

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1898 OF 2022

In the matter of:

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

And

Mst. Saleha Khatun

... Petitioner

-Versus-

Shantibala Debi and others

... Opposite parties

Mr. Uzzal Bhowmick with

Ms. Salina Akter, Advocates

...For the petitioner.

Mr Oziullah with

Mr. Shohidul Islam, Advocates

... For the opposite party Nos.35, 37,
39-40, 50, 74-78 and 82-83.

Mr. Md. Moshihur Rahman, Assistant Attorney
General with

Mr. Md. Mizanur Rahman, Assistant Attorney General

... For the opposite party No.1.

Heard on 23.10.2024 and Judgment on 16.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite Nos.1-11 to show cause as to why the impugned judgment and decree dated 09.11.2021 passed by the learned Additional District Judge, 2nd Court, Pabna in Other class Appeal No.06 of 2019 dismissing the appeal and thereby affirming the judgment and decree dated 20.11.2018 passed by the learned Senior Assistant Judge, Pabna Sadar, Pabna in Parititon Suit No.189 of 1985 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 petitioner as plaintiff instituted above suit for declaration of title for 85 decimal land and for recovery of possession of 40 decimal out of above 85 decimal alleging that above property belonged to Priyo Bala Rajakini and in her name C. S. Khatian No.1444 was correctly recorded. The husband of above Priyo Bala Rajakini namely Mohendra Nath Rajok died issueless and after demise of Priyo Bala Rajakini above property devolved upon three sons of the sister of Mohendra Nath rajok namely Sukumar Biswas, Horendra Nath Biswas and Profulla Kumar Biswas who transferred above land to the plaintiffs by registered kabala deed dated 20.04.1970. Plaintiffs were in possession in above land by constructing dwelling huts but above land was erroneously recorded in S. A. Khatian No.1053 in the name of Shantibala Debi and the defendants on the strength of a forged kabola deed and erroneous S. A. Khatian claimed title in above land and dispossessed the plaintiffs from 40 decimal land on 15.12.1979.

Defendant No.2-15 contested above suit by filing a joint written statement alleging that Priyo Bala Rajakini the C. S. recorded tenant of the disputed property failed to pay rent and the superior landlord filed a rent suit for recovery of outstanding rent and Priyo Bala

Rajakini voluntarily surrendered above land to Gour Chandra Roy and others on 15 Ashar 1337 B.S. who gave settlement of above land to Hemanta Prova Debi. Above Hemanta Prova Debi having not paid rent of above land above landlord filed Rent Suit No.35 of 1951 and obtained a decree on 26.03.1951 and filed Decree Execution Case No.262 of 1951 and purchased above land in auction. But in the meantime Hemanta Prova Debi gave settlement of above land to Shahti Bala who paid outstanding rent to the landlord and was in possession in above land and S. A. Khatian was rightly recorded in the name of Shanti Bala Debi. After demise of Shanti Bala his only son Gour Chandra Roy inherited above property and transferred the same to the defendants by registered kobala deed dated 09.09.1978 and defendants are in possession in above land by constructing dwelling huts.

At trial plaintiffs examined sixteen witnesses and defendants examined thirteen. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of the defendants were marked as Exhibit Nos. A – N.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Other Class Appeal No. 06 of 2019 to the District Judge, Pabna which was heard by the learned Additional District Judge, 2nd Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Uzzal Bhowmick, learned Advocate for the petitioner submits that admittedly disputed 85 deicmal land belonged to Priyo Bala Rajakini and in her name Khatian No.1444 was correctly prepared. Defendants have claimed that the superior landlord filed a Rent Suit against Priyo Bala Rajakini for recovery of outstanding loan and to avoid consequences of above Rent Suit Priyo Bala Rajakini voluntarily surrendered disputed 80 decimal to the superior landlord. But Priyo Bala Rajakini had her dwelling house and laundry business in above land and her husband had died. So Priyo Bala Rajakini had no reason to surrender above land to the superior landlord. The defendants could not produce any document in support of their claim that the rent of above suit fell due and superior landlord filed a Rent Suit for the recovery of the same. The defendants could not prove by legal evidence that Priyo Bala

Rajakini surrendered above land to the superior landlord. As far as title of Shanti Bala Debi predecessor of the defendants is concerned it has been alleged that when the landlord filed a Rent Suit against Hemanta Prove Debi for recovery of outstanding rents and she gave settlement of above land to Shanti Bala Debi. But in his evidence as DW1 defendant No.2 has stated that the superior landlord gave settlement of above 85 decimal land to Shanti Bala Debi suppressing the fact that they filed a Rent Suit against Hemanta Prova Debi for realization of outstanding rent. There is no claim of the defendants that the Zaminder obtained possession of above land from Hemanta Prova Debi. As such the defendants could not prove that Shanti Bala Debi acquired lawful title in the disputed land which substantiates the claim of the plaintiff that the S. A. Khatian which stands in the name of Shanti Bala Debi was erroneous. Plaintiff's possession in above land has been admitted by Shanti Bala Debi in Suit No.189 of 1985 which was filed by Shanti Bala Debi for declaration of title and recovery of possession against the plaintiffs but withdrawn under Order 23 Rule 1 of the Code of Civil Procedure. The plaintiffs have proved their possession in 45 decimal land by consistent evidence of 16 witnesses and further succeeded to prove their unlawful dispossession by the defendants by legal evidence. On consideration of above facts and circumstances of the case and

