Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 5275 of 2022
Mst. Amirjan
.....petitioner
-Versus-
Md. Shukur Ali Moral and others
.....opposite parties

Mr. Md. Faruque Ahammed, Senior Advocate
with
Mr. Md. Omar Faruk and
Mr. Kawsar Ahmed, Advocates
.....for the petitioner

Mr. Md. Shamim Darji and
Mr. Mohammed Mozibur Rahman, Advocates
.....for opposite parties

Heard on: 13.05.2026, 24.06.2026, 25.06.2026, 28.06.2026, 09.07.2026 and 15.07.2026

Judgment on: 22.07.2026

In the instant revision Rule was issued calling upon the opposite party 1 to show cause as to why the judgment and decree dated 28.08.2022 passed by the Joint District Judge, 2nd Court, Gazipur in Title Appeal Number 15 of 2021 reversing the judgment and decree dated 26.11.2020 passed by the Senior Assistant Judge, 5th Court, Gazipur in Title Suit Number 146 of 2013 dismissing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party Number 1 as plaintiff filed Title Suit Number 146 of 2013 in the Court of the Assistant Judge, 5th Court, Gazipur on 10.10.2013 praying for declaration of title. During the pendency of the suit the plaint was amended by order dated 29.07.2015 incorporating a further prayer for a declaration that the documents described in the schedules to the plaint are not binding upon the plaintiff. Subsequently by another amendment allowed on 24.03.2016 the plaintiff also incorporated a prayer for recovery of possession.

The plaintiff's case in brief is that C.S. Khatian Number 67 stood in the name of his predecessor-in-interest Amir Morol. Amir Morol died leaving behind three sons namely Jomir Morol, Ismail Morol and Karim Morol and one daughter Shohor Banu as his legal heirs. Thereafter S.A. Khatian Number 132 and R.S. Khatian Number 156 were correctly prepared and finally published in the name of Karim Morol. While remaining in possession of the land Karim Morol by registered Deed Number 8284 dated 15.11.1977 sold in favour of his two sons Sukur Morol and Motaleb Morol a total area of

$55\frac{1}{2}$ decimals of land including $20\frac{1}{4}$ decimals comprised in C.S. and S.A. Plot Number 889 which is the suit plot.

It is further the plaintiff's case that thereafter Motaleb Morol by registered Deed of Gift Number 6126 dated 21.07.2013 transferred his share in the suit plot in favour of Sukur Ali. Pursuant thereto Sukur Ali got his name mutated in the revenue records and paid rent regularly and remained in peaceful possession of the suit property. Although defendant 3 being the brother of Sukur Ali had earlier obtained mutation in his own name the plaintiff succeeded in getting the said mutation cancelled by preferring Miscellaneous Appeal Number 12 of 2014. The plaintiff further alleged that on 08.08.2013 defendant 1 attempted to erect fencing around the suit land and to plant saplings thereon and disclosed to the plaintiff that he had acquired ownership over the suit property from defendants 3 and 4 by virtue of a registered power of attorney and an agreement for sale. It has further been alleged that during the pendency of the suit on Friday 25.09.2015 at about 10.00 a.m. defendant 1 along with 10-12 associates unlawfully entered into the suit land and dispossessed the plaintiff therefrom. Hence the suit.

Defendants 1 and 2 contested the suit by filing a written statement denying the material statements made in the plaint. Their case in substance is that defendants 3 and 4 became owners of 82 decimals of the suit land by inheritance, purchase and mutation in accordance with an amicable family arrangement. While remaining in possession thereof they executed a registered agreement for sale being Deed Number 1221 dated 08.02.2012 in respect of $20\frac{1}{4}$ decimals of the suit land in favour of Asab Uddin Bepari. According to the defendants Asab Uddin Bepari acted merely as a benamdar on behalf of his parents-in-law defendants 1 and 2. Thereafter defendant 3 by registered Power of Attorney Deed 5592 dated 14.06.2012 transferred possession and authority in respect of the suit property in favour of defendant 1. Defendant 1 thereafter constructed a poultry farm and residential structures upon the suit land and has been possessing the same ever since. It is further their case that by virtue of registered agreement for sale Number 5632 dated 14.06.2012 defendant 1 delivered possession of the suit property to his wife defendant 2 who subsequently obtained mutation in her own name. Thereafter during the pendency of the suit defendant 1

executed registered Sale Deed Number 7801 dated 19.10.2013 in favour of defendant 2 and delivered possession of the property to her. Accordingly the defendants prayed for dismissal of the suit.

On the basis of the pleadings of the parties the trial Court framed as many as seven issues for determination. In support of their respective cases the plaintiff examined three witnesses while the defendants examined two witnesses. Both parties also adduced documentary evidence.

Upon hearing the parties and considering the evidence on record the trial Court by judgment and decree dated 26.11.2020 dismissed the suit principally on the findings that since no partition was ever effected amongst the heirs of Karim Morol the plaintiff's claim of exclusive ownership over the suit plot could not be accepted and the plaintiff's title could not be determined in the absence of partition and ascertainment of his specific share and the plaintiff failed to prove his possession followed by dispossession in the manner pleaded.

Being aggrieved thereby the plaintiff preferred Title Appeal Number 15 of 2021 before the District Judge, Gazipur. The appeal was subsequently transferred to the Court of the

Joint District Judge, Second Court, Gazipur. Upon hearing the parties the appellate Court by judgment and decree dated 28.08.2022 allowed the appeal and reversed the judgment and decree of the trial Court and decreed the suit.

Being dissatisfied with the judgment and decree of the appellate Court defendant 2 as petitioner preferred the instant Civil Revision and obtained the present Rule on 06.12.2022.

Learned Senior Advocate Mr. Md. Faruque Ahammed along with Mr. Md. Omar Faruk and Mr. Kawsar Ahmed appearing on behalf of the defendant-petitioner submits that the appellate Court committed error of law resulting in failure of justice in decreeing the suit inasmuch as there had been no lawful partition amongst the heirs of Amir Morol and therefore the plaintiff could not legally acquire any exclusive title without prior ascertainment of his specific share in accordance with law. He contends that the trial Court correctly appreciated this aspect of the matter but the appellate Court failed to do so. He further submits that the impugned judgment is not a proper judgment of reversal within the meaning of Order 41 Rule 31 of the Code of Civil Procedure and as such is liable to be set aside.

Learned Advocate further submits that until the plaintiff's specific share is determined through partition by metes and bounds no suit claiming exclusive title against the co-sharers is maintainable. Referring to Exhibit-4 he submits that the said document does not contain any boundary description and therefore the identity of the suit land remains uncertain making the suit liable to fail.

He further submits that the mutation obtained by defendant 3 was earlier in point of time than that obtained by the plaintiff and the appellate Court failed to consider the specific finding of the trial Court that by reason of the subsequent order passed by the Additional Deputy Commissioner (Revenue) as evidenced by Exhibit-7 whereby the suit land was consolidated into the original holding the plaintiff ceased to be the owner in possession of the suit land. According to him such failure amounts to a clear misappreciation of the evidence on record.

The learned Advocate next submits that the trial Court upon a proper consideration of the oral and documentary evidence arrived at a definite finding that the plaintiff failed to prove possession followed by dispossession. The appellate Court however reversed the said finding merely on conjecture

and surmise without any legal basis. He lastly submits that it is settled principle of law that plaintiff must succeed on the strength of his own case and cannot derive any advantage from the weakness of the defence. Since the appellate Court failed to apply the said settled principle the Rule having considerable merit should be made absolute.

On the other hand learned Advocate Mr. Md. Shamim Darji along with Mr. Mohammed Mozibur Rahman appearing on behalf of the plaintiff-opposite party submits that the question of any amicable partition has no manner of application in the facts and circumstances of the present case since Karim Morol already transferred the suit property in favour of the plaintiff's predecessor by registered Deed dated 15.11.1977 (Exhibit-4) which has never been challenged by any competent proceeding.

He further submits that title flows from a registered instrument of transfer and not from an order of mutation passed by the revenue authority. Mutation neither creates nor extinguishes title. According to him the appellate Court upon proper appreciation of both the oral and documentary evidence and upon correct application of the relevant principles of law

rightly decreed the suit and such findings are not liable to be interfered with in revisional jurisdiction.

Referring to Exhibits-8, 9 and 10 the learned Advocate submits that none of those documents is sufficient to dislodge the legal presumption attached to Exhibits-4 and 5 and the appellate Court rightly found title in favour of the plaintiff. He also draws attention to the specific boundary description contained in the schedule to the plaint and submits that the plaintiff successfully proved both his possession and subsequent dispossession in accordance with the pleadings and evidence on record. Accordingly there existed no legal impediment in granting the decree sought for by the plaintiff.

He finally submits that the trial Court dismissed the suit upon erroneous appreciation of the evidence whereas the appellate Court strictly complying with the requirements of Order 41 Rule 31 of the Code of Civil Procedure independently considered and reversed each of the findings recorded by the trial Court. Since those findings are based upon proper appreciation of the evidence and law no interference is called for by this Court in exercise of its revisional jurisdiction. He accordingly prays for discharge of the Rule.

I have heard the learned Advocates appearing for the respective parties and perused the materials on record and gone through the judgments and decrees passed by both the Courts below.

The plaintiff has specifically pleaded in paragraph 2 of the plaint that upon the death of Amir Morol he left behind his three sons namely Jomir Morol, Ismail Morol and Karim Morol and one daughter namely Shohor Banu as his legal heirs. Consequently each of them inherited and became entitled to his or her respective share in the property of the deceased by succession.

It appears from R.S. Khatian Number 156 marked as Exhibit-2(Kha) that R.S. Plot Number 605 comprises a total area of 54 decimals of land. The said record further reveals that Karim Morol was recorded as owner of a 5 annas 19 gandas 2 karas share which is equivalent to approximately 20.25 decimals of land. It further appears that Karim Morol by registered Kabala Deed Number 8284 dated 15.11.1977 marked as Exhibit-4 sold his entire 20.25 decimals of land comprised in the suit plot to his two sons namely the plaintiff Sukur Morol and Motaleb Morol and simultaneously delivered possession.

In support of the said transaction the plaintiff examined his son as P.W. 1 under the registered power of attorney marked as Exhibit-1. He produced the original deed before the Court. Since Exhibit-4 is a document more than thirty years old and has been produced from proper custody a statutory presumption as to its due execution and attestation arises under section 90 of the Evidence Act. Furthermore P.W. 3 aged about 77 years is one of the attesting witnesses to Exhibit-4. In compliance with section 68 of the Evidence Act he appeared before the Court and proved his signature which has been marked as Exhibit-11. More importantly the defendants have nowhere in their written statement or in the course of the trial raised any substantial challenge to the execution or genuineness of Exhibit-4 rather the same is admitted in Exhibit-Ja.

Once Karim Morol himself transferred the suit land to his sons by the registered sale deed dated 15.11.1977 any subsequent plea advanced by the defendants that the said land still required partition amongst the heirs is totally misconceived devoid of legal basis and cannot be accepted. The other purchaser under Exhibit-4 namely Motaleb Morol subsequently transferred his share to his brother the plaintiff

by registered Deed of Gift dated 21.07.2013 marked as Exhibit-5. Thus by virtue of Exhibits-4 and 5 the plaintiff lawfully acquired title to and possession over the entire suit land.

The plaintiff has further pleaded in paragraph 9 of the plaint that during the pendency of the suit on Friday the 25th day of September 2015 at about 10.00 a.m. the defendants entered upon the suit land and cut down the standing trees and erected two tin-shed houses thereon and forcibly dispossessed the plaintiff. In support of his possession the plaintiff produced rent receipts which have been marked as Exhibit-6 series.

P.W. 1 deposed that the defendants are presently in possession of the suit land and they dispossessed the plaintiff about three to three and a half years before his deposition whereas prior thereto the plaintiff had been possessing the suit property. P.W. 2 stated in cross-examination that Sukur Ali had been dispossessed about three to four years earlier and until such dispossession the defendants had never possessed the suit property which remained in the possession of the plaintiff. P.W.3 also deposed that the plaintiff remained in possession of the suit land until he was forcibly dispossessed

during the pendency of the suit about four years earlier and thereafter the defendants erected a tin-shed house thereon by force. During cross-examination he further stated that the defendants forcibly occupied the plaintiff's land. The defendants extensively cross-examined all three witnesses but failed to bring out any material contradiction or inconsistency in their evidence.

On the other hand D.W. 1 admitted in cross-examination that the very property which defendant 3 purportedly transferred to him had previously been sold by Karim Morol to the plaintiff Sukur Ali and Motaleb Morol in the year 1977. He also admitted that before his alleged purchase he had never visited the suit land. D.W. 1 further admitted that neither the registered power of attorney executed in his favour nor the document under which defendant 2 claims title contains any boundary description of the land. Consequently neither the registered power of attorney marked as Exhibit-8 nor the registered agreement for sale executed on the same date in favour of defendant 2 marked as Exhibit-9 nor the registered sale deed marked as Exhibit-10 contains any specification of the boundaries of the suit plot.

Exhibit-Ja is a registered deed of disclaimer dated 05.11.2014 executed by Motaleb Morol in favour of defendant 2. A plain reading of the said document reveals a clear admission by Motaleb Morol that he acquired his share in the suit property from his father by purchase under Exhibit-4. Thus Exhibit-Ja itself substantially supports the plaintiff's case and clearly shows that the defendants have made an unjustified attempt to misappropriate the plaintiff's lawfully acquired title and possession over the suit property.

D.W. 1 further admitted in cross-examination that Sukur Morol and his property are situated to the north of his poultry farm in R.S. Plot Number 608 and the suit land measuring about 20.25 decimals lies in R.S. Plot Number 605 to the south of his house and poultry farm. This admission unmistakably establishes that neither the defendants' poultry farm nor their dwelling house stands upon the suit plot.

D.W. 2 stated in his examination-in-chief that he acquired the land of R.S. Plot Number 605 by way of gift and thereafter transferred the same to the defendants. However in cross-examination he abandoned that narration and stated that he delivered possession of 21 decimals of land in R.S. Plot 605 to the defendants while delivering another 21 decimals

from R.S. Plot Number 620 to the plaintiff. He did not produce any deed of gift before the Court. His evidence therefore clearly establishes that he never acquired any title or interest in R.S. Plot Number 605. Consequently no question arises of his transferring any valid title in the said land to defendants 1 and 2.

Likewise D.W. 3 stated in his examination-in-chief that the defendants' dwelling house and poultry farm stand on R.S. Plot Number 605. But in cross-examination he admitted that the poultry farm is actually situated in R.S. Plot Number 608. This material contradiction seriously impairs the credibility of his evidence.

It has also been argued on behalf of the defendants that the suit land has not been properly identified. The schedule to the plaint contains a complete description of the suit land together with its boundaries. The property is therefore sufficiently identified and specifically described. Consequently the contention advanced by the defendants as well as the finding recorded by the trial Court on this aspect cannot be sustained in law.

Upon an overall assessment of the oral and documentary evidence I find that the plaintiff had been in lawful possession

of the suit land from before and during the pendency of the suit he was unlawfully dispossessed therefrom by the defendants. I further find that Exhibits-8, 9 and 10 neither create any lawful interest in favour of the defendants nor are they binding upon the plaintiff.

The principal issue in controversy in the present case centered around Exhibit-4. The trial Court unfortunately proceeded upon a fundamentally erroneous understanding of the legal effect of the said document at the very outset. Having fallen into that error the trial Court remained influenced by the same throughout its judgment and consequently arrived at conclusions which cannot be sustained in law. The appellate Court on the other hand correctly appreciated the evidence and properly applied the relevant principles of law and rightly reversed the erroneous findings of the trial Court.

In the result I find no merit in the Rule.

Accordingly the Rule is discharged.

The judgment and decree dated 28.08.2022 passed by the Joint District Judge, 2nd Court, Gazipur in Title Appeal No. 15 of 2021 are hereby affirmed.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher-B.O.