

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 5422 of 2023

In the matter of:

Arju Miah

.....Plaintiffs-Respondents

Petitioner

-Versus-

Rahima Begum and others

... Defendants-Appellants

Opposite parties

Mr M. Khaled Ahmed, with

Mr Al Amin Adib, Advocate

.....For the Petitioner

Mr Kingshuk Das, Advocate

...for the opposite parties

**Date of Hearing: 05.07.2026, 09.07,2026
and 15.07.2026 A.D.**

Date of Judgment: 22.07.2026 A.D.

[বুধবার, ০৭ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ]

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been preferred under section 115(1) of the Code of Civil Procedure, 1908, calling in question the legality and propriety of the judgment and decree dated 13.07.2023 passed by the learned Additional District Judge, 2nd Court, Moulvibazar in Title Appeal No. 46 of 2022, whereby the learned Appellate Court disallowed the appeal and affirmed the judgment and decree dated 06.04.2022 passed by the learned Senior Assistant Judge, Sreemongol, Moulvibazar in Title Suit No. 31 of 2018 decreeing the suit.

At the time of issuance of the Rule, the following order was passed:

"Let the records be called for and a Rule issue calling upon the opposite party Nos. 1-2 to show cause as to why the impugned Judgment and Decree dated 13.7.2023 passed by the Additional District Judge, 2nd Court, Moulavibazar in Title Appeal No. 46 of 2022 disallowing the appeal and thereby affirming the

Judgment and Decree dated 06.4.2022 passed by the Senior Assistant Judge, Sreemongol, Moulvibazar in Title Suit No. 31 of 2018 decreeing the suit should not be set-aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper."

Concomitantly, this Court was also pleased to stay the operation of the impugned judgment and decree and further directed both the parties to maintain *status quo* in respect of possession of the suit land. It appears from the record that the said interim orders were not subsequently extended for any further period.

Facts in Brief:

The material facts, shorn of unnecessary details, are that opposite party No.1 and her husband, opposite party No.2, instituted Title Suit No. 31 of 2018 in the Court of the learned Assistant Judge, Sreemongol, Moulvibazar, seeking, inter alia, declaration of title and rectification of the registered deed.

The plaintiffs' case, in substance, was that the disputed land originally belonged to Tera Miah, who died leaving behind

five sons, namely, Nouyash Miah, Arju Miah, Arjod Miah, Anchar Miah and Ankar Miah, the last being the husband of plaintiff No.1. The brothers had been possessing and utilizing the land in different ways, including running a rice mill and cultivating seasonal vegetables thereon.

According to the plaintiffs, the five brothers transferred 0.15 acres of land from S.A. Dag No. 1138, corresponding to R.S. Dag No. 1505, in favour of plaintiff No.1 as her *mohorana* by registered Deed No. 5191 dated 22.10.2000. The plaintiff asserted that she had thereafter been in joint possession of the said land with her husband. Subsequently, she discovered that, due to an erroneous insertion in the schedule of the deed, R.S. Dag No. 1504 had been mentioned in place of R.S. Dag No. 1505. Hence, the suit was instituted for rectification of the deed coupled with declaration of title.

However, the contesting defendants denied the material allegations of the plaint. Their case was that, after Tera Miah's death, his heirs continued to possess the land, and that the plaintiff never acquired title to or possession of the disputed land. It was specifically asserted that a *Bhusimal* (i.e. cattle

feed) shop belonging to defendant Nos. 1-4 was situated over R.S. Dag No. 1505; that a rice-mill house was in the possession of defendant No.3; and that fruit trees standing on portions of the land belonged to the defendants.

It was further contended that one decimal of land from R.S. Dag No. 1505 had already been sold by Tera Miah to Manik Miah, and that Tera Miah had been residing thereon, having constructed a permanent house, since 1997. The defendants also challenged the identity and boundaries of the suit land and asserted that the boundaries described in the impugned deed did not correspond with the actual location of the land. They further denied that R.S. Dag No. 1504 had been inserted in the deed by mistake.

During pendency of the suit, a local investigation was conducted through an Advocate Commissioner, and a report was submitted on 04.04.2019. Upon completion of the trial and consideration of the oral and documentary evidence, the learned trial Court decreed the suit by its judgment dated 06.04.2022, with the decree drawn up and signed on 10.04.2022.

Being aggrieved, the contesting defendants preferred Title Appeal No. 46 of 2022 before the learned District Judge, Moulvibazar. The appeal was subsequently transferred to the learned Additional District Judge, 2nd Court, Moulvibazar, who, upon hearing the parties, disallowed the appeal and affirmed the judgment and decree of the learned trial Court by judgment dated 13.07.2023.

It is against those concurrent judgments and decrees that the present revisional application has been filed.

The opposite party 1 made appearance in the instant Rule through a counter Affidavit, by opposing the grounds stated in the revisional application, and prayed for discharging the Rule.

Submissions on Behalf of the Petitioners:

Mr M. Khaled Ahmed, learned Senior Advocate, assisted by Mr Al Amin Adib, learned Advocate appearing for the petitioners, submitted that both the Courts below committed an error of law resulting in an error in the decision occasioning failure of justice in decreeing the suit without properly appreciating the question of possession.

His principal submission is that where a plaintiff seeking a mere declaration of title is not in possession and the defendant is in possession, a mere declaratory relief is insufficient and the plaintiff is required to seek consequential relief for recovery of possession. According to the learned Advocate, the suit was therefore hit by the proviso to section 42 of the Specific Relief Act, 1877.

Learned Senior Advocate further submitted that admittedly one decimal of land from R.S. Dag No. 1505 had been transferred to Manik Miah. Therefore, according to him, the Courts below could not lawfully grant a decree covering the entire 15 decimals of land without first excluding the land allegedly transferred to the said purchaser. It is argued that a Court ought not to make a declaration which is incapable of effective implementation or which may operate ineffectively against a third party.

It is further contended that the boundaries appearing in registered Deed No. 5191 dated 22.10.2000 do not correspond with the boundaries appearing in the Advocate Commissioner's report or with the actual physical features of

the land. It is argued that the plaint did not contain an adequate description of R.S. Dag No. 1504 and, therefore, failed to satisfy the requirement of Order VII Rule 3 of the Code of Civil Procedure.

The learned Advocate also submitted that the suit for rectification was hopelessly barred by limitation, having been instituted approximately eighteen years after execution and registration of the deed. Particular emphasis has been placed upon the admission made by the plaintiff in cross-examination that, “আমার বিয়ের পর ১৮ বছরের মধ্যে দলিল মিলিয়ে জায়গা দেখি বিয়ের পরই। দলিলটি আমার মামাও পড়েন আমিও পড়িয়াছি। নালিশী দলিল করার সময় আমার বাবা পরচা দেখিয়াছেন।”, and accordingly this admission demonstrates that the plaintiff had sufficient opportunity to know the contents of the deed from the very inception and, consequently, the finding of the Courts below regarding limitation, particularly the applicability of Article 93 of the Limitation Act, cannot be sustained.

On these grounds, learned Senior Advocate submitted that the impugned judgments suffer from errors of law and

misappreciation of material evidence and, therefore, call for interference in revisional jurisdiction.

Submissions on Behalf of the Opposite Party 1:

Mr. Kingshuk Das, learned Advocate appearing for the opposite parties, supported the impugned judgments and submitted that the Courts below, upon proper appraisal of the entire evidence, arrived at concurrent findings that the land intended to be transferred to the plaintiff was R.S. Dag No. 1505 and that the insertion of R.S. Dag No. 1504 in the deed was the consequence of fraud and/or mutual mistake.

Learned Advocate submitted that the plaintiff succeeded in establishing her possession over R.S. Dag No. 1505 through oral and documentary evidence, whereas the defendants' own evidence demonstrates that their homestead, pond and other structures were substantially situated over R.S. Dag No. 1504. Consequently, according to him, the defendants cannot successfully contend that the plaintiff is required to seek recovery of possession of the very land which, according to their own evidence, remains substantially under their

possession and occupation in a manner inconsistent with their asserted claim over the entire R.S. Dag No. 1505.

Learned Advocate further submitted that one of the executants of the impugned deed deposed before the Court in support of the plaintiff's case. He argues that the identity of the transferors, execution and registration of the deed and the underlying transaction are not disputed. The real controversy is confined to the erroneous description of the R.S. plot number in the schedule.

It is also submitted that the suit was instituted within the prescribed period from the date on which the plaintiff acquired knowledge of the erroneous insertion of R.S. Dag No. 1504 in place of R.S. Dag No. 1505. Therefore, the question of limitation has rightly been determined by the Courts below.

Finally, learned Advocate submitted that both Courts below have concurrently found the facts in favour of the plaintiffs upon consideration of the evidence, the Advocate Commissioner's report, the mouza map and the testimony of the witnesses. In the absence of perversity, misreading or non-

consideration of material evidence, no interference is warranted under section 115(1) of the Code.

Consideration and Findings:

I have heard the learned Advocates for the respective parties, perused the revisional application, the judgments and decrees of the Courts below, the pleadings, oral and documentary evidence, the Advocate Commissioner's report and the other materials available on record.

At the outset, it is necessary to determine the true nature and scope of the controversy. The suit is not founded upon a claim that the plaintiff acquired title to a wholly unidentified parcel of land by virtue of the impugned deed. Rather, the plaintiff's specific case is that the parties intended to transfer a definite parcel of land, namely, the land comprised in R.S. Dag No. 1505, but, by reason of fraud and/or mutual mistake, R.S. Dag No. 1504 was incorporated in the schedule of the registered deed.

The execution and registration of Deed No. 5191 dated 22.10.2000 are not disputed. The identity of the executants is also not in serious controversy. Therefore, the substantial

question requiring determination is whether the Courts below were justified, upon the evidence, in concluding that the reference to R.S. Dag No. 1504 in the deed was erroneous and that R.S. Dag No. 1505 represented the property actually intended to be transferred.

Nature of Rectification:

Section 31 of the Specific Relief Act, 1877 recognizes the equitable jurisdiction of the Court to rectify a written instrument where, by reason of fraud or mutual mistake, the instrument does not express the real intention of the parties.

However, the essential inquiry in such a case is not merely what words appear in the instrument, but whether the instrument, as written, fails to embody the agreement or intention which the parties actually reached. Rectification is, therefore, a corrective jurisdiction. It does not permit the Court to make a new contract for the parties; rather, it enables the Court, upon proper proof, to make the written instrument conform to the transaction which the parties actually intended.

In the present case, the learned trial Court examined the surrounding circumstances, the relationship of the parties, the execution of the deed, the evidence of the executants, the location of the plots and the physical features appearing from the local investigation. The learned trial Court particularly noticed that the plaintiff had received other lands under the same deed and that the defendants did not seriously dispute the transfer of those other properties in her favour.

Of considerable significance is the fact that defendant No.5, who was himself one of the executants and vendors of the impugned deed, expressly admitted in his written statement, the transfer of the suit land in favour of the plaintiff. Such admission is not a matter of mere formality. It constitutes substantive evidence regarding the transaction and substantially supports the plaintiff's case that the dispute relates to the description of the plot number rather than to the existence of the underlying transfer.

The learned trial Court, upon an overall assessment of the evidence, found that R.S. Dag No. 1504 had been incorporated in the schedule of the deed in place of R.S. Dag

No. 1505 due to fraud and/or mutual mistake. I find no material basis in the record to hold that such finding is perverse or unsupported by evidence.

Effect of the Mouza Map and Advocate Commissioner's Report:

The geographical identity of immovable property is often established not by a single piece of evidence but by a cumulative consideration of the deed, plot numbers, boundaries, mouza map, physical features, possession and local investigation.

In the instant case, the learned Appellate Court independently considered the mouza map and found that a road lies to the west of R.S. Dag No. 1505, whereas R.S. Dag No. 1504 lies to its east. The Appellate Court further found that R.S. Dag No. 1505 corresponds to and originates from S.A. Dag No. 1138.

More importantly, the evidence of DW-1 substantially corroborates the geographical relationship between the two plots. In cross-examination, DW-1 stated that his homestead and pond are situated over R.S. Dag Nos. 1504 and 1505.

While describing the boundary of R.S. Dag No. 1504, he stated that R.S. Dag No. 1505 lies to its west. Conversely, while describing the boundary of R.S. Dag No. 1505, he stated that his own land lies to its east.

Moreover, DW-1 stated that a pond and part of the katcha and pucca (i.e. temporary and permanent) structures were situated on R.S. Dag No. 1504, whereas the remaining portions of the structures, rice mill and tong shop were situated on R.S. Dag No. 1505.

The evidentiary significance of this testimony cannot be overlooked. The defendants' own witness supplied material information concerning the relative position of the two plots and the physical structures existing thereon. Such evidence, when considered along with the mouza map and the Advocate Commissioner's report, provides an objective basis for identifying the respective plots.

The local investigation report, although not by itself conclusive of title, constitutes a relevant piece of corroborative evidence concerning the physical features and location of the suit property. The Courts below considered the

report along with the oral and documentary evidence rather than treating it as a substitute for proof of title.

Therefore, I find no misreading or non-consideration of any material portion of the said report.

Question of Possession and Section 42 of the Specific Relief Act:

The peremptory objection of the petitioners is that the suit is defective for want of a prayer for recovery of possession.

The proposition that a plaintiff who is out of possession and seeks a declaration of title simpliciter may, in an appropriate case, be required to seek consequential relief is undoubtedly a settled principle. But the application of that principle depends upon the factual foundation of the suit and, in particular, upon the nature of the relief actually sought and the finding as to possession.

In the present case, the suit is principally one for rectification of the registered instrument coupled with declaration of title. The plaintiff's case is that the deed

contains an erroneous plot number and that the land actually transferred is R.S. Dag No. 1505. The Courts below, upon consideration of the evidence, accepted that case.

Moreover, the defendants' own evidence does not establish a simple and unequivocal case that the plaintiff is a stranger to the land and that the defendants are exclusively and adversely possessing the entire R.S. Dag No. 1505. Rather, the evidence discloses different structures and physical features extending over both R.S. Dag Nos. 1504 and 1505.

Therefore, the question whether the plaintiff was required to seek recovery of khas possession cannot be determined merely by referring to the defendants' pleading. It must be determined upon the findings of fact recorded on the basis of the evidence.

The Subordinate Courts found the plaintiff's claim regarding the identity of the transferred land to be established. No perversity has been demonstrated in that finding. In such circumstances, the proviso to section 42 cannot be mechanically invoked to defeat an otherwise proved claim for rectification and declaration.

The Alleged Transfer in Favour of Manik Miah:

The petitioners next contend that one decimal of land from R.S. Dag No. 1505 had previously been sold to Manik Miah and, therefore, the decree covering the entire 15 decimals is legally ineffective.

This submission has been considered.

A Court undoubtedly ought to be cautious before passing a decree which adversely affects the independent rights of a person who is not a party to the proceeding. However, the existence, legal effect and precise identity of the alleged one-decimal transfer in favour of Manik Miah must itself be established by reliable evidence and must be examined in the context of the relief granted.

The present suit does not seek adjudication of an independent title of Manik Miah. The essential controversy before the Subordinate Courts was whether the deed executed in favour of the plaintiff contained the wrong R.S. plot number. The petitioners cannot, merely by referring to an alleged prior transaction, demonstrate perversity in the concurrent finding regarding the identity of the property

unless they establish that the said fact was conclusively proved and that its legal effect necessarily invalidated the decree.

No such perversity or legal infirmity has been satisfactorily demonstrated before this Court. More so, it is the settled principle of law that the earlier deed in point time will get preference over the subsequent deed.

It is also material that the Subordinate Courts examined the physical location of the plots and the parties' possession. The decree for rectification is directed towards correcting the description in the registered instrument so as to make it conform to the property found by the Courts to have been intended to be transferred. It does not, by itself, amount to an adjudication of any independent title claimed by a stranger who was not before the Court.

Order VII Rule 3 of the Code of Civil Procedure:

The next submission concerns the alleged insufficiency of the description of the suit land.

Order VII Rule 3 requires that where the subject matter of the suit is immovable property, the plaint must contain a description sufficient to identify the property. The purpose of

the provision is identification of the subject matter of the litigation and prevention of uncertainty in execution and enforcement of the decree.

The provision, however, is to be applied with reference to the entire description available in the plaint, schedule, documents and other materials forming part of the record. The question is whether, upon a comprehensive reading of the materials, the property can reasonably and unequivocally be identified.

In the present case, the dispute itself concerns the erroneous insertion of R.S. Dag No. 1504 in place of R.S. Dag No. 1505. The Courts below did not proceed upon an unidentified parcel of land. They examined the S.A. and R.S. plot numbers, the mouza map, the boundaries, the physical features and the Advocate Commissioner's report and thereafter reached a definite conclusion regarding the identity of the land.

The petitioners have not demonstrated that the decree is incapable of implementation due to any uncertainty regarding the identity of the property. Accordingly, the

objection founded upon Order VII Rule 3 does not, in the facts of the present case, warrant interference with the concurrent judgments.

Question of Limitation:

The question of limitation requires somewhat closer consideration because the deed was executed on 22.10.2000, whereas the suit was instituted in 2018.

The mere lapse of time between execution of an instrument and institution of a suit for rectification does not, by itself, conclusively determine the starting point of limitation. The material question is when the right to sue accrued in the facts contemplated by the applicable provision of law.

The plaintiff's case is that she only subsequently learned that R.S. Dag No. 1504 had been inserted in place of R.S. Dag No. 1505. The Courts below accepted that explanation upon consideration of the evidence.

The petitioners have relied heavily upon the plaintiff's statement in cross-examination that she had seen the land after marriage and that the deed had been read by her and by

her maternal uncle. That statement undoubtedly constitutes evidence that required consideration. But the fact that a document was read or that a party inspected the land does not, by itself, conclusively establish that she discovered the precise discrepancy between R.S. Dag Nos. 1504 and 1505 on the date of execution or immediately thereafter.

Knowledge of the existence and execution of a deed is not necessarily identical with knowledge of a particular erroneous description contained therein. The distinction between knowledge of the instrument and knowledge of the specific mistake alleged in the instrument is material in determining when the right to seek rectification accrued.

However, the Subordinate Courts considered the evidence and concluded that the plaintiff's claim was not barred by limitation. Unless such finding is shown to have resulted from misapplication of the law, misreading of material evidence or perversity, this Court, in exercise of revisional jurisdiction, ought not to substitute its own factual assessment merely because another view may be possible.

Whereupon, I find no such jurisdictional infirmity in the concurrent findings on limitation.

Scope of Revisional Jurisdiction:

At this stage, it is necessary to remind ourselves of the limited nature of jurisdiction under section 115(1) of the Code of Civil Procedure, 1908.

A revisional Court does not ordinarily function as a second appellate Court for the purpose of re-appreciating evidence or substituting its own conclusion for a conclusion reasonably reached by the Courts of fact. Where the Courts below have considered the evidence, applied the correct legal principles and arrived at concurrent findings of fact, interference is justified only where the findings are shown to be perverse, founded upon misreading or non-consideration of material evidence, based upon an erroneous construction or application of law, or otherwise suffer from a jurisdictional error resulting in an error in the decision occasioning failure of justice.

The mere possibility of another view on the evidence is not, by itself, a sufficient ground for interference in revision.

In the case before me, both Subordinate Courts considered the oral and documentary evidence, the contents of the registered deed, the pleadings of the parties, the testimony of the witnesses, the mouza map and the Advocate Commissioner's report. Both Courts reached the same conclusion that the property intended to be transferred was R.S. Dag No. 1505 and that R.S. Dag No. 1504 had been incorporated in the deed in its place by reason of fraud and/or mutual mistake.

The findings are neither arbitrary nor unsupported by evidence. On the contrary, they derive support from the defendants' own evidence, particularly the deposition of DW-1, and from the objective geographical features appearing in the mouza map and the local investigation report.

The learned Subordinate Courts also did not ignore the defendants' case. Rather, they considered the principal objections and rejected them upon reasons recorded in their respective judgments.

I am, therefore, unable to accept the submission that the concurrent findings suffer from any apparent misreading or non-consideration of material evidence.

Overall Assessment:

Upon an overall assessment of the record, I find that the plaintiffs succeeded in establishing, on the standard of preponderance of probabilities applicable to a civil proceeding, that the parties intended to transfer the land comprised in R.S. Dag No. 1505, corresponding to the relevant S.A. Dag, but that R.S. Dag No. 1504 was erroneously incorporated in the schedule of Registered Deed No. 5191 dated 22.10.2000.

The evidence does not rest solely on the plaintiff's oral assertion. It is supported by the surrounding circumstances of the transaction, the evidence of one of the executants, the admissions appearing from the pleadings, the relative position of the two R.S. plots in the mouza map, the testimony of DW-1 and the findings contained in the Advocate Commissioner's report.

The cumulative effect of these circumstances provides a coherent evidentiary chain supporting the conclusion reached by the Subordinate Courts.

The case, therefore, cannot be characterized as one where the Subordinate Courts granted relief upon conjecture or surmise. Rather, the conclusion has been reached through a cumulative and constructive appreciation of the evidence.

In this context, the principle governing rectification is also attracted. Where the written instrument fails to express the real intention of the parties by reason of fraud or mutual mistake, the Court is empowered to correct the instrument so that the document reflects the transaction actually intended by the parties, provided the intention is established by satisfactory evidence.

Therefore, the present case falls within that principle.

I am also mindful that a registered document ordinarily carries considerable evidentiary significance. Nevertheless, registration does not render an erroneous description immune from judicial rectification where the statutory requirements are established. The Court's task is not to rewrite a concluded

transaction but to restore the instrument to the form in which it ought to have stood according to the intention proved before it.

In the instant case, the Subordinate Courts have performed precisely that exercise.

Conclusion:

For the reasons discussed above, I find no illegality, material irregularity, perversity or jurisdictional error in the concurrent judgments and decrees passed by the Courts below. The petitioners have failed to demonstrate any misreading or non-consideration of material evidence; an erroneous application of law; or any other infirmity of such nature as would justify interference under section 115(1) of the Code of Civil Procedure, 1908.

The findings of the learned trial Court and the learned Appellate Court are findings of fact based upon evidence and are sufficiently supported by the materials on record. There is consequently no legal or factual basis for this Court to displace those concurrent findings in its limited revisional jurisdiction.

Accordingly, the judgment and decree dated 13.07.2023, decree having been drawn up and signed on 18.07.2023, passed by the learned Additional District Judge, 2nd Court, Moulvibazar in Title Appeal No. 46 of 2022, affirming the judgment and decree dated 06.04.2022, decree having been drawn up and signed on 10.04.2022, passed by the learned Assistant Judge, Sreemongol, Moulvibazar in Title Suit No. 31 of 2018, are hereby affirmed.

The Rule is accordingly **discharged without any order as to costs.**

The order of stay of operation of the impugned judgment and decree and the order of *status quo* passed earlier by this Court, if still subsisting, stand **recalled and vacated.**

It is, however, made clear that the plaintiffs shall be entitled to pursue mutation and/or correction of the record of rights on the basis of the rectified deed in accordance with law and subject to the outcome of any lawful proceeding before the competent authority or any order of a superior forum.

The office is directed to transmit the records of the Courts below, together with a copy of this judgment, at once.

Before parting with the case, this Court places on record its appreciation for the diligent assistance rendered by the learned Advocates appearing for both sides. Their able submissions and assistance have materially facilitated the Court in examining the questions of fact and law involved in this long-pending litigation and in arriving at a just and proper determination.

Let the records be sent down at once along with a copy of this judgment.

(Abdur Rahman, J)