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

Present:
Mr. Justice Rezaul Karim

Civil Revision No. 5106 of 2022

Sher Ali Sardar and others
..... petitioners
-Versus-

Abdul Jalil Bepari and others
..... opposite parties
Mr. Zahid Ahammad Hero, Advocate
…….For the petitioners
Mr. Md. Aktarujjaman, Advocate
…….For the opposite party Nos. 1-6

Heard on: 13.09.2026 and 14.09.2026
Judgment on: 15.09.2026

On an application under Section 115(1) of the Code of Civil Procedure, 1908, a Rule was issued on 30.10.2022 in the following terms:

> "Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 24.07.2022 (decree being drawn up on 24.07.2022) passed by the learned Joint District Judge, 2nd Court, Shariatpur in Title Appeal No. 58 of 2016 dismissing the appeal and thereby affirming the judgment and decree dated 28.10.2015 (decree being drawn up on 28.10.2015) passed by the learned Senior Assistant Judge, Vedorganj, Shariatpur in Title Suit No. 08 of 2014 dismissing the suit for permanent injunction shall not be

set aside and / or such other or further order or orders passed as to this Court may seem fit proper".

At the time of issuance of the Rule, the parties were directed to maintain status quo in respect of possession of the suit land for a period of 6 (six) months. The order was not extended thereafter.

The petitioners, as plaintiffs, instituted Title Suit No. 08 of 2014 in the Court of the learned Senior Assistant Judge, Vedorganj, Shariatpur. It was a suit for permanent injunction only. They sought to restrain the defendants from entering into, or disturbing their possession of, 34 decimals of land in plot No. 423 of S.A. khatian No. 183 of Mouza No. 63 Koraltoli, Police Station-Vedorganj, District Shariatpur.

According to the plaint, Toyab Ali Sardar, the S.A. recorded tenant, owned and possessed 34 decimals of land in plot No. 423. On his death, the land devolved upon his son Sher Ali Sardar, his four daughters and his widow. One of the daughters, Momtaz Begum, later died leaving her husband, four sons and three daughters. The plaintiffs claim that they have remained in possession of the suit land and that the defendants have no right, title or possession in it. They allege that on 01.01.2014 the defendants threatened to dispossess them by force. By a later amendment of the plaint, they added that Mutation Case Nos. IX-P-1-111/87-88 and IX-P-1-130/87-88, standing in the names of the defendants, had been cancelled by the learned Additional

Deputy Commissioner, Shariatpur in Miscellaneous Case No. 20 of 2013.

Defendant Nos. 1-6 contested the suit. Their case is that Rahim Box Haldar and Karim Box Haldar, two of the R.S. recorded owners of the land, sold 13½ decimals each in plot No. 423 to Sikim Ali Bepari, the predecessor of the defendants, by kabala No. 127 dated 06.01.1953 and kabala No. 3915 dated 19.10.1955. Sikim Ali Bepari was then recorded in S.A. Khatian No. 183 along with the other recorded owners. When the land was threatened with auction by the Government, Sikim Ali Bepari and others filed a suit which, on transfer, became Civil Suit No. 65 of 1984 of the Vedorganj Court. That suit was decreed on 30.11.1986. Sikim Ali Bepari then had his name mutated and transferred the land to defendant Nos. 5 and 6 by a heba-bil-ewaz deed of 1997. The defendants say that they have their homestead on these 27 decimals and are in possession of it.

The learned trial Court framed three issues, including whether the plaintiffs had prima facie title and exclusive possession in the suit land. Each side examined three witnesses and produced documents. The trial Court found that the defendants had explained, through two kabalas (Exhibits Ka and Ka-1), how their predecessor came to be recorded in the S.A. khatian, while the plaintiffs gave no such explanation for Toyab Ali. It relied on the plaint of Civil Suit No. 65 of 1984 (Exhibit Kha series), filed jointly by Toyab Ali and Sikim Ali,

which stated that Sikim Ali held 27 decimals and Toyab Ali 13 decimals of plot No. 423 by purchase. It found the evidence of the plaintiffs' witnesses on possession to be inconsistent. It also considered the order passed in Miscellaneous Case No. 20 of 2013 (Exhibit 2), produced by the plaintiffs. That order recorded, on local inquiry, that out of 0.40 acre in the suit plot, the plaintiff Sher Ali Sardar had his homestead on 0.13 acre and the defendant Abdul Jalil Bepari on 0.27 acre. The trial Court read that order as accepting the possession of both sides while denying the title of both. It held that the plaintiffs had failed to prove their prima facie title and exclusive possession in the 34 decimals claimed, and dismissed the suit on 28.10.2015.

The plaintiffs' appeal, Title Appeal No. 58 of 2016, was heard on transfer by the learned Joint District Judge, 2nd Court, Shariatpur. During the appeal, an application by the plaintiffs for amendment of the plaint was rejected; that rejection has not been challenged before this Court. On the evidence of the witnesses, the appellate Court found that the suit land is joint (ejmali) property and that the suit was not maintainable in its present form. It noted that the plaintiffs' witnesses admitted the defendants' homestead in the suit plot and described the land differently. It dismissed the appeal by the impugned judgment and decree dated 24.07.2022.

In the revisional application, the petitioners maintain that they have been owning and possessing the suit land for a long time and that the opposite parties have no right, title, interest or possession in it. They also allege that, after obtaining the impugned judgment and decree, the opposite parties tried to dispossess them. The opposite parties have not filed any counter-affidavit or any other document in this Rule.

Mr. Zahid Ahammad Hero, the learned Advocate for the petitioners, submits that the impugned judgment is not a proper judgment of affirmance and cannot be sustained in law. He submits that the Courts below failed to consider that the plaintiffs have long been in possession of the suit land, while the defendants have no right, title or possession in it. He argues that the defendants failed to prove their own case and failed to identify the suit land. According to him, both the Courts below misread and misconstrued the material evidence on record, did not consider the plaintiffs' case and decided the matter on surmise and conjecture, and thereby committed an error of law resulting in an erroneous decision occasioning failure of justice. In the course of his submissions, however, he could not show any misreading, non-reading or misconstruction of the evidence or documents on record by either the trial Court or the appellate Court.

Mr. Md. Aktarujjaman, the learned Advocate for opposite party Nos. 1-6, supports the impugned judgment. He submits that both the

courts below concurrently found, on the evidence that the plaintiffs had failed to prove their prima facie title and exclusive possession in the suit land. Relying on Habibullah (Md) vs. Sher Ali Khan and others, 11 MLR (AD) 1, he contends that the parties are co-sharers in an unpartitioned plot, that a co-sharer who seeks a permanent injunction must prove exclusive possession of the land claimed, and that this Court in revision will not disturb concurrent findings of fact unless misreading or non-consideration of material evidence is shown. He also relies on Belayet Hossain vs. Nurul Alam Mir and others, 42 DLR (AD) 20, and submits that a plaintiff whose own case and a local inquiry show that he is not in possession of the land claimed is not entitled to an injunction.

I have heard the learned Advocates for both sides and perused the revisional application, the impugned judgments and the materials on record.

The question is whether the courts below committed an error of law resulting in an erroneous decision occasioning failure of justice in refusing the injunction on the ground that the plaintiffs had not proved their prima facie title and exclusive possession in the 34 decimals claimed. In answering that question, this Court does not weigh the evidence afresh. It examines whether the findings below are supported by the evidence and whether any material evidence was misread or left out of account.

This is a suit for permanent injunction simpliciter, and not a suit for declaration of title. Under section 54 of the Specific Relief Act, 1877 (Act No. I of 1877), when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the cases set out in that section. The relief is discretionary. In such a suit, the Court does not finally decide title. It asks whether the plaintiff has shown a prima facie title and whether he is in possession of the land. Where the land is part of an unpartitioned plot held jointly with the defendant, the plaintiff must further show that he is in exclusive possession of the portion he claims. The burden is on the plaintiff, and the weakness of the defence does not relieve him of it.

The finding on prima facie title is borne out by the record. The plaintiffs produced no document showing the source of Toyab Ali's alleged title to the entire 34 decimals claimed in the suit. The S.A. khatian (Exhibit-1) records both Sikim Ali and Toyab Ali in the column of ownership of plot No. 423, and PW-1 Sher Ali Sardar admitted in cross-examination that this khatian was correctly prepared. He also admitted that Toyab Ali and Sikim Ali were the plaintiffs in Civil Suit No. 65 of 1984, that his father obtained a decree in that suit, and that 27 out of the 40 decimals were decreed in the name of Sikim Ali. At another stage he said that he did not know whether 27 decimals were decreed to Sikim Ali and 13 decimals to

Toyab Ali. That answer does not take away his earlier admission. Further, the plaint of that suit, filed by Toyab Ali himself, stated that Sikim Ali held 27 decimals and Toyab Ali 13 decimals. A statement made by a person from whom the plaintiffs derive their interest is an admission under section 18 of the Evidence Act, 1872 (Act No. I of 1872), and under section 21 of that Act it may be proved against them as his representatives in interest. Under section 31 of that Act, such an admission is not conclusive proof. It is, however, substantive evidence unless it is satisfactorily explained. The plaintiffs offered no explanation for it. On this evidence, the trial Court was right to hold that the plaintiffs had not shown a prima facie title to 34 decimals.

The finding on possession equally rests on the evidence. PW-1 admitted that the defendant lives with his family on the northern side of the suit plot. The other two witnesses for the plaintiffs are not independent. PW-2 Alauddin is the plaintiff's brother-in-law. PW-3 Ripon Khan, who described the plaintiff as his maternal uncle, is himself one of the plaintiffs and is petitioner No. 8 in this Rule. That alone does not make their evidence untrue. What matters more is that both of them accepted that the defendants live in the suit plot and possess 6 decimals of it. They could not agree, however, on the land itself. PW-1 said that it is equal on all sides, PW-2 that it lies north to south, and PW-3 that it lies east to west. They also gave different numbers of houses belonging to the plaintiffs. The S.A. khatian shows

Toyab Ali's name in the column of possession, but that old entry cannot outweigh what the plaintiffs' own witnesses admitted about the present possession. The courts below were therefore right to hold that the plaintiffs had failed to prove their exclusive possession of the 34 decimals. That alone is a paramount ground for refusing a permanent injunction.

The plaintiffs rely on Exhibit 2 because it cancelled the mutation standing in the names of the defendants. That does not help them. An order passed in a mutation proceeding does not decide title. Being based on a local inquiry, it may be considered as supporting evidence on possession, but it is not conclusive on title or on exclusive possession. The same order treated the land as Government land and recorded the homesteads of both sides in the plot. In this suit, its value lies in what it records about possession, and on that point it goes against the plaintiffs' claim of exclusive possession.

The evidence also shows that the parties are co-sharers in plot No. 423. Both are recorded in the S.A. khatian, both have their homesteads in the plot, and PW-2 admitted that there has been no partition through the Court. A co-sharer may obtain an injunction against another co-sharer if he proves exclusive possession of a specific portion, for example under an amicable partition. The plaintiffs neither pleaded nor proved any such arrangement. Their case was that the defendants have no right, title or possession in the suit

land at all, and that case is not borne out by their own witnesses. On the evidence in this case, no injunction could be granted even in respect of a smaller area, because the plaintiffs did not establish their exclusive possession over any specific and identifiable part of the plot. Their witnesses could not agree even on the shape of the land. An injunction between co-sharers cannot be used to settle how much land each of them holds. If the plaintiffs claim any share in the plot, their remedy, if any, lies in a properly constituted suit for declaration of title and partition. Nothing in this judgment shall be taken as a decision on the share of either party.

