

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.225 OF 2011**

In the matter of:

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

And

Rowsannessa Bibi being dead her heirs-Ramela Khatun  
and others

.... Petitioners

-Versus-

Renu Begum and others

.... Opposite parties

Mr. Shasti Sarker, Advocate

....For the petitioner.

Mr. Mohammad Mosharaf Hossain, Advocate

.... For the opposite party Nos.1-2

and 4.

**Heard on 28.01.2025.**

**Judgment on 29.01.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and decree dated 22.09.2010 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Jhenaidah in Title Appeal No.136 of 1995 affirming the judgment and decree dated 30.04.1995 passed by the learned Assistant Judge, Shailakupa, Jheidah in Title Suit No.213 of 1983 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 petitioners as plaintiffs instituted above suit for declaration of title and confirmation of possession and if plaintiff is proved to be dispossessed then a decree for recovery of possession for 38 decimal land appertaining to C. S. Khatian No.447 and Plot No.503. It was alleged that above property belonged to Bhadu Bhuimali who died leaving only daughter Shankari who gave birth to three sons namely Shambu Mali, Devdas and Norendra Mali who were in possession in above land by cultivation and they transferred the same to the plaintiffs by registered kabola deed dated 09.08.1975 and plaintiffs are in possession in above land by cultivation. Above land was erroneously recorded in S. A. Khatian No.375 in the name of Direndra Nath Chowdhury who had no title and possession in above land. On the basis of erroneous record defendants threatened the plaintiff with possession.

Defendant No.1-5 contested above suit by filling a joint written statement alleging that Bhadu Bhuimali died leaving one son Kalipada who mortgaged above land to Durgapada who filed Mortgage Suit No.172 of 1940 and obtained a decree and in Decree Execution Case No.129 of 1940 above land was sold in auction and purchased by Durgapada. Kalipado purchased above land from Durgapada by a registered kabola deed dated 29.05.1943 and sold the same to Narendra who gave oral settlement of above land to Direndra Chandra and in his name S. A. Khatian No.375 was correctly recorded. Above Direndra died leaving three son Ramesh, Gonesh and Bishanath who sold above

land to the plaintiffs by registered kabola deed dated 08.02.1983 and they are owning and possession above land by cultivation.

At trial plaintiffs examined four witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-3. The defendants examined three witnesses and documents of the defendants were marked as Exhibit Nos."A" - "E" series.

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

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Title Appeal No.130 of 1995 to the District Judge, Jhenaidah which was heard by the Joint District Judge, 1<sup>st</sup> Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below above appellants 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.

Mr. Shasti Sarker, learned Advocate for the petitioners submits that admittedly disputed property belong to Bhadu Bhuimali and same was correctly recorded in C. S. Khatian No.447. Above Bhadu Bhuimali died leaving only daughter Shankori who gave birth three sons namely Shombu Mali, Debdas and Norendra Mali who transferred above land to the plaintiff by a registered kobla deed on 09.08.1975. Plaintiffs are in possession in above land by cultivation and plaintiffs have succeeded to

prove above claims by mutually supportive oral evidence of four competent witnesses. On the other hand defendants could not prove that Bhadu Bhuimali had a son namely Kalipada or above property was sold in auction and subsequently purchased by above Kalipada and Kalipada transferred the same to Narendra Nath and Narendra Nath gave oral settlement to Direndra Nath by legal evidence. On consideration of above oral and documentary evidence the learned Judge of the Court of Appeal below should have allowed the appeal and set aside the unlawful judgment and decree of the trial Court and decreed the suit but the learned Judge of the Court of Appeal below failed to appreciate above materials on record properly and most illegally dismissed the appeal and affirmed the unlawful judgment and decree of the trial Court which is not tenable in law.

Mr. Mohammad Mosharraf Hossain, learned Advocate for opposite party Nos.1-2 and 4 submits that it has been correctly stated at Paragraph No.1 in the plaint that Bhadu Bhuimali had his dwelling house in the disputed land in Fazilpur village. The defendants have produced and proved original registered kabola deed dated 29.05.1943 showing transfer of the disputed land by Durgapada Shaha to Kalipado Bhuimali and in above document fathers name of Kalipada has been mentioned as Bhadu Bhuimali and it has been further stated that he is an inhabitant of Fazilpur village.

Above original registered document of more than 30 years old clearly show that Kalipada was a son of Bhadu Bhuimali who is the

admitted owner of disputed 38 decimal land and in whose name C. S. khatian was correctly prepared. As such the claim of title by the plaintiff from the so called sons of a daughter of above Bhadu Bhuimali does not have any leg to stand.

The plaintiff could not mention anything as to possession of Shankari in the disputed land nor they succeeded to prove their possession by producing any documentary evidence, mutated khatian or rent receipts. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below have rightly and concurrently held that the plaintiffs have utterly failed to prove their claim of title and possession in the disputed land and accordingly dismissed the suit and the appeal respectively which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that 38 decimal land belonged to Bhadu Bhuimali and the same was correctly recorded in C. S. Khatian No.447. It is also admitted that above land was recorded in S. A. Khatian No.375 in the name of Dhirendra Nath predecessor of the defendants.

It turns from the schedule of the plaint that in this suit of 1982 disputed land has been described by C. S. Khatian and Plot number. The plaintiff did not bring into hotchpot the latest Khatian Number and

Plot Number or the latest record of right which stands in the name of the predecessor of the defendants.

The plaintiff has claimed that above Bhadu Bhuimali died leaving only daughter Sankari who died leaving three sons Shombu, Devdas and Norendra but the plaintiffs did not make any endeavor to prove above genology of Bhadu Bhuimali by oral evidence of any competent witnesses or reliable documentary evidence. The plaintiffs have examined four witnesses but none of them is a competent witness to give evidence as to above genology of Bhadu Bhuimali. The plaintiff did not produce and prove any succession certificate in support of his above genology. As such the the plaintiffs could not prove that Bhadu Bhuimali died leaving only daughter Sankari as his heir and Sankari died leaving three sons namely Shombu, Devdas and Norendra the executants of the registered kabola deed of the plaintiff by legal evidence.

On the contrary defendants has produced and proved original registered kabola deed dated 29.05.1943 showing transfer of disputed 38 decimal land by Durgapads Shaha to Kalipads Bhuimali son of Bhadu Bhuimali of Fazilpur village. Above registered kabola deed is more than 30 years old and there is no reason to disbelieve the contents of above document. Above document shows that Bhadu Bhuimali died leaving one son Kalipada Bhuimali who used to reside in his paternal house at Fazilpur village. As such Sonkari was not a legal heir of Bhadu

Bhimali and the plaintiff did not acquire any title in the disputed land by way of purchase from three sons of above Sonkari.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of materials on record rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

I am unable to find any 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 liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*