

**District-Barishal.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 7436 of 2023.**

Hochain Ali Howlader being dead his legal heirs  
Sahera Begum and others.

---- Plaintiff-Appellant-Petitioners.

-Versus-

Nurjahan Begum being dead her heirs Md. Jalal  
Talukder and others.

---- Defendants-Respondent-Opposite Parties.

Mr. Md. Modersher Ali, Advocate

---- For the Plaintiff-Appellant-Petitioners.

Mr. Swapan Kumar Dutta, Advocate with

Mr. Md. Abu Baker Siddique, Advocate

---- For the Defendants-Respondent-Opposite Parties.

Heard On: 29.10.2025. and 06.10.2025.

And

**Judgment Delivered On: 11.11. 2025.**

**Md. Toufiq Inam, J.**

This Rule, at the instance of the petitioners, was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 07.02.2023 (decree signed on 14.02.2023) passed by the learned Additional District Judge, 1st Court, Barisal in Title Appeal No. 20 of 2020, affirming the judgment and decree dated 21.11.2019 (decree signed on 26.11.2019) passed by the learned Assistant Judge, Banaripara, Barisal in Title Suit No. 61 of 2012, dismissing the suit, should not be set aside or such other order or orders be passed as to this Court may seem fit and proper.

The predecessor of the petitioners, as plaintiff, instituted Title Suit No. 61 of 2012 before the learned Assistant Judge, Banaripara, Barisal seeking partition of the “Ka” schedule property described in the plaint. The plaintiff’s case, in short, is that 2.39 acres of land under plot Nos. 321, 322, and 323 of S.A. Khatian No. 214 originally belonged to Gnanada Sundari and others. The recorded tenant Prahlad Chandra Shil, son of Haricharan Shil, died issueless leaving behind his cousin Ananta Kumar Shil, who inherited his 4-anna share under Hindu law. Ananta Kumar thereafter got his name mutated under Mutation Case No. 1847/1974–75, and subsequently executed a registered deed being No. 6023 dated 03.07.1975 transferring 80 decimals of land in favour of the plaintiff. The plaintiff claimed to be in peaceful possession of 60 decimals of land thereunder. Upon the defendants’ refusal to amicably partition the land on 03.08.2012, the plaintiff filed the instant suit.

Defendant No. 1 contested the suit denying the material averments. The defence case is that the suit is barred by limitation, bad for defect of parties, hit by Section 42 of the Specific Relief Act, and barred by estoppel and acquiescence. The defendants asserted that Ganada Sundari died leaving three sons—Laxmikanta, Birendra Nath, and Narendra Shil—and that Prahlad Chandra died leaving three sisters—Renuka Bala, Monsha Sundari, and Abala Sundari—whose ten sons inherited the 4-anna share of Prahlad under Hindu Dayabhaga law. The defendants further claimed purchase of 1.0375 acres of land

through several registered deeds executed between 1976 and 1983 by the lawful heirs and transferees, thereby denying any title or possession of Ananta Kumar Shil. Defendant Nos. 11–14 also filed separate written statements asserting purchase of 60 decimals of land under Deed Nos. 5330 and 5331 dated 08.12.1977, and possession thereon.

Upon hearing both sides and assessing the evidence, the learned trial court dismissed the suit on 21.11.2019, holding that the plaintiff had failed to establish valid title or possession over the suit land. The plaintiff preferred Title Appeal No. 20 of 2020, which was dismissed by the learned Additional District Judge, 1st Court, Barisal, affirming the trial court's findings. The appellate court held that according to the plaintiff's own case, Prahlad Chandra died issueless, but his cousin Ananta Kumar claimed inheritance. However, the evidence proved that Prahlad Chandra was survived by three sisters, whose sons are nearer heirs under Dayabhaga law. Hence, a so-called cousin cannot inherit in their presence. The appellate court also noted that the plaintiff's deed (Exhibit-2) was incomplete and missing its final page, and thus could not be relied upon as a valid conveyance. Since Ananta Kumar Shil had no title to the property, the plaintiff, as transferee, acquired no title either.

Against the appellate court judgment affirming the trial court's one, the petitioner moved this revision and obtained the present Rule, which is now taken up for disposal.

Mr. Md. Modersher Ali Khan, learned Advocate for the petitioners, submits that both the courts below misconceived the principles of Hindu inheritance. He argues that under the Dayabhaga school, a cousin stands in a higher line of sapinda relationship than sister's daughter's sons, and therefore, Ananta Kumar Shil, being the cousin of Prahlad Chandra, lawfully inherited his share. He further contends that the S.A. Khatian No. 214 was duly filed in court under a firisti dated 22.08.2016 but was not considered, resulting in a misreading of evidence and a finding that the khatian was not produced. He submits that the plaintiff's deed, though partially damaged, clearly conveys the land and that both courts below erred in dismissing the suit on technical grounds without proper evaluation of title and possession.

Contrastingly, Mr. Swapan Kumar Datta, learned Advocate for the defendants-opposite parties, on the other hand, supports the impugned judgments and submits that both courts below concurrently found that the plaintiff's vendor Ananta Kumar Shil was not an heir of the recorded owner Prahlad Chandra under Dayabhaga law, as sister's sons are nearer in the line of succession than so-called cousins. Hence, Ananta Kumar had no inheritable title to convey to the plaintiff. He further contends that the plaintiff's deed (Exhibit-2) is incomplete,

unregistered in its final page, and not proved in accordance with law, while the defendants' purchase deeds were executed by genuine heirs and duly proved. The plaintiff also failed to produce credible evidence of possession. Therefore, the concurrent findings of the courts below being based on proper appraisal of evidence and law, the revisional court should not interfere with such concurrent findings of fact.

This court has considered the submissions of the learned Advocates for both sides, examined the impugned judgments, and perused the record. It appears that both the trial court and the appellate court concurrently held that the plaintiff's vendor Ananta Kumar Shil was not a legal heir of Prahlad Chandra. Under Hindu Dayabhaga law, the order of succession gives preference to the sister's sons over a cousin, as the former stand nearer in the line of sapinda relationship. Therefore, the finding that Ananta Kumar had no title to inherit from Prahlad Chandra is consistent with established legal principle.

Further, the plaintiff's registered deed (Exhibit-2) was found incomplete and unproved, lacking the final registration page. The courts below rightly refused to rely upon it. It is a settled principle that a transferee cannot acquire any better title than his transferor; hence, if Ananta Kumar had no title, the plaintiff also could not derive one. The contention that the S.A. Khatian was filed but ignored does not alter the position of law, since mere recording does not create title in absence of lawful inheritance or valid transfer.

Under the Hindu Dayabhaga law, the sons of a deceased sister are nearer sapindas than a cousin, and therefore, in their presence, a cousin cannot inherit the property of a deceased male. Consequently, a transferee from such a cousin acquires no better title than his vendor. Concurrent findings based on such legal and evidentiary reasoning do not warrant interference in revision under Section 115 CPC.

In view of the discussions made above, this Court finds no illegality or material irregularity in the impugned judgments warranting interference.

Accordingly, the **Rule is discharged.**

The judgment and decree dated 07.02.2023 (decree signed on 14.02.2023) passed by the learned Additional District Judge, 1st Court, Barisal in Title Appeal No. 20 of 2020, affirming the judgment and decree dated 21.11.2019 (decree signed on 26.11.2019) passed by the learned Assistant Judge, Banaripara, Barisal in Title Suit No. 61 of 2012, is hereby upheld.

The interim order of status-quo stands vacated.

There will be no order as to costs.

Let the lower court records be sent down together with this judgment at once.

**(Justice Md. Toufiq Inam)**