

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

Present:

Mr. Justice Md. Shohrwardi

Civil Revision No. 2379 of 2000

IN THE MATTER OF

An application under Section 115 of
the Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Petitioner No. 1 Kalipada Das, being
dead, his heirs; 1(a). Krishna Pada Das
... Petitioner

-Versus-

Biddah Sagor Das and others
... Opposite parties

Mr. Tapash Kumar Biswas, Advocate
with

Mr. Md. Mizanur Rahman, Advocate
.....For the petitioner

Mr. Ashutush Kumar Sana, Advocate
...For the opposite party No. 8(b) and 8(a)(1)

Heard on 26.07.2026, 01.09.2026 and
08.09.2026.

Judgment on: 09.09.2026

On an application under section 115 (1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 8 to 11 to show cause as to why the impugned judgment and decree dated 09.03.2000 and 13.03.2000 passed by Additional District Judge, Court No. 2, Khulna in Title Appeal No. 359 of 1995 affirming those dated 26.09.1995 and 02.10.1995 respectively passed by Sub-ordinate Judge (now

Joint District Judge), Court No. 2, Khulna in Title Suit No. 107 of 1994 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The plaint case in a nutshell is that 6.79 acres of land appertaining to CS Khatian No. 34 of Mouza-Chandipur belonged to Pachi Sundari Dasi and Braja Bashi Kundu in equal share and 6.77 acres of land appertaining to C.S Khatian No. 30 of the said Mouza belonged to Madar Das, Beni Madhav and Patambari Dasi to extent of 4 (four) annas each and remaining 4 annas belongs to Nagar Bashi Kundu and Braja Bashi Kundu to the extent of 2(two) annas each. After the death of Nagar Bashi Kundu, his wife Pachi Sundari Dasi had given settlement of 6.80 acres of land of the said two holdings to Shibendra Nath Das and Amullya Krishna Das by registered patta dated 09.04.1943 and delivered possession to the tenants. After that, Shibendra Das and Amullya Das transferred 6.80 acres of land to Panchanan Kundu by registered Kabala dated 03.01.1944. Subsequently, Panchanan Kundu transferred 6.79 acres of land to Chittaranjan Mondal and Sudhir Mondal (defendant Nos. 9 and 10) and delivered possession. In the S.A. Khatian, 6.79 acres of land was recorded in the name of Panchanan Kundu. Thereafter, the plaintiff purchased 3.00 acres of land from Panchanan Kundu by registered kabala dated 18.08.1959 in benami of Kusum Kumari, his brother's wife, and Pijush Kanti, his trusted friend. After purchase, the plaintiff took possession of the suit land, and in the statement made in compliance with the provisions of P.O. No. 98 of 1972, it has been mentioned that said 3 acres of land is benami land. Subsequently, the plaintiff took a loan in the name of

Pijush Kanti by mortgaging 1.50 acres of land and also repaid the loan. The registration receipt of kabala dated 18.08.1959 was handed over to the plaintiff, but unfortunately he lost it, for which he could not collect the original deed, and consequently the concern office destroyed the original deed. Thereafter, he lodged a GD entry on 25.01.1991, but the defendant Nos. 1 to 8 claimed the title on the suit land on the basis of the said deed dated 18.08.1958 denying the benami transaction for which the plaintiff filed the suit.

The defendant Nos. 1 to 7 entered appearance in the suit by filing vokalatnama and made a compromise with the plaintiff admitting the fact stated in the plaint.

The defendant No. 8 contested the suit by filing a written statement denying the assertion made in the plaint, stating that the suit is not maintainable in law and barred by limitation. He offered to sell 3 acres of land to Kusum Kumari and Pijush Kanti, who agreed to purchase the same, and executed the registered kabala dated 18.08.1959 but surprisingly the Kusum Kumari and Pijush Kanti did not pay the consideration of the deed for which he kept the registration receipt of the said deed but during war of liberation in 1971, he lost the registration receipts. Consequently, the concerned office destroyed the original deed, and he could not collect the original deed. It has been asserted that although the deed was registered, the possession of the land was not handed over to the purchasers and he is possessing the land. The defendant No. 8 specifically denied the benami transaction of the plaintiff in the name of Kusum Kumari and Pijush Kanti.

During pendency of the suit, before appearance of defendant No. 8, the plaintiff and the defendant Nos. 1 to 7 filed a solenama and the plaintiff was examined as P.W. 1 and defendant No. 1 was examined as D.W. 1, and the trial court by order dated 29.02.1992 passed an order holding that the compromise between the plaintiff and the defendant Nos. 1 to 7 would be considered at the time of disposal of the case. After that, the defendant No. 8 entered appearance in the suit.

During trial of the case, the plaintiff examined 4 witnesses and defendant No. 8 examined 3 D.Ws to prove their respective cases. After concluding the trial, the Sub-ordinate Judge (now Joint District Judge), Court No. 2, Khulna, by judgment and decree dated 26.09.1995 (decree signed on 02.10.1995) dismissed the suit on contest. Against which the plaintiff filed Title Appeal No. 359 of 1995 in the Court of District Judge, Khulna. The Additional District Judge, Court No. 2, Khulna heard the appeal and, by impugned judgment and decree dated 09.03.2000(decree signed on 13.03.2000), dismissed the appeal, affirming the judgment and decree passed by the trial court against which the plaintiff obtained the Rule.

The learned Advocate Mr. Tapash Kumar Biswas appearing along with learned Advocate Mr. Mizanur Rahman on behalf of the petitioner submits that the plaintiff purchase 3 acres of land appertaining to CS Khatian Nos. 30 and 34 of Mouza-Chandipur by deed No. 4724 dated 18.08.1959 (exhibit-4/Ga) in benami of Kusum Kumari and Pijush Kanti and the defendant No. 8 Panchanan Kundu did not dispute the execution of said deed. He further submits that Panchanan Kundu inherited .846

decimals of land of CS Khatian No. 30 from his father Braja Bashi Kundu and he also inherited $3.39 \frac{1}{2}$ acres of land from CS Khatian No. 34 through his father Braja Bashi Kundu. The plaintiff acquired title to 8.24 acres of land in CS Khatian Nos. 30 and 34 by purchase and inheritance. He also submits that although the trial court, by order dated 29.02.1992, opined that the compromise made between the plaintiff and the defendant Nos. 1 to 7 would be considered at the time of disposal of the case, both the courts below without considering the compromise made between the plaintiff and defendant Nos. 1 to 7 passed the impugned judgment and decree. He lastly submits that in the deed dated 18.08.1959 (exhibit-4/Ga) it has been specifically stated that the vendor Panchanan Kundu accepted the consideration. Therefore, the plaintiff is entitled to get a decree of declaration of title on the suit land, but both the courts below, without considering the content of the deed dated 18.08.1959 (exhibit-4/Ga) and misreading and non-reading of the material evidence of both the parties, illegally passed the impugned judgments and decrees and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for setting aside the impugned judgments and decrees passed by the courts below.

The learned Advocate Mr. Ashutus Kumar Sana appearing on behalf of the opposite party Nos. 8(b) and 8(a)(1) submits that the consideration of the deed was not paid to the defendant No. 8, for which he took the registration receipt of the disputed deed in his possession but subsequently during war of liberation in

1971, he went to India and lost the registration receipt of the deed dated 18.08.1959. Consequently, he could not collect the deed, since the concern office destroyed the deed. He further submits that the possession of the suit land was not handed over to the defendant Nos.1 to 7, and the defendant Nos. 1 to 7 are not the benamidars of the plaintiff. He also submits that the defendant No. 8 did not hand over the possession of the suit land and subsequently he paid the rent of the suit land to the government and is now possessing the suit land, and both the courts below, on correct assessment and evaluation of the evidence of both the parties legally passed the impugned judgment and decree. He lastly submits that both the courts below arrived at a concurrent finding of fact that the plaintiff failed to prove his title to the suit land. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Tapash Kumar Biswas appearing along with learned Advocate Mr. Mizanur Rahman on behalf of the petitioner, and the learned Advocate Mr. Ashutus Kumar Sana who appeared on behalf of the opposite party Nos. 8(b) and 8(a)(1), perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the trial court, and the records.

On perusal of the records, it is revealed that during pendency of the Rule, the petitioner filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint and after hearing both the parties, this court by order dated 20.02.2006 allowed the said application for amendment of the plaint. In view of the amendment of the plaint,

there is no scope to dispose of the suit without taking additional evidence. Therefore, I am of the view that the ends of justice would be best served if the suit is sent back on remand to the trial court for taking additional evidence regarding the amendment of the plaint. The defendant No. 8 is also entitled to file the additional written statement regarding the amendment of the plaint, if so advised.

It is found that during pendency of the suit, the plaintiff and the defendant Nos. 1 to 7 executed a solenama and the trial court, by order dated 29.02.1992, opined that the solenama executed by the plaintiff and the defendant Nos. 1 to 7 would be considered at the time of disposal of the suit. Since the additional evidence is required for proper adjudication of the dispute between the parties, I am not inclined to dispose of the Rule considering evidence or touching merit of the case. Therefore, the impugned judgment and decree and the findings arrived at by the courts below are hereby set aside.

The suit is sent back on remand to the trial court. Both the plaintiff and the defendant No. 8 are entitled to adduce additional evidence.

The trial court is directed to dispose of the suit considering the solenama made between the plaintiff and defendant Nos. 1 to 7, evidence adduced by the parties and the additional evidence, if any.

With the above findings, observations and directions, the suit is sent back on remand to the trial court.

In the result, the Rule is disposed of.

The impugned judgment and decree passed by the courts below are hereby set aside.

The trial court is directed to dispose of the suit within 06(six) months positively from the date of receipt of this judgment and order.

Send down the LCR at once.