

District- Kushtia.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam**Civil Revision No. 5206 of 2023.**

Md. Moslem Uddin.

----- Plaintiff-Respondent-Petitioner.

-Versus-

Most. Rahima Khatun.

----- Defendant-Appellant-Opposite Party.

Mr. Md. Faizullah, Advocate

----- For the Plaintiff-Respondent-Petitioner.

Mr. Syed Mohammad Javed Parvez, Advocate with
Mr. Abdullah Al Ashik, Advocate

----- For the Defendant-Appellant-Opposite Party.

Heard On: 28.08.2025, 31.08.2025.And**Judgment Delivered On: 01st Day of September 2025.****Md. Toufiq Inam, J.:**

By issuance of this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 10.09.2023 (decree signed on 13.09.2023), passed by the learned Additional District Judge, Court No. 02, Kushtia in Civil Appeal No. 172 of 2019, allowing the appeal and thereby reversing the judgment and decree dated 20.08.2019 (decree signed on 27.08.2019) of the learned Senior Assistant Judge, Sadar, Kushtia in Title Suit No. 303 of 2015 decreeing the suit, should not be set aside.

The case, in short, is that the plaintiffs instituted Title Suit No. 303 of 2015 seeking a decree of permanent injunction in respect of “Ka”

schedule land and recovery of possession of “Kha” schedule land. Their case is that the suit land originally belonged to Rowson Ali, Abesh Ali, Joygun Nesa, and Hamna Khatun. By successive transfers and inheritance, the plaintiff Moslem Uddin became owner of 0.100675 acres and has been in continuous possession of the property.

The defendant-opposite party contested the suit by filing a written statement, denying the plaintiff’s exclusive title and possession, and contending that the suit was barred for defect of parties since other co-sharers were not impleaded. It was further contended that the plaintiff had no exclusive possession in the suit land and that by amicable arrangement the co-sharers, including the defendants, had been in possession of their respective portions. The defendants also asserted that the Commissioner’s report supported their possession and that no cause of action existed for the suit.

Evidence was adduced by both sides. The plaintiffs examined three witnesses, while the defendants examined two. Upon consideration of the evidence, the learned Senior Assistant Judge decreed the suit by judgment dated 20.08.2019 (decree signed on 27.08.2019), finding that the plaintiff was in possession of “Ka” schedule land and entitled to recovery of possession of “Kha” schedule land. On appeal, however, the learned Additional District Judge allowed Civil Appeal No. 172 of 2019, set aside the trial Court’s judgment and decree in

toto, and dismissed the suit. The plaintiff thereafter filed the present revisional application and obtained the Rule, which is now taken up for disposal.

Mr. Md. Faizullah, learned Advocate for the petitioner, submits that the learned appellate Court committed a manifest error of law in reversing the well-reasoned decree of the trial Court without complying with the mandatory requirements of Order XLI Rule 31 of the Code of Civil Procedure. He argues that the appellate judgment suffers from serious infirmity inasmuch as the findings of the trial Court, which were based on cogent evidence and the Commissioner's report, were not properly controverted, nor were any specific and independent reasons given for discarding the trial Court's conclusions, particularly with respect to the "Ka" schedule land.

He further submits that the appellate Court failed to appreciate the admissions of DW-1 and DW-2, the probative value of the Commissioner's report, and the legal effect of the admitted compromise saham arrangement between the co-sharers. As such, its decision has occasioned a failure of justice. In support of his contention, reliance is placed on the decision reported in *Muslim vs. Abdul Motaleb*, 54 DLR (HCD) 196, wherein it was held that when joint owners have agreed to enjoy joint property on the basis of mutual arrangement, it is not open to one of them to disturb such arrangement.

Per contra, Mr. Syed Mohammad Javed Parvez, learned Advocate assisted by Mr. Abdullah Al Ashik, Advocate for the opposite parties, supports the impugned appellate judgment and decree. He submits that the suit schedule lacks boundary specifications in violation of Order VII Rule 3 CPC. In support, reliance is placed on *Habibullah vs. Sher Ali Khan and others*, 11 MLR (AD) 1.

He argues that the plaintiff admittedly is one of several co-sharers of the suit holding, and in the absence of a formal partition by metes and bounds, neither the plaintiff nor any individual co-sharer can claim exclusive possession of a specific portion of the property. According to him, the suit for permanent injunction and recovery of possession is misconceived in law, since one co-sharer cannot maintain an injunction suit against another in respect of joint property.

He further submits that the Advocate Commissioner's report, far from supporting the plaintiff's case, establishes that the defendants raised construction within their own saham, and the incomplete structure reflects lawful use of land by co-sharers rather than encroachment. The trial Court, by overlooking these principles of co-sharership, wrongly decreed the suit, which the appellate Court rightly corrected by setting aside the decree.

Having carefully considered the submissions of both learned Advocates, examined the oral and documentary evidence, scrutinized the Advocate Commissioner's report, and assessed the findings of the courts below, this Court proceeds to determine the matter.

At the outset, it is necessary to address the opposite parties' submission that the plaintiffs' schedule is vague and lacks boundaries. This Court finds that absence of formal boundary demarcation does not invalidate the long-standing possession of the plaintiff. Both sides admitted that the land has been enjoyed by co-sharers on the basis of mutual saham for decades, with each occupying separate homesteads. Such long-standing enjoyment and recognition of sahams establish the identity and extent of possession with reasonable certainty.

It is well settled that where the identity of land can be reasonably ascertained from evidence, hyper-technical objections regarding boundaries or precise demarcation cannot defeat substantive rights. Testimonies of DW-1 and DW-2 confirm the plaintiff's exclusive possession of his saham, and the defendants were aware of such possession. The lack of formal boundary does not entitle the defendants to interfere with the plaintiff's land.

The Advocate Commissioner's report corroborates the plaintiff's possession. It notes the location of the "Kha" schedule land and the

attempted construction, reflecting the respective uses of the land by the plaintiff and defendants. This objective evidence dispels doubt regarding the plaintiff's saham. Hence, the defendants' plea of vagueness or absence of boundary cannot defeat the plaintiff's claim.

Although the suit land has not been formally partitioned, both sides admitted long-standing enjoyment based on mutual saham. Once such an arrangement is acted upon, no co-sharer may unilaterally disturb it. Long-standing possession on the basis of *aposhsaham* deserves protection, and no co-sharer may encroach upon another's saham on the plea of joint ownership.

It is a settled principle that possession, even of a co-sharer, cannot be disturbed without due process. The law protects settled possession and prohibits forcible dispossession even by a true owner. Thus, the remedy for a co-sharer lies in partition, not force. The trial Court correctly applied these principles, but the appellate Court overlooked them by wrongly insisting that the plaintiffs prove exclusive title excluding all co-sharers.

Testimonies of DW-1 and DW-2 reveal admissions that the plaintiff, as heir, has been in possession of his saham and that no partition has been made by metes and bounds. They also confirmed that each co-sharer has been occupying separate homesteads. These admissions

corroborate the plaintiff's uninterrupted possession and disprove the defendants' claim of lawful interference. The appellate Court also erred in holding that the plaintiffs' schedule was vague. Even if uncertainty existed, technical defects cannot defeat long-standing possession established through inheritance and corroborated by evidence.

Turning to "Kha" schedule land, the Advocate Commissioner's report is significant. It records that the defendants had raised an incomplete structure: walls unplastered, no doors or windows, and no one residing therein, with construction materials lying about. PW-2 confirmed that construction ceased after issuance of ad-interim injunction on 30.09.2015. This establishes that although construction was attempted, there was no ongoing violation of the injunction order.

Nevertheless, the construction itself was an unlawful encroachment upon the plaintiff's saham. The "Kha" schedule falls within the plaintiff's portion under the mutual saham. Raising an unauthorized structure violated the principle that no co-sharer may dispossess another without partition. Courts are not required to wait for dispossession to be completed; even an attempted ouster is unlawful interference justifying relief.

Thus, the trial Court rightly granted permanent injunction in respect of "Ka" schedule and recovery of possession with injunction in respect

of “Kha” schedule. The appellate Court, however, ignored the defendants’ admissions, the Commissioner’s report, and the legal effect of mutual saham. Instead, it focused on collateral matters and wrongly concluded that possession and dispossession were not proved. Such findings are perverse, based on non-consideration of material evidence, and fall short of the requirements of Order XLI Rule 31 CPC.

Considering the evidence and settled law, this Court is satisfied that the trial Court’s decree was soundly reasoned, while the appellate Court’s reversal was erroneous and occasioned a failure of justice.

Since both parties are co-sharers, they may, if they so choose, initiate a formal suit for partition. In that event, this judgment and its findings shall not prejudice the Court in deciding partition independently.

Accordingly, the Rule is made absolute.

The impugned judgment and decree of the appellate Court are set aside, and the judgment and decree of the trial Court are restored.

There will be no order as to costs.

Let the LCR be sent back, and this judgment be communicated at once for information and compliance.

(Justice Md. Toufiq Inam)