

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3684 OF 2023

In the matter of:

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

And

Aleya Begum and others

... Petitioners

-Versus-

Md. Mohsin and others

.... Opposite parties

Mr. Md. Humayun Bashir with

Mr. Swapan Kumar Mitra, Advocates

....For the petitioners.

Mr. Mohiuddin, Advocate

.... For the opposite party Nos.1-3.

Heard on 18.02.2025 and Judgment on 19.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 12.06.2023 passed by the learned Senior District Judge, Bhola in Title Appeal No.72 of 2022 disallowing the appeal and affirming the judgment and decree 29.05.2022 passed by the learned Senior Assistant Judge, Bhola Sadar, Bhola in Title Suit No.70 of 2017 dismissing 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 petitioners as plaintiffs instituted above suit for permanent injunction for 95 decimal land alleging that Nurul Islam

acquired 1.59 acres land including disputed 95 decimal from the Government vide Settlement Case No.3 Bho/1969-70 and transferred 60 decimal land to plaintiff No.1, 30 decimal land to plaintiff No.2 and 5 decimal land to plaintiff No.3 by three separate registered kobala deed being Nos.1837, 1838 and 1839 on 24.03.2016 and plaintiffs are possessing above land by cultivation and defendants threatened the plaintiffs with dispossession on 10.05.2017.

Defendant Nos.1-3 contested above suit by filing a joint written statement alleging that 7.34 acres land including above 95 decimals belonged to Syed Ahmed and the same was rightly recorded in S.A. Khatian No.60. Above Syed Ahmed died leaving defendant Nos.1-3 as heirs and they are in possession in above land by creating Namjari Khatian No.60 of 2001. Above defendants have transferred some land to other persons by registered kobala deed. Above property has been rightly recorded in the name of the defendants in B.S. Khatian. About 3 decimal land out of above property was acquired by the Government and defendants received compensation money. Above property did not belong to the Government and Nurul Islam did not get any settlement of above land and all documents relating to settlement of Nurul Islam is forged and plaintiffs did not get any title or possession by purchase from Nurul Islam.

At trial plaintiffs examined two witnesses and defendants examined two. Documents of the plaintiffs were marked as Exhibit

Nos.1-13 and those of the defendants were marked as Exhibit Nos. "Ka" - "Neo".

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

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Title Appeal No.72 of 2022 to the Senior District Judge, Bhola 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 revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Humayun Bashir, learned Advocate for the petitioners submits that the plaintiffs predecessor Nurul Islam acquired above land from the Government by a registered kabuliyat by settlement Case No.3 Bho/1969-70 and he was in possession by cultivation and above Nurul Islam transferred 95 decimal land to the plaintiffs by three separate kobala deeds. Plaintiffs are in possession in above 95 decimal land by cultivation and above land was recorded in their names in the B.S. Khatian. But on the basis of an Objection Case filed by the defendant Nos.1-3 above record was finally published in the name of the defendants and challenging the legality and propriety of above B.S. Khatian. Plaintiffs have filed Land Survey Tribunal Case No.97 of 2021

which is pending for trial. Plaintiffs have mutated their names for above land by Namjari Khatian No.556 and paid rent to the Government. PW2 Md. Mosharaf has given consistent and corroborating evidence in support of possession of the plaintiffs in above land. On consideration of above facts and circumstances of the case and evidence on record the learned District Judge should have allowed the appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit. But the learned District Judge utterly failed to appreciate above materials on record and relevant laws properly and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial which is not tenable in law.

On the other hand Mr. Md. Humayun Bashar, learned Advocate for the petitioners submits that admittedly 7.34 acres including disputed 95 decimal belonged to Syed Ahmed and the same was rightly recorded in S. A. Khatian No.60 and defendant Nos.1-3 are heirs of above Syed Ahmed. There is no averment in the plaint as to how the private property of Syed Ahmed became the property of the Government to give settlement of the same to Nurul Islam. Above Nurul Islam did not come to give evidence in Court in support of his acquisition of title in 1.89 acres land by settlement from the Government. It is admitted that 3 decimal land of above khatian was acquired by the Government by a Land Acquisition Case and compensation was paid to the defendants. It is also admitted that in the B.S. Khatian above property has been recorded in the name of

defendant Nos.1-3 and against above record plaintiffs have filed a suit in the Land Survey Tribunal which is pending for trial. The plaintiffs did not provide any detailed description as to the mode of possession of three separate plaintiffs who acquired separate quantity of land by separate kobala deeds from Nurul Islam. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below rightly and concurrently held that the plaintiffs failed to prove their title and possession in above land and accordingly dismissed the suit and appeal respectively which calls for no interference.

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

It is admitted that 7.34 acres land including disputed 95 decimal appertains to S.A. Khatian No.60 was recorded in the name of Syed Ahmed and defendant No.1 is heir of above Syed Ahmed and in the B.S. khatian above disputed land has been recorded in the name of defendant No.3 and challenging the legality and propriety of above B.S. Khatian plaintiffs have filed Case No.97 of 2021 to the Land Survey Tribunal which is pending for trial. It is also admitted that 3 decimal land out of above Khatian was acquired by the Government

and the compensation paid by the Government was received by defendant No.1.

Nurul Islam claims to have acquired disputed 95 decimal land from the Government by settlement vide Settlement Case No.03 Bho/1969-70. But there is nothing on record to show that at any point of time Government acquired or owned the land of S.A. Khatian No.60 which was a private property. Above Nurul Islam who allegedly acquired 1.59 acres land by settlement from Government and transferred only 95 decimal to the plaintiffs did not give evidence in this suit as a defendant witness to protect his above settlement. Since the plaintiffs could not show that disputed 95 decimal land was the Government property their claim of acquisition the same from the Government by a Settlement case does not have any leg to stand.

As far as possession of above land is concerned as mentioned above latest record of right of above 95 decimal was prepared in the name of defendant No.3 not in the name of the plaintiffs. Three plaintiffs acquired 95 decimal land by three registered kobala deeds from above Nurul Islam at varying quantity. Plaintiff No.1 purchased 60 decimal land and plaintiff No.3 purchased only 5 decimal and plaintiff No.2 purchased 30 decimal land from Nurul Islam. It is not understandable as to how and why above three plaintiffs would

possess their land jointly. While giving evidence as PW1 Plaintiff No.2 has admitted that in their three kobala deeds there were 12 boundaries of the land transferred by above kobala deeds. But in this suit they have provided 4 boundaries of the disputed land. The plaintiffs did not describe in the plaint the mode of possession of above land by three plaintiffs nor there is any evidence on record as to how above three plaintiffs are cultivating jointly and distributing usufructs of above land.

On consideration of above facts and circumstances of the case and evidence on record I hold the concurrent findings of the Courts below that the plaintiffs succeeded to prove their prima facie title and exclusive possession in above disputed land appears to be based on evidence on record and in the absence of an allegation of non consideration or misreading of any legal evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and decree of the Court of Appeal below nor I find any substances in this 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 status-quo granted at the time of issuance of the Rule is vacated.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER