

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 3171 of 2022

Executive Engineer, Bangladesh Water  
Development Board, Natore

.....petitioner

-Versus-

Khan Mohammad Monjur-E-Khuda being  
died his legal heirs:

1(a) Parvez Mahmud Khan and others

.....opposite parties

Mr. Arobinda Kumar Roy, Advocate

.....for the petitioner

Mr. Mahbub Shafique with

Mr. Shah Md. Babar, Advocates

.....for opposite parties

Mr. Md. Yousuf Ali, Deputy Attorney General  
with

Mr. Khan Mahfuzun Noor and

Mr. Rezbaul Kabir, Assistant Attorneys General

.....for opposite party 5

**Heard on: 10.05.2026, 07.06.2026,  
08.06.2026 and 11.06.2026**

**Judgment on: 14.06.2026**

In the instant revision Rule was issued calling upon the opposite parties 1-4 to show cause as to why the impugned judgment and decree dated 23.03.2022 passed by the learned District Judge, Natore in Title Appeal Number 160 of 2017 reversing the judgment and decree dated 24.09.2017 passed by the learned Assistant Judge, Sadar, Natore in Other Class Suit Number 33 of 2006 dismissing the suit should 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 opposite parties as plaintiff filed Other Class Suit Number 33 of 2006 in the Court of the Senior Assistant Judge, Natore on 12.02.2006 seeking a declaration of title in respect of 0.1544 acres of land appertaining to C.S. and S.A. Plot Numbers 1756 and 1757 corresponding to R.S. Plot Number 2604.

The plaintiffs' case in short is that one Sher Mahmud Khan was the recorded owner of the suit land described in the schedule to the plaint under C.S. Khatian Number 1021. He died leaving behind three sons namely Shamsheer, Jamshed and Khorshed and his five daughters namely Abedannessa, Jaheda, Rabia, Majedunnessa and Mokhlesunnessa alias Sajeda. Sajeda died leaving behind one son named Khairuzzaman and three daughters namely Ayesha, Khodeja and Indri Bibi. Majedunnessa also died leaving behind one son named Hamid and three daughters namely Rasheda, Majeda and Guni Bibi. On the basis of title and possession S.A. Khatian Number 1077 was duly prepared and published in the names of the aforesaid heirs.

Subsequently by way of amicable partition amongst the sons and daughters of Sher Mahmud Khan the suit property fell to the share of Khorshed Khan. After the death of Khorshed Khan the suit property devolved upon his four sons who are the plaintiffs and his five daughters who have been impleaded as defendants 17-21. Thereafter by an amicable partition amongst the heirs of Khorshed Khan the suit property exclusively fell to the shares of the plaintiffs. While the plaintiffs were possessing and enjoying the suit property on the strength of the aforesaid title they upon verification of the relevant records and papers on 21.08.2005 came to learn that the R.S. record in respect of the suit property had been published erroneously in the names of defendants 1 and 2. Defendant 1 allegedly took a decision to acquire the suit property for the benefit of defendant 2. But such acquisition was not proceeded with in view of an order passed by the Honourable High Court Division in a writ petition.

According to the plaintiffs the cause of action arose on 21.08.2005 when they discovered the erroneous R.S. record and their title became clouded. Hence the suit was filed seeking a decree declaring their title in the suit property.

Defendant 1 namely the Government contested the suit by filing a written statement wherein it was asserted that the suit property had been acquired through L.A. Case Number 147 of 1960-61 for the Government of Bangladesh and had been placed at the disposal of defendant 2 the Bangladesh Water Development Board. It was further stated that during the R.S. operation R.S. Khatian Number 5 was correctly prepared and published in the name of the Water and Power Development Department on the basis of title and possession. The plaintiffs allegedly received compensation for the acquired land. According to defendant 1 the plaintiffs have neither title nor possession in the suit property and filed the suit falsely with an intention to grab Government property. As such the suit was liable to be dismissed.

Defendant 2 also filed a separate written statement contending that the suit land was not acquired through L.A. Case Number 147 of 1960-61 and the plaintiffs' assertion in that regard was totally incorrect. Rather the suit property was acquired through L.A. Case Number 157 of 1962-63 by the Government of Bangladesh and thereafter transferred to the Bangladesh Water Development Board upon payment of compensation to the owners concerned. It was further asserted

that no writ petition had ever been filed before the Honourable High Court Division challenging the said acquisition proceeding.

Defendant 2 further stated that it constructed a rest house and residential buildings for its employees upon the suit property and has been possessing the same continuously. According to defendant 2 the entire suit property belonged to it by virtue of lawful title and possession. The R.S. record was correctly prepared and published in its favour and it has been possessing the land by paying rents and Government dues. The plaintiffs have no title or possession whatsoever in the suit property and filed the suit falsely with a view to grab Government land. Therefore the suit is liable to be dismissed with costs. Subsequently in additional written statement dated 05.02.2017 defendant 2 stated that the acquisition proceeding actually started by L.A. Case Number 100 of 1959-60.

Upon the pleadings of the parties the trial Court framed four issues for determination. The plaintiffs examined two witnesses in support of their case. Defendant 1 examined D.W. 1 while defendant 2 examined D.W. 2. Both sides also adduced documentary evidence in support of their respective

cases. In addition thereto an Advocate Commissioner was examined before the Court on 12.06.2016.

Upon consideration of the evidence on record the trial Court by judgment and decree dated 24.09.2017 dismissed the suit holding inter alia that although the plaintiffs succeeded in establishing title to the suit property they failed to prove possession thereof. The trial Court further held that the R.S. record and rent receipts supported the possession of defendant 2 over the suit property.

Being aggrieved thereby the plaintiffs preferred Title Appeal Number 160 of 2017 before the Court of the District Judge, Natore. The appellate Court by judgment and decree dated 23.03.2022 allowed the appeal and decreed the suit in favour of the plaintiffs.

Challenging the aforesaid judgment and decree of the appellate Court defendant 2 preferred the instant Civil Revision and obtained the Rule on 03.08.2022.

Learned Advocate Mr. Arobinda Kumar Roy appearing on behalf of the petitioner submits that the appellate Court committed an error of law resulting in an erroneous decree and thereby occasioned a failure of justice inasmuch as it failed to consider that the plaintiffs utterly failed to prove their

possession in the suit land. He contends that the instant suit having been instituted under Section 42 of the Specific Relief Act could not legally be decreed in the absence of a prayer for recovery of possession particularly when the trial Court specifically found that the plaintiffs are not in possession of the suit property. In support of his submission he places reliance upon the case of Dilipjan Vs. Shahed Badsha reported in 66 DLR(AD) 176.

Drawing the attention of the Court to the evidence on record he further submits that the plaintiffs also failed to establish their title in the remaining 0.0244 acres of land beyond 0.13 acres inasmuch as the said portion had already been acquired for the purpose of Roads and Highways. Referring to the evidence of P.W. 2 he argues that the trial Court rightly held that the plaintiffs failed to prove their possession. He further submits that rent-receipt Exhibit-A and the R.S. record marked as Exhibit-B unequivocally indicate possession of defendant 2 over the suit land. He submits that the appellate Court failed to consider these material pieces of evidence and most erroneously decreed the suit and the decision is not sustainable in law.

He further submits that the reliance placed by the appellate Court upon the report of the Advocate Commissioner for arriving at a finding regarding possession was totally misconceived and contrary to law. According to him no lawful finding as to possession could have been recorded solely on the basis of such report. He finally prays that since the Rule has substantial merit the same be made absolute.

Mr. Md. Yousuf Ali, the learned Deputy Attorney General along with Mr. Rezbaul Kabir and Mr. Khan Mahfuzun Noor, the learned Assistant Attorneys General appearing on behalf of opposite party 5 who was defendant 1 in the original suit supports the submissions advanced by Mr. Roy and further submits that although reference was made in the written statement of defendant 2 to both L.A. Case Number 147 of 1960-61 and L.A. Case Number 157 of 1962-63 defendant 2 ultimately based its claim over the suit property upon L.A. Case Number 157 of 1962-63. He submits that although the learned trial Court rendered findings with regard to L.A. Case Number 147 of 1960-61 it did not record any finding in respect of L.A. Case Number 157 of 1962-63. Since no writ petition was admittedly filed challenging the

acquisition proceeding arising out of L.A. Case Number 157 of 1962-63 the claim of defendant 2 stood established. He further contends that both the Courts below arrived at totally erroneous findings regarding title and as the plaintiffs failed to prove their case the suit was liable to be dismissed. Accordingly he prays that the Rule be made absolute.

On the other hand learned Advocate Mr. Mahbub Shafique appearing on behalf of the opposite parties submits that the appellate Court upon proper appreciation of the evidence on record and the law applicable thereto rightly decreed the suit and such findings are not amenable to interference in revisional jurisdiction.

