

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 5158 of 2023

Sree Roton Kumar Biswas and another
.....petitioners

-Versus-

Sree Dilip and others

.....opposite parties

Mr. M.A. Quddus, Senior Advocate with
Mr. Md. Munsur Rahman and
Mr. Kamruzzaman Zaman, Advocates
.....for the petitioners

Mr. Ahmed Nowshed Jamil with
Ms. Sayeda Shoukat Ara, Advocates
.....for opposite parties

**Heard on: 29.04.2026, 20.05.2026,
25.06.2026 and 14.07.2026**

Judgment on: 21.07.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 24.07.2023 passed by the learned Additional District Judge, 3rd Court, Jashore in Title Appeal Number 65 of 2017 dismissing the appeal thereby affirming the judgment and decree dated 27.07.2017 passed by the learned Assistant Judge, Chowgacha, Jashore in Title Suit Number 78 of 2011 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 petitioners as plaintiff filed Title Suit Number 78 of 2011 on 18.10.2011 in the Court of the Assistant Judge, Chougacha, Jashore seeking a declaration of title and thereafter by amendment allowed on 29.06.2015 sought a further declaration that the compromise judgment and order dated 12.03.1974 passed in Miscellaneous Case Number 332 of 1973 was forged, fraudulent, collusive, illegal and not binding upon the plaintiffs.

The plaintiffs' case in brief is that the suit land originally belonged to Nonibala, Annapurna and Shornabala. It is stated that in the year 1964 Nonibala and Annapurna transferred their respective interests in the suit land to Shornabala for a consideration of taka 85/- (eighty five) and simultaneously delivered possession and since the consideration was less than taka 100/- (one hundred) registration of the document was not required under the law then in force. Thereafter Shornabala by registered Kabala Number 3119 dated 04.04.1973 sold 49 decimals of land out of S.A. Plot Number 203 to the plaintiffs and delivered possession thereof. Since the date of purchase the plaintiffs have been possessing the suit land openly, peacefully and exclusively to the exclusion of all others for more than 35 years. According to the plaintiffs the

compromise judgment and order dated 12.03.1974 passed in Miscellaneous Case Number 332 of 1973 arising out of a pre-emption proceeding is forged, fraudulent, collusive, illegal and not binding upon them. The plaintiffs further assert that on 01.10.2011 the defendants denied their title by disclosing that the latest record of rights had been prepared in the names of the defendants although such record was fraudulently and collusively prepared without any lawful basis. It is also alleged that the defendants threatened to dispossess the plaintiffs from the suit land and hence the suit was instituted.

The opposite parties as defendants entered appearance and contested the suit by filing a written statement denying the material contentions made in the plaint. Their case is that Nonibala and others instituted Miscellaneous Case Number 332 of 1973 on 14.11.1973 seeking pre-emption of the Kabala dated 04.04.1973 in favour of the present plaintiffs and the said proceeding ultimately ended in a compromise executed by both sides. According to the defendants the compromise petition was allowed and although the present plaintiffs withdrew the pre-emption money deposited in the case they subsequently failed to execute and register the deed within the stipulated period of three months in violation of the terms of

the compromise. It was specifically agreed therein that in the event of such default the defendants would acquire the disputed 49 decimals of land by way of pre-emption. The defendants further claim that they are the successors of Nonibala and Annapurna and they have been possessing the suit land upon valid title. They accordingly prayed for dismissal of the suit with costs.

On the basis of the respective pleadings the trial Court framed as many as 06(six) issues for determination. In support of their case the plaintiffs examined 04(four) witnesses while the defendants examined 02(two) witnesses and both sides also adduced documentary evidence. Upon consideration of the pleadings and the oral and documentary evidence and after hearing the learned Advocates for the parties the Assistant Judge by judgment and decree dated 27.07.2017 dismissed the suit.

Being aggrieved thereby the plaintiffs preferred Title Appeal Number 65 of 2017 before the District Judge, Jashore which on transfer was heard by the Additional District Judge, 3rd Court, Jashore who by judgment and decree dated 24.07.2023 dismissed the appeal and affirmed the judgment and decree of the trial Court. Challenging the concurrent

findings of the Courts below the plaintiffs thereafter preferred the instant Civil Revision in which Rule was issued on 15.10.2023.

Learned Advocate Mr. Md. Mansur Rahman along with Mr. Kamruzzaman Zaman appearing on behalf of the petitioners submits that the Courts below committed error of law resulting in an erroneous decision occasioning failure of justice inasmuch as the Courts below dismissed the suit upon misreading and non-consideration of material evidence and also upon misconstruction of the documentary evidence and as such the impugned judgments being perverse and misconceived are liable to be set aside. He further submits that the defendants utterly failed to establish the genuineness of the alleged compromise whereas the plaintiffs successfully proved their own case in accordance with law. He next contends that the Courts below failed to appreciate that unless the defendants first proved the alleged compromise in support of their claim the plaintiffs were under no obligation to disprove the same and the burden of proof could not shift upon the plaintiffs until the compromise had been proved in evidence in accordance with law. Referring to the record he submits that the certified copy of the application for pre-emption marked as

Exhibit-Ka was admitted into evidence subject to objection and yet the Courts below erroneously relied upon the said exhibit thereby committing serious error of law occasioning failure of justice.

He has also filed two applications one seeking amendment of the plaint and the other seeking remand of the suit and submits that since both the Courts below found the suit land to be unspecified and since the pre-emption proceeding is fraudulent and the plaintiffs also sought amendment in Land Survey Tribunal Case Number 1154 of 2016 the ends of justice would be best served if the suit is remanded for amendment of the plaint and for a fresh hearing.

In reply Mr. Ahmed Nowshed Jamil, the learned Advocate appearing on behalf of the defendant-opposite parties submits that the Courts below upon proper appreciation of the entire evidence rightly found that the plaintiffs failed to assail the compromise marked as Exhibit-Ga(1) by any reliable and convincing evidence and the plaint itself does not disclose any material particulars explaining how and in what manner the said compromise was forged, fraudulent or collusive. He further submits that possession constitutes the principal issue in the present case but the plaintiffs failed to

establish their possession over the suit land at any point of time after their alleged purchase in 1973 by either oral or documentary evidence. He also contends that the suit is clearly barred by limitation inasmuch as Exhibit-Ga discloses that the compromise order was passed on 12.03.1974 whereas the present suit was instituted more than 37 years thereafter. He next submits that the suit is not maintainable under Section 51A read with Order 7 Rule 3 of the Code of Civil Procedure. Referring to the application for amendment he contends that no legally sustainable pleading has been sought to be introduced and an order of remand cannot be granted merely to rectify the defect in specification when the plaintiffs had ample opportunity to cure the same during the appellate stage. He finally submits that the Rule is devoid of substance and is therefore liable to be discharged.

I have heard the learned Advocates for the respective parties and have carefully examined the materials on record. I have also gone through the judgments and decrees passed by the Courts below.

The principal question for determination is whether the plaintiffs have succeeded in establishing their title and possession over the suit land and whether they have further

succeeded in avoiding the legal effect of the compromise judgment and order dated 12.03.1974 passed in Miscellaneous Case Number 332 of 1973.

The plaintiffs have based their claim upon Kabala Number 3119 dated 04.04.1973 marked as Exhibit-2. A careful reading of the said kabala shows that the plaintiffs allegedly purchased 49 decimals of land comprised in S.A. Plot Number 203 from Shornabala. Surprisingly however the present suit has not been filed in respect of the entire land covered by the kabala. The plaintiffs have confined their claim to only 20 decimals said to be situated on the western side of the said 49 decimals. Neither the original plaint nor the amended plaint contains any explanation whatsoever to satisfaction as to why the remaining 29 decimals have been excluded from the claim. No foundation has been laid in the pleadings that the balance land was transferred subsequently or lost by any lawful means or the dispute was confined only to the western 20 decimals. Such omission is not a mere defect of pleading. It strikes at the root of the plaintiffs' own case. If Exhibit-2 truly conferred title and possession upon the plaintiffs in respect of the entire 49 decimals there was no apparent reason consistent with ordinary human conduct and

common prudence for claiming only a part thereof without any explanation. The concurrent finding of both the Courts below on this aspect therefore cannot be said to be either unreasonable or unsupported by the evidence on record.

The matter assumes greater significance because although the plaint refers to the corresponding R.S. record the plaintiffs did not produce the relevant R.S. khatian or map in support of the description of the suit property. Consequently the alleged western 20 decimals cannot be identified with certainty from the materials available on record. The discrepancy between the area covered by Exhibit-2 and the land claimed in the plaint therefore remains wholly unexplained.

The defendants on the other hand produced the certified copies of the pre-emption application with the compromise petition and the judgment and order passed in Miscellaneous Case Number 332 of 1973 which were marked as Exhibits-Ka, Ga and Ga(1). Those documents disclose that after filing of the pre-emption proceeding the parties entered into a compromise whereunder the present plaintiffs agreed to accept the amount deposited in Court and further agreed that within three months they would receive the stipulated consideration

for 28.50 decimals and execute and register the necessary conveyance in favour of the pre-emptors. It was further stipulated that upon failure to comply with the said condition the pre-emptors would acquire the disputed 49 decimals by way of pre-emption. DW-1 consistently stated that although the plaintiffs withdrew the deposited amount they did not execute any deed within the stipulated period. Nothing material could be elicited in his cross-examination to discredit such evidence.

The principal submission of the learned Advocate for the petitioners is that the defendants having failed to call for the original record of Miscellaneous Case Number 332 of 1973 the compromise could not legally be relied upon. The submission does not merit acceptance. Section 114(e) of the Evidence Act embodies the statutory presumption that official and judicial acts have been regularly performed unless the contrary is established. The compromise petition and the judgment passed thereon have been produced by certified copies. Certified copies of judicial records possess recognised evidentiary value under the Evidence Act and remain admissible unless their genuineness is successfully impeached in accordance with law. The plaintiffs have not adduced any

convincing evidence capable of displacing the statutory presumption attached to those judicial acts.

The matter does not end there. Although the plaintiffs have repeatedly described the compromise as forged, fraudulent and collusive the plaint is completely silent as to the material particulars constituting such allegations. Order 6 Rule 2 of the Code of Civil Procedure requires every pleading to contain the material facts upon which the party relies. Rule 4 of the same Order further requires that whenever fraud, collusion, misrepresentation or similar allegations are made the necessary particulars thereof must be specifically pleaded. The plaint does not disclose who committed the alleged fraud or when it was committed or in what manner it was practised or under what circumstances the compromise became collusive or fraudulent. A mere allegation unsupported by material particulars cannot invalidate a judicial proceeding which has otherwise attained finality.

The learned Advocate for the petitioners next contended that unless the defendants first proved the compromise beyond all doubt the burden never shifted upon the plaintiffs. The contention overlooks the settled principle embodied in Sections 101-103 of the Evidence Act. The defendants by

producing Exhibits-Ka, Ga and Ga(1) together with the oral evidence of D.W-1 discharged the initial burden resting upon them. Once such evidence was brought on record the evidential burden shifted to the plaintiffs to establish that the compromise was either forged, fraudulent, collusive or otherwise legally inoperative. Except making general allegations the plaintiffs failed to produce any documentary evidence or convincing oral evidence in support of those allegations. Consequently the burden which shifted upon them remained wholly undischarged.

Another important aspect deserves notice. The plaintiffs admittedly figured as parties in Miscellaneous Case Number 332 of 1973. Their case is that the compromise entered therein is fraudulent and not binding upon them. If that be so the proper course in law was to seek the appropriate relief contemplated by Section 39 of the Specific Relief Act so as to remove the judicial obstacle created by the judicial proceeding to which they themselves were parties. The present suit has not been framed in that manner. The omission goes to the root of the maintainability of the action and substantially weakens the plaintiffs claim to a mere declaration ignoring the subsisting judicial order.

The plaintiffs have equally failed to establish their possession over the suit land by reliable evidence. The plaint does not disclose with certainty the manner in which they continued to possess the suit land after the alleged purchase in 1973. P.W-2 stated that the plaintiffs possessed the entire land comprised in the suit plot while P.W-3 also deposed to the same effect. Such evidence however is plainly inconsistent with the plaintiffs' own pleadings for the suit has been confined to only 20 decimals although Exhibit-2 covers 49 decimals. P.W-3 who claims to be a neighbouring witness aged about 65 years further admitted in cross-examination that he could not state when the plaintiffs entered into possession of the suit land or what acts of possession they exercised thereafter. Apart from such general assertions no documentary evidence whatsoever has been produced by the plaintiffs to establish their possession. On the contrary the rent receipts produced by the defendants under Exhibit-Kha series show payment of rent in respect of the disputed land and lend corroboration to their claim of possession. It is a settled principle of the law of evidence that the plaintiff must succeed on the strength of his own case and cannot obtain a decree merely because of any perceived weakness in the defence. The

concurrent finding of the Courts below that the plaintiffs failed to prove possession therefore calls for no interference.

The challenge to the compromise proceeding is also hopelessly barred by limitation. Exhibit-Ga discloses that Miscellaneous Case Number 332 of 1973 was disposed of on compromise on 12.03.1974. The present suit was filed only on 18.10.2011 after the lapse of about thirty-seven years. The plaintiffs were admittedly parties to the said proceeding and cannot therefore plead ignorance of the compromise decree. Both the Courts below rightly held that the challenge having been made long after expiry of the prescribed period of limitation is clearly time-barred. I find no illegality in such finding.

There is yet another fundamental defect in the suit. The land claimed in the plaint has not been identified with reasonable certainty. The description of the suit property is inconsistent with the area covered by Exhibit-2 and no acceptable evidence has been adduced to identify the alleged western 20 decimals. Such uncertainty strikes at the very maintainability of the suit. The Courts below therefore rightly held that the suit is hit by Section 51A and Order 7 Rule 3 of the Code of Civil Procedure.

The plaint itself further discloses that the defendants denied the plaintiffs' title on the basis of the latest record of rights and threatened to dispossess them from the suit land. Once such threat of dispossession has been specifically pleaded a mere declaration of title without seeking consequential relief by way of confirmation of possession or permanent injunction is not maintainable under Section 42 of the Specific Relief Act. The suit as framed is therefore legally defective on that ground as well.

The petitioners have also prayed before this Court for amendment of the plaint and for remand of the suit. The proposed amendment substantially seeks to remove the defect regarding the specification of the suit property. That defect had already been noticed by the trial Court. The plaintiffs had full opportunity to seek appropriate amendment before the appellate Court but chose not to do so. The power under Order 6 Rule 17 of the Code of Civil Procedure is intended to determine the real controversy between the parties and not to enable a litigant to fill up lacunae after suffering concurrent findings on facts. The proposed amendment therefore deserves no consideration at this revisional stage.

Equally no acceptable case has been made out for remand. A remand under Order 41 Rules 23, 23A or 25 of the Code of Civil Procedure is not to be ordered as a matter of course. Such power is exercised only where the statutory requirements are fulfilled and where the interests of justice genuinely demand a fresh adjudication. The application for remand does not disclose any omission on the part of the Courts below to determine any material issue nor does it point out any procedural illegality which has occasioned failure of justice. On the contrary both the Courts below have framed the necessary issues and recorded evidence adduced by both parties and returned concurrent findings upon proper appreciation of the pleadings and the evidence. The petitioners cannot now seek a remand merely to cure the defects in their pleadings or to improve the case which they failed to establish before the Courts below. The prayers for amendment and remand are therefore rejected.

Upon an independent examination of the pleadings and the oral as well as documentary evidence and the impugned judgments I find that the plaintiffs have failed to establish their title and possession in accordance with law. They have further failed to plead or prove the material particulars of the

alleged fraud or collusion so as to avoid the compromise order passed in Miscellaneous Case Number 332 of 1973. The suit is further barred by limitation and suffers from uncertainty in the description of the suit property and is not maintainable in its present form under Section 42 of the Specific Relief Act. The concurrent findings recorded by the Courts below are based upon proper appreciation of the evidence and correct application of the relevant legal principles. No misreading of the evidence or non-consideration of any material evidence or error of law occasioning failure of justice has been shown so as to warrant interference in revisional jurisdiction.

Accordingly, the applications for amendment of the plaint and for remand are rejected. The Rule is discharged. The judgments and decrees passed by the Courts below are hereby affirmed.

The order of status quo 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: