

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4614 of 2023**

In the matter of:

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

And

Md. Gour Ali

... Petitioner

-Versus-

Md. Jahangir Miah and others

... Opposite parties

Mr. Baki Md. Murtoza with

Mr. Md. Shaikhul Islam, Advocates

... For the petitioner.

None appears

... For the opposite parties.

**Heard on 15.12.2024 and Judgment on 17.12.2024.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 04.07.2018 passed by the learned Additional District Judge, Hobitonj in Title Appeal No.35 of 2014 allowing the appeal and thereby reversing the judgment and decree dated 19.03.2014 passed by the learned Senior Assistant Judge, Hobitonj in Title Suit No.29 of 2003 dismissing the suit should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration of title and recovery of possession for  $17\frac{1}{2}$  decimal land alleging that above property belonged to Akram Hossain who died leaving the plaintiffs as his heirs and the plaintiffs were in possession in above land by cultivation. On 1<sup>st</sup> Boishakh 1399 B.S. defendant No.1 became a borgader of above land but in 1408 B.S. defendant No.1 stopped giving share of the crops and on 9<sup>th</sup> Falgun 1409 B.S. raised an unlawful claim of title for above land.

Defendant No.1 contested the suit by filing a written statement where he has denied all claims and allegations made in the plaint and stated that above land belonged to Akram Hossain predecessor of the plaintiffs who declared to sale above land and defendant No.2 agreed to purchase the same for Taka 1700/- and on receipt of above full consideration Akram Hossain delivered possession to defendant No.2 but due to want of money no sale deed was executed and registered. Defendant No.1 sold above land to defendant No.2 for Taka 16,000/- after three years of above purchase. Defendant No.1 is in possession in above land from above date as the owner of the same and he was never a borgader of the plaintiffs for above land.

At trial plaintiffs examined 4 witnesses and out of them PW1 remained not cross examined by the defendant. Documents of the plaintiffs were marked as Exhibit Nos.1 and 2 series. On the other hand the defendant examined 6 witnesses but did not produce any document at trial.

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.35 of 2014 to the District Judge, Hobigonj which was heard by the learned Additional District Judge who allowed the appeal and set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as appellants moved to this Court with an application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Baki Md. Murtoza, learned Advocate for the petitioner submits that the plaintiffs could not prove by legal evidence that defendant No.1 was their borgader or defendant No.1 ever gave share

of the crops to the plaintiffs. The possession of defendant No.1 in disputed  $17\frac{1}{2}$  decimal land is admitted by the plaintiffs. The plaintiffs were required to prove their previous possession in above land and their dispossession from the same by the defendant without their consent. But the plaintiffs could not prove their alleged dispossession from the disputed land by the defendants nor they have succeeded to prove that this suit under Section 8 of the Specific Relief Act, 1877 was instituted within the statutory period of limitation from the date of above dispossession. On the other hand defendants possession in the disputed land is admitted but the defendants never gave any crops of the disputed land to the plaintiffs. It is true that the defendants could not prove by legal evidence his claim of purchase of above land from Akram Hossain. But their continuous possession has matured into valid title by adverse possession. On consideration of above facts and circumstances of the case and evidence on record the learned Senior Assistant Judge rightly dismissed the suit. But the learned Judge of the Court of Appeal below totally failed to appreciate the evidence on record correctly and most illegally

allowed the appeal, set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence on record.

It is admitted that disputed  $17\frac{1}{2}$  decimal land belonged to Akram Hossain and plaintiffs are the heirs of above Akram Hossain.

The plaintiffs have filed this suit under Section 8 of the Specific Relief Act, 1877 alleging that defendant No.1 was their borgader who raised a claim of title for above land on 9<sup>th</sup> Falgun 1409 B.S.

It is well settled that in a suit under Section 8 of the Specific Relief Act, 1877 a plaintiff must prove besides his title in the disputed property his previous possession in the above land and the fact of subsequent dispossession by the defendant and further prove that the suit has been filed within 12 years from the date of above

dispossession. If a plaintiff fails to prove above facts as to his alleged possession and dispossession his suit must failed irrespective of the fact that he has good title in above land.

At Paragraph No.5 of the plaint it has been alleged that plaintiffs after inheriting the disputed land from Akram Hossain was in possession in the same by growing crops and vegetables. No mention has been made in the plaint as to when Akram Hossain died and plaintiffs became owner and possessor of above land and how many years they possessed above land by growing crops and vegetables. Plaintiffs examined 4 witnesses to substantiate above claims as to possession and dispossession from the disputed land. Plaintiff No.1 gave evidence as PW1 and he stated that defendant Nos.1 and 2 were their borgaders for the disputed land. This is a material contradiction and deviation from the claim made in the plaint. In the plaint plaintiffs have claimed that defendant No.1 was their borgader. Above witness did not mention in his evidence as to who appointed defendants as borgaders. As to the cause of action for filing of this suit it has been stated at Paragraph No.5 of the plaint that on 9<sup>th</sup> Falgun 1409 B.S. defendant Nos.1 and 2 raised a claim of title for above land but in his evidence PW1 stated that on 9<sup>th</sup> Falgun

1409 B.S. defendants refused to give him crops. This is also another material contradiction with the case as set out in the plaint. PW2 Ramiz Ali stated that defendant possessed the disputed land by cultivation but he did not know on what basis defendant possessed the land. He did not know whether the defendants gave crops of the disputed land to the plaintiffs. PW3 Abdul Mutabbir stated that defendant possessed the disputed land as borgader of the plaintiffs. But in cross examination he stated that he was not present in the talk of giving borga to the defendant. Nor he knows if defendant gave crops of above land to the plaintiffs. PW4 Abdul Quiyum stated in this evidence that the disputed land was possessed by the defendant but he did not know the basis of above possession of the defendant. In cross examination he stated that he did not see the defendant gave share of crops to the plaintiffs.

It is crystal clear from above evidence that the plaintiffs could not prove their previous possession in the disputed land nor they succeeded to prove that defendant No.1 was in possession of the disputed land as their borgaders. On the other hand defendant No.1 has succeeded to prove by mutually corroborated and credence inspiring evidence of six witnesses that he is in possession in above

land since 1976 B.S. from defendant No.2 who was in possession of above land.

It is true that true title of any immovable property of value over Taka 99/- cannot be transferred without a written and registered instrument of sale. But defendant No.1 has stated to be in possession on the claim of ownership of the disputed land continuously and peacefully since 1976 and this suit was filed by the plaintiffs on 17.03.2003 after about 27 years. As such above peaceful and continuous possession of the defendant No.1 in above  $17\frac{1}{2}$  decimal land had matured into valid title by adverse possession.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Judge of the trial Court on correct appreciation of materials on record rightly dismissed the same but the learned Judge of the Court of Appeal below committed serious illegality in allowing the appeal and setting aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.



As such, I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 04.07.2018 passed by the learned Additional District Judge, Hobitonj in Title Appeal No.35 of 2014 is set aside and the judgment and decree dated 19.03.2014 passed by the learned Senior Assistant Judge, Hobitonj in Title Suit No.29 of 2003 is restored.

However, there is no order as to costs.

Send down the lower Courts record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*