

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5102 of 2024.

In the matter of:

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

And

Government of the People's
Republic of Bangladesh

...Petitioner

-Versus-

Lutfe Habib and others

...opposite parties

Mr. Md. Asaduzzaman, Attorney
General for Bangladesh with
Mr. Mohammad Mohsin Kabir, DAG with
Mr. Md. Saifur Rahman, DAG with
Md. Moshihur Rahman, AAG with
Mr. Arifur Rahman, AAG

...For the petitioner

Mr. Md. Zahedul Bari, Advocate with
Mr. Minal Hossain, Advocate with
Mrs. Nazmun Nahar Khan, Advocate

..For the opposite party Nos.1-4

Mr. Zamir Uddin Sircar, Senior
Advocate with

Mr. Abdul Al Mamun, Advocate

..For the opposite party No.5(a).

Heard on: 12.08.2025 & 14.08.2025.

Judgment on: 19.08.2025.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 07.07.2024 (decree signed on 11.07.2024) passed by the learned Additional District Judge, 1st Court, Munshiganj in Civil Appeal No.67 of 2018 disallowing the appeal and

thereby affirming the judgment and decree dated 22.02.2018 (decree signed on 28.02.2018) passed by the learned Senior Assistant Judge, Srinagar, Munshiganj in Title Suit No.07 of 2007 dismissing the suit should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the Government of Bangladesh represented by the Deputy Commissioner, Munshiganj as plaintiff instituted above suit for declaration of title for 24 decimal land as described in "Ka" schedule and for declaration that S.A. and R.S. khatinas of above land were erroneous and for further declaration that the registered kobla deeds of the defendants as described in "Ga" schedule are not binding upon the plaintiff.

It was alleged that above 24 decimal land belonged to Rajoni Kant Dhupi and Abisas Chandra Dhupi and their dwelling house was situated in above land and the same was correctly recorded in C.S. khatian No.184. Above Rajoni Khant and Abissas left this country for good for India about 71 years ago abandoning above land. Above two rightful owners gave consent to use 3 decimal land of plot

No.3167 as a public path which is still being used by the people at large. Above 24 decimal land has vested in the government which land remains vacant. The defendants do not have any lawful title and possession in above land but they prepared relevant R.S. and S.A. khatians in their names without any lawful basis.

Defendant Nos.1 and 2 contested above suit by filling two separate written statements but their claims and allegation are identical. It has been alleged by above defendants that above Abisshas Chandra Dhupi died leaving brother Rajoni Kant Dhupi as heir who in his turn died leaving only son Horomohon Dhupi who transferred 15 decimal land to Lutfe Ali Bhuiyan predecessor of defendant Nos.1-3 by registered kobla deed and delivered possession. But above land has been erroneously recorded in the relevant R.S. khatian No.2424 as ছাড়াবাড়ী or abandoned house which is incorrect. In the relevant S.A. khatian above land was erroneously recorded only in the names of three sons of above Lutfe Ali Bhuiyan and defendant No.1 has filed Title Suit No.256 of 2007 against above erroneous record of right which is pending for trial. Above registered kobla deed of Lutfe Ali Bhuiyan which was executed and

registered by Horomohon Dhupi any time during 1942-1943 was lost in 1971 and no copy of above document could be traced out despite relentless efforts of the defendants. Above Horomohon Dhupi transferred 3 decimal land by a registered deed dated 23.03.1945 to Abul Latif Chowdhury and 6 decimal land to Kazi Helal Uddin by another registered deed dated 07.09.1943 and transferred possession. Defendant No.1 has purchased above 9 decimal land from the heirs of Abdul Latif Chowdhury and Hazi Helal Uddin by registered kobla deed dated 18.10.1966 and possessing above land by erecting dwelling huts. The plaintiff does not have any right, title, interest and possession in above land.

At trial plaintiffs examined two witnesses and defendants examined nine. Documents of the plaintiffs were marked as Exhibit Nos.1-8 series and those of the defendants were marked as Exhibit Nos.Ka-Cha series.

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

Being aggrieved by above judgment and decree of the trial court above plaintiff as appellant preferred Civil Appeal No.67 of 2018 to the

District Judge Mushigonj which was heard by the learned Additional District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and dissatisfied with above judgment and decree of the court of appeal below above appellant as petitioner moved to this court with this civil revisional application under section 115(1) of the Code of Civil Procedure and obtain this rule.

Mr. Md. Asaduzzaman learned Attorney General along with Mr. Mohammad Mohsin Kabir learned Deputy Attorney General submits that this suit has been filed by the government of Bangladesh represented by Deputy Commissioner, Munshiganj for declaration of title for 24 decimal land under Article 143(1)(C) of the Constitution of Bangladesh. Above Article of the Constitution of Bangladesh provides as follows:

"143(1) There shall vest in the Republic, in addition to any other land or property lawfully vested-

..... .

(c) any property located in Bangladesh that has no rightful owner".

Admittedly 24 decimal land belonged to Rajoni Kanti Dhupi and Abisshas Chandra Dhupi and their dwelling house was situated in above land and the same was rightly recorded in C.S. khatian No.2184. Above two undisputed owners left this country for good about 71 years ago without leaving any heir or lawful owner. As such pursuant to Article 143(1)(c) of the Constitution of Bangladesh above property vested in the Republic of Bangladesh. Defendants claim title in above 24 decimal land by purchase by three registered deeds from Horomohon Dhupi but they The defendants could not produce any deed of sale showing that Lutfe Ali Bhuiyan purchased 15 decimal land in 1943. The plaintiff and defendant both have produced and proved registered deed No.6660 dated 23.07.1943 and registered deed No.8535 dated 07.09.1943 allegedly executed by Horomohon Dhupi in favor of Abdul Latif Chowdhury and Kazi Helal Uddin for 9 decimal land. Above two documents were marked as Exhibit Nos.2-3 and Gha and Uma respectively and which show that those documents were not sale deeds but deeds of mortgage without possession. As such above two documents did not create any lawful title to Abdul Latif Chowdhury and Kazi Helal Uddin for 9 decimal land.

Thus defendants totally failed to prove title in above 24 decimal land by way of purchase by legal evidence. But the learned judge of the court of appeal below utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally dismissed above appeal holding that the title and possession of the defendants in above land has been proved which is not tenable in law.

On the other hand learned Senior Advocate Mr. Jamir Uddin Sircar along with Mr. Abdullah Al Mamun and Mr. Zahedul Bari learned Advocates for opposite party No.1-4 and opposite party No.5(a) submit that the plaintiff claims title in 24 decimal land which belonged to Rajoni Kanti Dhupi and Abisshas Chandra Dhupi but in the plaint plaintiff did not mention the mode and means of acquisition of above title. If any private property has to be acquired by the government that requires initiation of a proceeding either under the State Acquisition and Tenancy Act, 1950 or any other special law. But the plaintiff could not make mention of any such proceedings let alone prove the same. The plaintiff has produced and proved two registered deed of mortgage relating to 9 decimal land executed by Horomohon

Dhupi (Exhibit Nos. 2 and 3) which show that Rajoni Kanto Dhupi died leaving son and heir Horomohon Chandra Dhupi. Above fact disproves the claim of the plaintiff that Horomohon Dhupi and Abisshas Chandra Dhupi left this country without leaving any heir to own above land.

The learned Advocate lastly submits that in spite of relentless endeavor the defendants could not find the registered kobla deed executed by Horomohon Dhupi for 15 decimal land to Abdul Latif Chowdhury. Yesterday defendant No. 1 has procured a certified copy of above registered kobla deed dated 16.11.1943 executed by Horomohon Dhupi to Lutfe Ali Bhuiyan for 12 decimal land and produced above document to this court. The learned Advocate submits that the ends of justice will be set if the defendants are given an opportunity to admit above document into evidence and get a judicial decision as to their title in above 12 decimal land. The impugned judgment and decree of the court of appeal below may be set aside and the suit be remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence as to above kobla deed dated 16.11.1943.

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

It is admitted that above 24 decimal land belonged to Rajoni Khanto Dupi and Abisas Chandra Dhupi and their dwelling house was situated in above land and the same was correctly recorded in C.S. khatian No.2184. It is also admitted that in R.S. khatian No.2724 and 246 above land was recorded in the names of the defendants but nature of above land was stated to be ছাড়াবাড়ী or abandoned house and the relevant S.A. khatians having erroneously recorded only in the names of three sons of Latfe Ali Bhuiyan defendant No.1 has filed Title Suit No.256 of 2007 which is pending for trial.

The Government of Bangladesh represented by the Deputy Commissioner of Munshiganj as plaintiff instituted above suit under section 42 of the Specific Relief Act, 1877 for declaration of title for above 24 decimal land.

Learned Attorney General submits that above Rajoni kant Dhupi and Abisshas Chandra Dhupi having left this country for good for India about 71 years back abandoning above land the same has vested in

the Government of Bangladesh pursuant to Article 143(1)(C) of the Constitution of Bangladesh.

The Constitution of Bangladesh is the supreme law of the State and Article 143 of the Constitution provides as follows:

"143(1) There shall vest in the Republic, in addition to any other land or property lawfully vested-

- (a) All minerals and other things of value underlying any land of Bangladesh;
- (b) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh; and
- (c) any property located in Bangladesh that has no rightful owner".

(2) Parliament may from time to time by law provide for the determination of the boundaries of the territory of Bangladesh and of the territorial waters and the continental shelf of Bangladesh".

The learned Advocate for opposite parties submits that without taking possession under section 92 of the State Acquisition and Tenancy

Act, 1950 title above land cannot lawfully vest in the government.

Article 143(1)(c) of the Constitution of Bangladesh provides for vesting of ownerless land in the Republic but section 92 of the Act No.XXVIII of 1951 which is a subordinate legislation provides for entering into possession of the land by the revenue officer for vesting of above land to the government. The defendants did not make out a claim for title by adverse possession. The plaintiff admits that above land is partially being used as public road and the remaining land remains unused and vacant. In view of above submissions of the learned Advocates of the respective parties and materials on record I find no illegality in investing of above private property in the Republic pursuant to Article 143(1)(c) of the Constitution if the State can prove by legal evidence that the above land is situated in Bangladesh without any rightful owner or authorized person to take care or possess and a civil court may declare title of the Republic in such a land.

Mr. Rafiqul Islam, Assistant Land Officer of Shologhor Union Land Office gave evidence as P.W.1 and reiterated above claims and allegations as set

out in the plaint and stated that Rajoni kant Dhupi and Abisshas Chandra Dhupi were rightful owners of above 24 decimal land who allowed a part of the land for using as public road and then left this country for good and above land has become the khas land of the government. The R.S. khatian of above land has been erroneously recorded in the name of the defendants.

Above witness was cross examined by the defendants but he was not cross examined on his evidence that Rajoni Khant Dhupi and Abisshas Chandra Dhupi left this country about 70 years back for good for India nor any suggestion was put to him that Abisshas Chandra Dhupi died leaving Rajoni Kanto Dhupi as heir who also died leaving son and heir Horomhon Dhupi. Above witness produced and proved a certified copy of registered deed No.6660 dated 23.07.1943 and deed No.8535 dated 07.09.1943 executed by Horomohon Dhupi which were marked as Exhibits No.3 and 3.

As far as the evidence of the defendants are concerned defendant No.1 Habibur Rahman himself gave evidence as D.W.1 but when he was recalled for further evidence his constituted attorney namely Salauddin gave evidence for him. Above Salauddin

stated in his evidence that he was giving evidence as constituted attorney of Habibur Rahman (defendant No.1) but he also gave evidence on behalf of the defendant No.2 without any authority. A witness cannot be allowed to give partial evidence and his remaining evidence cannot be given by another authorized person and no person may be permitted to give evidence for another person without authorization. The evidence of P.W.1 Habibur and Salauddin is thus vitiated with illegality and procedural lapses.

P.W.1 Habibur Rahman stated that his father Lutfe Ali purchased 15 decimal land from Horomohon Dhupi by registered kobla deed during 1942-1943 but he could not trace out above document nor he could produce any certified copy of above deed at trial. He further stated that above Horomohon Dhupi transferred 3 decimal land to Abdul Latif Chowdhury by registered kobla deed dated 03.07.1943 and 6 decimal land to Kazi Helal Uddin by registered kobla deed dated 07.09.1943. Above witnesses produced above two documents which were marked as Exhibit Nos.Gha and Umo.

It turns out from the contents of above two documents (Exhibits Nos. Gha and Umo) that those

documents were not deeds of sale but deeds of mortgage without possession. As such even if it is admitted that above two deeds were rightly executed by a lawful heir of Rajoni Khant Dhupi even then above two documents did not create any title for 9 decimal land to Abdul Latif Chowdhury and Kazi Helal Uddin and defendant No.1 did not acquire any valid title or possession in above 9 decimal land.

It is admitted that in relevant R.S. khatian the nature of above land has been described as ছাড়াবাড়ী or abandoned house. The learned Attorney General points out that above nature of the disputed land supports the claim of the plaintiff that above Rajonikant Dhupi and Abisshas Chandra Dhupi abandoned above property and left this court for good for India without leaving any rightful owner.

Defendants claim that Abisshas Chandra Dhupi died leaving Rajonikant Dhupi and Rajonikant Dhupi died leaving only son Horomohon Dhupi but the plaintiff did not admit above genology of Rajonikant Dhupi and Abisshas Chandra Dhupi. As such the defendants were required to prove above genology of Rajoji Kant and Abisshas Chandra by legal evidence. P.W.1 Habibur Rahman stated in

cross examination that he heard that Abisshas Chandra Dhupi died leaving brother Rajoni Kanto Dhupi as heir. The defendants did not adduce any other oral evidence of competent witness or documentary evidence to substantiate above genealogy of Rajonikant Dhupi and Abisshas Chandra Dhupi. As such the claim of the defendant that Monmohan Chandra Dhupi inherited above land as successive heir of Rajani Kant Dhupi and Abisshas Chandra Dhupi remains not proved.

A record of right or khatian is not a deed of title. A khatian merely provides a presumption as to possession of the person in whose name the khatian stands. Above presumption is not static. If correctness and genuinity of a khatian is challenged in a judicial proceeding the person in whose name the khatian stands is required to prove the legal basis of above khatian. The defendants could not produce the deed of sale of Lutfe Ali at trial and two deeds of Abdul Latif Chowdhury and Helal Uddin were not sale deeds at all. As such the defendants could not show any legal basis of above R.S. and S.A. khatians of disputed 24 decimal land.

Today opposite party Nos.1-4 has produced a certified copy of registered kobla deed dated

16.11.1943 showing transfer of 12 decimal land of above C.S. khatian by Horomohon Dhupi to Lutfe Ali Bhuiyan. The learned Advocate for the opposite parties submits that they have succeeded to obtain the certified copy of the kobla deed dated 16.11.1943 from the Munshigonj District Registry office and sought an opportunity to adduce above document into evidence to establish their claim of title in 12 decimal land.

As mentioned above defendant Nos.1 and 2 stated in their written statements that their predecessor Lutfe Ali Bhuiyan purchased 15 decimal land by registered kobla deed from Horomohon Dhupi during 1942-1943 but they could not find out above deed. In his evidence D.W.1 also reiterated above claim and stated that they lost above original kobla deed in 1971 and could not locate and procure a certified copy of above deed.

The learned Attorney General frankly concedes that since defendant Nos.1 and 2 could not produce their title deed to the trial court or the court of appeal below on the ground that they were unable to procure a certified copy of above document and now they have produced a certified copy the ends of justice will be met if above defendants are given

an opportunity to prove the genuinity and effectiveness of above deed.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the impugned judgment and decree passed by the learned Additional District Judge in above appeal is set aside and above suit is remanded to the trial court for retrial after giving defendant Nos.1-2 an opportunity to amend their written statement and adduce further evidence in order to prove the correctness and genuinity of certified copy of registered kobla deed dated 16.11.1943 and legal right of Horomohon Dhupi to transfer above land to Lutfa Ali Bhuiyan and then conclude the retrial of above suit in accordance with law.

In the result, the rule is made absolute.

The impugned judgment and decree dated 07.07.2024 (decree signed on 11.07.2024) passed by the learned Additional District Judge, 1st Court, Munshiganj in Civil Appeal No.67 of 2018 disallowing the appeal and thereby affirming the judgment and decree dated 22.02.2018 (decree signed on 28.02.2018) passed by the learned Senior Assistant Judge, Srinagar, Munshiganj in Title Suit

No.07 of 2007 is set aside and above suit is remanded to the trial court for retrial after giving defendant Nos.1 and 2 an opportunity to amend their written statements and adduce further evidence to prove the genuinity and effectiveness of above kobla deed dated 16.11.1943 and the legal right of Horomohon Dhupi to transfer above 12 decimal land to Lutfe Ali Bhuiyan by above kobla deed and then conclude the retrial of the suit expeditiously within a period of 06(six) months from the date of receipt of this order in accordance with law.

Let the lower courts' records be transmitted down at once.

Md. Kamrul Islam
Assistant Bench Officer