Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 2091 of 2024
Sree Joyanto Kumar Roy and another
.....petitioners
-Versus-
Dinesh Chandra Roy and others
.....opposite parties

Mr. Md. Taherul Islam with
Mr. Zobaidur Rahman, Advocates
.....for the petitioners

Ms. Anita Ghazi Rahman, Senior Advocate with
Mr. Taposh Bandhu Das with
Mr. Manzur-Al-Matin, Advocates
.....for opposite parties

Heard on: 12.05.2026, 17.06.2026, 23.06.2026, 01.07.2026 and 05.07.2026

Judgment on: 08.07.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 04.03.2024 passed by the learned Additional District Judge, Second Court, Dinajpur in Other Appeal Number 10 of 2021 reversing the judgment and decree dated 29.11.2020 passed by the learned Assistant Judge, Kaharol, Dinajpur in Other Class Suit Number 14 of 2018 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 plaintiffs filed Other Suit Number 14 of 2018 on 10.04.2018 seeking a decree of permanent injunction in respect of 47 decimals of land out of 1.48 acres appertaining to C.S. and S.A. Plot Number 92 corresponding to C.S. Khatian Number 38 and S.A. Khatian Number 57 within the boundaries described in the schedule to the plaint.

The plaintiffs' case in short is that the suit land originally belonged to Neelbarmoni who died leaving behind three sons named Tilok, Amulya and Dhirendra. During her lifetime Neelbarmoni executed and registered three deeds of gift being Numbers 4603, 4604 and 4605 dated 22.12.1980 in favour of three grandsons named Ratan, minor Nitai and minor Jayanta who is defendant Number 1 in the suit and delivered possession thereof. Subsequently Dhirendra being the father and natural guardian of minor Jayanta executed and registered three kabala deeds being Numbers 502, 503 and 504 dated 27.01.1986 in favour of the plaintiffs for the welfare of the minor. Thereafter the plaintiffs got their names mutated and have been possessing the suit land by exercising right, title and interest therein. It is further stated that defendant 1 Jayanta also executed a deed of relinquishment in favour of the

plaintiffs. According to the plaintiffs on 07.04.2018 the defendants demanded money from them and threatened that in default of payment they would dispossess the plaintiffs from the suit land. Hence under such apprehension the instant suit was filed.

The petitioners as defendants 1 and 2 entered appearance and contested the suit by filing a written statement denying all the material averments made in the plaint and contending inter alia that defendant 1 acquired the suit property from his grandmother by the registered deed of gift dated 22.12.1980. At the relevant time defendant 1 was a minor and his father merely possessed and managed the property on his behalf. After attaining majority defendant 1 has been possessing and enjoying the suit property by exercising right, title and interest therein. His father never transferred the suit land to the plaintiffs and in any event had no legal authority to do so. Accordingly the suit is false, frivolous and liable to be dismissed with costs.

On the pleadings of the parties the trial Court recast as many as four issues namely whether the suit is maintainable, whether it is barred by limitation, whether the plaintiffs are in exclusive possession of the suit land and whether they are

entitled to the reliefs prayed for. In support of their respective cases the plaintiffs examined four witnesses and the defendants examined three witnesses. Both sides also adduced documentary evidence. Upon hearing the parties and considering the evidence on record the trial Court by judgment and decree dated 29.11.2020 dismissed the suit mainly on the finding that the case involves a complicated question of title and the suit land has not been properly identified or demarcated.

Being aggrieved thereby the plaintiffs as appellants preferred Other Appeal Number 10 of 2021 before the Court of the District Judge, Dinajpur, which on transfer was heard by the Additional District Judge, 2nd Court, Dinajpur. The appellate Court by judgment and decree dated 04.03.2024 allowed the appeal upon holding that the plaintiffs have prima facie title in the suit land and have also proved their exclusive possession thereof.

Being dissatisfied with the said judgment and decree, the defendants preferred the instant civil revision and obtained the Rule on 29.04.2024.

Learned Advocate Mr. Md. Taherul Islam along with Mr. Zobaidur Rahman appearing for the petitioners submits

that the appellate Court committed an error of law resulting in failure of justice by decreeing the suit upon erroneous consideration of the evidence without reversing the findings lawfully arrived at by the trial Court upon proper appreciation of the evidence in accordance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure. He submits that the impugned judgment is perverse and misconceived and liable to be set aside. He further contends that the transfer deeds executed by the father of defendant 1 do not disclose that the transfers were made for the welfare or legal necessity of the minor as required under the Hindu Law and therefore the deeds are void ab initio and incapable of passing any title. He next submits that defendant 1 was admittedly a minor at the time of execution of both the transfer deeds and the deed of relinquishment as is evident from the cross-examination of D.W. 1 and as such the transactions are also hit by Sections 11 and 24 of the Contract Act. In support of his submission he has referred to the case of Md. Julhash Mollah and another Vs. Ramani Kanta Malo and another reported in 14 BLD (AD) 263. He has also relied upon the decision of the case of Rafizuddin Ahmed Vs. Mongla Barman and others reported in 43 DLR(AD) 215 and submits that since the case involves a

complicated question of title a mere suit for permanent injunction without adjudication of title is not maintainable. Referring to the evidence of the P.Ws. he further submits that although the plaintiffs did not mention any shop standing on the suit land in their pleadings the evidence discloses the existence of shops thereon which clearly disproves their claim of exclusive possession. He further points out that the plaintiffs' title deeds contain no boundary description and the suit land has not been properly identified or demarcated and therefore no decree for permanent injunction could legally be granted. He also submits that both parties produced rent receipts in support of their respective possession and therefore the appellate Court acted illegally in placing reliance solely upon the rent receipts produced by the plaintiffs while ignoring those produced by the defendants. Finally he submits that the identity of the suit land cannot be determined without local investigation and therefore an order of remand would be the most appropriate course for effective adjudication of the dispute.

On the other hand learned Advocate Mr. Taposh Bandhu Das along with Mr. Manzur-Al-Matin appearing for the opposite parties submits that the appellate Court upon

independent assessment and proper appreciation of the entire evidence on record rightly reversed the erroneous findings of the trial Court in strict conformity with the provisions of Order 41 Rule 31 of the Code of Civil Procedure and therefore the impugned judgment calls for no interference in revision. Referring to Exhibits-3, 4, 5 and 6 he submits that the said documents fully satisfy the legal requirements governing the transfer of a minor's property and once such transfer has been lawfully completed it cannot subsequently be avoided except upon proof of fraud. He disputes the submissions regarding the existence of shops on the suit land and contends that no such case was either pleaded or raised by either party before the Courts below and therefore the petitioners cannot be permitted to introduce an altogether new case upon second thought at this stage. He further submits that there is no complicated question of title involved in the instant case since both parties claim title through defendant 1 Jayanta whose title has never been disputed. He also points out that D.W. 2 admitted in his cross-examination that the plaintiffs have been possessing the suit land since their purchase and such evidence remained unchallenged. He finally submits that the Rule is devoid of substance and is liable to be discharged.

I have heard the learned Advocates for both sides and perused the materials on record and also gone through the judgments passed by the Courts below.

It is an admitted position that Neelbarmani was the original owner of the suit property. She had three sons namely Tilok, Amulya and Dhirendra. Ratan Roy is the son of Tilok, Nitai Chandra is the son of Amulya and Jayanta defendant 1 is the son of Dhirendra. In order to avoid future dispute amongst her successors Neelbarmoni executed and registered three separate deeds of gift being numbers 4603, 4604 and 4605 dated 22.12.1980 in favour of her aforesaid three grandsons and simultaneously delivered possession of the respective properties. The said deeds have been marked as Exhibits-9, 10 and 11 respectively.

The plaintiffs' case is that since defendant 1 Jayanta was then a minor his father Dhirendra acting as his natural guardian transferred the property covered by Exhibit-11 in favour of the plaintiffs by executing and registering kabala deeds being numbers 502, 503 and 506 dated 27.01.1986 marked as Exhibits-3, 4 and 5 and delivered possession thereof. The word boundaries of the transferred land have been specifically described in each of the said deeds. Exhibit-3

recites that the transfer became necessary due to inconvenience in cultivation and Exhibit-4 states that there was no other means to meet the educational expenses of the minor and Exhibit-5 recites that the transfer was necessary for purchasing land elsewhere.

According to Sections 518 and 528 of Mulla's Principles of Hindu Law (16th Edition) the father is the natural guardian of the person and property of his minor child and is competent to transfer the minor's property in case of necessity or for the benefit of the estate. Section 528 specifically provides that the natural guardian of a Hindu minor has power in the management of the minor's estate to mortgage or sell any part thereof in case of necessity or for the benefit of the estate. The reasons recited in Exhibits-3, 4 and 5 clearly fall within the ambit of the said provision. The deeds were admitted in evidence without objection and the original deeds have been produced before the Court.

There is no dispute in the instant case regarding the title of defendant 1 Jayanta. Consequently the objection raised by the petitioners that the suit involves a complicated question of title has no factual or legal basis. Although the defence case is that Jayanta continued to possess the suit property after

attaining majority and Dhirendra neither transferred the property nor had any authority to do so but the documentary evidence discussed above clearly establishes that the plaintiffs purchased the property in 1986 by virtue of Exhibits-3, 4 and 5. Those deeds at the least establish the plaintiffs' prima facie title over the suit property.

A question may arise in view of the latter part of Section 528 of Mulla's Principles of Hindu Law which provides that if the alienee fails to prove legal necessity or make reasonable enquiries the transfer is invalid. In the opinion of this Court however that principle has no application to the present case. This is merely a suit for permanent injunction in which the plaintiffs are required to establish only a *prima facie* title together with possession. Had this been a suit for declaration of title under Section 42 of the Specific Relief Act the plaintiffs as transferees might have been required to establish legal necessity in terms of the relevant principles embodied in Section 41 of the Transfer of Property Act. Such question does not arise in the present proceeding. Likewise the provisions of Sections 11 and 24 of the Contract Act relied upon by the petitioners are wholly inapplicable to the facts of the present case.

Exhibit-6 being the deed of relinquishment dated 16.02.1987 executed by Jayanta in favour of the plaintiffs lends further support to Exhibits-3, 4 and 5. The original deed has also been admitted in evidence without objection. Although a deed of relinquishment does not by itself create title it is certainly admissible as corroborative evidence supporting the plaintiffs' claim of title.

The petitioners have relied upon the statement made by D.W. 1 in cross-examination that Jayanta was about nine years old in 1986 and have argued that he was still a minor when Exhibit-6 was executed. This contention cannot be accepted. Jayanta himself did not appear before the Court. No birth certificate or school certificate or any other reliable document was produced to establish his age. Nor has any explanation been offered as to why he abstained from giving evidence. In the absence of the best available evidence regarding his age no reliance can safely be placed upon the speculative statement of D.W. 1. Accordingly this Court finds that the plaintiffs have successfully established their *prima facie* title.

The petitioners have further referred to the cross-examination of P.W. 1 and submitted that he admitted the existence of two houses and some shops on the suit land. A

careful reading of his evidence however reveals that he referred to the entire C.S. plot and not to the suit land. P.W. 2 in answer to a question put by the Court categorically stated that after filing of the suit no shop or house was constructed anywhere within the entire plot. P.W. 3 an adjoining landowner also stated in cross-examination that no shop was ever erected upon the suit land. Significantly there is no pleading by either party regarding the existence of any shop upon the suit land. Such contention is therefore a third case beyond the pleadings and cannot be entertained at the revisional stage. P.W. 4 an official from the Sadar Sub-Registry Office proved the plaintiffs' deeds and his evidence remained wholly unchallenged.

It also appears that D.W. 1 Liton Chandra Roy is not a party to Exhibits-3, 4 or 5. Consequently his evidence regarding those transactions cannot carry the same evidentiary value as that of the executant himself unless empowered by Order 3 Rule 2 of the Code of Civil Procedure. On the contrary D.W. 2 an independent neighbour candidly admitted in cross-examination that the plaintiffs purchased the suit land and have been possessing the same since the date of purchase. This material admission remained unimpeached. D.W. 3 is

merely a day labourer and admitted in cross-examination that he has no land adjoining the suit property. His evidence therefore carries little evidentiary weight.

The defendants produced three rent receipts marked Exhibit-G series. Of them two were obtained after institution of the suit and the remaining receipt is dated 05.03.2018 which is barely one month before filing of the suit. On the other hand the plaintiffs produced Exhibit-7 series showing payment of rent for the preceding twenty-nine years. Exhibit-7(Ka) further discloses payment of rent on 15.01.1989 and specifically refers to Mutation Case Number 583 of 1988-89 evidenced by Exhibit-8. These documents inspire confidence. It is well settled that rent receipts constitute evidence of possession and may also be used as collateral evidence of title.

It further appears that the schedule to the plaint identifies the suit land by a sketch map. Moreover the boundaries of the transferred land have been specifically mentioned in Exhibits-3, 4 and 5. The finding of the trial Court that the suit land is not properly identifiable is therefore unsupported by the evidence on record. The case is cited by the petitions are not at all relevant considering the facts and circumstances of the present case.

In view of the foregoing discussions this Court finds that the plaintiffs have successfully proved both their prima facie title and their exclusive possession over the suit property. Where the existing oral and documentary evidence on record is sufficient to resolve the controversy between the parties an order of remand cannot be granted as a matter of course merely to fill up lacunae on flimsy grounds. The prayer for remand is therefore refused.

Accordingly the Rule is discharged without any order as to costs. The judgment and decree passed by the Additional District Judge, 2nd Court, Dinajpur in Other Appeal Number 10 of 2021 are hereby affirmed and those passed by the trial Court in Other Suit Number 14 of 2018 are set aside.

The orders of stay and status quo passed by this Court stand vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and send down the lower Courts' record at once.

Md. Ali Reza, J: