

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.2298 OF 2021**

In the matter of:

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

And

Mst. Latifa Khatun and another  
.... Petitioners

-Versus-

Md. Saiful Islam (Felu) and others  
.... Opposite parties

Mr. Md. Aktar-Ul- Alam with  
Mr. S. M. Rezaul Karim, Advocates  
.... For the petitioners.

None appears  
.... For the opposite parties.

**Heard on 26.11.2024.**

**Judgment on 27.11.2024.**

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 03.02.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Rangpur, in Other Class Suit No.23 of 2015 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 under Section 9 of the Specific Relief Act, 1877 for recovery of possession of disputed 2.16 acres land alleging that above land belonged to Abdur Rafiq who married plaintiff No.1 by a registered kabinnama on 01.11.1965. Above Abdur Rafiq orally gifted disputed

1.92 acres land and recorded above gift at term No.16 of above registered kabinama dated 01.11.1965. Above Abdur Rafiq delivered possession of above land to plaintiff and above land was rightly recorded in Draft B.S. Khatian No.367 in the name of the plaintiff. Above plaintiff transferred 1.95 acre land to her daughter plaintiff No.2 by two registered deeds of gift dated 06.09.1999 and 04.11.1999. The defendants have forcefully dispossessed the plaintiffs from above land on 20.12.2014.

Defendant Nos.1-3 contested the suit by filing a joint written statement alleging that after demise of Abdur Rafiq disputed property has been inherited by the defendants. Above Abdur Rafiq married plaintiff No.1 by a registered kabinanama on 01.11.1965 fixing dower of Taka 1001/-. On the ill advice of some persons plaintiff No.1 incorporated some property in column No.16 of above kabinana but plaintiff did not possess above land. The plaintiff has mutated her name for above land by Miscellaneous Case No.1647 of 1415 without service of any notice upon the defendants. The defendants did not dispossess the plaintiff from above land.

At trial plaintiffs examined 4 witnesses. Document of the plaintiffs were marked as Exhibit Nos.1-6 series. On the other hand defendants examined 3 witnesses and their documents were marked as Exhibit Nos.Ka and Kha series.

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

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as petitioners moved to this Court and obtained this Rule.

Mr. Md. Aktar-Ul-Alam, learned Advocate for the petitioners submits that admittedly Abdur Rafiq was the owner and possessor of disputed 2.16 acre land and plaintiff No.1 was his third wife and he married her by a registered kabinama on 01.01.1965 and at column No.16 of above kabinama above Abdur Rafiq transferred disputed 2.16 acre land to the plaintiff No.1 who in her turn transferred 1.95 acre land to plaintiff No.2, by two registered deeds of gift. Plaintiff No.1 was possessing total 2.16 acre land through the husband of plaintiff No.2 and defendants have forcibly dispossessed the plaintiffs on 20.12.2014 and above claims have been proved in the Enquiry Report of the Assistant Commissioner Land submitted in Criminal Case No.633 of 2014. Besides four competent witnesses have given consistent oral evidence stating that the plaintiffs were in peaceful possession in the disputed land and they were forcibly dispossessed by the defendants on 20.12.2014. Defendants extensively cross examined above PWs but their evidence remained free from any material contradiction and credence inspiring. The learned Joint District Judge did not analyze the evidence of the plaintiff as to possession and subsequent dispossession

from the disputed land but dismissed the suit solely on the ground that the date of marriage of the plaintiff varies between the original kabinama and its certified copy which was out of pleadings and without any significance. As such the impugned judgment and decree passed by the learned Joint District Judge has been vitiated by illegality and liable to be set aside.

No one appears on behalf of the opposite parties at the time of hearing of the Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined pleadings, judgment and decree of the trial Court, evidence and other materials on record.

It is admitted that disputed 2.6 acre land belonged to Abdur Rafiq who married plaintiff No.1 by a registered kabinnama on 01.11.1965 and in Column No.16 of above kabinnama above 2.6 acre land was transferred to plaintiff No.1 in lieu of her dower.

It is well settled that in a civil suit admission may be made either in the pleadings or in the evidence at trial and an admitted fact does not require further prove by evidence. Defendant Nos.1-3 are steps sons and daughters of plaintiff No.1. The husband of the plaintiff No.1 and father of plaintiff No.2 and defendant Nos.1-3 has died about 6-7 years back.

It has been admitted in the written statements of the above defendants that Abdur Rafiq married plaintiff No.1 by a registered kabinnama on 01.11.1965 and in column No.16 of above kabinnama some land were show transferred.

There is no allegation in above written statement that above kabinnama of plaintiff No.1 (Exhibit No.4) was a forged document or column No.16 of above kabinnama which mentions of transfer of disputed 2.16 acres land in lieu of dower was fraudulently or erroneously written. It has been merely stated at Paragraph No.7 of above written statement that due to ill advice by some bad people plaintiff caused inclusion of above property in column No.16 of above kabinnama. While giving evidence as DW1 defendant No.2 has reiterated above admissions made in their written statement and stated that in column No.16 of the kabinama some property and plot numbers were incorporated. He admitted that his father married plaintiff No.1 by above registered kabinnama. He further admitted that during land survey above land has been recorded in the name of plaintiff No.1 and plaintiff No.1 has transferred 1.2 acre land to plaintiff No.2 by two registered deed of gift dated 06.09.199 and 04.11.1999.

While giving evidence as PW1 the husband of plaintiff No.2 has produced and proved above original kabinnama dated 11.01.1965 and a certified copy of the same since the original kabinana was very old and not easily readable and above two documents were marked as Exhibit

Nos.4 and 4Ka. It turns out from column No.16 of above kabinama that by mentioning C.S. Khatian Numbe and plot number 2.16 acre land was transferred by Abdur Rafiq to plaintiff No.1 lieu of her dower.

In a suit under Section 9 of the Specific Relief Act, 1877 there is no scope for consideration and determination of complicated question of title. The plaintiff of such a suit is required to prove that his alleged possession in the disputed land was referable to a rightful title. As such the question whether the ownership of immovable property can be transferred by a kabinama in lieu of dower or whether the alleged claim of gift by Abdur Rafiq to the plaintiff No.1 was proved by legal evidence were not required to be determined in this suit.

Above registered kabinama (Exhibit No.4) and recording of the name of plaintiff No.1 in the draft BRS khatian and mutation of her name for above land have been admitted by the defendants both in their written statement and evidence at trial which prima facie prove plaintiffs rightful claim of title. Plaintiffs have examined 4 witnesses who have stated in their respective evidence that plaintiffs were in possession in above land and they have been forcibly dispossessed from the same by the defendants on 20.12.2014. Above four PWs were subjected to extensive cross examination by the defendants but their above evidence remained unshaken and free from any material contradiction.

It has been claimed by the plaintiffs that the Assistant Commissioner (Land) conducted an enquiry as to the possession of the disputed land pursuant to an order passed in a criminal case filed by the plaintiffs. The plaintiffs have produced and proved Enquiry Report at trial which was marked as Exhibit No.6. Above Enquiry Report report shows that the plaintiffs were in possession in the disputed land and they were dispossessed by the defendants during pendency of above criminal case under Sections 144 and 145 of the Code of Criminal procedure.

DW1 Shamsul has reiterated their case as set out in the written statement that the plaintiffs were living in the joint family with the defendants during the life time of their father and plaintiffs did not possess the disputed land individually. Both the plaintiffs are women and plaintiff No.1 did not have any son. As such it is natural that plaintiff No.1 would possess the disputed land through her husband. It has been claimed by the plaintiffs that after demise of Abdur Rafiq they were in possession of above land through the husband of plaintiff No.2.

On consideration of above facts and circumstances of the case and evidence on record I hold that the plaintiffs have succeeded to prove by legal evidence that they were in possession in the disputed land on the basis of registered kabainnama dated 11.01.1965 (Exhibit No.4) and they have been dispossessed from the above land by the defendants on 20.12.2014 and the plaintiffs have filed this suit on 16.04.2005 but the

learned Judge of the trial Court has failed to appreciate above legal evidence on record properly and erroneously dismissed the suit which is not tenable in law.

In above view of the materials on record I find substance in this civil revisional application and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 03.02.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Rangpur, in Other Class Suit No.23 of 2015 is set aside and above suit is decreed on contest without any cost. Defendant Nos.1-3 are directed to voluntarily handover possession of disputed 2.16 acres of land to the plaintiffs within 60 (sixty) days from the date of receipt of this order in default the plaintiffs shall get the same through Court.

However, there is no order as to costs.

Send down the lower courts record immediately.