He submits that defendant 1 claimed the suit land on the basis of L.A. Case Number 147 of 1960-61 but neither the relevant acquisition record nor any supporting evidence was produced before the Court. He further submits that the alleged acquisition proceeding was disbelieved in Writ Petition Number 274 of 1967 marked as Exhibit-2(Ka). He also submits that the admitted title of the plaintiffs could not be said to have been extinguished by an acquisition proceeding which remains unproved in evidence. Consequently there existed no legal impediment to granting a decree in favour of

the plaintiffs. He further submits that the report submitted by the Advocate Commissioner was never challenged or contradicted or confronted by the defendants during trial and therefore the same carried considerable evidentiary value. He submits that the appellate Court lawfully considered the said report and correctly arrived at its finding regarding possession. He contends that no error of law much less any error occasioning a failure of justice was committed by the appellate Court. Lastly he submits that the appellate Court rightly applied the settled principle that possession follows title and having regard to the facts and circumstances of the case correctly decreed the suit. He therefore prays that the Rule being devoid of merit be discharged.

Heard the learned Advocates appearing for the respective parties. Perused the materials on record and also examined the judgments and decrees passed by the Courts below.

This is a suit for declaration of title in respect of 0.1544 acres of land appertaining to C.S. and S.A. Plot Numbers 1756 and 1757 corresponding to R.S. Plot Number 2604.

The plaintiffs' specific case is that the suit property originally belonged to their predecessors-in-interest. It is their

further case that when the Government initiated acquisition proceedings in respect of the suit land through L.A. Case Number 147 of 1960-61 their predecessor challenged the legality of such acquisition by filing Writ Petition Number 274 of 1967 before the High Court Division. The judgment delivered in the said writ petition has been brought on record as Exhibit-2(Ka). According to the plaintiffs by the said judgment dated 08.10.1969 the proposed acquisition in respect of the disputed land was set aside and thereafter neither defendant 1 nor defendant 2 lawfully acquired the suit property.

The defence however suffers from a fundamental inconsistency. Defendant 1 claims title through L.A. Case Number 147 of 1960-61 and asserts that pursuant thereto the suit land vested in the Government and the relevant R.S. record was accordingly prepared. Defendant 2 on the contrary specifically pleaded that the suit land was never acquired through L.A. Case Number 147 of 1960-61 and the acquisition was in fact made through L.A. Case Number 157 of 1962-63 or L.A. Case Number 100 of 1959-60. Subsequently instead of deleting the claim relating to the earlier L.A. Case through an amended statement defendant 2 once again based its claim on

L.A. Case Number 147 of 1960-61. Thus the very foundation of the title asserted by defendants 1 and 2 is mutually contradictory and destructive.

Exhibit-2(Ka) namely the judgment passed in Writ Petition Number 274 of 1967 clearly shows that acquisition in respect of 13 decimals of the disputed land was not allowed to stand. More importantly there is no evidence on record that the said judgment was ever challenged before any superior forum or otherwise rendered ineffective by any lawful proceeding. In the absence of any such material the legal effect of the said judgment remains undisturbed and effectively binding.

This Court is exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure. It is not sitting in a Civil Appeal over a judgment passed by the High Court Division in exercise of its special original jurisdiction. Therefore after the lapse of more than five decades it would be totally inappropriate and legally impermissible to arrive at a finding which would in substance nullify or override the effect of the judgment passed in Writ Petition Number 274 of 1967.

The learned trial Court upon consideration of the evidence on record arrived at a specific finding that the plaintiffs succeeded in proving their title in the suit property.

Although the suit was ultimately dismissed on the question of possession the finding relating to title was unequivocally recorded in favour of the plaintiffs.

It further appears from the record that after dismissal of the suit the plaintiffs preferred Title Appeal Number 160 of 2017. Significantly none of the defendants preferred any appeal challenging the finding regarding title nor did they file any cross-objection under Order 41 Rule 22 read with Rule 33 of the Code of Civil Procedure for questioning the correctness of the said finding.

Order 41 Rule 22 of the Code of Civil Procedure embodies the well-recognized principle that where a respondent intends to challenge an adverse finding recorded against him by the trial Court he may support the decree on any available ground but if he seeks reversal of a finding which may prejudice his interest in future litigation or which forms the foundation of the decree under challenge the proper course is to file a cross-objection. The provision exists to afford a respondent an opportunity to challenge that part of the judgment which has gone against him without filing an independent appeal.

In the present case the finding regarding title was clearly adverse to the defendants. If the defendants genuinely intended to dispute the plaintiffs' title over the entire suit land measuring 0.1544 acres it was incumbent upon them to challenge the said finding before the appellate Court through an appropriate cross-objection. No such step was taken.

It is true that Order 41 Rule 33 of the Code of Civil Procedure confers wide discretionary power upon the appellate Court to pass any decree or order which ought to have been passed. But Rule 33 is not intended to relieve a litigant from the consequences of his own omission. The provision is essentially discretionary and is invoked to do effectual justice between the parties in exceptional circumstances. It does not dispense with the necessity of challenging an adverse finding where the party concerned seeks affirmative relief against such finding.

In the case in hand the appellate Court not only refrained from disturbing the finding of title recorded by the trial Court but expressly affirmed the same. Consequently there are concurrent findings of both Courts below regarding the plaintiffs' title in the suit property.

In such circumstances the scope of interference in revision becomes extremely limited. Unless the concurrent findings are shown to be based on no evidence or misreading of evidence or non-consideration of material evidence resulting in an error of law occasioning failure of justice this Court would not be justified in reopening the question of title.

The submission advanced at the hearing that 0.0244 acres of land had allegedly been acquired by the Roads and Highways Department is also of no avail. Such a case finds no place either in the pleadings or in the evidence adduced by the parties. No issue was framed on that question. It is a settled principle of law that evidence without pleadings is of no legal consequence and a party cannot be permitted to travel beyond its pleadings by making out a third case upon second thought. Accordingly the said submission is rejected as being wholly beyond the scope of the case made out by the defendants.

The record further reveals that the R.S. records produced by the parties were marked as Exhibit-1(b), Exhibit-B and Exhibit-Kha(2) respectively. Exhibit-B shows that the same was printed and published on 26.10.1994 that is to say approximately twenty five years after the judgment passed in Writ Petition Number 274 of 1967.

Under Section 144A of the State Acquisition and Tenancy Act an entry in a finally published record-of-rights raises only a rebuttable presumption of correctness. Such presumption is not conclusive. Where reliable evidence shows that the entry was prepared upon an erroneous factual or legal foundation the presumption stands rebutted.

In the instant case the defendants failed to produce and prove the very acquisition proceedings upon which their title over the suit land is allegedly founded. Defendant 1 relied upon LA. Case Number 147 of 1960-61 whereas defendant 2 disowned the said case as apparent from written statement dated 09.08.2006 and relied upon L.A. Case Number 157 of 1962-63. Neither of those acquisition proceedings was proved in accordance with law. On the contrary Exhibit-2(Ka) the judgment passed in writ petition materially undermines the very basis upon which defendant 1 seeks to justify the R.S. entries.

In that view of the matter the presumption attached to the R.S. record stands effectively displaced and the recording of the names of the defendants in R.S. Plot Number 2604 cannot by itself confer title upon them.

There is another aspect of the matter. D.W. 2 during cross-examination admitted that defendant 2 does not claim the suit property on the basis of L.A. Case Number 157 of 1962-63. This admission strikes at the root of the defence case and further exposes the inconsistency in the stand taken by the defendants. The statements made in the written statement dated 09.08.2006 filed by defendant 2 was not subsequently amended disowning L.A. Case Number 157 of 1962-63 rather filed additional written statement on 05.02.2017 claiming with reference to other L.A. Case Numbers 100 of 1959-60 and 147 of 1960-61.

Accordingly I find no legal infirmity in the concurrent finding of the Courts below that the plaintiffs have successfully established their title in respect of the suit property measuring 0.1544 acres.

As discussed above the entries made in the names of the defendants in R.S. Khatian Number 5 in respect of R.S. Plot Number 2604 have already been found to be erroneous and incapable of supporting the defendants' claim of title. It further appears from Exhibit-A series that defendant 2 does not pay rent in respect of the suit plot namely R.S. Plot Number 2604. Thus neither the record-of-rights nor the rent

receipts materially advance the case of the defendants regarding their alleged possession over the suit land.

P.W. 1 stated in his cross-examination that the rest house of the Water Development Board is situated to the west of the suit land and that the suit land lies at a lower level than the land upon which the said rest house stands. Significantly no suggestion was put to him disputing the aforesaid statement. It is a settled principle of appreciation of evidence that where a witness makes a material assertion and the opposite party fails to challenge the same in cross-examination the Court may legitimately infer that such part of the evidence has substantially remained uncontroverted. P.W. 1 further stated that the certified copy of the judgment passed in Writ Petition Number 274 of 1967 was obtained in the year 1969. Exhibit-2(Ka) bears the delivery date of 07.11.1969 which lends assurance to the truthfulness of his statement.

P.W. 2 categorically stated that there was neither any Government possession nor any building standing upon the suit land. Surprisingly no cross-examination was directed against this specific and important assertion. In cross-examination P.W. 2 further stated that the rest house of the Water Development Board is situated to the west of the suit

land. Again no suggestion was put to him disputing that fact. On the contrary when it was suggested that the defendants are possessing the suit property he expressly denies the same.

On the other hand D.W. 1 admitted during cross-examination that according to L.A. Case Number 147 of 1960-61 15.44 decimals of land had allegedly been acquired. However he was unable to state the amount of compensation paid or the person in whose favour such compensation was allegedly paid. Such inability on the part of a witness claiming through acquisition substantially weakens the defence case. He also admitted that the suit property originally belonged to the plaintiffs although he denied the suggestion regarding the effect of the writ judgment.

The evidence of D.W. 2 creates even greater uncertainty. While defendant 1 relied upon L.A. Case Number 147 of 1960-61 and defendant 2 in its written statement relied upon L.A. Case Number 157 of 1962-63 D.W. 2 introduced yet another acquisition proceeding namely L.A. Case Number 100 of 1959-60 as disclosed in additional written statement dated 05.02.2017. Consequently the defendants have relied upon three different acquisition cases at three different stages of the proceeding. Yet none of those acquisition records has been

produced before the Court and proved in accordance with law. It is difficult to conceive how title by acquisition can be established without producing the acquisition records themselves. Such mutually destructive stands and absence of primary evidence completely undermine the defence case.

It is also important to note that defendant Number 2 specifically pleaded that it had long ago constructed a rest house and other structures upon the suit land and has been possessing the same. Thus according to its own pleading structures should have existed on the suit property itself but the record reveals another different picture.

The plaintiffs filed an application under Order 26 Rule 9 of the Code of Civil Procedure seeking local investigation and the said application was allowed. Pursuant thereto Advocate Commissioner Mr. Shyamal Kumar Saha conducted local investigation in presence of both parties and other local persons and submitted his report before the Court which was marked as Exhibit-AC.

Order Number 50 dated 12.06.2016 shows that the Advocate Commissioner was examined before the Court. Although the defendants entered appearance on that date they

did not cross-examine the Commissioner. Nor did they file any written objection challenging the report.

Order 26 Rule 10 of the Code of Civil Procedure expressly provides that the report of a Commissioner and the evidence taken by him shall form part of the record and may be used as evidence in the suit. True it is that a Commissioner's report is not conclusive and the Court is not bound to accept it blindly. Nevertheless where such report remains unchallenged and is supported by other evidence on record the Court is entitled to attach considerable weight thereto.

A careful reading of Exhibit-AC shows that in answer to question number 3 the learned Advocate Commissioner specifically found that no structure existed upon 0.1544 acres of land comprised in R.S. Plot Number 2604 and that the land was lying vacant. Therefore the Commissioner's report directly contradicts the specific defence case that the rest house of defendant 2 stands upon the suit land.

The significance of this report cannot be overlooked. The defendants neither challenged the report by filing objections nor tested its correctness through cross-examination of the Commissioner. The settled rule of evidence is that

failure to challenge material evidence in cross-examination ordinarily amounts to acceptance of that evidence unless the surrounding circumstances indicate otherwise. In the present case there is no such surrounding circumstance.

Furthermore the report is fully consistent with the evidence of P.W. 1 and P.W. 2 both of whom stated that the rest house is situated on the western side of the suit land and not upon the suit land itself. The oral evidence and the Commissioner's report thus lend mutual corroboration to each other.

Therefore this Court is unable to agree with the submission of the learned Advocate for the petitioner that the appellate Court committed any illegality in placing reliance upon Exhibit-AC. Rather the appellate Court correctly considered the report as one piece of corroborative evidence along with the other materials available on record.

Upon a cumulative assessment of the oral evidence, documentary evidence and the Commissioner's report I find that the plaintiffs have successfully proved their possession over the suit property. Moreover the facts of the present case also attract the well-established doctrine that possession

follows title which enunciates that possession is presumed to be in favour of such a person who has got better title.

The decision reported in 66 DLR(AD) 176 is clearly distinguishable on facts. In that case the possession of the defendants was admitted by the plaintiffs' own witnesses and the factual foundation of the dispute was entirely different. In the present case there is no admission by the plaintiffs' witnesses regarding possession of the defendants. Rather the evidence consistently establishes the contrary.

Having considered the entire evidence on record I find that the plaintiffs have successfully established both their title and possession in respect of the suit property measuring 0.1544 acres. The appellate Court correctly appreciated the evidence and correctly applied the law. I do not find any misreading or non-reading of evidence nor any error of law occasioning failure of justice warranting interference under Section 115 of the Code of Civil Procedure.

Accordingly the Rule is discharged without any order as to costs.

The judgment and decree dated 23.03.2022 passed by the learned appellate Court in Title Appeal Number 160 of 2017

are hereby affirmed and the judgment and decree dated 24.09.2017 passed by the learned trial Court are set aside.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher-B.O