

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 5879 of 2022

Md. Azibor Rahman and others

.....petitioners

-Versus-

Most. Hena Rahman and others

.....opposite parties

Mr. Md. Abdul Alim Mia (Jewel) with

Ms. Momtaj Parvin, Advocates

.....for the petitioners

Mr. Md. Mostofa Kaiyum, Advocate

.....for opposite parties

**Heard on: 29.04.2026, 12.07.2026 and
28.07.2026**

Judgment on: 06.08.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 20.07.2022 passed by the learned Joint District Judge, 2nd Court, Sirajgonj in Title Appeal Number 85 of 2018 dismissing the appeal thereby affirming the judgment and decree dated 28.03.2028 passed by the learned Assistant Judge, Kazipur, Sirajgonj in Title Suit Number 35 of 2016 decreeing 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 parties as plaintiffs filed Title Suit Number 35 of 2016 in the Court of the Assistant Judge, Kazipur, Sirajganj on 20.10.2016 seeking recovery of possession of the suit property by evicting the defendants on the allegation that they were licensees.

The plaintiffs' case in brief is that one Gerban Hossain was the owner of the suit property. By a registered sale deed being Number 2220 dated 31.07.1988 he transferred the suit property to the plaintiffs' predecessor-in-interest named Habibur Rahman. After the death of Habibur Rahman the plaintiffs inherited the property as his legal heirs. The plaintiffs opened Holding Number 779 through Miscellaneous Case Number 584 of 2012-13 and paid rent regularly. While they were in lawful possession of the property the family shifted to Bogura as plaintiff 2 was employed there. Before leaving the plaintiffs permitted the defendants to reside in the suit homestead for one year. After expiry of the said period the plaintiffs repeatedly requested the defendants to vacate the property. The defendants avoided compliance and finally refused to vacate the suit property on 16.09.2016. Hence the plaintiffs filed the present suit.

The contesting defendants entered appearance and filed a written statement on 25.04.2017 denying the material statements of the plaint. Their case is that they purchased land adjacent to the northern side of the suit property by registered deed number 1763 dated 20.06.1988 for constructing their dwelling house. As the purchased land was insufficient they entered into an agreement for sale with the plaintiffs on 05.01.2008 in respect of the suit property at a consideration of taka 3,10,000/- (three lac ten thousand) and paid taka 2,10,000/- (two lac ten thousand) as earnest money. According to the defendants after delivering possession of the suit property the plaintiffs permanently shifted to Bogura. Since then the defendants have been residing on the suit property by constructing dwelling houses, planting trees and paying Union Parishad taxes. They further contended that although the plaintiffs had already agreed to sell and delivered possession of the suit property they filed the present suit with an ulterior motive for unlawful gain. Accordingly they prayed for dismissal of the suit with costs.

The trial Court framed four issues for determination. The plaintiffs examined three witnesses and the defendants also examined three witnesses. Subsequently D.W. 4 was also

examined in appeal on 16.03.2022 as apparent from order number 22. Both parties produced oral and documentary evidence in support of their respective cases. Upon consideration of the pleadings and the evidence on record the trial Court by judgment and decree dated 28.03.2018 decreed the suit.

Being aggrieved the defendants preferred Title Appeal Number 85 of 2018. The appeal was transferred to the Court of the Joint District Judge, 2nd Court, Sirajganj who by judgment and decree dated 20.07.2022 dismissed the same and affirmed the judgment and decree passed by the trial Court.

The defendants thereafter filed the instant civil revision before this Court and obtained Rule on 11.12.2022.

Mr. Md. Abdul Alim Mia (Jewel), learned Advocate appearing for the petitioners submits that the Courts below committed an error of law resulting in an erroneous decree by misreading and failing to consider the material evidence on record. He submits that the Courts below failed to consider that the suit property has not been properly identified and therefore the suit could not legally be decreed in view of the provisions of Order 7 Rule 3 of the Code of Civil Procedure. He further submits that the defendants were never licensees.

Rather they have been claiming possession under an agreement for sale and other documents. Therefore the question of their eviction as licensees does not arise. He also submits that the defendants proved their independent possession by producing Exhibits-Ka series and Kha series. According to him those material exhibits were not properly considered by the Courts below and had they been considered in their true perspective the result of the case would have been different. He further contends that the defendants successfully proved payment of part of the consideration money whereas the plaintiffs failed to prove that they had ever requested the defendants to vacate the suit property. Nevertheless the Courts below rejected the defence case on fanciful considerations and thereby occasioned a failure of justice. He therefore prays for making the Rule absolute.

On the other hand Mr. Md. Mostofa Kaiyum, the learned Advocate appearing for the opposite parties submits that both the Courts below upon proper appreciation of the pleadings and the evidence on record rightly decreed the suit. He submits that there has been neither misreading nor non-consideration of any material evidence and therefore the impugned judgments call for no interference in revisional

jurisdiction. He further submits that the plaintiffs' title has not been disputed whereas the defendants utterly failed to establish any independent title in the suit property. According to him the evidence on record clearly proves that the defendants were merely permissive possessors and therefore the plaintiffs are legally entitled to recover possession of the suit property. He finally prays for discharge of the Rule.

I have heard the learned Advocates for both sides and perused the materials on record and considered the judgments and decrees passed by the Courts below.

It appears from the record that the plaintiffs produced the registered sale deed dated 31.07.1988 as Exhibit-4 in support of their title. Significantly the title of the plaintiffs has never been disputed by the defendants. Therefore the ownership of the plaintiffs over the suit property stands admitted.

Plaintiff 2 who was examined as P.W. 1 deposed that at the time when the defendants sought permission to reside in the suit property there already existed three residential rooms, one bathroom, one toilet and one tube-well on the suit homestead. This evidence supports the plaintiffs' case that the suit property was a homestead and the defendants entered into possession of the same. On the contrary defendants claim that

they entered the suit homestead on the basis of agreement. Defendant 2 examined as D.W. 1 stated in cross-examination that there was an agreement to sell the suit property for a consideration of taka 3,50,000/- (three lac fifty thousand). But paragraph 6 of the written statement states that the agreed consideration was taka 3,10,000/- (three lac ten thousand). This material inconsistency goes to the root of the case of the defendants. D.W. 1 further stated that earnest money of taka 2,10,000/- (two lac ten thousand) was paid in presence of the plaintiffs and one Nannu Mia and possession was delivered immediately after such payment. He also admitted that no written document was executed in respect of the alleged payment or delivery of possession.

Although D.W. 1 claimed that Nannu Mia was present during the alleged transaction the defendants did not examine him as a witness. Instead D.W. 2 Kurban Ali and D.W. 3 Tahir Uddin were examined to prove the alleged transaction but D.W. 1 himself did not mention their presence at the time of the alleged payment. Such inconsistency materially weakens the case of the defendants.

From the pleadings and the evidence it is evident that the plaintiffs seek recovery of possession on the basis that the

defendants were licensees within the meaning of Section 52 of the Easements Act, 1882. The defendants on the other hand seek to protect their possession by invoking the doctrine of part performance embodied in Section 53A of the Transfer of Property Act, 1882.

The plaintiffs' title and their prior possession over the suit homestead are admitted. It is also admitted that the defendants are presently in possession of the suit property. Although P.W. 1 admitted that the defendants resided on land situated immediately north of the suit property but the defendants failed to produce before the Court the registered sale deed dated 20.06.1988 by which they allegedly claimed to have purchased that adjacent land. Consequently the defendants failed to establish that they had acquired possession of the adjoining northern land under the said deed and their lawful entry in the northern plot flanked by the suit plot is absolutely unfounded.

Under Section 102 of the Evidence Act the burden squarely rested upon the defendants to establish their plea that they acquired lawful possession of the suit property pursuant to an agreement for sale. The defendants pleaded that they obtained possession on 05.01.2008 upon payment of earnest

money under an agreement for sale. However the alleged agreement for sale was never produced before the Court. In the absence of the alleged agreement the very foundation of the defence case remains unproved.

The provisions of Sections 17A and 17B of the Registration Act which came into force on 01.07.2005 require an agreement for sale relating to immovable property to be registered when relied upon for the purpose contemplated by law. Therefore even if the defendants' case of a written agreement is assumed for the sake of argument an unregistered agreement executed after the said amendment cannot confer upon the defendants the protection contemplated under Section 53A of the Transfer of Property Act. In the present case the defendants neither pleaded nor proved the existence of any registered agreement. Indeed no written agreement whatsoever has been produced before the Court.

The law is now well settled that the doctrine of part performance is available only when the transferee proves the existence of a written and signed contract and further proves that possession was taken in pursuance of the terms of that contract. The Appellate Division earlier settled this principle in the case of Mehar Khatun Vs. Sarat Kumar reported in 4

BCR(AD) 172. The law is equally well settled that the protection under section 53A is available only when the alleged contract is proved to be genuine. This principle has been affirmed in the case of Abdul Kader Vs. A.K. Nur Mohammad reported in 5 BLD(AD) 33. Since the defendants failed to prove any genuine written agreement they cannot claim the benefit of the doctrine of part performance.

The defendants relied upon Union Parishad holding tax receipts dated 11.06.2017 and 16.06.2017 marked as Exhibit-Ka series and Rural Electrification Board bills of 2014 marked as Exhibits-Kha and Ga series. These documents were obtained long after the defendants allegedly entered into possession and in case of tax receipts even after filing of the suit. Such documents may indicate physical occupation but they neither create title nor validate possession under Section 53A of the Transfer of Property Act. Likewise they do not defeat the plaintiffs' right to revoke the licence under Section 52 of the Easements Act.

The defendants also pleaded adverse possession in paragraph 6 of the written statement. However according to their own case they entered into possession on 05.01.2008 pursuant to an agreement for sale. The present suit was filed in

the year 2016. Thus even according to the defendants' own pleadings the statutory period necessary to establish title by adverse possession had not expired. Moreover a person claiming possession under an agreement for sale cannot simultaneously claim hostile possession unless there is clear evidence showing that the character of possession subsequently became hostile to the true owner. No such evidence is available on record. Therefore the plea of adverse possession is totally untenable.

The contention that this suit is not maintainable for non-compliance of Order 7 Rule 3 of the Code of Civil Procedure has no merit. In the present case it is not disputed that the suit property is a specific homestead situated within a specific area of 8 decimals of land. Moreover in paragraph 6 of the written statement the defendants themselves admitted that the said homestead is the disputed property. Therefore the suit property is clearly identifiable and there is no difficulty in identifying or locating it. Accordingly the requirement of Order 7 Rule 3 of the Code of Civil Procedure has been substantially complied with.

At the time of delivery of judgment learned Advocate for the petitioners drew the attention of this Court to the evidence

of P.W. 4 taken in appeal. He submits that the said witness stated in examination-in-chief that plaintiff 2 had told that he intended to sell the suit property. According to the learned Advocate such evidence materially supports the defence case.

I have examined the order dated 16.03.2022 passed by the appellate Court. It appears therefrom that the said witness was in fact produced by the defendant-appellant. Therefore the appellate Court inadvertently described the witness as P.W. 4 although he was actually D.W. 4. The record further shows that the defendant-appellant also filed an application praying for remand of the suit and the appellate Court ordered that the said application would be considered at the time of delivery of judgment. However while disposing of the appeal the appellate Court omitted to pass any specific order on the said application.

Undoubtedly the appellate Court ought to have disposed of the application for remand before finally deciding the appeal. Nevertheless the omission to pass a separate order on the application does not by itself render the appellate judgment liable to be set aside. A remand is not to be ordered merely because of a procedural irregularity. It must also been shown that such remand is necessary for the just and effective

adjudication of the dispute and it is likely to produce evidence capable of affecting the ultimate decision of the case.

In the present case the entire defence rests upon an alleged agreement for sale dated 05.01.2008 and the protection claimed under Section 53A of the Transfer of Property Act. As clearly discussed the defendants failed to produce any written and registered agreement in support of their plea. In the absence of such a document the legal requirements for invoking the doctrine of part performance cannot be satisfied. Therefore even if the suit were remanded the defendants would still be unable to establish the essential foundation of their defence unless such a legally admissible agreement exists. Consequently no useful purpose would be served by remanding the matter at this stage merely because the application for remand remained undisposed of.

For the same reason I find the decision in Bangladesh Railway Vs. Government reported in 3 CLR(AD) 455 relied upon by Mr. Alim has no application to the facts and circumstances of the present case.

Upon careful examination of the pleadings and the oral and documentary evidence and the applicable law this Court finds that both the Courts below correctly appreciated the

evidence and rightly concluded that the defendants failed to establish any legal right to retain possession of the suit property. There has been neither misreading nor non-consideration of any material evidence nor has any error of law been committed resulting in an erroneous decision.

In view of the admitted title and prior possession of the plaintiffs and the failure of the defendants to establish the requirements of Section 53A of the Transfer of Property Act and the permissive nature of their possession without lawful documents the plaintiffs are legally entitled to recover possession of the suit property upon revocation of the licence under Section 52 of the Easements Act read with Article 142 of the Limitation Act.

Accordingly I find no substance in the Rule.

In the result the Rule is discharged without any order as to costs.

The order of stay and status quo passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and send down the lower Courts' record at once.

Md. Ali Reza, J: