

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2813 OF 2021.

In the matter of:

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

And

Md. Abu Taleb and others

.... Petitioners

-Versus-

Sree Binod Chandra Paul

... Opposite party

None appears

... For the petitioners.

Mr. M Najmul Huda, Advocate

....For the opposite party.

Heard and Judgment on 24.04.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 15.09.2021 passed by the learned Joint district Judge, 2nd Court, Kurigram in Other Appeal No.50 of 2018 allowing the appeal and thereby reversing the judgment and decree dated 27.03.2018 passed by the learned Senior Assistant Judge, Roumari, Kirigram, in Other Suit No.137 of 2015 dismissing the suit should not be set aside and/or 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 declaration of title and recovery of possession of 15 decimal land alleging that 59 decimal land including above 15 decimal belonged to Abdul Hamid Sarker and Shamsul Haque Sarker in equal

shares and S. A. Khatian No.268 was correctly prepared. Above Shamsul Haque Sarker transferred of 15 decimal to the plaintiff by a registered kabala deed dated 24.11.1986 and delivered possession. Plaintiff appointed Gopal Chandra Paul as caretaker of above property who erected a hut in above land and planted trees and was in possession in above property. Defendants forcibly dispossessed above Gopal Chandra Paul on 30.08.2015 and erected dwelling huts.

Defendant Nos.1-5 contested above suit by filing a joint written statement alleging that above Abdul Hamid Sarker and Shamsul Haque Sarker while owning and possessing 79 decimal land transferred the same to Rajab Ali predecessor of above defendant by registered kabla deed No.568 dated 14.02.1959 and delivered possession. Above Rajab Ali got his name mutated for above land vide Miscellaneous Case No.877 of 1972-73 and created holding No.3581 and possessed above land by erecting dwelling huts and planting trees and after his demise defendants as his heirs are in possession of above land.

At trial plaintiff examined two witnesses and defendants examined four. Documents of the plaintiff were marked as Exhibit Nos.1-5 series and those of the defendants were marked as Exhibit Nos."Ka" - "Uma".

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

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Other Appeal No.50 of 2018 to the

District Judge, Kurigram which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

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

No one appears on behalf of the petitioners at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Mr. M Najmul Huda, learned Advocate for opposite party submits that the defendants have claimed that their predecessor Rajab Ali purchased total 79 decimal land from Abdul Hamid Sarker and Shasul Haque Sarker by registered kabla deed dated 14.02.1959. DW4 Najir Hossain permanent a Mohorar of Kurigram District Registry Office produced Volume No.5 dated 04.02.1959 and stated that page Nos.297 and 298 of above volume relating to the above kabla deed dated 14.02.1959 of the defendants were not available. As such the defendants could not prove the genuinity and correctness of their registered kabla deed dated 14.02.1959. On the other hand plaintiff has produced and proved his kabla deed dated 24.11.1986 and documents relating his mutation of name and payment of rent which show that the plaintiff acquired valid title in above land. As far as possession and dispossession of the plaintiff is concerned the plaintiff has succeeded to

prove the same by consistent evidence of two plaintiff witnesses. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly allowed the appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

It is admitted that 79 decimal land appertaining to S. A. Khatian No.268 belonged to two brothers Abdul Hamid Sarker and Shamsul Haque Sarker in equal shares.

Defendants claim title and possession in above total 59 decimal land by way of purchase from above Abdul Hamid Sarker and Shamsul Haque Sarker by registered kabla dated 14.02.1959. On the other hand the palintiff claims title only in 15 decimal land out of above 79 decimal by purchase from Shamsul Haque Sarker by registered kabla deed dated 24.11.1986. It is surprising that above Shamsul Haque Sarker or Abdul Hamid Sarker or their successive heirs did not come up to challenge the legality and propriety of registered kabla deed dated 14.12.1959 of Rajab Ali predecessor of the defendants who claimed total 70 decimal land on the basis of above deed.

It is true that as defendants No.4 a Mohorar of Kurigram District Registrar brought the relevant volume of above kabla deed of the defendants and stated that pages relating to above kabla deed were missing from above volume. But the fact remains that on the basis of

above kabla deed Rajab Ali mutated his name and created a holding long before the purchase of above land by the plaintiff on 24.11.1986.

It is admitted that the defendants are in possession in above 15 decimal land by constructing dwelling huts and planting trees. The plaintiff seeks recovery of possession by demolishing the huts of the defendants besides declaration of title. In such a suit besides proving lawful title the plaintiff is required to prove his previous possession and subsequent dispossession from above land by legal evidence.

In the plaint plaintiff has claimed that on his behalf above 15 decimal land was possessed by Gopal Chandra Paul by erecting dwelling hut and planting trees. While giving evidence as PW1 plaintiff has reiterated above claim in his evidence and stated that defendants forcibly dispossessed above Gopal Chandra Paul and erected dwelling huts. According to above evidence of PW1 Gopal Chandra Paul was in possession in above land before the alleged dispossession by the defendant. As such above Gopal Chandra Paul was an important witness in this suit to prove previous possession of the plaintiff and his dispossession by the defendants. But the plaintiff did not examine above Gopal Chandra Paul as a witness nor any explanation has been provided for non examination of above important witness in this suit.

As such the claim of the plaintiff as to possession in above land and subsequent dispossession by the defendants remains not proved. In above view of the facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly dismissed the suit.

But the learned District Judge utterly failed to appreciate the legal aspect of above evidence on record and most illegally allowed the appeal and set aside the lawful judgment and decree of the trial Court which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute. The impugned judgment and decree dated 15.09.2021 passed by the learned Joint District Judge, 2nd Court, Kurigram in Other Appeal No.50 of 2018 is set aside and the judgment and decree dated 27.03.2018 passed by the learned Senior Assistant Judge, Roumari, Kurigram in Other Suit No.137 of 2015 is restored.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER