

District-Dhaka**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam**Civil Revision No. 1364 of 2022.**Md. Abdul Hossain being dead his legal heirs-
1(a) Most. Ferdousi Hossain and others.

---- Defendants-Respondents-Petitioners.

-Versus-

Amin Uddin and others.

---- Plaintiff-Appellant-Opposite Party.

Mr. Md. Amzad Hossain, Advocate

---- For the Defendants-Respondents-Petitioners.

Mr. M. Mashiur Rahman, Advocate with

Mr. Asish Karmaker, Advocate and

Ms. Shakila Akhter, Advocate

---- For the Plaintiff-Appellant-Opposite Party.

Heard On: 14.08.2025.17.08.2025 and 20.08.2025.And**Judgment Delivered On: 24th Day of August 2025****Md. Toufiq Inam, J:**

By issuance of this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 06.10.2021 (decree signed on 03.11.2021), passed by the learned Additional District and Sessions Judge, 8th Court, Dhaka in Title Appeal No. 142 of 2018 allowing the appeal and thereby reversing the judgment and decree dated 23.01.2017 (decree signed on 26.01.2017) passed by the learned Senior Assistant Judge, 3rd Court, Dhaka in Title Suit No. 210 of 2014 dismissing the suit, should not be set aside.

The case of the plaintiff, in short, is that he instituted Title Suit No. 210 of 2014 for permanent injunction before the learned Senior Assistant Judge, 3rd Court, Dhaka, contending, inter alia, that C.S. Khatian No. 10191 of the suit land was recorded in the names of Kailash Chandra Shil Kabiraj and Radha Gobindra Shil. Upon the death of Radha Gobindra Shil, leaving behind his only son Shyamlal Shil, the S.A. Khatian was recorded in Shyamlal's name. During the Liberation War, Shyamlal left for India with his family, and subsequently the R.S. Khatian was published in the name of the Government.

On 20.02.1979, the plaintiff's father, along with one Rabiullah, applied for lease before the Deputy Commissioner, Dhaka, and obtained lease of the suit property. The City Survey record (Khatian No. 1/1, Dag No. 5812) was published in the name of the Government, and the land was further listed in "Ka" Schedule of vested property (Orpito Sompotti) by Gazette Notification, Serial No. 90. The plaintiff's father held lease from 1979 until 2004 on yearly renewal basis. After his father's death, the plaintiff himself obtained lease from 2005 onwards. Thereafter, the defendant-petitioners threatened him with eviction, giving rise to the cause of action for the suit.

Defendant Nos. 1–5 contested by filing a written statement, denying the plaintiff's allegations. They asserted that C.S. Khatian No. 10191

was recorded in the names of Kailash Chandra Shil Kabiraj and Radha Gobindra Shil, who sold the property to their predecessor Tainuch by Kabala Deed No. 2130 dated 14.10.1935. Thereafter, S.A. Khatian No. 1764, Dag Nos. 3350 and 3423, and subsequently R.S. Khatian No. 2017, Dag Nos. 6193 and 6371, were recorded in the names of Shyamlal Shil and Tainuch, each as eight annas (half) sharers.

The heirs of Tainuch, i.e., defendant Nos. 1–5, mutated their names in Mutation Khatian No. 13274 in respect of Dag Nos. 5811 and 5812. They contended that the City Survey record showing the property in the name of the Government was erroneous and that the Gazette Notification wrongly listing it as vested property under “Kha” Schedule had already been released by Gazette Notification dated 21.11.2013. They argued that the plaintiff, being a mere lessee, had no right, title, or possession in the property and that the suit was liable to be dismissed.

Upon hearing, the learned trial court dismissed the suit by judgment and decree dated 23.01.2017, holding that it had abated as the suit land was included in the “Ka” schedule of vested property. The court found that, with the “Kha” schedule becoming inoperative under the Vested Property Return Act, 2013 and the “Ka” schedule remaining in force, any claim lay exclusively before the Vested Property Tribunal. Accordingly, it held that the civil court lacked jurisdiction.

On appeal, the learned Additional District Judge allowed the appeal and reversed the trial court's judgment, finding that properties listed in Schedule "Ka" cannot be restored without a Tribunal's order and remain vested under Government control. The Government, being entitled to grant leases, lawfully leased the property to the plaintiff, who established possession through documentary evidence. The court held that the plaintiff was entitled to permanent injunction against defendant Nos. 1–5, as his possession was lawful. Against this Appellate court judgment, the defendants as petitioners moved this revision and obtained the present Rule.

Mr. Md. Amzad Hossain, learned Advocate appearing for the petitioners, submits that the plaintiff is admittedly a yearly lessee under the Government in respect of the suit property, which was recorded as vested property. A yearly lessee or a mere tenant cannot acquire any right, title or interest beyond the term of the lease. Therefore, a suit for permanent injunction at the instance of a temporary lessee is not maintainable in law.

He further contends that the original owners, namely Kailash Chandra Shil Kabiraj and Radha Gobindra Shil, had sold the suit land to the predecessor of the petitioners, one Tainuch, by a registered Kabala Deed No. 2130 dated 14.10.1935. Since then, the names of Shyamlal Shil and Tainuch were duly recorded as eight annas (half) sharers in both the S.A. and R.S. khatians. The heirs of Tainuch, i.e., the

petitioners, mutated their names in the mutation khatian. The City Survey record showing the property in the name of the Government was erroneous, and the Gazette Notification wrongly listing it as vested property was later released by Government notification dated 21.11.2013.

Per contra, Mr. M. Mashiur Rahman, learned Advocate appearing for the plaintiffs-opposite parties submits that until and unless an order is passed by the Tribunal under the Vested Property Return Act, 2001, the suit property continues to remain vested property under the control of the Government. In such circumstances, the Government is entitled to lease out the property. The plaintiff has produced documentary evidence showing valid lease granted to his father from 1979 to 2004, and thereafter to the plaintiff from 2005 onwards, by the Deputy Commissioner, Dhaka.

He further submits that by asserting that the plaintiff was their tenant, the defendants-petitioners have indirectly admitted the plaintiff's possession over the suit land. Possession being established, and the plaintiff being a lawful lessee under the Government, he is entitled to protection of possession through injunction. The trial court committed a manifest error in dismissing the suit, which was rightly corrected by the appellate court below.

Upon hearing the learned Advocates for both sides and on perusal of the record, it appears undisputed that the suit property was listed in

“Ka” Schedule of the vested property list by Gazette Notification. Under section 13(1)(ka) of the Vested Property Return Act, 2001, restoration of such property to the original owner can only be made by an order of the Tribunal. In absence of such an order, the property remains vested property and under the control of the Government. Accordingly, the Government retains authority to lease out the property, and the plaintiff has produced documents proving continuous lease from the Deputy Commissioner in respect of the suit land. This establishes the plaintiff’s lawful possession.

The petitioners’ claim of title based on a Kabala deed of 1935 and subsequent khatians may have historical relevance, but such claim cannot override the statutory position that the property stands vested until restoration is ordered by the competent Tribunal. Furthermore, by alleging that the plaintiff is their tenant, the petitioners have themselves recognized the plaintiff’s possession. Possession is a key element in a suit for injunction, and once admitted, it cannot be denied.

The appellate court further observed that since the plaintiff sought injunction while acknowledging the land as vested property, there was no occasion to examine title, nor any scope for abatement under section 13(1)(ka) of the Vested Property Return Act, 2001. The trial court’s contrary view was erroneous.

In view of the above, this Court finds that the trial court was not correct in holding that the suit had abated. Mere inclusion of the property in the “Ka” schedule does not automatically terminate a civil proceeding. Under section 13(1)(ka) of the Vested Property Return Act, 2001, abatement takes place only when restoration proceedings are initiated before the Vested Property Tribunal. In the present case, the plaintiff has neither claimed ownership of the suit property nor challenged its listing in the “Ka” schedule. On the contrary, the plaintiff accepted the property as vested property and came before the court only to protect his lawful possession as Government’s lessee. So long as the property remains vested, the Government is competent to grant lease, and a lawful lessee is entitled to seek protection from unlawful interference. Therefore, the trial court fell into error in treating the suit as abated and beyond its jurisdiction, whereas the appellate court rightly held that the plaintiff’s claim for injunction was maintainable.

This Court finds that the appellate court’s reasoning is sound. The plaintiff is a lawful lessee of vested property under Government authority. The petitioners’ claim of ownership through a 1935 Kabala deed and subsequent records cannot override the statutory position that the land remains vested until restoration is ordered by the Tribunal. Moreover, by alleging that the plaintiff was their tenant, the petitioners indirectly admitted his possession. Possession being

established, a lawful lessee is entitled to injunction against unlawful interference.

Accordingly, the appellate court rightly reversed the dismissal of the suit and granted injunction. The trial court's view that the suit abated was misconceived, as abatement under section 13(1)(ka) occurs only when restoration proceedings are pending before the Tribunal, which is not the case here.

For these reasons, this Court finds no error in the judgment and decree dated 06.10.2021 (decree signed on 03.11.2021) passed by the learned Additional District Judge, 8th Court, Dhaka in Title Appeal No. 142 of 2018.

Accordingly, **the Rule is discharged**. The appellate court's decree of permanent injunction in favour of the plaintiff against defendant Nos. 1–5 stands affirmed. There will be no order of costs.

However, it is clarified that the decree of permanent injunction shall not bar the Government from exercising its lawful authority over the property, including leasing to third parties or taking back possession.

Let the LC Records be sent back together with a copy of this judgment at once.

(Justice Md. Toufiq Inam)