The decision in Habibullah (Md) vs. Sher Ali Khan and others, 11 MLR (AD) 1, also reported in 57 DLR (AD) 55, supports this view. There, the plaintiffs sought a permanent injunction over part of a plot of 3.13 acres in which the defendant was a co-sharer. The courts below found that the plaintiffs had failed to prove exclusive possession, their evidence being contradictory, and the appellate Court also found the land claimed to be unspecified. The High Court Division reversed those findings in revision. The Appellate Division set its decision aside. It held that, the defendant being a co-sharer, the plaintiffs had to establish exclusive possession of the land claimed. It also held that the High Court Division could not reverse concurrent findings on possession without finding misreading or non-consideration of the evidence. In that case, a partition suit between the

parties had already been decreed, which is not so here. The two propositions relied on, however, were stated by the Appellate Division in general terms, and they apply to the present case, where the plaintiffs claim part of an unpartitioned plot held with the defendants and have given conflicting evidence about it. Under article 111 of the Constitution, the decision is binding on this Court.

The other decision cited for the opposite parties, Belayet Hossain vs. Nurul Alam Mir and others, 42 DLR (AD) 20, does not fit the present case. That was an appeal arising from an order of temporary injunction in a suit challenging the cancellation of a Government settlement. The plaintiff had stated in his own plaint that he had transferred the settled land to his brothers, a local enquiry had found the same, and he had pursued interim relief from court to court for years. On those facts, the Appellate Division held that, having parted with the land, he could not seek an injunction to protect his alleged possession. In the present case, the plaintiffs have made no admission of transfer. The suit was decided after a full trial, and the question is one of exclusive possession between co-sharers, which did not arise in that case. I therefore do not rely on that decision.

The grounds taken in the revisional application are general. None of them points to any evidence that the courts below misread, overlooked or misconstrued, and the learned Advocate for the petitioners could point to none at the hearing. The complaint that the

defendants failed to prove their case or to identify the suit land does not help the petitioners. The burden was on the plaintiffs, and it was their own witnesses who described the suit land in different ways. As to the contention that the impugned judgment is not a proper judgment of affirmance, the appellate judgment is no doubt brief. It does not discuss Exhibit 2 or the question of title. The appellate Court, as the final Court of fact, had to apply its own mind to the evidence, and it did so on the decisive question. It referred to the evidence of PW-1, PW-2 and PW-3, noted their admissions and the conflict between them, found the land to be joint and agreed with the trial Court. Having agreed with the trial Court, it was not required to repeat every reason given there. Both the Courts below said that the suit could not proceed in its present form, and the appellate Court said so because the suit land is joint. The expression “not maintainable” is not apt in this context. A co-sharer is not barred from suing another co-sharer for injunction; whether he succeeds depends on proof of exclusive possession over a specific and identifiable portion of the joint property. The real basis of the appellate Court's decision, as appears from its reference to the evidence of the plaintiffs’ witnesses, is that such exclusive possession was not proved. That conclusion is supported by the evidence, for the reasons discussed above. The plaintiffs’ failure to prove exclusive possession was by itself enough to defeat the suit, and the brevity of the appellate judgment has caused

no failure of justice. Lastly, the petitioners allege that the opposite parties tried to dispossess them after the impugned judgment. Whatever the truth of that allegation, an alleged subsequent event cannot by itself show that the findings recorded by the courts below on the evidence then before them were wrong.

For these reasons, I find that the Courts below considered the case of the parties and the evidence, both oral and documentary, and rightly dismissed the suit and the appeal. Their concurrent findings are founded on the evidence. I find no error of law in them resulting in an erroneous decision occasioning failure of justice. The Rule therefore has no merit.

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

The order of status quo passed at the time of issuance of the Rule was for six months and was not extended. It has therefore already expired.

Communicate the judgment at once.

Send down the LCR.

Mazhar, BO