

Present:
Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 6524 OF 2024

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Habibur Rahman and another

...Defendants-respondents-petitioners

Versus

Md. Bodray Alam and others

...Plaintiff-appellant-opposite parties

Mr. Golam Rabbani, Advocate

... for the petitioners

Mr. Shahabuddin Khan (Large), Advocate

...for the opposite parties

Heard on: 07.01.2026 & 12.01.2026

Judgment on: 18.01.2026

This Rule was issued calling upon the opposite party no. 1 to show cause as to why the impugned judgment and decree dated 14.05.2024 (decree signed on 20.05.2024) passed by the learned Joint District Judge, 1st Court, Rangpur in other Appeal no. 117 of 2021 allowing the Appeal and reversing the judgment and decree dated 30.09.2021 (decree signed on 07.10.2021) passed by the learned Senior Assistant Judge, Rangpur Sadar, Rangpur in Other Suit no. 40 of 2003 dismissing the suit should not be set aside and after hearing the parties and on perusal of the cause shown, if any, make the Rule absolute and/ or pass such any other or further order or orders as to your Lordship may seem fit and proper.

2. The Plaintiff Appellant and others filed Other Suit no. 40 of 2003 for declaration of title on the basis of Heba-Bil-Ewaz deed before Learned Assistant Judge, Sadar Rangpur stating that the suit land was originally belonged to Rahim Box and Shatish Chandraw and C S khatian no. 1951 was prepared in their name. Rahim Box transferred his tenancy in favor of one Yakub Ali who thereafter leased out the same to Moniruddin. Moniruddin erected house in the land but the R S record was not prepared in the name of Moniruddin and prepared only in the name of Shatish Chandra. R S record was corrected on Misc case no. 367 of 1970 filed by Moniruddin. Moniruddin transferred .06 decimals of land to Mokter Kha on 07.08.1962 and Mokhter Kha thereafter sold the same in favor of Hasina Begum in 1967, Hasina Begum mutated her name and transferred that land to the Plaintiff Appellant in 1993 by way of Heba-Bil-Ewaz deed. Plaintiff Appellant mutated his name and has possessed the land. Defendant respondents were given the land to live in on permission. The Plaintiff Appellant requested the Defendant respondent to vacate the land but they denied and as such the Plaintiff Appellant filed the suit for eviction.

3. On the other hand Defendant respondents contested the suit denying the entire materials allegation stating that the suit land was originally belonged to one Hasina Begum and she executed an agreement deed with Torab Ali (predecessor of the defendants) and Hasina handed over possession of the suit land to the father of the defendant and Hasina Begum went to Parbotipur in 1973 when

independent war was begun. Hasina went to the father of the Defendant Torab Ali and claimed excess taka 500/ but the father of the defendant denied. Thereafter Hasna Begum did not come and claim the land. The Plaintiff has no interest and title in the said land. The Plaintiff Appellant claimed that they got the land by way Heba-Bil-ewaz deed and threatened the Defendant respondent to dispossess the land. So the Defendant respondent filed the suit being no. 223 of 2010. Plaintiff appellant by false aversion filed the present suit no. 40 of 2003, which is liable to be dismissed.

4. Learned Trial Court on elaborate discussion dismissed the other suit no. 40 of 2003 dated on 30.09.2021 and on appeal learned Appellate Court allowed the appeal and set aside the trial Court judgment.

5. Being aggrieved by and dissatisfied with the impugned judgment and decree these Defendant revision petitioners moved this revision before this Court and obtained the Rule.

6. Mr. Golam Rabbani, learned Advocate appearing for the Defendat revision petitioners in the course of argument takes this Court through the impugned judgment of both the trial Court and the Court of Appeal, plaint of the suit, written statements, deposition of the witnesses and other materials on record and then submits that the Appellate Court without applying its judicial mind into the facts of the case and law bearing on the subject most illegally rejected the appeal thereof on the finding that the Defendant revision petitioners have been failed to prove the execution of their deed of agreement and the

adverse possession on the suit land. Learned Appellate Court was misconceived in holding the view that the Plaintiff Appellants have acquired the suit land by way of registered Heba-Bil-Awaz deed being no 7892 dated on 19.06.1996, though the deed writer Pw 4 Nur Ali admitted that no awaz was exchanged in his presence. Also Learned Appellate Court was misconceived in arriving conclusion that the Defendant revision petitioners could not disprove the existence and execution of that Heba-Bil-Awaz deed and have failed to prove the mandatory provision of law, the boundary of the suit land. Learned Appellate Court erroneously held that the Defendant revision petitioners could not show any rent receipt in their name to prove their alleged possession. Learned Advocate appearing for the Defendant revision petitioner further submits that the Plaintiff Appellant as Pw 1 himself admitted that Torab Ali was his tenant and he had been in the suit land before execution of the Heba-Bil-Awaz deed. Also he submits that since Hasina left this country and went Pakistan, so the suit land belonged to Hasina was in unmanaged and hence Torab Ali went in possession in the suit land before liberation war of 1971 which is corroborated by the testimony of Pw 2 Abdur Rouf Rahman. Learned Advocate further contended that Plaintiff Appellant Badre Alam could not produce the daughter or son of Hasina Begum to prove the execution of the alleged Heba-Bil-Awaz deed, Badre Alam is not a true owner of the suit land and as such he is not entitled to evict the Defendant revision petitioner. But learned Appellate Court without taking these matters into account observed that the Defendant revision petitioners have been failed to prove their case to the effect

that they have obtained the suit land by way of a deed of agreement and acquired right, title and interest over the suit land by possessing the same more than 12 years which by their claim became adverse against the true owner.

7. On the other hand learned Advocate for the Plaintiff Appellant turned down the contention of the Defendant revision petitioner and argues that the Defendant revision petitioners claim the title of the suit land on the basis of agreement for sale on 26.12.70 from Hasina Begum and since then Torab Ali has been in possession which discloses that Torab Ali got title on the suit land by way of the aforesaid unregistered agreement for sale deed. Learned Advocate for the Plaintiff Appellant asserted that no one can get title over a property as adverse possession on the basis of sale deed or of any other deed. Possession on the basis of a deed over a property indicates a permissive possession. Also Learned Advocate argues that the schedule of the suit property in the plaint is vague and unspecified which violates the mandatory provision of Order 7 Rule 3 of the Code of Civil Procedure. Learned Advocate for the Plaintiff Appellant further argues that Heba-Bil-Awaz deed is a registered deed and it has a presumptive value. It was the responsibility of the Defendant revision petitioner to prove the same as forged and fake but they failed to adduce any evidence to this effect. He further added that Learned Appellate Court correctly disallowed the judgment and order of the trial court on proper and elaborate appreciation of the materials on record.

8. On meticulous and close perusal of the case record and the evidence adduced by the both the parties oral and documentary, this Court found that the Defendant revision petitioner claimed the suit property on the basis of adverse possession against the owner Hasina Begum. Pw 1 Siddiquir (of case no. 223/10) admitted in his testimony that his father Torab Ali went in possession in the suit land on 26.12.70 by way of an agreement for sale deed. Pw 3 (of case no. 223/10) Abdullah Sarkar admitted that the Defendant revision petitioner is a permissive possessor in the suit land since 1994. Pw 1 Badre Alam in other suit no. 40/2003 deposed that Hasina executed the alleged Heba-Bil-Awaz deed in favor of him and delivered possession of the suit land in 1993. Badre Alam also deposed that the Defendant revision petitioner sought permission from him to live in the suit land and he granted them permission to live in the same land. The Defendant revision petitioner's son Siddiquir Rahman as Pw 1 admitted in his cross examination that his father Torab Ali paid municipality tax including all other taxes in the name of Hasina Begum. So it is proved on appreciation of evidences oral and documentary that the Defendant revision petitioner's possession in the suit land is mere a permissive possession.

9. A permissive possession never become adverse however long such possession may be. Learned Advocate appearing for the Plaintiff Appellant cited the case of Kamal Baksh and others and Siraj Baksh referred in 7 B L T (A D) at page 329 where it is held that:

“Moreover, even in pursuance of the contracts for sale the plaintiff's possession, so far as the real owners are

concerned, has been a permissive possession. It is evident from the Trial Court's judgment that the plaintiffs have stated in the plaint that their vendors refused on 29.07.88 to execute and register the kabalas for the suit land and on that date the cause of action for the suit arose. Thus, at best from 29.07. 88 the plaintiffs' possession in the suit land may be said to be adverse against the real owners. But such possession does not entitle the plaintiff's to get a decree of declaration of title on adverse possession in the instant suit."

10. On appreciation of the aforesaid decision of their Lordship it is found that possession of the Defendant revision petitioner of the instant case is a permissive possession. There is nothing as regards to refusal in executing or registering the contracts for sale deed since no evidence on the part of the Defendant revision petitioner is produced to this effect. More so it is evident that Torab Ali paid municipality and other taxes in the name of Hasina Begum which Learned Trial Court categorically observed this matter in his judgment on 30.09.2021. So the Defendant revision petitioner did not acquire any adverse possession on the basis of refusal by the true owner Hasina Begum. Thus it is crystal clear that the possession by the Defendant revision petitioner is all along a permissive possession. It did not become subsequently adverse in any manner.

11. In this context Mr. Shahabuddin Khan (Large), learned Advocate for the Plaintiff Appellant opposite party argues that on the

basis of permissive possession, title cannot be bestowed upon the possessor or his successor whatever the duration of this possession may be. Learned Advocate Mr. Shahabuddin Khan Large cited the case of Abdus Samad and others vs Deputy Commissioner and custodian of V P and others referred in 5 M L R (AD) 2000 at page 73 which reads as follows:

“Permissive possession, however long, cannot bestow title upon the possessor or his successors. It is fairly settled that when possession commences in a permissive character it does not become adverse unless by some positive overt act it is indicated that such possession became adverse either in the hands of successors or even in the hands of the original permissive possessor. None of the Courts below have found that there was assertion of hostile title to the knowledge of the true owners for 12 years or more. In the circumstances we do not find fault with the ultimate decision of the High Court Division.”

