

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.3510 OF 2019**

In the matter of:

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

And

Nur Jahan Begum and others

... Petitioners

-Versus-

Tahshilder, Union Land Office, Borghop, Cox's Bazar and others

... Opposite parties

None appears

... For the petitioner.

Mr. Saifur Rahman, Deputy Attorney General

Mr. Moshihur Rahman, Assistant Attorney General

Mr. Md. Mizanur Rahman, Assistant Attorney General

Mr. Saifur Rahman, Assistant Attorney General

.... For the opposite party Nos.1-3.

Mr. Md. Earul Islam, Advocate

.... For the opposite party Nos.25-28.

**Heard on 23.04.2025 and Judgment on 14.05.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 27.05.2019 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Cox's Bazar in Other Appeal No.89 of 1999 dismissing the appeal and thereby affirming the judgment and decree dated 31.03.1999 passed by the learned Assistrant Judge, Khutbdia, Cox's Bazar in Other Suit No.10 of 1994 dismissing the suit 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 opposite party Nos.25-28 as plaintiffs instituted Other Suit No.10 of 1994 for declaration of title for 47 decimal land of schedule No.2 and for further declaration that plaintiffs are permissive processor for 1.1 acres land of schedule No.1 under the Government alleging that the predecessor of the plaintiffs namely Kazi Golum Sobhan acquired 1.20 acres land from the Government by Settlement Case No.27 of 1947-48 and M. R. R. Khatian No.62 was recorded correctly in the name of above Golam Sobhan. He was in possession of above land and after his demise plaintiffs are in possession of above land as his heirs. 47 decimal land of Plot No.5558 belonged to the Government and plaintiff's father was in possession of above land by taking lease and by above continuous possession plaintiff have acquired title.

Defendant Nos.1 and 2-4 contested above suit by filling separate written statements. It was alleged by defendant No.1 that his father Abdul Hakim was in possession of disputed 1.5 acres land of the Government adversely and claiming title and by above continuous adverse possession defendant acquired valid title in above land and above land was rightly recorded in the name of defendant No.1 as the heir of above Abdul Hakim. Plaintiff did not obtain settlement of above land from the Government but above land has been erroneously recorded in the name of the Government in R. S. Khatian.

Defendant Nos.2-4 stated that above 1.49 acres land belonged to the Government and the same is still in the possession of the Government and plaintiff and defendant No.1 do not have any title and possession in above land.

At trial plaintiff examined 3 witnesses and defendant No.1 examined 2. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of defendant No.1 were marked as Exhibit No."Ka".

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

Being aggrieved by above judgment and decree of the Trial Court plaintiff as appellant preferred Other Appeal No.71 of 1999 and defendant No.1 preferred Cross Appeal to the District Judge, Cox's Bazar. Above Cross Appeal was heard by the learned Joint District Judge, 2<sup>nd</sup> Court who dismissed above cross appeal by impugned judgment and decree dated 27.05.1919.

Being aggrieved by above judgment and decree of the Court of Appeal below above cross appellant as petitioners moved to this Court with this civil revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioners at the time of hearing of this Rule although the Rule appeared in the list for hearing on several dates.

Mr. Md. Earul Islam, learned Advocate for the opposite party Nos.25-28 submits that above opposite parties were the plaintiffs of Other Suit No.10 of 1994 and the trial Court dismissed the suit and against above judgment and decree of the trial Court plaintiffs as appellants preferred Other Class Appeal No.71 of 1999 which was also dismissed. But the appellants did not prefer any civil revision challenging the judgment and decree of the Court of Appeal below. Above appellants are opposite party Nos.25-28 of this Civil Revision and the right and title of above opposite party Nos.25-28 may be discussed and a decision may be passed on the basis of materials on record.

Mr. Saifur Rahman, learned Deputy Attorney General for opposite party Nos.1-3 submits that admittedly disputed 1.59 acres land belonged to the Government and the relevant M. R. R. Khatian was rightly recorded. Plaintiff claimed 1.2 acres land on the basis of settlement from the Government but both the Courts below concurrently held that the plaintiffs could not prove above settlement and their title and possession in above land on the basis of settlement. Opposite party Nos.25-28 did not challenge the legality and propriety of judgment and decree passed by the Court of Appeal below in Other Class Appeal No.71 of 1999. Opposite party Nos.25-28 without preferring a Civil Revision against the judgment and decree of Other Class appeal No.71 of 1999 cannot get any relief in this proceeding. The

learned Deputy Assistant General lastly submits that both the Courts below have concurrently held that defendant could not prove title and possession in 1.59 acres land by adverse possession against the Government and in the absence of any allegation of misreading or non consideration of any evidence on record this Court cannot interfere with above concurrent findings of above facts. As far as B. S. Khatian No.773 is concerned the same was erroneously recorded in the name of defendant No.1 when he was a minor boy and the defendants could not show any legal basis of above B. S. Khatian. On consideration of above materials on record the learned judge of the Court of Appeal below rightly dismissed the cross appeal of defendant No.1 which calls for no interference.

I have considered the submissions of the learned Advocates for opposite parties and carefully examined all materials on record.

Admittedly opposite party Nos.25-28 as plaintiffs instituted Other Class Suit No. of 1994 for declaration of title for 1.59 acres land and above suit was dismissed and Other Class Appeal No.89 of 1999 filed by above plaintiffs were also dismissed on contest and above appellants did not challenge the legality and property of above judgment and decree of the Court of appeal below by preferring a Civil Revision to the High Court Division.

As such above judgment and decree of the Court of Appeal below has reached its finality as far as opposite party Nos.25-28 are concerned.

Defendant No.1 of above suit preferred a cross appeal in above Other Class Appeal No.89 of 1999 and the Court of Appeal below dismissed above cross appeal of defendant No.1 by a separate judgment. The judgment and decree passed by the Court of Appeal below in above cross appeal has been challenged by this Civil Revision. As such there is no scope to revise the judgment and decree passed by the Court of Appeal below in Other Class Appeal No.89 of 1993 since above judgment and decree of the Court of Appeal has not been challenged before this Court.

It is admitted that disputed 1.59 acres land belonged to the Government and the same was rightly recorded in the name of the Government relevant M.R.R. Khatian and above land was recorded in the name of defendant No.1 in B.S. Khatian No.773.

While giving evidence as DW1 defendant No.1 Kamal Uddin stated that his age is 55 years and after demise of his father above land was recorded in his name in B. S. Khatian No.773. As to the acquisition of title in above land he has merely stated that his father possessed above land and made above land cultivable. But he could not mention the date of entry of his father in above land or the nature of his possession. He did not claim that his father acquired title in above land by way of adverse possession against the Government. DW2 Nurul Alam stated in his evidence that defendant is possessing above land for 15 years. On consideration of above evidence of defendant Nos.1 and 2

the learned Judges of the both the Court below rightly held that defendant No.1 could not prove title in disputed 1.59 acres land by way of adverse possession. The learned Judge of the Court of Appeal below on correct appreciation of materials on record rightly dismissed above cross appeal which calls for no interference.

I am unable to find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is devoid of any substance and liable to be discharged.

In the result, Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*