

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1824 OF 2022 with

CIVIL REVISION NO.1826 OF 2022

In the matter of:

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

And

Saleha Begum and others

.... Petitioners

-Versus-

Md. Mosharaf Hossain and others

.... Opposite parties

Mr. A. K. Rashedul Huq, Advocate

.... For the petitioners of both
the Civil Revisions.

Mr. Mohammad Eunus, Advocate

.... For the opposite party
Nos.1-2 of Civil Revision Nos.1824 of 2022 and opposite
party Nos.5-6 of Civil Revision No.1826 of 2022.

Heard on 10.02.2025 and Judgment on 23.02.2025.

This Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and decree dated 09.12.2021 passed by the learned District Judge, Patuakhali in Title Appeal No.81 of 2019 analogously heard with Title Appeal No.92 of 2019 allowing the appeal and thereby reversing the judgment and decree dated 29.04.2019 passed by the learned Senior Assistant Judge, Kalapara, Patuakhali in Title Suit No.136 of 2008, whereby a suit for perpetual injunction along with a declaration had been decreed, should

not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

And another Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the judgment and decree dated 09.12.2021 passed by the learned District Judge, Patuakhali in Title Appeal No.92 of 2019 analogously heard with Title Appeal No.81 of 2019 allowing the appeal and thereby reversing the judgment and decree dated 29.04.2019 passed by the learned Senior Assistant Judge, Kalapara, Patuakhali in Title Suit No.136 of 2008, whereby a suit for perpetual injunction along with a declaration had been decreed, 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 suit for declaration that the order passed by defendant No.4 in Miscellaneous Case No.33SA/ 83-84 on 30.03.1987 cancelling the settlement of "Ka" schedule land of the plaintiff by registered deed of kobuliyat dated 17.12.1980 is without jurisdiction, fraudulent and not binding upon the plaintiffs and for permanent injunction against the defendants restraining them from disturbing peaceful possession of the plaintiffs in above land.

It was alleged that the predecessor of the plaintiffs Akabbar Kha a poor and landless peasant obtained settlement of disputed 1.5 acre land appertaining to S. A. Khatian No.1 from the Government of

Bangladesh vide Settlement Case No.182k/75-76 and registered deed of kobuliyat dated 17.12.1980. Above Akkabar kha mutated his name and created a settlement khatian and possessed above land by erecting dwelling huts and cultivation. Defendant No.1-3 submitted a false petition to defendant No.5 alleging that above land did not belong to the Government but the same was their private property which was illegally given settlement to the plaintiff. On the basis of above petition Miscellaneous Case No.33SA/83-84 was started and above settlement of Akkabar Kha was cancelled.

Defendant Nos.1-4 and 6-7 contested above suit by filling two separate written statements. Defendant Nos.1-4 alleged that land of Plot Nos.306 and 307 was partially Government property and before giving settlement of above land to Akkabar Hossain the Government transferred 7 decimal land of Plot No.306 and 1.04 acres land of Plot No.307 to WAPDA. The Government did not have any subsisting interest in any land above two plots but erroneously gave settlement of disputed 1.50 acres land to Akkabar Kha which was rightly cancelled by defendant No.2 on 30.03.1987.

Defendant Nos.6 and 7 stated that by way of purchase Abu Al Hashem and Amena Khatun predecessors of the defendants acquired title and possession in 11.75 acres land out of Plot Nos.306 and 307 but during SA operation above land was not recorded in their names

Abu Al Hashem and Amena Khatun filed five separate objection cases on the basis of their five registered kabola deed being Nos.80, 82, 83, 84 and 85 and which were allowed and orders were passed for recording of above Khatians in the names of above objectors but above land was erroneously recorded in the names of the Government in S. A. Khatian No.1.

Challenging the legality and propriety of above erroneous S. A. Khatian above Abul Hossain and Most. Amena Khatun filed Title Suit Nos.58 of 1987 in the Second Court of Sub-Judge Barishal which was decreed ex-parte on 15.08.1967. Above suit was reopened and renumbered as Title Suit No.39 of 1969 and decreed on 16.04.1969. Above property was sold in auction by Certificate Case No.401kha/76-77 and defendant Nos.6 and 7 purchased the same jointly with their brother Amir Hossain and obtained certificate of sale and delivery of possession on 30.04.1980 and 17.05.1980 respectively. They got their names mutated on 28.07.1981 and possessing above land by cultivation and erecting huts and kholian. Above defendants submitted a petition for cancellation of above settlement of the plaintiff which was rightly cancelled by defendant No.2 by order dated 12.05.1985.

At trial plaintiffs examined three witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-5 and defendant No.1-4

examined one witness and defendant Nos.7 and 8 examined two witnesses and documents of the defendants were marked as Exhibit Nos.“Ka” – “Neo/4”.

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

Being aggrieved by above judgment and decree of the trial Court defendant No.1-4 preferred Title Appeal No.91 of 2019 and defendant Nos.6-7 preferred Title Appeal No.92 of 2019 to the District Judge, Patuakhali who allowed above appeals, set aside the judgment and decree of the trial Court and dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the learned District Judge above respondents as petitioners moved to this Court with two petitions under Section 115 of the Code of Civil Procedure being Civil Revision Nos.1824 of 2022 and 1826 of 2022.

Above two Civil Revisions and the Rules issued thereunder having arising out of the identical judgment and decree of the learned District Judge above Rules were heard together and being disposed of by this single judgment.

Mr. A. K. Rashedul Huq, learned Advocate for the petitioners submits that admittedly disputed 1.50 acres land appertaining to Plot

Nos.306 and 307 was recorded in the name of the Government in SA Khatian No.1 and defendant No.1 gave settlement of above land to the plaintiff as a landless peasant vide Settlement Case No.182 Kha/1975-76 and registered deed of kobiliyat dated 17.12.1980. On the basis of above settlement Akkabar Kha mutated his name for above land, created mutated Khatian No.170 and erected his huts in a part of above land and possessed the remaining land by cultivation. After his demise plaintiffs as his heirs are in possession of above land. On the basis of an application filed by predecessors of defendant No.6 and 7 and without hearing the petitioners defendant No.2 most illegally cancelled above settlement by impugned order dated 12.05.1985 passed in Miscellaneous Case No.33 SA/1983-84 which is not tenable in law. The plaintiffs got settlement of above land by a registered Kobuliyat and defendant No.2 had no legal jurisdiction to recognize above land as a private property and cancel above settlement without hearing the petitioners.

The plaintiffs have succeeded to prove their possession in above land by erecting dwelling huts and cultivation by production of mutated khatian, rent receipts and admission of DW3 and on consideration of above evidence on record the learned judge of the trial Court rightly decreed the suit. But the learned Judge of the Court of Appeal below without reversing any material findings of the

learned Judge of the trial Court most illegally allowed the appeal and set aside the lawful judgment and decree of the trial court and dismissed above suit which is not tenable in law.

On the other hand Mr. Mohammad Eunos, learned Advocate for opposite party Nos.1-2 of Civil Revision No.1824 of 2022 and opposite party No.5-6 of Civil Revision No.1826 of 2022 submits that the land of S. A. Plot Nos.306 and 307 was not fully Government property and a bigger part of land of above two plots belonged to private persons by auction purchase vide Certificate Case No.401 Kha/76-77 on 28.02.1980. Defendants got their names mutated for above 11.75 acres land on 28.07.1981 and possessing the same by constructing dwelling house and cultivation. The Government did not have any subsisting title and possession in any land of Plot Nos.306 and 307 but defendant Nos.1-4 erroneously gave settlement of disputed 1.50 acres land to Akkabar Kha predecessor of the plaintiffs. Defendant Nos.6 and 7 submitted a petition to defendant No.4 for cancellation of above settlement and defendant No.2 rightly cancelled above settlement which calls for no interference. Above 11.75 acres land having not recorded in the name of the defendants their predecessor filed five Objection Cases which were allowed and directions were given for recording the names of Abul Hashem Talukder and Amena Khatun but inspite of above direction land of

Plot Nos.306 and 307 were unlawfully recorded in the name of the Government in S. A. Khatian No.1. Challenging the legality and propriety of above erroneous S. A. Khatian above Abu Al Hashem filed Title Suit No.58 of 1967 which was finally decreed on contest on 16.04.1969. The plaintiffs did not have any right, title, interest and possessions in above land.

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

Admittedly 1.50 acres land appertaining to Plot Nos.306 and 307 was recorded in SA Khatian No.1 in the name of the Government and defendant No.1 gave settlement of above land to poor and landless peasant Akkabar Kha predecessor of the plaintiffs by Settlement Case No.182K/75-76 and registered kobuliyat deed dated 17.12.1980.

Plaintiff No.1 while giving evidence as PW1 stated that on the basis of above settlement Akabbar Kha got his name mutated and created mutated Khatian No.170 and paid rent to the Government and possessed above land by constructing dwelling huts and cultivation PW1 has produced a certified copy of above registered kobuliyat dated 17.12.1980, mutated Khatian No.117 and a rent receipt which were marked as Exhibit Nos.1-3 respectively. While giving evidence as DW1 for defendant No.3. Kamrul Islam, Assistant

Union Land Officer stated in cross examination that Plot No.306 comprises 73 decimal land and Plot No.307 comprises 13.55 acres and only 4.76 acre land of plot No.307 was privately owned property and remaining land was Government khas land. As far as plot No.306 is concerned only 18 decimal land was privately owned land and remaining land was Government land.

It turns out from registered Kobuliyat of the plaintiff (Exhibit No.1) that Akbar Ali Kha was given settlement of 20 decimal land out of plot No.306 and remaining 1.30 acres land was given settlement out of Plot No.307. As such it cannot be said that the land which was given settlement to plaintiff No.1 was private land or the Government did not have any title or possession in above land.

PW1 has stated that they are possessing disputed 1.5 acre land by constructing dwelling huts and cultivation. Above PW was cross examined but she was not cross examined on her above evidence as to possession nor any suggestion was put to above witness that they did not get possession in disputed 1.50 acres land pursuant to above registered Kabuliyat deed dated 17.12.1980. PW2 Abdul Berek corroborated above evidence of PW1 as to possession of disputed 1.50 acres land.

The defendants have produced and proved certified copy of the plaint of Title Suit No.39 of 1969 which was marked as Exhibit

No."Kha". It turns out from the schedule of above plaint that above suit was filed for 11.75 decimal land of previous Khatian Nos.658 and 659 and current Khatian Nos.14 and 15. It is true that Plot Nos.306 and 307 were included along with Plot Nos.319, 320, 321, 322, 323, 324, 325, 327 and 329 in the schedule of above plaint but there was no specific mention as to what quantity of land from which plot comprised disputed 11.75 decimal land.

It further turns out that S. A. Khatian No.1 was not included in the schedule of plaint of Title Suit No.39 of 1969. As such by above judgment and decree of Title Suit No.39 of 1969 plaintiffs title was not declared for land of S. A. Khatian No.1.

As far as possession of above land is concerned in the written statements above defendants claimed that they have their dwelling huts and kholiyan in partial land and they cultivate the remaining land. But while giving evidence as DW1 defendant No.6 merely mentioned that they are jointly possessing 11.75 acres land by cultivation. DW1 did not mention that their dwelling house or khuliyan were situated in above land. Mohammad Arshed while giving evidence as DW2 stated that the plaintiffs are possessing above land by constructing their dwelling huts. Above witness was declared hostile by defendants and subjected to cross examination

but his above evidence remained free from contradiction and credence inspiring.

Defendant Nos.1-4 gave settlement of 1.50 acres land of S. A. Khatian No.1 to Abu Al Kha and defendant No.2 did not have any legal authority to claim that finally published S. A. Khatian was erroneous and above land did not belong to the Government.

The learned Advocate for the opposite party submits that defendant No.2 cancelled the settlement of the plaintiff on the basis of enquiry report prepared by the Revenue Officer but above report was not admitted in to evidence nor the maker of above report was subjected to cross examination by the plaintiffs. As such above report did not attain the status of a legal evidence which could be used against the plaintiffs.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned judge of the trial Court on current appreciation of materials on record rightly decreed the suit but the learned Additional District Judge utterly failed to appreciate above evidence on record and most illegally allowed the appeals 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 these Civil Revisions being Civil Revision Nos.1824 of 2022 and

1826 of 2022 under Section 115(1) of the Code of Civil Procedure and the Rules issued in this connection deserve to be made absolute.

In the result, the Rules issued in connection of Civil Revision Nos.1824 of 2022 and 1826 of 2022 are hereby made absolute.

The impugned judgment and decree dated 09.12.2021 passed by the learned District Judge, Patuakhali in Title Appeal Nos.81 of 2019 and Title Appeal No.92 of 2019 is set aside and the judgment and decree dated 29.04.2019 passed by the learned Senior Assistant Judge, Kalapara, Patuakhali in Title Suit No.136 of 2008 is restored.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER