

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 1083 of 2021
Peti: 01 being dead, his heirs are as follows:
1(a) Balaram Tarua and others....Petitioners
-Versus-
Sree Ranjit Kumar Parbat and others....Opposite parties
Mr. Tapan Kumar Bepary, Advocate
....For the petitioners
Mr. S.M. Rezaul Karim, Advocate with
Mr. Deb Dulal Baral, Advocate
....For the opposite parties
Heard on 26.04.2026 and 27.04.2026
Judgment delivered on 06.05.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 26.01.2021 passed by the Joint District Judge, Court No. 2, Pirojpur in Title Appeal No. 46 of 2015 reversing the judgment and decree dated 30.06.2015 passed by the Assistant Judge, Nazirpur, Pirojpur in Title Suit No. 30 of 2012 decreeing the suit shall not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioner as plaintiff filed Title Suit No. 30 of 2012 in the Court of Assistant Judge, Nazirpur, Pirojpur praying for a decree of recovery of khas possession against the defendants in respect of the land described in the schedule Kha situated within schedule Ka stating that 38 decimals of land of R.S. Khatian No. 732 belonged to Prasanya Kumar Tarua and out of the said land, 12 decimals of land was recorded in S.A Khatian No. 531, S.A dag No. 2029, and 26 decimals of land was recorded in S.A plot No. 2032 in the name of said Prasanya Kumar Tarua who died leaving behind the petitioners as heirs. The defendant, upon taking permission from the petitioners, took possession of the land mentioned in Kha schedule land and started living there, but on 20.01.2012 when the plaintiffs requested him to vacate the land, he refused to vacate the land. Thereafter, the petitioner filed the suit for recovery of khas possession.

The defendants entered appearance in the suit by filing written statement denying the assertions made in the plaint, stating that Abu Shikder was the C.S. recorded tenant of 4.23 acres of land of C.S. Khatian No. 80. Syed Mahmud Morshed, landlord of the said khatian, filed Rent Suit No. 1064 of 1931 for non-payment of the rent, and the said suit was decreed against Abu Shikder. Thereafter, 4.23 acres of land of C.S. Khatian No. 80 was sold in auction in Decree Execution Case No. 1203 of 1934. Purno Laxi, Sorojini and Billu Basini purchased the said land on 13.02.1935 in auction. Nokeleswar, husband of Billu

Basini, filed Miscellaneous Case No. 819 of 1974-75 before the Revenue Circle Officer for cancellation of the S.A record illegally prepared in the name of the plaintiffs, and after hearing, the Revenue Circle Officer, Nazirpur, by order dated 10.11.1985 cancelled the S.A Khatian directing to insert the name of the heirs of the auction purchaser in the records. Subsequently, the review application filed by the plaintiff was rejected on 02.12.1985 by the Revenue Circle Officer, Nazirpur. Thereafter, the name of the heirs of the auction purchaser was recorded in the R.S. khatian.

During trial, the plaintiff examined 3 P.Ws, and the defendant examined 4 D.Ws to prove their respective cases. After concluding trial, the Assistant Judge, Nazirpur, Pirojpur, by judgment and decree dated 30.06.2015 decreed the suit in favour of the plaintiff against which the defendant filed Title Appeal No. 46 of 2015 in the Court of the District Judge, Pirojpur. The Joint District Judge, Court No. 2, Pirojpur heard the appeal and by the impugned judgment and decree dated 26.01.2021 set aside the judgment and decree passed by the trial Court against which the defendants-petitioners obtained the Rule.

Learned Advocate Mr. Tapan Kumar Bepary appearing on behalf of the plaintiff-respondent-petitioner submits that the opposite parties were the permissive possessor of the suit land and when the plaintiff requested him to vacate the land, he refused to vacate the land and the plaintiff proved that the defendants were in permissive possession in the suit land and refused to vacate the land and the trial Court considering the evidence of both the parties legally passed the impugned judgment and decree in favour of the plaintiff but the appellate Court below misreading the material evidence of the plaintiff illegally reversed the judgment and decree passed by the trial Court and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Learned Advocate Mr. S.M. Rezaul Karim appearing along with the learned Advocate Mr. Deb Dulal Baral on behalf of the defendant-opposite parties submits that the opposite parties are the heirs of the auction purchaser and during trial, the defendants prove their title in the suit land, and now they are possessing the land recording their names in the R.S. khatian. The plaintiff failed to prove his possession and dispossession in the suit land. Therefore, the appellate Court below legally set aside the judgment and decree passed by the trial Court. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Tapan Kumar Bepary who appeared on behalf of the plaintiff-respondent-petitioner and the learned Advocate Mr. S.M. Rezaul Karim who appeared along with the learned Advocate Mr. Deb Dulal Baral on behalf of the defendant-opposite

parties, perused the evidence, the impugned judgment and decree passed by the Courts below and the records.

On perusal of the judgment and decree passed by the trial Court, it reveals that the trial Court decreed the suit holding that the agreement dated 09.04.1991 is not proved by the defendant and that the defendant could not prove any dakhila of 2013/2014-15 and that the corresponding R.S. khatian of C.S. khatian No. 80 was not proved in the case and that there is no presumption of correctness of S.A khatian. The appellate Court reversed the judgment and decree passed by the trial Court holding that the plaintiff failed to prove the date of permissive possession and dispossession and that the trial Court did not consider the exhibits of the defendants and that the plaintiff failed to prove any record after the S.A khatian and that the predecessor of the defendant purchased the disputed land in auction and there is a dispute regarding title between the parties.

On perusal of the evidence, it reveals that the plaintiff proved S.A khatian prepared in the name of the plaintiff as exhibit 2 which has been cancelled subsequently by order dated 10.11.1985 by Revenue Circle Officer, Nazirpur (exhibit cha(1)). The defendant proved the exhibits Ka(1), Kha(1), Ga(1), Gha(1), Cha(1) to Cha(3), Chha(1) and Za(1) to Za(15).

To get a decree for recovery of khas possession, the plaintiff shall prove his possession and subsequent dispossession from the suit land. In the instant case, the S.A record prepared in the name of the plaintiff was set aside by the Revenue Circle Officer, Nazirpur, by order dated 10.11.1985, and subsequently, the review application filed by the plaintiff was also rejected on 02.12.1985 by the RCO, which has been proved as exhibit Uma(1). The defendant also proved the dakhilas as exhibit Za(1) to Za (15), which proved that the defendant paid the rent of the suit land.

On perusal of the judgment and decree passed by the trial Court, it reveals that the trial Court decreed the suit on the failure of the defendants. There is no finding in the judgment and decree passed by the trial Court that the plaintiff owned the suit land before alleged dispossession. No specific date of dispossession has been proved by the plaintiff. In reply to a question put to P.W. 2 Nony Gopal Roy stated that he is not aware as to how the defendants are possessing the land. P.W. 3 Siddessor Mondal admitted in cross-examination that on the date of taking over possession by Ranjit, he was not present in this house. Admittedly, the defendants are possessing the suit land which is their homestead and the plaintiff could not prove their dispossession from the suit land. After the cancellation of S.A khatian, no khatian was prepared in the name of the plaintiff, and the defendants paid the rent of the suit land. I am of the view that the

defendants owned the suit land before filing the suit and the plaintiff could not prove his possession in the suit land and subsequent dispossession from the suit land. I do not find any misreading and non-reading of material evidence.

In view of the above evidence, findings, observations and the proposition, I am of the view that no illegality was committed by the appellate Court below in setting aside the impugned judgment and decree passed by the trial Court.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records at once.