

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.5297 OF 2022**

In the matter of:

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

And

Abdul Latif Sikder and others

... Petitioners

-Versus-

Most. Jakia Begum and others

... Opposite parties

Mr. A. K. Rashedul Huq, Advocate

...For the petitioners.

Mr. Mohammad Eunus with

Mr. Rafi Ahmed, Advocates

... For the opposite party Nos.1-7.

**Heard on 27.01.2025 and Judgment on 28.01.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the judgment and decree dated 16.11.2022 passed by the learned Special Judge (Senior District and Sessions Judge), Patuakhali in Title Appeal No.118 of 2019 reversing those dated 31.07.2019 passed by the learned Assistant Judge, Mirzagonj, Patuakhali in Title Suit No.04 of 2019 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for cancelation of the judgment and decree dated 12.11.1958

passed on compromise by the learned Munsif 3<sup>rd</sup> Court, Patuakhali in Title Suit No.165 of 1958 which was obtained by fraud, forgery and personation.

It has been alleged that Yeasin Shikder was a co-sharer and owner of land of C. S. Khatian Nos.153 and 154 and he died leaving three sons namely Chantu Sikder, Torab Ali and Jonab Ali and one wife Bibison Bibi. By way of inheritance from husband and deceased sons Torab Ali and Jonab Ali above Bibison Bibi became owner and possessor of disputed 2.02 acres land and after her demise above land was inherited by her only surviving son Chuntu who died leaving the plaintiffs as heirs who are possessing above land by growing paddy. Above Bibison Bibi was a pordanshil illiterate village woman and she did not transfer above land nor gave settlement of the same and relevant R. S. and S. A. Khatians of above property was correctly recorded in the name of Bibison Bibi. The plaintiff fraudulently instituted Title Suit No. 165 of 1958 in the 3<sup>rd</sup> Court of Munsif and by suppression of summons on the heirs of Bibison Bibi obtained the impugned compromise decree by personation. Plaintiff's predecessor Chandu Sikder never executed above solenama nor gave signature on the same.

Defendant No.1-6 contested the suit by filling a joint written statement alleging that Bibison Bibi while owning and possessing 2.20 acres land gave settlement of the same to Muslim Shikder predecessor of the defendants by a registered kobuliyat on 09 Srabon 1354 B. S. Above Bibison Bibi accepted above kobuliyat and granted rent receipts

and Muslim Shikder was in possession in above land. Plaintiff Chandu Shikder raised a claim of title in above land on the basis of erroneous S.A. record and above Muslim as plaintiff instituted Title Suit No.165 of 1958 for declaration of coal korsha raiyoti title in above 2.20 acre land against Chandu Shikder the heir of Bibison Bibi. Above defendant Chandu Shikder entered appearance in above suit and executed a solenama on 05.11.1958 and in terms of above solenama disputed 2.02 acres land was divided between the plaintiffs and defendant and plaintiffs got 1.80 acres land and remaining 22 decimal land was given to defendants Chandu Shikder and on the basis of above solenama above suit was rightly decreed. On the basis of above compromise decree above Muslim Shikder got his name mutated for above land and possessed the same as dwelling house and by cultivation of the rest.

At trial plaintiffs examined 5 witness and documents of the plaintiffs were marked Exhibit No.1-9 series. On the other hand defendant examined 2 witnesses and documents of the defendant were marked exhibit "Ka" series to "Ja" series.

On consideration of facts and circumstance of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Civil Appeal No.118 of 2019 to the District Judge, Patuakhali which was heard by the learned Special Judge who allowed the appeal, set aside the judgment and decree of the trial court and decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this court with this petition under Section 115 of the Code of Civil Procedure and obtained this rule.

Mr. A. K. Rashedul Huq, learned Advocate for the petitioners submits that admittedly 2.02 acres land belonged to Bibison Bibi. The predecessors of the defendants Muslim Shikder obtained settlement of above land from Bibison Bibi by a registered kabuliyot on 26.01.1947 but above land was erroneously recorded in the name of Bibison Bibi in the relevant R. S. and S. A. Khatian and on the basis of above erroneous record above Chandu Shikder claimed title and above Muslim Shikder as plaintiff instituted Title Suit No.165 of 1958 for declaration of col corsha rayoti title. Above defendant Chandu Shikder entered appearance and executed a solenama dividing above 2.02 acres land between the plaintiffs and defendants and Muslim Shikder got 1.80 acres land and remaining 22 decimal was given to Chandu Shikder. In the impugned solenama there is an interpolation in the 1.80 acres which was allotted to Muslim Shikder but above interpolation has been endorsed by initials of the concerned Advocates. As far as 22 decimal land which was allotted to defendant Chandu Shikder is concerned there is no interpolation or over writing.

