

**District-Narail.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No.4014 of 2022.**

Krishna Pada Bawali being dead his legal heirs:

1(a) Shadhan Bawali and others.

----- Plaintiffs-Respondents-Petitioners.

-Versus-

People's Republic of Bangladesh and others.

----- Defendants-Appellants-Opposite Parties.

Mr. Zahirul Alam Babar, Advocate

-----For the Plaintiffs-Respondents-Petitioners.

Mr. Md. Yousuf Ali, D.A.G. with

Mr. Kazi Rahman (Manik), A.A.G.

Mr. Md. Siddik Ali, A.A.G.

Mr. Raja Kamrul Islam, A.A.G. and

Ms. Kamrunnahar Lipi, A.A.G.

----- For the Defendant-Appellant-Opposite Party No.1.

Mr. Md. Amimul Ehsan, Advocate with

Mr. Md. Gazi Mamunur Rashid, Advocate

Mr. K.M. Habibur Rahman, Advocate

-----Contesting Defendants-Opposite Party Nos. 2 and 3.

Heard On: 20<sup>th</sup> Day of July 2025.

And

**Judgment Delivered On: 28<sup>th</sup> Day of July 2025.**

**Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 26.07.2022 (decree signed on 27.07.2022) passed by the learned Additional District Judge, Narail, in Title Appeal No. 41 of 2015, allowing the appeal and thereby reversing the judgment and decree dated 07.10.2015 (decree

signed on 12.10.2015) passed by the learned Assistant Judge, Kalia, Narail, in Title Suit No. 84 of 2009 decreeing the suit, should not be set aside.

The plaintiffs' case, in short, is that the suit land, situated in Mouza Bilaphor, P.S. Noragati, District Narail, recorded in C.S. Khatian No. 413, comprising Plot Nos. 437 and 444, along with Plot Nos. 436, 444 and 445, measuring a total of 1.50 acres, was recorded in the name of Fulmala Dasi (8 annas share) and Jadob and others (8 annas share). Upon amicable partition, Fulmala Dasi came into possession of her share comprising Plot Nos. 437 and 444. While in such possession, Fulmala Dasi died, leaving behind her only son, Dijobor Bawali. After Dijobor's death, his two sons, Krishnapodo Bawali and Moharaj Bawali, the plaintiffs, succeeded to the property.

While the plaintiffs were in possession, the Government of Bangladesh (defendant no. 3) along with others denied their title, claiming the suit land to be khas land. Consequently, the plaintiffs instituted Title Suit No. 142 of 1979, later renumbered as Title Suit No. 451 of 1984, before the Court of Assistant Judge, Kalia, Narail, seeking a declaration of title. Upon contested hearing, the suit was decreed in their favour, declaring their title and possession. Significantly, the Government did not prefer any appeal against the said decree, which thus attained finality. Thereafter, on 25.06.2009, defendants no. 1 and 2 again denied the plaintiffs' title, claiming to have obtained a lease of the suit land from the Government (defendant no. 3), and threatened to dispossess them. Accordingly, the plaintiffs instituted the instant suit for permanent injunction.

Defendants no. 1 and 2 contested the suit by filing written statements, contending that the suit land was correctly recorded in SA Khatian No. 1 under the State Acquisition and Tenancy Act, as the original CS tenants had died without heirs. They asserted that they had obtained a

lease over 99 decimals of land, including the suit land, by virtue of Settlement Case No. 32/XII/99-2000, were subsequently mutated in Mutation Case No. 626/IX/2003, and had been paying rent regularly.

Defendant no. 3 (Government of Bangladesh) also filed a written statement, claiming that the suit land was correctly recorded in SA Khatian under section 92(c) of the SAT Act, as the CS tenants had left the country during the 1947 partition without transferring their title. The Government subsequently granted lease of the land to defendants no. 1 and 2, who were in possession.

The learned trial court framed three issues. The plaintiffs examined three witnesses: Plaintiff no. 1, Krishna Pada Bawali (PW-1), and two neighbours, namely Kushilal Biswas (PW-2) and Anup Kumar Biswas (PW-3). PW-1 produced the certified copy of CS Khatian No. 413 (Exhibit-1) and the certified copy of the judgment and decree in Title Suit No. 451 of 1984 (Exhibit-2). On the defence side, defendant no. 1, Gaus Hossain Mollah, deposed as DW-1; Atiyar Rahman Mollah as DW-2; and Mejbah Uddin, Assistant Union Land Officer, as DW-3. The defendants submitted the lease deed in Settlement Case No. 32/XII/99-2000 (Exhibit-Ka), the mutation khatian and five DCRs (Exhibit- Kha series), eight rent receipts (Exhibit-Ga series), and documents relating to Case No. 4/XIII/2006-07 under section 150 of the SAT Act.