12. On perusal of the evidences and material on records and the observations of both the Courts below no such positive overt act is found here in this case. Also there was no any assertion of hostile title to the knowledge of the true owners for 12 years or more. In this circumstances this Court find that the permissive possession of the Defendant revision petitioner did not become adverse due to not meeting the necessary requirement of the same.

13. Learned Advocate appearing for the Defendant revision petitioner argues that the execution of Heba-Bil-Awaz deed is not formally proved by the Plaintiff Appellant respondent in the trial court. Plaintiff Appellant respondent did not bring the daughter and son of Hasina Begum to the trial Court to prove the execution of Heba-Bil-Ewaz deed. Also it is not proved that ewaz was given to the donor Hasina Begum. Pw 4 Nur Ali of other suit no. 40/2003 deposed in his cross examination that no ewaz was exchanged in front of him. It is noted that this Pw 4 deposed on 15.07.2012 but he wrote the alleged deed on 19.06.1994. It is almost impossible for someone who has to write countless documents every day to remember whether or not the donor was given anything as ewaz. The alleged Heba-Bil-ewaz deed being no 7892 dated 19.06.1996 is a registered deed and that deed is submitted in the trial Court which was exhibited as 6. The Plaintiff Appellant respondent has been able to prove its execution by submitting the original deed. But the Defendant revision petitioner could not prove that it was forged and fake. It is well settled law that a registered deed is presumed to be correct so long it is not proved incorrect. Learned Advocate for the Plaintiff Appellant respondent referred the case of Rafiqul Islam vs Zahirul Islam cited in 70 D L R (A D) 2018 at page 135 which reads as follows:

“If the question is whether the deed is genuine or not, the simple answer is, it being a registered document, is showered with a strong presumption as to genuineness.”

14. Similar view is adopted in 55 D L R (A D) 2003 at page 39, in 12 M L R (A D) in 2007 at pages 149 and 273. The principle enunciated in these cited cases is:

“A registered document carries presumption of correctness of the endorsement made therein---One who disputes this presumption is required to dislodge the correctness of the endorsement.”

15. The defendant revision petitioner did not comply with its onus to disprove the genuineness of the execution of the alleged Heba-Bil-ewaz deed.

16. Learned Advocate for the Defendant revision petitioner submits that the Plaintiff Appellant respondent is not the true owner of the suit land, so he is not entitled to evict this Defendant revision petitioner. The Defendant revision petitioner made Plaintiff respondent parties to other suit no. 223 of 2010 and prayed for declaration of title over the suit land on basis of adverse possession. So the Defendant revision petitioner acknowledged the ownership of Plaintiff respondent Badre Alam. Pw 1 Badre Alam deposed that Hasina Begum handed over the possession of the suit land in 1993 by way of Heba-Bil- ewaz deed. Badre Alam further deposed that the Defendant (Torab Ali) sought permission from him to live in the suit land and he granted permission. This version of the testimony of Badre Alam is reflected in Torab Ali's witness Pw 3 Abdullah Sarkar's cross examination. Abdullah Sarkar admitted that the plaintiffs (Torab Ali) are permissive possessor in the suit land.

17. Thus it is proved beyond any shadow of doubt that Badre Alam is the true owner of the suit land and he is the proper person to evict Torab Ali or any other illegal occupier. So the decision cited in 27 DLR where it is enunciated that “a person claiming possessory right, a bargadar, even a trespasser is entitled to maintain his possession against anybody else except the true owner” has no manner of application in the context of the present case.

18. According to the observation of learned trial Court it appears that the Plaintiff Appellant petitioner has failed to comply with the mandatory provision of law in giving description sufficient to identify the suit land. This lacuna has been filled up at the directions of the Appellate Court by amending the plaint which contains the detail description to specify and identify the suit land. Learned Appellate Court thus satisfied that the suit now does not suffer from want of specification of the boundary of the suit land

19. In view of the discussion made in above this Court found that the Defendant revision petitioners have failed to prove the right, title and interest over the suit land by way of adverse possession. They are permissive possessor over the suit land firstly from Hasina Begum and thereafter from the Plaintiff Appellant respondent. On the other hand the Plaintiff Appellant respondent has succeeded to prove that they acquired the suit land from Hasina Begum by way of Heba-Bilwaz deed being no. 7892 dated on 19.06.1996. This Court is fully accorded with the findings and decision of the learned Appellate Court. So by now it is clear that the instant revision must fail.

20. In the result, the revision is discharged. Connecting rule is also hereby discharged.

21. The impugned judgment and decree dated 14.05.2024 (decree signed on 20.05.2024) passed by the learned Joint District Judge, 1st Court Rangpur in other Appeal no. 117 of 2021 is hereby affirmed.

22. Send down the lower Courts record with a copy of this Judgment to the Courts below at once.