

District-Barishal.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1225 of 2021.

Tapon Kumar Saha and others.

---- Plaintiffs-Appellants-Petitioners.

-Versus-

Zudishtir Saha.

---- Defendant-Respondent-Opposite Party No.1.

Somir Kumar Saha and others.

---- Plaintiffs-Appellants-Opposite Parties.

Mr. A.H.M. Borhan, Advocate.

---- For the Plaintiffs-Appellants-Petitioners.

Mr. Sudipta Arjun, Advocate with

Mr. Bidhayok Sarker, Advocate

----For the Defendant-Respondent-Opposite Party No.1.

Heard On: 01.03.2026, 05.03.2026 & 09.03.2026.

And

Judgment Delivered On: 11.03.2026.

Md. Toufiq Inam, J.

This Rule was issued at the instance of the plaintiffs as petitioners calling upon the opposite parties to show cause as to why the impugned judgment and decree 01.10.2020 and 05.10.2020 respectively passed by the learned Special District Judge in Title Appeal No.169 of 2016 affirming the judgment and decree of the learned Senior Assistant Judge passed on 29.09.2016 and 06.10.2016 respectively in Title Suit No. 90 of 2007 dismissing the suit, should

not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts, in brief, giving rise to the Rule are that the plaintiffs instituted the suit seeking a declaration of their title to 2 decimals of land comprised in J.L. No. 63 of Mouza Koloskathi under S.A. Khatian No. 768 and R.S. Khatian No. 194. They also sought a declaration that the deed of gift dated 19.08.2010, allegedly executed by defendant No. 2 in favour of defendant No. 1 in respect of 1 decimal of the suit land, is not binding upon them. The plaintiffs further prayed for eviction of defendant No. 1 from the shop standing on the land described in Schedule 'Kha' of the plaint and for recovery of khas possession thereof.

The case of the plaintiffs, as stated in the plaint, is that their predecessor, Rajanikanta Saha, obtained oral settlement of the entire 2 decimals of land from the then zamindars and established a grocery shop thereon. According to them, during the R.S. survey the land was correctly recorded in the sole name of Rajanikanta Saha in R.S. Khatian No. 194. It is alleged that subsequently Rakhil Chandra Saha, father of defendant No. 1, taking advantage of the inexperience of the plaintiffs' predecessors in land matters, collusively caused the name of his wife, Sree Hari (defendant No. 2), to be recorded along with the name of Rajanikanta Saha in S.A. Khatian No. 768 showing equal

shares. The plaintiffs contend that the said record was erroneous. They further claim that defendant No.1 has been occupying the shop on a portion of the suit land since 1996 merely as a permissive possessor under them. According to the plaintiffs, relying on the wrong S.A. record, defendant No. 2 subsequently executed the deed of gift dated 19.08.2010 in favour of defendant No. 1 transferring 1 decimal of land without any lawful title or authority.

The defendants contested the suit by filing written statements denying the material allegations of the plaint. Their case, in short, is that the suit land was originally settled with Jagabandhu Saha, the common predecessor of both parties, who constructed a shop thereon and carried on business. After his death the property devolved upon his three sons- Rajanikanta Saha, Sitanath Saha and Mathuranath Saha. Subsequently Mathuranath Saha died unmarried and his share devolved upon the remaining two brothers. Thereafter Sitanath Saha died leaving behind his daughter Sree Hari as his sole heir. According to the defendants, Sree Hari inherited her father's share in the property and the S.A. record correctly reflects the names of Rajanikanta Saha and Sree Hari in equal shares. It is further contended that Sree Hari, being a co-sharer, validly transferred her share by executing the registered deed of gift dated 19.08.2010 in favour of her son, defendant No. 1, who is now possessing the land as lawful owner and not as a permissive possessor.

The learned trial court, upon framing the necessary issues and considering the oral and documentary evidence adduced by the parties, dismissed the suit by judgment and decree. Being aggrieved thereby, the plaintiffs preferred a Title Appeal before the learned District Judge. The appellate court, upon hearing the parties and reappraising the evidence on record, dismissed the appeal and affirmed the judgment and decree of the trial court. Challenging the legality and propriety of the said appellate judgment and decree, the plaintiffs have filed the present civil revision before this Court and obtained the Rule.

Mr. A.H.M. Borhan, learned Advocate appearing for the petitioners, submits that both the courts below failed to properly appreciate the evidence on record and thereby arrived at erroneous findings regarding the title of the parties. According to him, the R.S. record stands in the sole name of Rajanikanta Saha and such record, having been prepared upon field survey and measurement, carries a presumption of correctness. He contends that the courts below committed serious illegality in discarding the R.S. record and in placing reliance upon the S.A. record, which, according to him, was prepared merely by table work without field verification.

He further submits that the appellate court erred in relying upon the statements made in the earlier Title Suit No. 42 of 2007 instituted by

the plaintiffs. According to the learned Advocate, the said suit had been withdrawn with permission to institute a fresh suit on account of certain formal defects in the plaint. Therefore, the pleadings of that withdrawn suit, in his submission, lost their legal effect and could not be used against the plaintiffs as admissions. He contends that once a suit is withdrawn with liberty to file afresh, the earlier pleadings cannot legally bind the party nor be relied upon to determine title.

Conversely, Mr. Sudipta Arjun, the learned Advocate appearing for defendant-opposite party No. 1, assisted by Mr. Bidhayok Sarker, supports the impugned judgment and decree. He submits that both the courts below, upon proper appreciation of the evidence on record, have rightly concluded that Rajanikanta Saha was not the exclusive owner of the entire suit land. He points out that the plaintiffs' own predecessor, Bhubaneshwar Saha, the father of plaintiff No. 9, executed a registered deed of sale being No. 1150 dated 14.03.1995, marked as Exhibit-Gha(1). In the recital of that deed, it has been clearly stated that his father Rajanikanta Saha possessed only half share of the 2 decimals of land under S.A. Khatian No. 768. According to the learned Advocate, such recital in a registered instrument constitutes a clear admission by the executant and operates against his successors. In support of this submission, he refers to the decision reported in *Roushan Ara vs. Aaluddin*, 26 BLC (AD) 370.

He further submits that the plaintiffs themselves had earlier instituted Title Suit No. 42 of 2007 concerning the same property wherein they specifically pleaded that the original settlement had been taken by Jagabandhu Saha and that, after his death, the property devolved upon his heirs including Rajanikanta Saha and Sitanath Saha. According to him, such statement clearly acknowledges the joint origin of title. Although the said suit was subsequently withdrawn, the statements contained therein remain admissible as admissions unless satisfactorily explained. In this regard he refers to the decision reported in *Mohammed Seraj vs. Abidar Rahaman Sheikh and others*, AIR 1968 Cal 550. He therefore contends that the courts below were perfectly justified in considering those admissions along with the other evidence on record.

Upon hearing the learned Advocates of both sides and upon perusal of the materials on record, it appears that the principal controversy revolves around the title to the suit land measuring 2 decimals under J.L. No. 63 of Mouza Koloskathi recorded in R.S. Khatian No. 194 and S.A. Khatian No. 768.

The plaintiffs claim that their predecessor Rajanikanta Saha obtained settlement of the entire land from the zamindars and that the R.S. record correctly reflects his exclusive title. According to them, the subsequent S.A. record showing the name of Sree Hari along with

Rajanikanta Saha was prepared erroneously and collusively. On that basis they have challenged the deed of gift dated 19.08.2010 executed by Sree Hari in favour of defendant No. 1.

The defendants, however, assert that the land was originally settled with Jagabandhu Saha, the common predecessor of the parties, and that after his death the property devolved upon his sons- Rajanikanta Saha, Sitanath Saha and Mathuranath Saha. Upon the death of Mathuranath without issue, his share devolved upon the remaining two brothers, and after the death of Sitanath Saha his daughter Sree Hari inherited his share. According to the defendants, the S.A. record correctly reflects this position by recording Rajanikanta Saha and Sree Hari in equal shares.

A substantial argument advanced on behalf of the petitioners is that the courts below ought not to have relied upon the statements contained in the plaint of the earlier Title Suit No. 42 of 2007 because the said suit had been withdrawn with liberty to file afresh. The submission, however, cannot be accepted.

Pleadings in judicial proceedings are deliberate statements of fact made by a party with full awareness of their legal consequences. When such statements relate to material facts, such as the source of title or the extent of interest in disputed property, they constitute

admissions within the meaning of Sections 17 and 21 of the Evidence Act, 1872, and are relevant against the maker. The probative force of an admission lies in its voluntary character, being a statement emanating from the party itself. Statements in pleadings are not casual or inadvertent; they are formal assertions made upon legal advice and with conscious intent. Accordingly, a clear and unambiguous statement made in an earlier plaint continues to retain its evidentiary value as an admission against the party and his representatives, unless it is shown to have been withdrawn, amended, or satisfactorily explained.

The withdrawal of a suit under Order XXIII Rule 1 of the Code of Civil Procedure affects only the procedural fate or status of that proceeding. It prevents the earlier suit from operating as *res judicata* and permits the institution of a fresh suit; but does not efface or erase the statements of fact consciously made therein. Such statements do not lose their force merely by reason of withdrawal of the suit; they continue to be relevant as 'admissions' against its maker and his representatives unless they are corrected, or satisfactorily explained.

In the present case, in the earlier Title Suit No. 42 of 2007 the plaintiffs themselves pleaded that the original settlement had been taken by Jagabandhu Saha and that, after his death, the property devolved upon his heirs including Rajanikanta Saha and Sitanath Saha. Such statement unmistakably indicates that the title did not

originate exclusively in Rajanikanta Saha. Although the suit was later withdrawn on the ground of formal defect, the plaintiffs have offered no explanation as to why such statement was made if it did not reflect the true state of affairs. The courts below were therefore justified in treating the said statement as an admission bearing upon the origin of title.

Apart from the earlier pleading, there exists another significant piece of documentary evidence supporting the defence case. Exhibit–Gha(1), the registered deed of sale dated 14.03.1995 executed by Bhubaneshwar Saha, contains a clear recital that Rajanikanta Saha was the owner of only half share of the total 2 decimals of land under S.A. Khatian No. 768. A recital of this nature in a registered instrument carries considerable evidentiary value. It amounts to an admission by the executant regarding the extent of title held by his predecessor, and the executant as well as those claiming through him are ordinarily precluded from asserting a position inconsistent with such statement unless it is shown to have been made under mistake.

The present plaintiffs claim through the said Bhubaneshwar Saha. Yet no convincing explanation has been offered as to why such recital was incorporated in the registered deed if Rajanikanta Saha had in fact been the exclusive owner of the entire land. In the absence of any satisfactory explanation, the admission contained in the said deed

stands as strong evidence indicating that Rajanikanta Saha possessed only a half share in the suit property.

It is true that the R.S. record stands in the sole name of Rajanikanta Saha and such record carries a presumption of correctness. However, the presumption attached to a record-of-rights is rebuttable. In the present case, the admissions appearing both in the earlier plaint and in the registered deed executed by the plaintiffs' predecessor provide cogent evidence rebutting the claim of exclusive ownership. Significantly, the S.A. record showing the names of Rajanikanta Saha and Sree Hari in equal shares appears to be consistent with those admissions.

In these circumstances, the courts below, upon consideration of the documentary evidence and the conduct of the parties, have concurrently found that Rajanikanta Saha was not the exclusive owner of the entire suit land. In revisional jurisdiction, this Court does not ordinarily interfere with concurrent findings of fact unless such findings are shown to have been reached by misreading the evidence or by applying an erroneous principle of law.

No such infirmity is apparent in the impugned judgment. Accordingly, this Court finds no illegality or material irregularity in the impugned judgment warranting interference in revisional jurisdiction.

The Rule is, therefore, discharged.

There will be no order of costs.

Send down the lower court's record at once together with this judgment.

(Justice Md. Toufiq Inam)

Ashraf /ABO.