

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2371 OF 2021

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Motiyar Rahman @ Moti being dead his heirs- Mst. Fenci Begum and others

... Petitioners

-Versus-

Md. Abdul Gani and others

... Opposite parties

Mr. Garib Newaz, Senior Advocate with

Ms. Maksuda Akhter, Advocate

Mr. Mushruful Alam, Advocate

.... For the petitioner Nos.1(a)-1(f).

Mr. Md. Habibur Rahman with

Mr. Polash Mollik, Advocates

.... For the opposite party No.1-5.

Heard on 19.02.2025 and 21.04.2025.

Judgment on 22.04.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-5 to show cause as to why the impugned judgment and decree dated 08.02.2021 passed by the learned District Judge, Kirigram in Other Appeal No.156 of 2018 disallowing the appeal and affirming the judgment and decree dated 30.09.2018 passed by the learned Assistant Judge, Bhurungamari, Kurigram in Other Suit No.145 of 2013 decreeing

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 opposite party as plaintiff instituted above suit for permanent injunction for one acre land appertaining to S. A. Khatian No.1 alleging that above land belonged to the Bangladesh Government and Abdus Samad, the predecessor of the plaintiffs as a landless and poor peasant submitted an application for settlement of above land for cultivation and the Sub-Divisional Officer gave settlement of above land to Abdus Samad by registered kobuliyat dated 13.11.1975 and delivered possession. Above Samad transferred above land to Shafiqul Islam by registered deed of Heba Bil Ewaz dated 29.01.1991. Above Shafiqul Islam transferred above land to the plaintiff by registered kabla deed dated 15.12.1991. The plaintiff is possessing 84 decimal land by excavating tank and remaining 16 decimal by erecting dwelling huts.

Above suit was contested by defendant Nos.1-8 by filling a joint written statement denying all claims and allegations made in the plaint and alleging that 2.5 acres land of S. A. Khatian No.259 was rightly recorded in the name of Abdul Sheikh who transferred 64 decimal land to Abu Bakar by registered kabla deed dated 16.12.1963 who in his turn transferred above land to Chand Miah and by successive transfer the defendants acquired 76 decimal land of Plot No.420 and possessing above land by constructing dwelling huts and excavating tank.

At trial plaintiffs and defendant No.1-8 examined 3 witnesses each. Documents of the plaintiffs were marked as Exhibit No.1-5 series and those of the defendants were marked Exhibit No.Ka-Cha and Ja series.

On consideration of facts and circumstance of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court defendants Nos.1-8 as appellants preferred Other Class appeal No.156 of 2018 to the District Judge, Kurigram who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Garib Newaz, learned Advocate for petitioner Nos.1(a) - 1(f) submits that the plaintiffs claim that disputed one acre land belonged to the Government and the same was recorded rightly in S. A. Khatian No.1. The defendants do not admit above claim of the plaintiffs. Defendants claim that above property which was rightly recorded in the name of the predecessor of the defendants namely Abdul Sheikh in S.A. Khatia No.259. As such plaintiffs should have proved by legal evidence that disputed one acre land belonged to the Government but the plaintiff did not make any endeavor to prove above claim. As far as

possession in above one acre land is concerned while giving evidence as PW1 plaintiff himself has admitted in his cross examination that he does not have possession in total one acre land and he further admitted that the house of his nephew and a public road are situated in a part of the disputed land. But the learned District Judge utterly failed to appreciate above materials on record and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Md. Habibur Rahman, learned Advocate for the opposite party Nos.1-5 submits that undisputedly Plot No.420 comprises 19.95 acres land out of which one acre has been recorded in the name of the Government in S. A. Khatian No.1 which was acquired by plaintiff's predecessor Abdus Samad by a registered kobuliyat. The plaintiffs could not produce a certified copy of S. A. Khatian No.1 in the trial Court in spite of their best endeavor. As far as possession of the disputed land is concerned the plaintiff has excavated tank in 84 decimal land and erected dwelling huts in the remaining 60 decimal. While giving evidence as PW1 plaintiff has corroborated above claims as made in the plaint and his evidence has been further corroborated by PW2 Abdul Mannan Sheikh.

On consideration of above facts and circumstance of the case and evidence on record the learned Judges of both the Courts below concurrently held that the plaintiffs succeeded to prove their title and

possession in above land and accordingly the trial Court decreed the suit and the appellate Court affirmed above judgment and in the absence of an allegation of misreading or non consideration of any legal evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

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

It is admitted that disputed Plot No.420 comprises 19.95 acres land including disputed 1 acre. At Paragraph No.2 of the plaint it has been alleged that above total land belonged to the Government and was rightly recorded in S. A. Khatian No.1. Defendant No.1-8 has produced S. A. Khatian No.259 which was marked as Exhibit No.Ka which shows that 1.26 acres land of Plot No.420 was recorded in above Khatian. As such this is not correct that 19.95 acres land of Plot No.420 was recorded in the S. A. Khatian No.1.

The defendants did not admit that disputed one acre land belonged to the Government and the same was recorded in S. A. Khatian No.1. As such the plaintiff should have proved above claim by producing a certified copy of S. A. Khatian No.1 but the plaintiff did not produce a certified of S. A. Khatian No.1 at trial nor any other document was produced to substantiate the claim that disputed one acre land belonged to the Government of Bangladesh. As such the

plaintiffs failed to prove his prima facie title in above one acre land on the basis of settlement by registered deed of kobuliyat dated 13.11.1975.

As far as possession in above land is concerned it has been alleged at Paragraph No.2 of the plaint that the plaintiffs have excavated tank in 84 decimal land and erected dwelling huts in remaining 60 decimal land. But while giving evidence as PW1 plaintiff No.3 stated that he possessed above land by pisci culture. It was further stated that on 13.11.2013 defendants tried to forcibly catch fish from above tank and dispossess the plaintiff. In cross examination PW1 stated that 84 decimal land has been recorded in his name and in the remaining land there is a public road and dwelling huts of his nephew. Above 16 decimal land has been recorded in a different khatian but he could not mention the number of above Khatian. PW2 Abdul Mannan stated in his evidence that his dwelling house and tank are situated in above land.

An admission is an important legal evidence against its maker and PW1 has admitted that he has no possession in 16 decimal land out of one acre. As such the plaintiff is not entitled to get a decree for permanent injunction for above 1 acre land.

In above view of the facts and circumstance of the case and evidence on record I hold that the learned District Judge utterly failed to appreciate above evidence on record properly and most illegally

dismissed above appeal and affirmed the unlawful judgment and decree of the trial Court which is not tenable in law.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 08.02.2021 passed by the learned District Judge, Kirigram in Other Appeal No.156 of 2018 disallowing the appeal and affirming the judgment and decree dated 30.09.2018 passed by the learned Assistant Judge, Bhurungamari, Kurigram in Other Suit No.145 of 2013 is set aside. Above suit is dismissed on contest against defendant No.1-8 without cost.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER