

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 801 of 2024

Md. Omar Faruk and others

.....petitioners

-Versus-

Mahiuddin and others

.....opposite parties

Mr. Laxman Biswas, Advocate

.....for the petitioners

Mr. Dipayan Chandra, Advocate

.....for the opposite parties

Heard on: 27.10.2025 and 06.11.2025

Judgment on 09.11.2025

In the instant revision rule was issued calling upon the opposite parties 1-4 to show cause as to why the judgment and decree dated 11.10.2023 passed by the learned Additional District Judge, Third Court, Narayanganj in Title Appeal Number 250 of 2022 allowing the appeal thereby reversing the judgment and decree dated 28.07.2022 passed by the learned Senior Assistant Judge, Second Court, Narayanganj in Title Suit Number 70 of 2011 decreeing the suit shall not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioners as plaintiff filed Title Suit Number 70 of 2011 in the Court of learned Senior Assistant Judge, 2nd Court,

Narayangonj for permanent injunction. The case of the plaintiff-petitioners in brief is that the suit land belonged to Alim Uddin Bepary who died leaving behind two sons named Abdul Goni and Fazel and two daughters named Alemjan and Kolomjan. By amicable partition Goni, Alemjan and Kolomjan acquired the property excluding Fazel. Subsequently Goni died leaving behind three sons named Sadeq, Omar and Sattar. Amongst the three brothers Sadeq acquired the property of Goni by amicable partition. On the other hand Alemjan died leaving behind one son and two daughters who executed kabala 13022 on 25.08.1943 to Sadeq and Sahad. Kolomjan also sold her share in favour of Sadeq and Sahad by kabala 13313 dated 26.10.1983. Subsequently Sadeq acquired the property alone by amicable settlement. Sadeq died leaving behind one son Hossain Ali and three daughters and a wife and they sold their entire .35 acres of land by kabala 2141 on 18.06.1971 to Sanaullah and R.S. record was prepared accordingly. Sanaullah died leaving behind four sons named Aslam, Hai, Amzad, Salahuddin and three daughters named Rokeya, Momtaz, Safia and wife Ambia. Aslam, Hai, Amzad and Ambia got the suit land by amicable partition and sold the same to Abdur Rouf by kabala

5591 dated 03.11.1985. Abdur Rouf died leaving behind the present plaintiffs and later on plaintiffs appointed Jamal Uddin as attorney on 04.05.2009. The heirs of Abdul Fazel named Bahadur Miah and Sahad Ali claimed title in the suit plot for which Aslam and other heirs of Sanaullah purchased the same from them on 16.04.1976 by kabala number 1952. Plaintiffs have been maintaining title and possession in the suit land. On 04.02.2011 defendants claiming ownership in the suit land threatened them with dispossession for which the instant suit was filed on 10.02.2011.

The opposite parties as defendants contested the suit by filing written statement denying the material statements made in the plaint contending *inter alia* that Alim Uddin Bepary died leaving behind two sons named Abdul Goni and Abdul Fazel and two daughters named Alemjan and Kolomjan and they became owner in possession according to their share. But wrongly the name of Alemjan and Kolomjan were not included in the R.S. record. One of the sons of Alim Uddin Bepary named Fazel who was the predecessor of the defendants accordingly got 11.66 decimals of land and died leaving behind two wives named Maleka Bibi and Sonai Bibi and one son named Bahadur and four daughters named

Mariam, Khoti Bibi, Moti Bibi and Zafrani. Subsequently defendant 1 acquired the ownership in 0.83 decimals of land by inheritance from his mother and he purchased 1.07 decimals of land and defendant 2 acquired 2.83 decimals of land. The suit being false is liable to be dismissed.

Trial court framed as many as five issues and during the course of trial plaintiffs examined two witnesses and defendants also examined two witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

Trial court decreed the suit on 28.07.2022 on the finding that plaintiffs have been able to prove their title and exclusive possession in the suit land. As against the same defendants preferred Title Appeal Number 250 of 2022 before the District Judge, Narayangonj which on transfer was heard by Additional District Judge, 3rd Court, Narayangonj who was pleased to allow the appeal on the finding that plaintiffs failed to prove their exclusive possession in the suit land along with other findings.

Being aggrieved by and dissatisfied with the judgment and decree passed by the appellate court plaintiffs came before this court with this revision and obtained rule on 27.02.2024.

Mr. Laxman Biswas, learned Advocate appearing on behalf of the plaintiff-petitioners submits that the learned appellate court failed to follow the mandatory provision of law under order 41 rule 31 of the Code of Civil Procedure and the impugned judgment of the appellate Court is never a proper judgment of reversal. He further submits that the plaintiffs have been able to prove their exclusive possession in the suit land and the trial court upon proper appreciation of evidence accordingly decreed the suit but the appellate court upon misreading and non-consideration of material evidence and misconstruction of document dismissed the suit upon wrongful consideration thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice. He strongly submits that the appellate court did not consider the rent receipt filed by the plaintiff showing their exclusive possession in the suit land and failed to appreciate that rent receipt is the evidence of possession and may be used as collateral evidence of title and the impugned judgment being perverse and misconceived is liable to be set aside. He also submits that plaintiffs proved their exclusive possession in the suit land by adducing proper oral evidence which cannot be ignored at all but the lower appellate court failed to

consider such evidence in its true perspective which is not tenable in the eye of law. He also contends that the possession of defendants is not proved and the oral evidence led by defendants in order to prove their possession is not at all convincing but the appellate court allowed the appeal without considering that the defendants failed to prove their possession in the suit land thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice and wrongly dismissed the suit which may be interfered with by this court and he finally submits that the rule having merit may be made absolute.

On the other hand Mr. Dipayan Chandra, learned Advocate appearing on behalf of the defendant-opposite parties submits that appellate court did not commit any error of law resulting in an error in such decree occasioning failure of justice and since there is no misreading or non-consideration of material of evidence the finding of the appellate court cannot be interfered with in revision. In support of his submission he further points out that when a finding of fact is based on proper consideration of materials on record the same cannot be interfered with by the revisional court and in support of his submission he refers to the case of

Habibur Rahman Vs. Galmon Begum reported in 64 DLR(AD) 133. He then submits that in a simple suit for permanent injunction the relief is available to such person who is in exclusive possession and until the amicable partition as claimed by the plaintiffs in the instant suit is proved. He contends that plaintiffs have no *prima facie* case because their specific claim on title stands on amicable partition. He also contends that a simple suit for permanent injunction should not be allowed to be used as a testing device for ascertaining the title. In support of such submission he refers to the case of Rafizuddin Ahmed Vs. Mongla Barman and others reported in 11 BLD(AD) 245. He proceeds on that the judgment passed by the appellate court is lawfully correct and since the finding arrived at by the appellate court is based upon proper appreciation of material evidence the same is immune from interference by this court in revision. He finally prays that considering the facts and circumstances of the instant case the rule may kindly be discharged.

I have heard the learned Advocates for both sides and gone through the judgments passed by the courts below and perused the revisional application with all other materials on record.

This is a suit for permanent injunction. In the instant suit plaintiffs have to show that they have *prima facie* title and exclusive possession. Plaintiffs claimed that the successors of Alemjan named Sahed and others sold their disputed share in favour of Sadeq Ali and Sahad Ali by kabala dated 25.08.1943 exhibit-3 Chha and Kolomjan also sold her share in their favour on 26.10.1983 exhibit-3 Cha. Subsequently the heirs of Sadeq sold the entire land in favour of Sanaullah by kabala dated 18.06.1971 exhibit-3 Ja. After death of Sanaullah his successors transferred the suit land in favour of the Abdur Rouf on 03.11.1985 exhibit-3 Eno and plaintiffs being the heirs of Abdur Rouf thus acquired title and possession in the suit land. On the other hand defendant claims the ownership in the suit land as the successive heirs of Alim Uddin Bepary. Trial Court found that defendants did not explain away as to how they acquired the property by inheritance in the instant suit. Plaintiffs have to prove their title acquired by amicable partition as claimed in the instant suit. Co-sharership of the defendants is not denied rather it is admitted. It is the settled principle of law that amicable partition does not extinguish the right, title and interest of a co-sharer unless effected by a registered deed of partition or by a final decree passed in a suit

for partition or by separation of holding under section 117 of the State Acquisition of Tenancy Act. In the instant case plaintiffs could not able to prove that they have acquired the property by way of registered deed of partition. Mere amicable partition does not confer any title. Amicable partition is made only for the convenience of the possession of the co-sharers. Law is also settled that possession of a co-sharer is the possession of all the co-sharers unless a case of ouster is made out. In the instant case plaintiffs have got no such claim.

It is admitted by both the parties that Alim Uddin Bepary died leaving behind two sons named Abdul Goni and Abdul Fazel and two daughters named Alemjan and Kolomjan. Plaintiffs claimed that Abdul Goni, Alemjan and Kolomjan got the suit property by amicable partition and Abdul Fazel did not get any property in the suit plot. On the other hand defendants claimed that all the heirs of deceased Alim Uddin Bepary got their respective shares in the suit land and maintained their title and possession and accordingly Fazel acquired .17 acres of land out of .35 acres of the suit land. Although plaintiffs claimed that Fazel did not get any property from the suit plot but did not produce any evidence showing Fazel's exclusion from his ownership. Plaintiffs made out a

case in their plaint that Fazel died leaving behind his sons Bahadur and Sahad and they claimed title in the suit land from Aslam and others. Aslam and others then purchased the suit land from Bahadur and Sahad by kabala dated 16.04.1976 exhibit-3(Jha). Exhibit-3(Jha) reveals that the predecessor of the plaintiffs purchased .12 acres of land from Bahadur and Sahad but earlier plaintiffs claimed that Fazel did not acquire any land from the suit plot but subsequently by dint of exhibit-3(Jha) they disowning ownership by amicable settlement claimed .12 acres of land and for such reason exhibit-3(Jha) was executed which proves that Fazel admittedly acquired his share in the suit plot. Thus the claim of the plaintiffs that they have acquired the property by amicable partition is unfounded. Plaintiffs once claimed that they acquired the property by amicable partition and at the same time claimed that they acquired the suit land by purchase from Fazel which means that they have no definite case on their acquisition of title and they cannot be allowed to approbate and reprobate at the same time. Plaintiffs also did not clearly depict in their claim as to who was or were the heir or heirs of Fazel but defendants have made out a clear case that after death of Fazel he left behind son Bahadur and four daughters named Moriam, Khotibibi,

Motibibi and Zafrani. Thus it transpires that Bahadur and Sahad were not at all entitled to sell the entire property inherited from their father excluding their sisters from their ownership. The trial Court did not advert to exhibit-3(Jha) and erroneously came to a wrong finding that plaintiffs were successful in proving their *prima facie* title in the suit land.

It further appears that the R.S. khatian 399 exhibit-3 shows that the suit plot 750 contains 39 decimals of land. The schedule of the plaint shows that plaintiffs claim 35 decimals of land from suit plot 750 but they did not explain away in their plaint about the rest .04 acres. Therefore the suit land claimed by the plaintiff is unspecified according to exhibit-3. Thus it is clear that plaintiffs in order to get a decree of permanent injunction failed to give clear description of the land under order 7 rule 3 of the Code of Civil Procedure and since the suit land is not ascertainable and unspecified the plaintiffs are no entitled to get a decree for permanent injunction. This view finds support from the case of Md. Habibullah Vs. Mr. Sher Ali Khan and others reported in 11 MLR(AD) page 1 wherein our Appellate Division found that when it is established that the plaintiffs is not in exclusive possession and the suit land is unspecified no injunction can

be granted in a suit for permanent injunction. Plaintiffs have to prove exclusive possession in the suit land. In the instant case plaintiffs filed some rent receipts which were marked in evidence as exhibit-3(Umma) series in support of their possession. There are as many as 06(six) rent receipts filed by the plaintiffs and out of these 06(six) receipts two receipts dated 19.10.2014 and 21.07.2016 clearly show that the quantum of land for which the rent was paid is .23 acres. Thus this documentary evidence proves that plaintiffs have no exclusive possession in the suit land. Defendants stated in their written statement that four owners named Abdul Goni, Abdul Fazel, Alemjan and Kolomjan maintained their possession in the suit land as co-sharers but plaintiffs although did not admit the possession of Fazel but their subsequent purchase from Fazel by virtue of exhibit-3(Jha) evidently proves that plaintiffs have failed to prove their exclusive possession in the suit land because the title as claimed by the plaintiffs on the basis of amicable partition stands disproved by exhibit-3(Jha). Defendants depicted a picture of the shares of all the co-sharers wherein it is shown that Abdul Goni acquired 11.66 decimals and Fazel acquired 11.66 decimals and Alemjan and Kolomjan acquired 5.83 decimals of land

each. The land purchased by plaintiffs through exhibit-3(Cha) and exhibit-3(Chha) measures a total of 23.32 decimals and the above mentioned rent receipts also show that plaintiffs paid rent for .23 acres of land and for such reason it is not difficult to hold that the plaintiffs failed to prove their exclusive possession in .35 acres of land.

Plaintiffs adduced two witnesses in order to prove their case. PW 1 stated in examination-in-chief that they have four tin shed rooms in the suit land but PW 2 who claimed to be the adjacent land owner has admitted in cross-examination that plaintiffs has got three tin shed rooms in the suit land. This inconsistency between the two witnesses indicates that plaintiff failed to prove their exclusive possession in the suit land by oral evidence. PW 2 also admitted in cross-examination that he did not know whether the homestead of defendant 3 is in the suit land or not. Thus it transpires that defendant 3 may have his homestead in the suit land. Defendant 3 also filed the electricity bills which show that in suit plot 750 he has his holding. The trial court did not at all consider this aspect of the case and it appears that the plaintiffs have failed to prove their exclusive possession in the suit land.

At the fag end of the hearing the learned advocate for the opposite parties informed this court that Title Suit 727 of 2022 has already been filed seeking partition in which the suit land is included in the schedule and both petitioners and opposite parties are parties to that partition suit. The learned Advocate for the petitioners also conceded the fact as well and this partition suit is pending to resolve the controversy among the co-sharers once for all. In such circumstance if any adverse finding given in this particular judgment goes against the interest of any of the parties to this revision that finding shall not bar the concerned trial court to adjudicate and express the decision on merit in that partition suit.

It is the well settled principle of law that the plaintiff must succeed on the strength of his own case and not on the weakness of the defence. The plaintiffs are not entitled to a decree unless independently prove their claim. In the instant case plaintiffs have failed to prove their *prima facie* title and exclusive possession in the suit land and law is also settled that when the appellate court arrives at a finding of fact upon proper consideration of the materials on record such finding is immune from interference by the revisional court unless it is shown that the same has been tainted with misreading or non-

consideration of material evidence on record. The appellate court being the last court of fact has lawfully passed the judgment which cannot be interfered with by this court in revision. Therefore the judgment and decree passed by the appellate court is affirmed and those of the trial court is set aside.

I therefore find no merit in this rule. Accordingly, the rule is discharged.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: