

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

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2980 of 2022

IN THE MATTER OF

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

-AND-

IN THE MATTER OF:

Md. Joynal Mulla and others

.....Petitioners

-Versus-

Gulam Mustafa Mridha and others

... Opposite parties

Mr. Muhammad Musa, Advocate

....For the petitioners

Mr. Feroz Alam, Advocate

...For the opposite parties.

Heard on 18.06.2026, 22.06.2026,

25.06.2026, 29.06.2026, 06.07.2026 and

13.07.2026.

Judgment on: 26.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.06.2022 (decree signed on 30.06.2022) passed by Joint District Judge, Court No. 2, Magura in Title Appeal No. 82 of 2019 reversing those dated 21.11.2019 (decree signed on 28.11.2019) passed by Assistant Judge, Mohammadpur, Magura in Title Suit No. 137 of 2017 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.

The plaint case in a nutshell is that Kasim Uddin Mollah, grandfather of the plaintiffs, was the owner of 77 decimals of land appertaining to CS Khatian No. 74, Dag No. 1226 and 24 decimals of land appertaining to CS Khatian No. 1307, Dag No. 1035. Kasim Uddin Mollah died intestate, leaving behind his only son Abdul Jalil Mollah, and after the death of Abdul Jalil Mollah, his sons, daughters, and wife, the plaintiffs inherited the property of Abdul Jalil Mollah, but during SA operation, the SA record was wrongly prepared in the name of Abdul Goni Mridha and Abdul Jalil Mulla. The plaintiffs were not aware of the wrong SA record. Subsequently, the defendant Nos. 1 and 2 disclosed that their father is the SA-recorded tenant and owner of 50% of Dag Nos. 1226 and 1035. Thereafter, the plaintiffs filed the suit for declaration of their title to the suit land.

The defendant Nos. 1 and 8 contested the suit by filing a written statement denying the assertion made in the plaint, stating that the CS recorded tenant Kasim Uddin Mollah gifted the suit land appertaining to SA Dag Nos. 1226 and 1035 to Abdul Jalil Mullah and Abdul Gani Mridha in equal shares in 1935, and after the gift, both Abdul Jalil Mullah and Abdul Gani Mridha took possession of the suit land. Abdul Jalil Mollah took possession of 39 decimals of land to the north of Dag No. 1226 and 12 decimals of land to the west side of Dag No. 1035, and Abdul Gani Mridha took possession of land to the east of Dag No. 1035 and 38 decimals of land to the south of Dag No. 1226, and SA Khatian Nos. 98 and 1515 were jointly recorded in the name of Abdul Jalil Mollah and Abdul Gani Mridha in equal shares in 1986. The defendants have been peacefully possessing the land since 1935. Abdul Jalil Mollah prepared the SA and RS records, and they are jointly paying the rent. The original rent receipts and the documents are lying with the defendants. Abdul Jalil Mollah died 3 years ago. Kasim Uddin Mollah died in 1940. Abdul Jalil

Mollah did not claim any title by inheritance in the suit land, and he also did not deny the possession of the defendants. At the time of the death of Kasim Uddin Mollah, he had no possession of the suit land, and his son Abdul Jalil Mollah and daughters Peta and Pachi inherited his other property. Pachi died unmarried, and after the death of Pachi, her sister Peta inherited the property of Pachi. Peta was the wife of Abdul Gani Mridha and mother of the defendants. The predecessor of the plaintiffs was aware of the SA and RS records.

During trial, the plaintiffs examined 4 P.Ws and defendants examined 4 DWs to prove their respective cases. After concluding the trial, the trial court, by judgment and decree dated 21.11.2019, decreed the suit on contest against the defendant Nos. 1 to 8, declaring the title and possession of the plaintiffs in the suit land. Against the said judgment and decree passed by the trial court, the defendants filed Title Appeal No. 82 of 2019 in the Court of the District Judge, Magura. The Joint District Judge, Court No. 2, Magura heard the appeal and, by impugned judgment and decree, reversed the judgment and decree passed by the trial court, considering the possession of the defendants in the suit land. Thereafter, the plaintiff petitioners obtained the Rule.

The learned Advocate Mr. Mohammad Musa appearing on behalf of the plaintiffs petitioners submits that the Kasim Uddin Mollah was the CS recorded tenant of the suit land who died intestate leaving behind his only son Abdul Jalil Mulla, father of the plaintiffs Nos. 1 to 11 and husband of plaintiff No. 12, who inherited the suit land and the defendants failed to prove that the Peta and Pachi are the daughters of Kasim Uddin Mollah and both the courts below arrived at a concurrent finding of fact that the defendants failed to prove that the Kasim Uddin Mollah gifted the suit land to Abdul Gani Mridha and Peta and Pachi are the daughters of Kasim Uddin Mollah. He

further submits that admittedly Abdul Jalil Mollah is the only son of Kasim Uddin Mollah and the plaintiffs are the heirs of Abdul Jalil Mollah, and the Appellate Court, considering the evidence of P.W.2, wrongly arrived at a finding that the defendants are possessing the suit land and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for setting aside the impugned judgment and decree passed by the appellate court below.

The learned Advocate Mr. Feroz Alam, appearing on behalf of the defendant opposite parties, submits that the defendants proved their possession in the suit land based on the gift by CS recorded tenant Kasim Uddin Mollah to Abdul Gani Mridha and from the CS record to till today, the defendants are possessing the suit land and the Appellate Court below legally held that without praying for recovery of possession a suit for declaration of title is not maintainable in law. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Muhammad Musa, who appeared on behalf of the petitioners, and the learned Advocate Mr. Feroj Alam, who appeared on behalf of the opposite parties, the evidence adduced by both the parties, the impugned judgments and orders passed by the courts below, and the records.

On perusal of the evidence reveals that Kasim Uddin Mollah was the CS recorded tenant of 77 decimals of land appertaining to CS Khatian No. 74, Dag No. 1226 and 24 decimals of land, CS Khatian No. 1307, Dag No. 1035. It is an admitted fact that Abdul Jalil Mulla is the only son of Kasim Uddin Mollah. The plaintiffs denied that Peta and Pachi are not the daughters of Kasim Uddin Mollah. D.W. 1 stated that Kasim Uddin Mollah died intestate, leaving behind his son Abdul Jalil Mollah and two daughters, Peta and Pachi, and Abdul Gani Mridha is the husband of Peta.

It is a settled proposition that both the plaintiffs and defendants shall prove their respective cases. The defendants admitted that Abdul Jalil Mollah is the only son of Kasim Uddin Mollah. The plaintiffs denied that Peta and Pachi are daughters of Kasim Uddin Mollah. Therefore, the defendants shall prove that Peta and Pachi are the daughters of Kasim Uddin Mollah.

Both the Courts below, on considering the evidence of both the parties, arrived at a concurrent finding of facts that the defendants failed to prove that Peta and Pachi are the daughters of Kasim Uddin Mollah. In the plaint, it has been asserted that Peta, wife of Abdul Gani Mridha, is the mother of the defendants. In reply to a question, D.W.1 admitted that Turas Ullah Sheikh is his maternal grandfather, but in reply to a question by the trial court, he affirmed that his mother's name is Peta. D.W. 1 admitted that Turas Ullah Sheikh is his maternal grandfather. Therefore, Peta, daughter of Kasim Uddin Mollah, cannot be the mother of D.W.1. I am of the view that the statement made by D.W.1 that he is the son of Peta is a lie.

In reply to a question, D.W. 1 affirmed that the house of his grandfather is situated at Faridpur, but from the address of P.W.1 and D.W.1, it appears that they are residents of Mohadevpur, Magura, which proves that Kasim Uddin Mollah is a resident of Mohammadpur Thana who is not the maternal grandfather of defendant No.1. D.W. 1 stated that Kasim Uddin Mollah gifted the suit property in favor of Abdul Gani Mridha and Abdul Jalil Mollah. During cross-examination, D.W.1 Mustafa Mridha, son of late Abdul Gani Mridha, admitted that he had no personal knowledge of the gift of the suit land by Kasim Uddin Mollah to Abdul Gani Mridha and that there is no document or evidence regarding the gift. Nothing has been stated by D.W.1 that he heard from his father that Kasim Uddin Mollah gifted the suit land to Abdul Gani Mridha. I am of the view

that the defendants failed to prove that Kasim Uddin Mollah gifted the suit land to Abdul Gani Mridha, and both the courts below, considering the evidence of both the parties, rightly arrived at a finding that the defendants failed to prove that Kasim Uddin Mollah gifted the suit land to Abdul Gani Mridha. There is no scope to hold the view that the defendants are possessing the suit land on the basis of gift by Kasim Uddin Mollah.

It is the consistent case of the defendants that they are possessing the land on the basis of the gift in 1935 by Kasim Uddin Mollah to Abdul Gani Mridha. Since the defendants failed to prove the gift, it cannot be said that they are possessing the land based on the gift. Although in the written statement, the defendants claimed adverse possession of the suit land, none of the DWs stated that the defendants got title on the basis of adverse possession in the suit land. The trial court found that the plaintiffs own the suit land.

Admittedly, no rent receipt is proved by either party. The trial court held that Abdul Jalil Mollah is the only son of Kasim Uddin Mollah and there is no basis of the SA record prepared in the name of Abdul Gani Mridha. The appellate court affirmed the finding of the trial court that the defendants failed to prove the gift in favor of Abdul Gani Mridha by Kasim Uddin Mollah, and that Abdul Jalil Mollah is the only heir of Kasim Uddin Mollah. I am of the view that Abdul Jalil Mollah is the only heir of Kasim Uddin Mollah and he got title to the suit land as the only heir of Kasim Uddin Mollah.

D.W. 1 tells a lie that he is the son of Peta. No rent receipt is proved by either party. The possession of the plaintiffs on half of 50.50 decimals of land is admitted by the defendants, but the plaintiffs denied the possession of the defendants in the suit land. In the absence of any documentary evidence regarding payment of tax of the suit land by the defendants, it cannot be said that the defendants are

possessing the suit land. Furthermore, D.W. 1 tells a lie that Peta is his mother. The defendants failed to prove their possession on the basis of the gift in 1935.

I am of the view that the SA Khatian Nos. 98/1515 and RS Khatian Nos. 1523/1710 were prepared illegally in the name of Abdul Gani Mridha without any basis and the appellate court below failed to assess the evidence of both the parties in juxtaposing and misread the material evidence adduced by both the parties and arrived at a wrong decision as to the possession of the defendants in the suit land and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. The plaintiffs proved their title and possession of the suit land, and they are entitled to get a decree of declaration of title and confirmation of possession in the suit land. The finding arrived at by the appellate court that the suit is not maintainable in law is hereby set aside.

The findings arrived at by the trial court that the plaintiffs have title and possession in the suit land are hereby affirmed.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the appellate Court is hereby set aside.

However, there will be no order as to costs.

Send down the LCR at once.