evidence on record the learned Additional District Judge should have allowed the appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit. But the learned Judge of the Court of Appeal below failed to appreciate the evidence on record correctly and most illegally dismissed above appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Oziullah, learned Advocate for the opposite party Nos.35, 37, 39-40, 50, 74-78 and 82-83 submits that the plaintiff could not prove by legal evidence that Sukumar Biswas and others were lawful heirs of Priyo Bala Rajakini or they had lawful title and possession in the disputed land by legal evidence. The defendants are in possession in the disputed land on the basis of purchase by registered kobala deed dated 09.09.1978 from the only son of S. A. recorded tenant Shanti Bala Debi and possessing above land by constructing their dwelling huts. The plaintiff has admitted defendants possession in 40 decimal land but they could not prove their previous possession in above land and their subsequent dispossession from above land by the defendants. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below rightly held that the plaintiffs could not prove their lawful title in disputed 85 decimal land by legal evidence and accordingly dismissed the suit and the

appeal and since above concurrent findings of the Courts below as to title and possession of the plaintiff are based on evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

Mr. Moshihur Rahman, learned Assistant Attorney General for opposite party No.1 submits that the disputed property was rightly recorded in the name of Shanti Bala Debi who left this Country for good for India before 1965 and above property was enlisted as enemy property subsequently vested and nonresident property and all documents produced at trial by the plaintiff and defendants were concocted, false, forged and ineffective documents.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that disputed 85 decimal land belonged to Priyo Bala Rajakini and in heir name C.S. Khatian No.1444 was correctly recorded and above land has been recorded in the name of Shanti Bala Deb in S.A. Khatian No.105. It is also admitted that in above land dwelling house and laundry business of Priyo Bala Rajakini used to run her laundry business from above land.

At Paragraph No.2 of the plaint it has been claimed that Priyo Bala Rajakini died issueless and above property devolved upon three sons of the sister of her deceased husband Mohendra Nath Rojok namely Sukumar Biswas, Horendra Nath Biswas and Profulla Kumar Biswas who transferred above land to the plaintiffs by a registered kabola deed on 20.04.1970. The plaintiff did not provide a detailed description of the genology of deceased Priyo Bala Rajakini nor the plaintiffs mentioned the name of the sister of Priyo Bala Rajakini whose sons transferred above land. On the other hand defendants claimed that Mohendra Nath Rojok had two sisters namely Lakhkhi and Sorosati not one sister as was claimed in the plaint. In order to prove above claim as to heirs of Priyo Bala Rajakini plaintiffs examined PW11 Horendra Nath Biswas who is one of the executants of plaintiffs kabola deed dated 24.04.1970 (Exhibit No.1). In cross examination PW 11 Horendra Nath Biswas stated that he was heir of Mohendra Chandra Rojok who died leaving two brothers and one sister. But above witness did not explain as to how he as son of the sister of the husband of Preobala became her heir in presence of two brothers. In cross examination PW11 stated that above Monehdra Nath Rajak died leaving only wife Priyo Bala Rajakina and two brothers and one sister. On the next breath he stated that Mohendra Nath Rajak had two sisters namely Lakhkhi and Sorosati. In view of

above evidence of PW11 Horendra Nath Biswas a son of a sister of Mohendra Nath Rajak it can be lawfully presumed that Mohendra Nath Rajak died leaving two brothers and two sisters and PW11 and Profulla Kumar Biswas being sons of a sister they did not lawfully inherit above property in the presence of two brothers of Mohendra Nath Rajak. The plaintiff has utterly failed to substantiate their claim that after demise of Priyo Bala Rajakini disputed 85 decimal land was inherited by three sons of only sister of Mohendra Nath Rajak by legal evidence. Since above Sukumar, Horendra and Profulla did not lawfully inherit any property of Priyo Bala Rajakini the plaintiff did not acquired any valid title in above land by purchase from above Horendra Nath Biswas and others by registered kobala deed dated 20.04.1970 (Exhibit No.Ka).

On the other hand defendants have claimed that Priyo Bala Rajakin surrendered above land to the superior landlord due to filing of a Rent Suit for above 85 decimal land. It is admitted that the dwelling house, courtyard and garden of Priyo Bala Rajakin was situated in disputed 85 decimal land. The defendants could not produce any document showing that rent of above land fell due and for the recovery of outstanding rents the superior land lord instituted a rent suit against Priyo Bala Rajakini. As far as the claim of the defendants that Priyo Bala Rajakin voluntarily surrendered above

land to the landlord any evidence oral or documentary to substantiate above claim.

The claim of the defendants as to the mode of acquisition of title by Santi Bala is also contradictory. It has been alleged in the written statement that Hemonta Prova Debi gave settlement of above land to Santibala Debi in fear of consequences of the Rent Suit filed by the landlord for recovery of outstanding rent. But in his evidence as DW1 defendant No.2 claimed that the superior landlord filed a Rent Suit for recovery of outstanding rent against Hemonta Prova Debi and suppressing above fact gave settlement of above land to Santibala Debi. There is no mention in above evidence of DW1 as to how the landlord delivered possession to Santibala Debi. But the facts remains that S.A. Khatian No.1053 of above 85 decimal land was recorded in the name of Santibala Debi. The claim of the defendants that Santibala Debi died leaving only son Gour Chandra Roy as his sole heir has been denied by the defendant No.1 and the plaintiff. But the learned Judges of both the Courts below on consideration of evidence oral and documentary adduced by both the parties concurrently held that the plaintiff and defendants Nos.2-20 are in physical possession in above 85 decimal land by constructing their dwelling huts and defendant No.1 does not have any possession.

On consideration of above facts and circumstances of the case and evidence on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Additional District Judge nor I do not find any substance in this petition under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER