

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4652 OF 2017

In the matter of:

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

And

Md. Insar Ali Pramanik @ Eya Sin Ali and others
... Petitioners

-Versus-

1(a). Most. Shamsun Nahar being dead her heirs- Md. Shafiqul Alam and others

.... Opposite parties

Mr. Mansur Habib, Senior Advocate with
Ms. Shimul Sultana, Advocate

.... For the petitioners.

Mr. A. K. Rashedul Huq, Advocate

.... For the opposite party

No.1(a)(i) - 1(a)(ii).

Heard on 16.02.2025.

Judgment on 17.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 08.02.2017 passed by the learned Additional District Judge, 3rd Court, Bogura in Other Class Appeal No.28 of 2014 dismissing the appeal and thereby affirming the judgment and decree dated 28.11.2013 passed by the learned Joint District Judge, 1st Court, Bogura in Other Class Suit No.79 of 2007 decreeing the suit 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 opposite parties as plaintiffs instituted above suit for declaration of title for 15 decimal land out of 59 decimal alleging that above 59 decimal land belonged to Shaha Mahmud who gave borga of the same for seven years to Kalim Sheikh by a registered deed of kabuliyat dated 31.01.1919 and C. S. Khatian No.964 was accordingly recorded. After expiry of seven years above land came to the possession of Shaha Mahmud and after his demise the same devolved upon his heirs namely Bhola Prang Thandi @ Sohi Bibi and above Bhola Prang died leaving one wife Afiron Nessa and four daughters defendant Nos.1-5 who transferred 34 decimal land by registered kabola deed dated 28.09.1963 to Abul Hossain who in his turn transferred the same to Moniruddin and Fatema Begum and by successive transfer the plaintiffs purchased 15 decimal land by registered kabola deed dated 13.08.1065. But above 59 decimal land including disputed 15 decimal was erroneously recorded in M. R. R Khatian No.1247 and on the basis of above erroneous record defendants claimed title in above land.

Defendant Nos.1-14 and 49-63 contested the suit by filing a joint written statement alleging that Shaha Mahmud was the owner and possessor of above land and he transferred above 59 decimal land to Karim Sheikh by registered Borga Kabuliyat dated 31.01.1919 and during C. S. survey above Shaha Mahmud recorded the name of Karim

Sheikh in above Khatian as Korfa tenant. Karim Sheikh was in lawful and continuous possession in above 59 decimal land and in his name M. R. R. Khatian No.1247 was rightly prepared. Defendants are in possession in above land as the successive heirs of Karim Sheikh. Plaintiffs do not have any title and possession in above land.

At trial plaintiffs examined four witnesses and defendants examined three. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of the defendants were marked as Exhibit No."Kha" to "Uma".

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

Being aggrieved by above judgment and decree of the trial Court defendants preferred Other Class Appeal No.28 of 2014 to the District Judge, Bogura which was heard by the learned Additional District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Mansur Habib, learned Advocate for the petitioners submits that the owner of disputed 59 decimal Shaha Mahmud initially handed over possession of above land to Karim Sheikh as a borgader pursuant to registered borga kabuliyat dated 31.01.1919 but subsequently at the

time of C. S. Survey above Shaha Mahmud himself recorded the name of Karim Sheikh as korfa tenant in C. S. Khatian No.964. Above Karim Sheikh continuously and peacefully possessed above land as a korfa tenant and after his demise his heirs above defendants are in possession in above land. Defendants have succeeded to prove their possession by consistent evidence of three witnesses. The defendants have produced rent receipts showing payment of rent for 44 decimal land by Feroza Begum and others in 2007 and 2009. On consideration of above oral and documentary evidence the learned Additional District Judge should have held that the defendants as successive heirs of Karim Sheikh are in peaceful possession of disputed 59 decimal land and the nature of possession of Karim Sheikh was changed from a mere borgader to korfa tenant and accordingly allowed the appeal and set aside the unlawful and flawed judgment and decree of the trial Court. But the learned Additional District Judge failed to appreciate above materials on record properly and most illegally dismissed the appeal and affirmed the erroneous judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. A. K. Rashedul Huq, learned Advocate for opposite party Nos.1(a)(i) and 1(a)(ii) submits that admittedly 59 decimal land belonged to Shaha Mahmud and he gave borga of above land to Karim Sheikh by a registered Borga Kabuliyat dated 31.01.1919 and on the basis of the same C. S. Khatian No.964 was recorded. Above Borga Kabuliyat was for seven years and there is nothing on record to

show that above tenure of the Kabuliyat was further extended. Nor there is any case of the defendant that at any time above Shah Mahmud gave Korfa Bondobosta of above land to Karim Sheikh. A certified copy of above Borga Kabuliyat dated 31.01.1919 was produced at trial which was marked as Exhibit No.3 which shows that above Borga Kabuliyat was for a period of seven years. In his evidence DW1 has admitted above position of above Borga Kabuliyat dated 31.01.1919 (Exhibit No.3). The defendants did not dispute the genealogy of deceased Shaha Mahmud as has been provided in the plaint. The grand daughters of Shaha Mahmud transferred above land by a registered kabola deed dated 28.09.1963 and from successive purchasers the plaintiff purchased 15 decimal possession and is in possession in the same by mutating his name and paying rent to the Government. At trial the plaintiff has produced the document of mutation of his name and the rent receipt as well as examined 4 competitive witnesses who gave consistent evidence as to possession of the plaintiffs in above land. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below concurrently held that the plaintiffs have succeeded to prove their lawful title and possession in the disputed land by oral and documentary evidence and the defendant could not prove their possession in the same and above concurrent findings of the Courts below being based on evidence on record this Court cannot in its revisional jurisdiction interfere with the same.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that 59 decimal land including disputed 15 decimal originally belonged to Shaha Mahmud who gave Borga of above land to Karim Sheikh by a registered deed of Borga dated 31.01.1919 and above 59 decimal land was recorded in M.R.R. Khatian No.1247 in the name of Karim Sheikh.

Defendants are successive heirs of above Karim Sheikh and plaintiff claims to have purchased 15 decimal land from the successive purchasers who purchased above land from heirs of Shaha Mahmud. The plaintiffs or the defendants did not dispute the genology of Shah Mahmud as has been provided in the plaint or the genology of Karim Sheikh as has been mentioned in the written statement.

While giving evidence as PW1 plaintiff reiterated the claims as stated in the plaint and produced a certified copy of registered Borga Kabuliyat dated 31.01.1919 which was marked as Exhibit No.3. Above document shows that Shaha Mahmud accepted above registered Borga Kabuliyat executed by Karim Sheikh for a period of seven years from 1326 B.S. In the written statement defendants have stated at Paragraph No.10 that Shaha Mahmud accepted registered Borga Kabuliyat dated 31.01.1919 from Karim Sheikh and delivered possession of above 59 decimal land.

In his evidence as DW1 the husband of defendant No.2 stated that Karim Sheikh executed a 7 year term registered Borga Kabuliyat on 31.01.1919 to Shaha Mahmud and transferred possession of 59 decimal land but at the time of C. S. Survey above Shaha Mahmud himself recorded above 59 decimal land in C. S. Khatian No.964 in the name of Karim Shaikh as korfa tenant. Above witness has produced C. S. Khatian No.964 which was marked as Exhibit No.4. Above khatian shows that the name of the Karim Sheikh was recorded as Korfa tenant but in the comment column mention was made of registered kabuliyat dated 31.01.1919 and Korfa started from 1326 B.S.

As mentioned above the registered Kabuliyat dated 31.01.1919 is a Borga Kabuliyat for seven years which started from 1326 B.S. If Shaha Mahmud would have recorded above C. S. Khatian in the name of Karim Sheikh as a Korfa tenant then why mention was made about the registered Borga Kabuliyat dated 31.01.2019 and Korfa would start from 1326 B.S. which was the date of starting of the borga.

Defendants admit that registered deed of Kabuliyat dated 31.01.1919 (Exhibit No.3) was a deed of borga for seven years and there is no case of the defendants that at any time after above Kabuliyat above Shaha Mahmud gave Korfa Bondobosta of above 59 decimal land to Karim Sheikh nor there is any evidence on record to show that the borga possession of Karim Sheikh in 59 decimal land continued after expiry of seven years.

On consideration of above facts and circumstances of the case and evidence on record I am unable to find any illegality in the concurrent findings of the Courts below that after expiry of seven years of Borga Kabuliyat dated 31.01.1919 disputed 59 decimal land returned to Shaha Mahmud which was subsequently inherited by his heirs and the plaintiff has succeeded to prove his possession in disputed 15 decimal land and the defendant could not prove their possession in above land. Above concurrent findings of facts of the Courts below being based on evidence on record this Court cannot interfere with above concurrent findings of facts in its revisional jurisdiction.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Additional District Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is vacated.

However, there will be no order as to costs.

Send down the lower Court's records immediately.