

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

**Present:**

**Mr. Justice S.M. Kuddus Zaman**

**CIVIL REVISION NO. 5572 OF 2022**

Khusnehar Begum and others.

... *Petitioners.*

-Versus-

Md. Nurul Islam Master and another.

... *Opposite Parties.*

Mr. Md. Shumon Sikdar, Advocate.

... For the petitioners.

Mr. Zulfiqur Ahmed, Advocate with

Mrs. Sayeda Saukat Ara, Advocate

... For the opposite parties.

**Heard on:** 01.09.2024

**Judgment on:** 21.10.2024

In an application under section 115(1) of Code of Civil Procedure, the instant Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned judgment and decree dated 31.10.2022 (decree signed on 01.11.2022) passed by the learned District Judge and Sessions Judge, Jono Nirapotta Bignokari Oporadh Tribunal and Special District Judge, Cumilla in Title Appeal No. 28 of 2020 (112/2016) setting aside the judgment and decree dated 31.03.20216 (decree signed on 06.04.2016) passed by the learned Assistant Judge, Burichang, Cumilla in Title Suit No. 107 of 2013 with a direction (remand) to dispose of the suit giving opportunity to

adduce evidence shall not set-aside and/or pass other or further order or orders passed as to this court may seem fit and proper.

Facts in short, are that petitioners as plaintiffs instituted above suit for declaration of title and recovery of khas possession for 32 decimal of land after evicting the dwelling house of the defendants. It was alleged that 54 decimal land including disputed 32 decimal belonged to Abdul Hamid who exchanged the same orally with the father of the plaintiff namely Akamat Ali in 1952 and delivered possession. Above Akamat Ali died leaving two sons the plaintiffs who were in peaceful possession in the same. Taking advantage of long absence of plaintiff No. 1 in the locality defendants got their names recorded fraudulently in the B.S. Khatian and dispossessed the plaintiffs from the same by constructing a half pucca dwelling house on 02.11.2013.

Defendant Nos. 1 and 2 contested the suit by filing a joint written statement contending, *inter alia*, that the above land originally belonged to Abdul Hamid who exchanged the same orally with the father of the plaintiffs namely Akamat Ali and his two brothers namely Dula Miah and Tota Miah & defendants are heirs of above Dula Miah and Tota Miah. On amicable partition the defendants got disputed 32 decimals of land and they are in the possession of the same by constructing dwelling house for a long time and above land was correctly recorded in their name in the relevant BS khatian. The

plaintiffs did not have any possession in the above land nor they have ever dispossessed the plaintiffs from the same.

At trial, the plaintiffs and the defendants examined 3 (three) witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit Nos. 1-5 and those of the defendants were marked as Exhibit No.

On conclusion of trial, the learned Assistant Judge, Cumilla considering the material facts and evidence on record decreed the suit vide judgment and decree dated 31.03.20216 and against above judgment and decree defendant Nos. 1-2 preferred an appeal being Title Appeal No. 112 of 2016 and subsequently renumbered as Title Appeal No. 28 of 2020 to the learned District Judge, Cumilla which was heard by the learned Special District Judge, Cumilla who allowed the appeal, set aside the judgment and decree of the trial court and remanded the suit to the trial court for re-trial.

Being dissatisfied by and aggrieved with the judgment and decree passed by the court of appeal below, the respondents as petitioners preferred this revisional application under section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Md. Shumon Sikdar, the learned Advocate appearing for the petitioners submits that undisputedly the disputed land belonged to Abdul Hamid and he transferred the same by oral exchange and the plaintiffs are heirs of Akamat Ali and the defendants are the heirs of

uterine brother of above Akamat Ali namely Dula Miah. Due to absence of defendant No. 1 in the locality above defendants fraudulently recorded the land in their names and forcibly dispossessed them from land and constructed building house. The plaintiffs have succeeded to prove above claims by adducing consistent and mutually corroborative evidence of three competent witnesses. On consideration of above evidence on record the learned Judge of the trial court rightly decreed the suit but the learned Judge of the court of appeal below miserably failed to appreciate the facts and laws involved in this case and most illegally allowed the appeal set aside the judgment and order of the trial court and remanded the suit for re-trial which is not tenable in the eye of law.

