

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

Present:

**Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 1593 of 2022**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Most. Zohora Khatun

... Plaintiff-Appellant-Petitioner.

-Versus-

Md. Aminur Rahman and others

... Defendants-Respondents-Opposite  
parties.

Mr. Sadananda Rana with

Mr. Md. Shibbir Ahmed, Advocates

...For the petitioners.

Mr. Md. Abdul Barik with

Mr. Mohammad Afirur Rahman and

Ms. Jarin Tasnim, Advocates

... For the Opposite Parties.

**Heard on 26.10.2025, 23.10.2025, 26.11.2025,  
01.12.2025, 02.12.2025, 08.12.2025, 11.12.2025**  
**Judgment on: 17.12.2025**

**Md. Bashir Ullah, J.**

At the instance of the plaintiff in Other Class Suit No. 04 of 2011, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 31 of 2012, dismissing the appeal and affirming the judgment and decree dated 26.02.2012 passed by the learned Senior Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No. 04 of 2011, dismissing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The facts, relevant for disposal of the Rule, in brief, are that the plaintiff instituted the above-mentioned suit seeking a decree of permanent injunction restraining the defendants from entering upon the suit land measuring 47 decimals out of 80 decimals as described in the schedule to the plaint and from disturbing her peaceful possession. The case of the plaintiff, in substance, is that the suit land appertaining to S.A khatian no. 443 originally belonged to one Nipusa Mahmood who gifted the property to his grandson, Aminur Rahman by registered deed no 6208 dated 05.03.1975. Thereafter, defendant no 1, Aminur Rahman allegedly sold 47 decimals of land out of 80 decimals to the plaintiff by deed No. 5447 dated

12.09.1985. Since then she had been possession of the suit land by erecting structures thereon. Defendant No. 2 expressed his intention to sell 27 decimals of the suit land to the plaintiff and a deed of agreement was executed and the defendant received Taka 20,000 as earnest money for that. Subsequently, the defendants refused to execute the deed and upon being requested to do so and threatened the plaintiff to dispossess from the suit land and eventually on 05-01-2011, the defendants entered the suit land and attempted to dispossess her there from. Hence, she instituted the suit seeking permanent injunction.

On the contrary the defendants contested the suit by filing written statement, denying the material allegations made in the plaint, stating *inter alia* that the suit land belonged to Nipusa Mahmood who gifted the same to defendant No. 1 and since then he had been possessing the suit land and accordingly DP record No. 1478 was prepared in the name of defendant No. 1.

The defendants further contended that the plaintiff is a cousin of defendant No. 1. The plaintiff sought permission to construct a dwelling house on a portion of the suit land due to family difficulties after her marriage, assuring that she would vacate the land whenever the defendant asks. Defendant no. 1 permitted her to erect a house on approximately 10 decimals of land. Subsequently,

defendant no. 1 asked the plaintiff to vacate the possession of the suit land but the plaintiff declined leading to a village *salish* wherein the plaintiff disclosed about deed no. 5447 of 1985. Defendant no.1 asserted that at the time of execution of the deed he was a minor. The deed was executed in another place other than the Sub-Registry Office where the deed was required to be executed. The deed was executed by way of impersonation and fraud. So, the suit is liable to be dismissed.

In order to dispose of the suit, the trial Court framed as many as 04 (four) different issues. To support the case, the plaintiff examined as many as 4(four) witnesses while the defendant examined 03(three) witnesses. The plaintiff produced several documents which were marked as exhibits 1-4, on the contrary the defendant produced documents which was marked as exhibit-Ka.

Upon hearing, the Senior Assistant Judge, Hatibandha, Lalmonirhat dismissed the suit by its judgment and decree dated 26.02.2012.

Challenging the said judgment and decree, the defendant as appellant preferred Other Class Appeal No. 31 of 2012 before the learned District Judge, Lalmonirhat. Subsequently, the appeal was transferred to the learned Additional District Judge, Lalmonirhat who upon hearing the parties dismissed the appeal on 25.03.2021.

Being aggrieved by and dissatisfied with the Judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 31 of 2012, petitioner preferred this revisional application and obtained the Rule.

Mr. Sadananda Rana, learned Advocate along with Mr. Md. Shibbir Ahmed, learned advocates appearing on behalf of the petitioner contends that the plaintiff proved D.C.R (Exhibit-1), rent receipts (Exhibit-2) but the Courts below failed to appreciate such vital evidence and passed the judgments and decrees which are not sustainable in the eye of law and are liable to be set aside for securing the ends of justice.

He next submits that the possession of the plaintiff in the suit land has been proved by the witnesses but the Court below failed to consider the evidence and thus committed an error of law resulting in an error in such decision occasioning failure of justice.

He further contends that P.W 4, an official from sub-registry office proved deed no. 5447 of 1985 as well as page nos. 148-150 of Volume no. 55 yet the Courts below failed to give due weight to such evidence.

He finally prays for making the Rule absolute.

*Per contra*, Md. Abdul Barik, learned Advocate along with Mr. Mohammad Arifur Rahman, learned Advocates appearing on behalf of the opposite parties submits that both the trial Court and the appellate Court have concurrently held, upon a detailed assessment of oral and documentary evidence, that the plaintiff has utterly failed to prove her title or possession over the suit land and that the alleged Deed No. 5447/85 appears to be forged and created by false personation. In revisional jurisdiction, such concurrent findings cannot be interfered with unless they suffer from perversity, misreading of evidence, or failure to consider material facts. The revisional court cannot reassess evidence like an appellate court. In the present matter, the courts below analysed Gift Deed No. 6208/75, DP entries, testimonies of PW witnesses, and surrounding circumstances, and came to a legal, proper and reasonable conclusion that the deed relied upon by the plaintiff is not genuine.

He next submits that, there was no prima facie case in favour of the plaintiffs. The plaintiffs could not prove exclusive possession as such the learned Court below delivered the judgments and decrees with concurrent findings legally and lawfully.

He further contends that deed No. 5447/85 is Void for Want of Capacity (Mohori Bibi Principle). At the time of execution of the alleged sale deed in 1985, the defendant was around 13-15 years old. Under Section 11 of the Contract Act, 1872 and Section 3 of the Majority Act, 1875, a minor is incompetent to enter into a contract. A minor's contract is void *ab initio*, as laid down in *Mohori Bibi v. Dharmodas Ghose*. The deed does not even specify who identified the minor before the Registrar.

He next contends that Section 28 of the Registration Act, 1908 mandates that documents relating to immovable property be presented for registration in the sub-registry within whose jurisdiction the property is located. The suit land lies within Hatibandha, yet the impugned deed was registered at Patgram without any explanation. This grave irregularity casts serious doubt upon the genuineness of the deed and strengthens the conclusion reached by the lower courts that the deed is suspicious, unlawful, and fabricated and as such the plaintiff has no title in this suit land.

He further contends that where execution of a registered document is denied, Section 68 of the Evidence Act requires at least one attesting witness to be examined. The plaintiff did not call the attesting witnesses, deed-writer, or identifier, nor did she account

for their absence. A certified copy produced without supporting oral evidence cannot establish execution. The trial court, therefore, correctly relied on the oral testimony of the PW witnesses, whose statements overwhelmingly suggested the falsity of the plaintiff's claim and the absence of any valid sale.

He next contends that the plaintiff was only given temporary, permissive possession of a small portion (0.10 decimals) to construct a dwelling house due to family difficulties. PW2, PW3 and PW4 had no clear or direct knowledge as to how the plaintiff allegedly came into possession. In contrast, the defendant produced credible witnesses-close relatives of both parties-who confirmed the defendant's long-standing possession. The plaintiff's DCR and claimed possession for 26 years were rightly disbelieved by the courts. The plaintiff failed to establish possession, which is an essential element for seeking injunction. Thus, plaintiff is not entitled to Permanent Injunction.

The learned Advocate prays for discharging the Rule.

I have considered the submissions so advanced by the learned Advocates for both the parties at length, perused the judgments and decrees and other materials on record.

Record goes to show that the petitioner, Most. Zohora Khantun as plaintiff instituted Other Class Suit No. 04 of 2011 seeking permanent injunction against the opposite parties, Md. Aminur Rahman and others before the learned Senior Assistant Judge, Hatibandha, Lalmonirhat. On the other hand, Md. Aminur Rahman as plaintiff instituted Other Class Suit No. 09 of 2011 against Most. Zohura Khatun as defendant seeking declaration of title, cancellation of deed no. 5447 dated 12.09.1985 and recovery of *Khas* possession of 10 decimals of land.

It appears that the parties, the land in question, the subject matter of both suits substantially identical and arise out of the same transaction. The decision in Other Class Suit No. 09 of 2011 wherein the validity of deed no. 5447 of 1985 is directly in issue, will have a direct bearing upon the fate of Other Class Suit No. 04 of 2011 for permanent injunction. If the deed is found to be invalid and title is declared in favoure of the plaintiff of Other Class Suit No. 09 of 2011, the plaintiff in the present suit would not be entitled to any decree for injunction.

Since the Other Class Suit No. 09 of 2011 has already been sent back on remand for fresh trial by judgment dated 17.12.2025 passed in Civil Revision No. 1594 of 2022, the ends of justice would be best served if Other Class Suit No. 4 is also remanded to

the trial Court for analogous hearing and disposal together with Other Class Suit No. 09 of 2011 by the learned Senior Assistant Judge, Hatibandha, Lalmonirhat or the same trial Court, so as to avoid conflicting decisions.

Since the grounds for sending back the suit on remand have been elaborately discussed in Civil Revision No. 1594 of 2022, this Court refrains from entering into the merits of this present revisional application.

In the result, the Rule is disposed of, however, without any order as to costs.

The judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 31 of 2012 and the judgment and decree dated 26-02-2012 passed by the learned Senior Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No. 04 of 2011 are hereby set aside.

The trial Court is directed to hear and dispose of Other Class Suit No. 04 of 2011 analogously with Other Class Suit No. 09 of 2011 in accordance with law.

Let a copy of this Judgment along with Lower Court's Record be communicated to the concerned Court forthwith.