Upon consideration of the evidence, both oral and documentary, the learned trial court decreed the suit on contest against all defendants and issued a mandatory injunction restraining them from interfering with the plaintiffs' possession or altering the nature of the suit property. Aggrieved, defendant no. 3, the Deputy Commissioner, Narail, preferred Title Appeal No. 41 of 2015. The learned Additional District Judge, Narail, allowed the appeal and reversed the trial court's decree. During the pendency of the appeal, plaintiff no. 1, Krishna

Pada Bawali, died on 07.06.2022, prior to pronouncement of the appellate judgment. His heirs, Shadhan Bawali and Vajan Bawali, thereafter they along with another filed the instant revisional application and obtained the present Rule, which is now before this Court for disposal.

It is further relevant to state that the plaintiffs' predecessors had earlier instituted Title Suit No. 451 of 1984 against the Government, which had been contested by filing written statements and adducing evidence. The Government, however, failed to establish its claim of khas land, and the suit was decreed on 22.09.1993, declaring the plaintiffs' title and possession. That decree attained finality as no appeal was preferred against it.

Mr. Zahirul Alam Babar, learned Advocate for the petitioners, submits that since the Government did not challenge the decree in Title Suit No. 451 of 1984, it had no lawful authority to subsequently lease out the same land in violation of that binding decree. The learned appellate court, by overlooking this legal position, committed errors of law and fact resulting in a miscarriage of justice. He further submits that Fulmala Dasi, the CS recorded tenant, came into possession of the suit land upon amicable partition. After her death, her only son, Dijobor Bawali, inherited the property, and upon his demise, his sons, Krishna Pada Bawali and Moharaj Bawali, succeeded and possessed the land. Being Bangladeshi citizens, there was no legal basis to treat the land as khas land, yet the appellate court failed to consider this crucial fact, thereby falling into error.

He points out that in cross-examination, DW-1 admitted that Dijobor Bawali was the son of Fulmala Dasi and that Krishna Pada and Moharaj were his sons. Thus, the plaintiffs are her lawful heirs and are in possession. Their names have also been recorded in the Hal BRS, which further disproves the claim of the land being khas.

It is also argued that DW-3 deposed that CS tenants Jadob and Madhob Choudhury had left for India but made no such statement regarding Fulmala Dasi. Therefore, her share of land, or that of her successors, could not legally vest in the Government as khas land. On the contrary, PW-1, PW-2 and PW-3 consistently supported the plaintiffs' possession. The trial court, rightly appreciating this evidence, decreed the suit. The appellate court, however, failed to properly evaluate the testimony of both PWs and DWs and ignored the binding effect of the earlier decree in Title Suit No. 451 of 1984, which had conclusively declared that the Government had no title or possession over the suit land.

Mr. Babar finally submits that the plaintiffs have been in peaceful possession of the land, cultivating betel leaf and planting trees thereon. The appellate court, in reversing the decree of the trial court, committed manifest errors of law and fact, which have caused a failure of justice.

Per contra, Mr. Md. Yusuf Ali, learned Deputy Attorney General, appearing on behalf of the Government, submits that although the plaintiffs obtained a decree of title in respect of 0.33 acres of land from Plot Nos. 437 and 444 in Civil Suit No. 451 of 1984 (Exhibit-2 series), title alone is insufficient to sustain a suit for permanent injunction. Actual possession must be pleaded and proved by credible evidence, which the plaintiffs have failed to do.

He contends that the plaintiffs did not produce any mutation khatian, rent receipt, or revenue document to support their alleged possession. On the other hand, defendants Nos. 1 and 2, who received valid government settlement under Settlement Case No. 32/XII/99–2000, furnished cogent documentary proof, namely: Mutation Khatian No. 1/3 (Exhibit-Kha), Original D.C.R. (Exhibit- Kha/1), and eight rent

receipts (Exhibit-Ga series) showing continuous rent payment from 2007 to 2015, long prior to the institution of the suit. The plaintiff's challenge to this mutation under Section 150 of the State Acquisition and Tenancy Act, 1950 was rejected by a competent authority on 31.03.2009 (Exhibit-Gha).

He further submits that SA Khatian No. 1 records the land in the name of the Government as khas, and pursuant to established policy the Government lawfully settled it in favour of defendants Nos. 1 and 2. Their names were accordingly mutated, and they remain in possession. The Government has no obligation to restore possession to a party who has not established continuous possession or proved any dispossession by the state or its lessees.

Mr. Ali emphasizes that the plaintiffs neither demarcated the 0.33 acres claimed from Plot No. 444 nor submitted any map or sketch to identify it. Their witnesses gave vague and contradictory statements, failing to link the claim with specific dag, khatian, or boundary descriptions. In contrast, the defendants' possession was supported by clear evidence.

Finally, learned D.A.G. submits that the decree in Civil Suit No. 451 of 1984 established title only and did not relate to delivery of possession. That decree was obtained against different parties and cannot bind the Government or its allottees, who were not parties thereto. In absence of execution, the decree cannot override lawful settlement subsequently made by the Government. The appellate court, therefore, rightly reversed the trial court's judgment, which had been based solely on weak oral testimony of possession.

Echoing the submissions of the learned Deputy Attorney General, Mr. Md. Amimul Ehsan, learned Advocate, appearing with Mr. Md. Gazi Mamunur Rashid on behalf of opposite parties Nos. 2 and 3, submits

that the plaintiff's case is hopelessly vague and incurably defective with respect to the identity and demarcation of the suit land. The plaintiff schedule discloses no boundaries, directions, or adjoining plots, nor does it indicate from which specific portion of Plot No. 444 the alleged 0.33 acres is claimed.

Mr. Md. Amimul Ehsan points out that this vagueness is also reflected in the depositions of plaintiff's witnesses. PW-1 admitted that the land is claimed from Dag No. 444 but failed to identify any portion thereof. PW-2 vaguely stated that the suit land is near his betel-nut garden without specifying side or boundaries. PW-3 similarly failed to demarcate the land and admitted that other persons, namely Nur Mohammad and Kaiyum, are in possession of portions of the same plot- contradicting the plaintiff's claim of exclusive possession.

In contrast, opposite parties Nos. 2 and 3 established their lawful possession through unimpeached documentary and oral evidence. They produced their settlement papers (Exhibit-Ka), the D.C.R. dated 12.11.2006 (Exhibit-Kha), and eight rent receipts (Exhibit-Ga series) showing continuous rent payments from 2007 to 2015. None of these documents was challenged in cross-examination. Their testimony was specific, consistent, and fully supported by revenue records.

He submits that while the plaintiffs failed to produce a single revenue record, the defendants' possession flows from valid government settlement duly recorded in mutation and revenue receipts. In a suit for permanent injunction, possession is the determinative factor, and mere proof of title cannot suffice. The appellate court, therefore, correctly held that the plaintiffs failed to discharge their burden and rightly reversed the trial court's decree. Accordingly, he concludes, the judgment of the appellate court suffers from no legal infirmity and calls for no interference by this Court. The Rule is liable to be discharged.

Upon hearing the learned Advocates for the parties and upon perusal of the record and materials before this Court, it appears that the learned appellate court rightly reversed the judgment of the trial court after a proper appreciation of both oral and documentary evidence.

It is well-established that a suit for permanent injunction requires the plaintiff to establish lawful and exclusive possession of the suit land at the date of filing the suit. Proof of title, while relevant, is not determinative; the plaintiff must demonstrate actual possession. Mere ownership or title, without demonstrable possession, cannot justify the grant of injunctive relief.

In the present case, the plaintiff relies on a decree of title over 0.33 acres out of Plot Nos. 437 and 444. Such decree alone is insufficient to sustain a claim for permanent injunction. The oral evidence of PWs 1, 2, and 3 was vague, inconsistent, and lacked specificity regarding the boundaries of the claimed land. No sketch map, boundary description, or official revenue records (mutation khatian, rent receipts) were produced to demonstrate actual possession.

On the other hand, the Opposite parties Nos. 2 and 3 have established lawful, continuous, and peaceful possession, validated by official records:

- 1) Settlement documents (Exhibit-Ka) showing lawful acquisition from the Government;
- 2) Duplicate Carbon Receipt (Exhibit-Kha) evidencing payment of rent in 2006;
- 3) Eight rent receipts (Exhibit-Ga series) proving continuous rent payment from 2007 to 2015;
- 4) Mutation khatian confirming their names in the record-of-rights, which remained valid after the plaintiff's Section 150 application was rejected.



Such possession, supported by government recognition and continuous control, outweighs the plaintiff's unsubstantiated claim.

The decree obtained in Civil Suit No. 451 of 1984 relates only to title and was obtained against different parties. It cannot override the lawful possession of defendants who were not parties to the earlier suit. Courts recognize that possession and control, particularly when validated by authorities, take precedence over title in favor of non-parties. In a suit for permanent injunction, the burden lies on the plaintiff to establish possession. Failure to produce documentary or credible oral evidence of possession weakens the plaintiff's claim, even if title is proved. In this case, the plaintiff failed to rebut the defendants' documented possession.

The possession of opposite parties, as validated by settlement, rent payment, and mutation records, is lawful and continuous. Courts give significant weight to possession recognized and recorded by official authorities, and the plaintiff cannot override it merely on the basis of title.

It is evident that the trial court erred in granting the decree in favor of the plaintiff solely based on title, without requiring proof of possession or examining the weight of the defendants' evidence. The appellate court correctly applied the legal standard, evaluated the evidence comprehensively, and rendered a reasoned decision reversing the trial court's decree. No jurisdictional error or illegality is apparent, and the appellate court's findings of fact are neither perverse nor unreasonable.

Accordingly, the revisional application is devoid of merit, and the Rule fails.

**The Rule is discharged without any order as to costs.**

The impugned judgment and decree dated 26.07.2022 (decree signed on 27.07.2022) passed by the learned Additional District Judge, Narail, in Title Appeal No. 41 of 2015 is hereby upheld. The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let the lower court records be sent down along with a copy of this judgment forthwith.

**(Justice Md. Toufiq Inam)**

Ashraf /ABO.