On the other hand, Mr. Zulfiqur Ahmed along with Mrs. Sayeda Saukat Ara, the learned Advocates for the opposite parties submits that admittedly the disputed land is in possession of the defendant Nos. 1 and 2 and the same was recorded in their names in the relevant BS Khatian. The plaintiff could not prove their previous possession and alleged subsequent dispossession from above land by legal evidence nor the plaintiffs have succeeded to prove their valid title in above land but the learned Judge of the trial most illegally decreed the suit. The learned Judge of the court of appeal below should have on consideration of the evidence on record allowed the appeal and dismissed the suit but the learned Judge most illegally remanded the suit for re-trial which will not tenable in law.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all the materials on record.

It is admitted that 54 decimal land including disputed 32 decimal land belonged to Abdul Hamid who transferred the same by oral exchange and the plaintiffs are heirs of Akamat Ali and defendant Nos. 1 and 2 are heirs of Dula Miah and Tota Miah who were uterine brothers of Akamat Ali. It is also admitted that disputed 32 decimal land has been recorded in the name of defendants in the relevant B.S. Khatian and they are in possession in above land by constructing their dwelling house.

It has been alleged by the plaintiffs that above mentioned oral exchange of 54 decimals land by Abdul Hamid was solely with their father Akamat Ali and defendants' claim is that above exchange was between Abdul Hamid and Akamat Ali and his two uterine brothers namely Dula Miah and Tota Miah.

It is well settled that in a civil suit the initial onus to prove the claim as set out in the plaint lies with the plaintiffs and since the disputed land admittedly stands in the name of defendants in the relevant B.S. khatian and they are in possession the onus to prove that above oral exchange by Abdul Hamid was exclusively with Akamat Ali rests with the plaintiffs. But the plaintiff could not substantiate above claim even by mentioning the date, time and the place or the person in whose presence above oral exchange took place nor any

competent witness was examined in support of above claim. In fact not an *iota* of evidence was adduced by the plaintiffs to prove the claim that Abdul Hamid exchanged above 54 decimals land exclusively with their father Akamat Ali.

It is well settled that besides proving lawful title a plaintiff must prove his previous possession and subsequent dispossession from the disputed land in a suit for declaration of title and recovery of khas possession.

As far as previous possession is concerned the plaintiff did not make any mention in the plaint as to the mood of their possession in the disputed land. Plaintiff himself gave evidence as P.W. 1 and stated that he was not present at the time of alleged dispossession by the defendants. His wife was present and she tried to resist above forcibly dispossession. But the wife of the plaintiff was not examined as a witness in this case. P.W. 2 Anamul Hoque, son of P.W. 1 has claimed that he was present at the time of above dispossession but he was not endorsed by his father that he was present at the time of alleged dispossession. Similarly, P.W. 3 Abdul Latif Rasel who also gave evidence in support of alleged dispossession was not endorsed by P.W. 1 that at the time of alleged dispossession P.W. 3 Abdul Latif was present.

On consideration of above facts and circumstances of this case and evidence on record it is crystal clear that the plaintiffs have

miserably failed to prove their alleged previous possession and subsequent dispossession by the defendants by legal evidence.

On consideration of above evidence on record, the learned Assistant Judge should have dismissed the suit but the learned Judge failed to appreciate the legal meaning of the evidence on record properly and thus most illegally decreed the suit. Similarly the learned Judge of the court of appeal below instead of allowing appeal and dismissing the suit by setting aside the unlawful judgment and decree of the trial court but most illegally remanded the suit for re-trial which is not tenable in law.

In view of the above facts and circumstances of case and evidence on record, I find substance in this revisional application and the rule issued deserves to be made absolute.

In the result, the rule is made absolute. The impugned judgment and decree passed in Title Appeal No. 28 of 2020 by the learned Judge of the court of Appeal below is hereby set aside and Title Suit No. 107 of 2013 is hereby dismissed on contest without cost.

The order of stay granted earlier by this court is hereby vacated.

Send down the Lower Courts' Records, at once.

*Md. Masudur Rahman/B.O*