2, 3 and 6 respectively.

Defendant has like his brother Rafiz Uddin claimed title in above premises but he did not dispute the genuinity and correctness of above judgments of F.A. No.248 of 1997 and Title Appeal No.149 of 1993 as (Exhibit Nos.2 and 6). Above PW1 Moklesur has also produced original deed of tenancy dated 16.05.1986 which was marked as Exhibit No.7. It turns out from above tenancy agreement that plaintiffs were the owners of disputed premises and other premises and the defendant, his brother Rafiz Uddin and Sontonsh Kumar were three tenants of the plaintiffs and they jointly executed above tenancy agreement. The defendant did not make any specific allegation against his signature in the above tenancy agreement nor made any endeavor by the defendant to prove that above tenancy agreement was forged and an ineffective document. The plaintiff also produced one rent receipt showing payment of rent by the defendant for the disputed premise.

Defendant has claimed that the plaintiffs were not the owners of the disputed premises. But the defendant did not mention who was the rightful owner of above premises nor he mentioned the source of his claim of title. The defendant has stated in the written statement that since he is in possession in above shop for more than 25 years his above

possession has matured into valid title by adverse possession. But in the absence of name of the rightful owner and against whom plaintiff claims title by adverse possession there is no lawful basis of above claim of title by adverse possession by the plaintiff.

The plaintiff has succeeded to prove that by executing Exhibit No.7 the defendant became a monthly tenant under the plaintiffs and the defendant paid rent until June 1986 but the defendant stopped payment of rent after July 1986 when his brother Rafiz Uddin instituted Title Suit No.260 of 1987 claiming title in a part of the disputed premises against the plaintiffs.

In the written statement the defendant did not dispute the identity of the disputed premises as has been described in the schedule to the plaint as Municipal Holding No.4/4 but the learned Judge of the trial Court most illegally held that the plaintiffs have failed to prove the holding number of the disputed property correctly which is not tenable in law.

It is true that the defendant stopped the payment of rent in 1986 but the plaintiffs filed this suit after about 19 years but above delay does not make this suit for eviction barred by limitation nor above possession of the defendant without payment of rent may be designated as adverse possession against the plaintiffs. A tenant is always a tenant and if a tenant wants to claim title in the rented the property against this landlord he must hand over vacant possession of the premises to the landlord and then reenter into the premise on the

strength of his rightful title. If and when the plaintiffs file a suit for recovery of outstanding rents that claim may be barred by limitation in part.

A Small Causes Court does not have the legal authority to determine the question of title. Section 23 of above Act provides that if in such a suit a question of title requires determination the Judge of the Small Causes Court shall return the plaint for presentation to an appropriate Civil Court. The learned Judge of the Small Causes Court below has most illegally held that the plaintiffs could not prove their lawful title in the disputed premises which is not tenable in law.

On consideration of above facts and circumstances of the case and evidence on record I hold that the plaintiffs succeeded to prove that the defendant was a monthly tenant of the disputed premise under tenancy agreement dated 01.04.1986 executed by the plaintiffs as landlord and defendant No.1, his brother Rafiz Uddin and Sontosh Kumer Sen as tenants by legal evidence and they have further succeeded to prove that the defendant abstained from paying rent since July 1986 and thereby the defendant has become a defaulter in the payment of the rent. Moreover, as mentioned above in the written statement the defendant has denied the lawful title of the plaintiffs in the disputed premises and thereby he has become a rebellious tenant who is liable to eviction. But the learned Judge of the Small Causes Court utterly failed to appreciate above evidence on record rightly and most illegally dismissed above suit which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 25 of the Small Causes Act, 1887 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 21.05.2017 passed by the learned S.C.C. Judge, Sadar, Kushtia in S.C.C. Suit No.03 of 2005 is set aside and above suit is decreed on contest against the defendant without cost.

Defendant is directed to handover vacant possession of above premises to the plaintiffs within 30 days or in default the plaintiffs shall get the same through Court.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER