

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

**Present:
Mr. Justice Md. Lutfur Rahman**

Civil Revision Case No. 6112 of 2024.

In the matter of:

Md. Nasim Faruk Khan (Mithu).

.....Plaintiff-appellant-Petitioner.

-Versus –

Government of Bangladesh and others

..... Plaintiffs-Respondents-opposite parties.

Mr. Golam Ahmed, Advocate

.....Plaintiff-appellant-Petitioner.

Mr. Ayub Ali Ashrafi, A.A.G.

.....Defendants-Respondents-opposite parties.

**Heard on:21.10.2025, 22.10.2025, 23.11.2025
and Judgment on:24.11.2025.**

Md. Lutfur Rahman, J.:

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 27.10.2024 (decree drawn on 30.10.2024) passed by the learned Joint District Judge, 1st Court, Satkhira in Title Appeal No. 173 of 2021 dismissing the appeal and thereby affirming the judgment and decree dated 18.10.2021(decree drawn on 24.10.2021) passed by the learned Senior Assistant Judge, Satkhira in Title Suit No. 58 of 2011 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Short facts relevant for the disposal of the Rule are that Upendranath Dutta being recorded tenant was owner of 0.05 acres of

land out of 0.22 acres of land in Plot No. 11466, S.A Khatian No.1087 under Polashpool Mouza, of Satkhira District.

That Certificate Case No. 4903/69-70 was filed for arrear rents and an auction was held on 31.12.1975; the predecessor of the plaintiff Sabera Khanam purchased the same in auction. The auction was confirmed on 03.03.1976 and the possession was handed over through court on 26.09.1976; the said Sabera Khanam mutated her name vide Misc. Case No. 283/76-77 and possessed the same letting out the pucca shops constructed by her to the tenants and paying taxes to the Government; Sabera Khanam died leaving behind 8 (eight) sons namely, Adeluzzaman, Maliuzzaman, Malekuzzaman, Alimuzzaman, Mohituzzaman, Shahiduzzaman, Moshuizzaman and Mohiduzzaman and 4 (four) daughters namely Rokeya Khanam, Zulfiya Khanam, Marzia Khanam and Rizia Khanam. That Moshuizzaman died leaving behind one daughter Merina Khanam and Wife Bashirazzaman; that Rizia Khanam died leaving behind 2(two) sons namely Jamal Ahmed and Helal Ahmed and 3(three) daughters Sabera, Samia and Sadia; Jamal Ahmed executed a registered Power of Attorney being No. 4772 dated 05.06.2004 constituting his brother Helal Ahmed attorney to look after his property. Marzia Khanam and all successors also executed registered Power of Attorney being No. 5154 dated 21.06.2003 constituting Zinnatun Ara Khanam alias Rupali as their

attorney to look after their property. Thereafter, Khurshid Jahan, Rafeza, Suraia, Merina and Basia Zaman transferred $0.00\frac{22}{25}$ acres of land in favour of the plaintiff by registered Saf Kabala Deed No. 7587 dated 22.07.2005. That the plaintiff opened new Khatian in his name being S.A. Khatian No.1087/1 vide Mutation Case No. 237/2005-2006. All the successors of Sabera Khanam transferred their shares measuring $0.03\frac{3}{5}$ acres of land in favour of the plaintiff vide Saf Kabala Deed No. 2576 dated 07.05.2006. The plaintiff mutated the total $0.04\frac{48}{100}$ acres of land in his earlier Khatian No. 1087/1 on 19.06.2005 vide Misc. Case No. 1546/2005-2006. During latest survey the said land was wrongly recorded in the name the Government in Khatian No. 1/1 and the plaintiff raised objection under section 30 and got order to record 0.0440 acres of land in his name, the rest 0.006 acres of land though wrongly was not recorded in the name of the plaintiff but he is possessing the same without any hindrance from any corner, he is possessing the same as like as earlier owner Sabera Khanam letting out pucca shops to the tenant and paying taxes to the government. That on 14.02.2011 corresponding to 2nd of Falgun, 1417 BS the defendants threatened the plaintiff to dispossess him claiming the land as khas land and for that reason he

filed the instant suit praying for perpetual injunction restraining the defendants from dispossessing the petitioner from the suit land etc.

The defendants Nos.1-5 contested the suit by filing written statement and denying the claims of the plaintiff contending inter alia that Asir Uddin Kahar and Meser Kahar were recorded tenant under Talebar Rahman Kha in 0.66 acres of land of C.S. Khatian No. 1056, the said Meser Kahar settled 0.05 acres of land out of 0.22 acres of land from plot No.11466 vide registered Patta No.3597 dated 18.07.1941 to Abdul Bari, the Director of Calcutta Motor Somobay Limited and handed over possession. In that land there was a bus-stand and after partition in 1947 the Motor Samity was abolished and accordingly the land was vested to East Pakistan Government and the said land has been recorded in the name of Government in Khas Khatian No.1 and government is in possession. During S.A. Survey the said land was recorded wrongly in the name of Upendranath Dutta who later on went to India with full family but Sabera Khanam, the predecessor of the plaintiff by forging documents recorded the same in her name illegally through Certificate Case No. 4903/69-70. The plaintiff illegally and without any consideration through kabala deed purchased the same and mutated his name in Khatian No. 1087/1. When the aforesaid facts revealed, the Upazila Nirbahi Officer cancelled all the mutation cases on 09.08.2007, the plaintiff filed

appeal No.98/07 before the Additional Deputy Commissioner (Revenue) and the same was rejected, in present survey the suit land has been recorded in the name of the government in D.P. Khatian No. 1/1. Since the suit land is situated in the middle of the Satkhira Town some persons constructed shops for their livelihood and prayed to the government for lease but due to pending suits lease could not be granted. To grab the government land and to harass the government, the plaintiff instituted the suit with false claim and hence prayed for dismissing the suit.

Thereafter the plaintiff filed application for temporary injunction which was allowed by the court by order No.12 dated 08.05.2011 against which the government filed Misc. Appeal No.25 of 2011 before the Learned District Judge and on transfer it was dismissed by the Additional District Judge, Satkhira on 06.09.2012. That the Government did not file any revision against the said order.

The trial court framed 04 (four) issues under Order 14 Rule 5 of the Code of Civil Procedure, 1908. During trial 3(three) witnesses were examined as P.W.s and 1 (one) witness was examined as D.W. and the documents submitted by both the parties were exhibited and marked.

After final hearing the learned Senior Assistant Judge, Satkhira by Judgment and Decree dated 18.10.2021 (decree signed on 24.10.2021) dismissed the suit.

Being aggrieved by and dissatisfied with the Judgment and decree dated 18.10.2021 the plaintiff as appellant preferred Title Appeal No. 173 of 2021 before the learned District Judge, Satkhira and on transfer it was finally heard by the Learned Joint District Judge, 1st Court, Satkhira who by the impugned Judgment and decree dated 27.10.2024 dismissed the appeal and affirmed the Judgment and decree dated 18.10.2021 passed by the Senior Assistant Judge, Sadar, Satkhira in Title Suit No. 58 of 2011.

Being aggrieved by and dissatisfied with Judgment and decree dated 27.10.2024, the petitioner preferred this revisional application.

Mr. Golam Ahmed, learned Advocate for the petitioner submits that the trial court held that the plaintiff has prima facie title, interest and also right to property in $0.04 \frac{48}{100}$ acres of land and also possession but due to failure of proving his exclusive possession in the entire suit land the suit was dismissed. The trial court also held that the plaintiff is in possession of two shops in the suit land but in other three shops he is not in possession which transpires that the petitioner has right, title, interest and right to property over the suit land. He added that the trial court found that the government is not the

owner of the said land but trial court failed to consider that the petitioner prayed for injunction against the government i.e defendants Nos.1 to 5 and not against his tenants and the appellate court also misunderstood the same like the trial court. He submits that both the courts below failed to consider that the petitioner successfully proved his title beyond reasonable doubt and the possession was also proved by the P.W.s. Though the trial court held that the petitioner has right, title, interest and right to property in $0.04 \frac{48}{100}$ acres of land and he is possessing 02 (two) shops out of 05 (five) shops thus dismissed the suit. That the trial court as well as the appellate court failed to consider that the plaintiff-petitioner prayed for injunction against the government i.e the defendant Nos. 1 to 5 and admittedly government could prove neither its title, nor its possession and thus the impugned judgment of decree of the courts below are liable to be set aside. That both the courts below found that the property belongs to the plaintiff and government has no right, title, interest and right to property in the suit land, in spite of that dismissed the suit and thus the judgment and decree are perverse in the eye of law.

He further submits that the appellate court passed the impugned judgment and decree affirming the same in a slip shod manner and mechanical way without giving his self-assessment and finding and failed to follow the provision of law contained in Order 41 Rule 31 of

the Code of Civil Procedure which causes error of law resulting error in decision occasioning failure of justice. The appellate court below, whether affirming or reversing the decision of the trial court is required to consider the materials on record and thereupon assign the reasons in support of his judgment, but the appellate court failed to consider the evidence and to give any finding on material issues which causes error of law resulting error in the decision occasioning failure of justice.

He next submits that a perpetual injunction is necessary to prevent a multiplicity of judicial proceedings.

Lastly he prayed for making the rule absolute.

Mr. Aiub Ali Ashrafi, the Assistant Attorney General appearing on behalf of the opposite party submits that Government is the owner of the land having record in its name. He further submits that Government is trying to lease out the suit land but not yet leased it. He prayed for discharging the rule.

I have heard the learned Advocates of both the parties and perused the record.

It appears that the plaintiff exhibited his title deeds, mutation, Khatians, auction documents, rent receipts, tenancy agreements and rents collection receipts from the tenants which prove his title and possession over the suit land and both the courts below concurrently

found the title of the plaintiff in the suit land, on the other hand the Government failed to prove its title and possession in the suit land. The trial court as well as the appellate court in their concurrent findings stated that the plaintiff proved his right, title and partial possession in the suit property but he is not in exclusive possession of the entire suit property, rather the plaintiff possessed 2 shops out of 05 shops. The plaintiff claims that he has been possessing all the shops through tenants and submitted written agreements with tenants and receipts of rent collections. But the court's below failed to consider that neither the Government is the owner of other shops nor the tenants acknowledged the Government as their land lord, thus the findings of possession of both the courts below are erroneous, perverse and illegal. Such findings are perverse, based on no evidence constituting a gross error of law. Such finding can be overturned if they arise from misreading of evidence, ignoring crucial documents or violating legal principles, making them unsupportable by any judicial standard.

The courts below disregarded evidence that directly contradicts their findings. They erroneously interpreted crucial evidence and misread documentary evidence entirely. Such findings recorded de hors (outside) the pleadings and violating mandatory provisions of law resulting in a miscarriage of justice.

From the record it appears that the plaintiff exhibited his title deeds, mutation khatian, rent receipts, tenancy agreements and rents collection receipts from the tenants which prove his title and possession over the suit land. In a suit for permanent injunction, the main thing is that the plaintiff is in possession or not, in the instant case the possession of the plaintiffs though proved by way of oral and documentary evidences but both the courts below surprisingly found partial possession in the suit land by the plaintiff though both the courts below concurrently found the title of the plaintiff in the suit land and no title and possession of the Government. That the defendants-respondents admittedly could not prove title and possession over the suit land in favour of the Government. Hence the finding of partial possession of the suit land by the plaintiff and partial possession by 3rd parties by both the courts below is wrong, illegal and in my opinion perverse.

The courts below also failed to consider that the plaintiff prayed for permanent injunction against the government not against his tenants or any other private individuals. It has been concurrently found by both the courts below that Government has neither any title, nor any possession over the suit land.

It appears that though Government has neither title, nor possession over the suit land, the defendants are trying to lease out the

suit land and also trying to make assertion of a right over the suit land illegally.

Perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendants are thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

That the plaintiff's right, title and possession over the suit property, have been proved during trial and the defendants could not prove the right title and possession of the Government over the suit land, rather they tried to prove the possession of 3rd party, shopkeepers who are actually proven to be the tenants of the plaintiff. Thus it can be well said that the merits of the suit are in favour of the plaintiff exclusively as against the defendants and thus the plaintiff is entitled to get an order of perpetual injunction over the suit land as against the government. Since the findings and decisions of the courts below are erroneous, perverse, arising from misreading of evidence, they constitute a gross error of law, those are liable to be interfered by this court and hence call for interference.

I find substance in the submission of the learned lawyer for the petitioner.

As a result the rule is made absolute.

The judgment and decree dated 27.10.2024 (decree drawn on 30.10.2024) passed by the learned Joint District Judge, 1st Court, Satkhira in Title Appeal No. 173 of 2021 dismissing the appeal and thereby affirming the judgment and decree dated 18.10.2021(decree drawn on 24.10.2021) passed by the learned Senior Assistant Judge, Satkhira in Title Suit No. 58 of 2011 dismissing the suit is hereby set aside. The Title Suit No. 58 of 2011 is hereby decreed against the contesting defendants. The defendants are restrained by an order of injunction from declaring the suit land as kash and from creating any sort of disturbance in the peaceful possession of the plaintiff petitioner.

The ad-interim order is hereby recalled and vacated.

However, there is no order as to costs.

Send down the lower courts record and communicate the judgment and decree to the concern Court at once.

(Md. Lutfor Rahman,J)