As far as the claim that Bibison Bibi died in 1353 B. S. before the date of above Kabiliyat deed is concerned above claime has been subsequently made by amendment of the plaint but no legal evidence

has been adduced to substantiate above claim. The defendant witnesses are incompetent due to their age to give evidence as to the death of Bibison Bibi in 1946. The alleged death certificate of Bibison Bibi is undated and there is no mention in the plaint that above Bibison Bibi died within the territorial limits of Mozidbaria Union Parishod. Above document was not proved at trial in accordance with law. On a detailed analysis of the facts and circumstances of the case and evidence on record the learned judge of the trial court rightly dismissed the suit but the learned judge of the Court of appeal below and most illegally held that above Title Suit No.165 of 1958 was not tenable in law and impugned compromise decree was obtained by fraud and on above erroneous perception of facts and laws most illegally allowed the appeal and set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

On other hand Mr. Mohammad Eunos, learned Advocate for the opposite party Nos.1-7 submits that Bibison Bibi was the rightful owner and possessor of disputed 2.02 acres land and after her demise the same has been inherited by her only son Chandur Shikder who is in possession of above land by cultivation. Both Bibison and Chandu Bibi were illiterate village people and no process of Title Suit No.165 of 1958 was served upon Chandu Shikder nor he entered appearance in above suit or executed solenama. Above solenama was obtained by personation and practicing fraud upon the Court. The learned Advocate further submits that Title Suit No.165 of 1958 was not tenable

in law since in above suit R. S. and S. A. Khatian were not mentioned and a declaration for col korsha rayot was sought. Above Bibison Bibi died on 2<sup>nd</sup> Joistha 1353 B. S. and in support of above claim the defendant has produced a certified copy of the death register issued by the Chairman of Mazidbaria Union Parishad. The learned Advocate lastly submits that the impugned registered kabuliyot of the defendant was a unilateral documents which is not supported by any patta deed or rent receipt and above kabuliyot was not acted upon nor Muslem Sikder got possession of above land. On consideration of above facts and circumstance of the case and evidence on record the learned judge of the Court of Appeal below has rightly allowed the appeal and set aside the flawed judgment and decree of the trial Court and decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the courts below and evidence adduced by the parties at trial.

It is admitted that disputed 2.20 acres land belonged to Bibison Bibi who died leaving only son plaintiff Chandu Shikder and above land was recorded in the name of Bibison Bibi in relevant R. S. and S. A. Khatian. It is also admitted that Muslem Shikder predecessor of the defendants as plaintiff instituted Title Suit No.165 of 1958 against defendant Chandu Sikder for declaration of col korsha rayoti title for above 2.02 acres land claiming that above Bibison Bibi gave settlement

of above land to him by registered kabuliyot dated 26.07.1947 but erroneously relevant S. A. khatian was not prepared on the basis of above kabuliyot. It is also admitted that above Title Suit No.165 of 1958 was shown to have been disposed of on compromise between plaintiff Muslem Shikder and defendant Chandu Shikder and a compromise decree was passed on 05.11.1958 and disputed 2.02 acres land was divided and plaintiff Muslem Shikder got 1.80 acres land and remaining 22 decimal was allotted to defendant Chandu Shikder.

Plaintiff has filed this suit on 11.01.2009 challenging the legality and propriety of above compromise decree of Title Suit No.165 of 1958 dated 05.11.1958 alleging that above decree was obtained by personation and secondly the term of the solenama was altered by unlawful interpolation and overwriting and 80 decimal land has been converted to 1.80 acres for plaintiff Muslem. It was further claimed that above Bibison Bibi died on 2<sup>nd</sup> Joishto, 1353 corresponding to 1946 before the execution and registration of registered deed of kabuliyot dated 26.07.1947 of Muslim Shikder.

At the very outset it needs to be mentioned that this is not a suit for determination of title or partition but a suit challenging the legality and propriety of a compromise decree passed in Title Suit No.165 of 1958 on 05.11.1958 about fifty years ago. Since in this suit of above property has not been specifically disputed there is no necessity to undertake an in death enquiry as to the title and possession of disputed 2.02 acres land.

The initial grounds taken by the plaintiffs as to the illegality of the compromise decree appears to be self contradictory. On the one hand plaintiff claimed that defendant Chandu Shikder did not enter appearance in Title Suit No.165 of 1958 since no summon of above suit was served upon him and above sole decree was obtained by personation. On the other hand the defendants claim that the quantity of land allotted to the plaintiff in above solenama was altered by interpolation and overwriting.

In this suit defendant has produced two original kabala deeds executed by Chundu Sikder transferring undisputed land to third parties containing Left Thump Impression of Chandu Shikder. The record of Title Suit No.165 of 1958 along with the solenama was called for and attached with this case record. It appears from above solenama that Chundu Sikder executed the same by putting Left Thumb Impression. In view of above materials on record the learned Judge of the trial court rightly observed that the plaintiff could take an initiative for obtaining expert opinion as to the left thumb impression of Chandu Shikder appearing on above solenama. But the plaintiff did not take any such initiative to substantiate the claim of forgery and personation.

It is true that there was overwriting in the sum of 1.80 acres but the learned Judge of the trial Court rightly found that above interpolation was endorsed by initial signature of the concerned Advocate and there was no overwriting or interpolation in the quantity of 22 decimal land allocated to defendants Chandu Sikder. The learned



Judge of the Court of Appeal below could not reverse above findings of the trial Court which were based on materials on record.

As far as the death of Bibison in 1946 before the impugned registered kobuliyot of 1947 of the defendants is concerned above claim of year of death of Bibison was subsequently made by amendment of the plaint without providing necessary particulars. It has been merely stated that above Bibison Bibi died on 02 joistha 1353 B. S. but no mention was made as to the place of her death or the source of knowledge of the plaintiffs. No defendant witness had personal knowledge about the year of death of Bibishon Bibi due to their age. In support of above claim plaintiffs have submitted a certified copy of a death register issued by the Chairmain of Majidbaria Union Parishad which was marked Exhibit No.8. Above Union Parishad Chairman or any staff of this Office did not give evidence in support of due execution of above document. There is no mention of date of issuance of above certificate or the date and name of the person when and who reported above death. There is nothing on record to show that above Bibison Bibi lived or died within the territorial limits of Mazid Baria Union Porishad. As such no reliance can be placed on above document (Exhibit No.8) and it must be held that the plaintiffs have failed to prove by legal evidence that above Bibison Bibi died in 1946 before the execution, registration or acceptance of kabuliyot of Muslim Sikder in 1947.

It has been repeatedly stated in the plaint that the plaintiff is possessing above land by growing paddy. On the other hand defendants have stated in their written statement that they have their dwelling house and other infrastructure in a part of the disputed property and in the remaining land they grow paddy. PW5 Md. Babul Miah who gave evidence on behalf of the plaintiffs admitted in cross-examination that the defendants have their dwelling house and tank in disputed Plot No.202. Above admission of PW5 has been corroborated by PW3 Aziz Shikder who stated in cross-examination that Plot No.202 is the subject matter of the suit and in the land of above plot there are two storied tin ghor, graveyard and Tube well of defendants Anis and Sobhan.

On consideration of above facts and circumstance of the case and evidence on record I hold that the learned Judge of the trial Court on correct appreciation of evidence on record rightly held that the compromise judgment and decree passed in Title Suit No.165 of 1958 on 05.11.1958 was lawful and defendants are in possessions in the disputed land by constructing dwelling house, tank, tubewell and graveyard which is based on the evidence on record. But the learned judge of the Court of Appeal below most illegally without reversing above material findings of the trial Court allowed the appeal and set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revision 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 16.11.2022 passed by the learned Special Judge (Senior District and Sessions Judge), Patuakhali in Title Appeal No.118 of 2019 is set aside and the judgment and decree dated 31.07.2019 passed by the learned Assistant Judge, Mirzagonj, Patuakhali in Title Suit No.04 of 2019 is restored.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*