

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

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2353 of 2025

IN THE MATTER OF

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

-AND-

IN THE MATTER OF:

Md. Ekhlash Uddin

.....Petitioner

-Versus-

Mukta Begum and others

... Opposite parties

Mr. Abdullah Al Bakee, Advocate

....For the petitioner

Mr. Quazi Ferdousul Hasan, Advocate

...For the opposite parties.

Heard on 27.04.2026, 06.05.2026,

18.05.2026 and 28.06.2026

Judgment delivered on 14.07.2026

On an application under Section 115(1) of the Code of Civil Procedure, 1908, Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 24.03.2025 passed by Senior Assistant Judge, Gafargaon, Mymensingh in Other Class Suit No. 218 of 2018, 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.

The plaint case, in a nutshell, is that the plaintiffs filed Other Class Suit No. 218 of 2018 in the Court of Senior Assistant Judge, Gafargaon, Mymensingh, impleading the opposite party Nos. 1 to 3 as

defendants, praying for decree of recovery of possession, stating that Nasir Uddin, vendor of the Plaintiff, and Md. Jasim Uddin, brother of Nasir Uddin, purchased 61 decimals of land of C.S. Dag Nos. 259 and 185, Khatian No. 13 by registered deed No. 2613 dated 27.7.1997 from Most. Amana Khatun. BRS Khatian No. 158 was recorded in the name of Amana Khatun along with others. Out of the said 61 decimals of land, each of them obtained 31.5 decimals of land. Nasir Uddin obtained 20.5 decimals of land of CS Dag No. 259 and 10 decimals of land of Dag No. 185, and Jasim Uddin also obtained 20 decimals of land of CS Dag No. 259 and 10.5 decimals of land of Dag No. 185. After purchase, both of them jointly took possession of the land. Nasir Uddin sold 20.5 decimals of land of CS Dag No. 259 to the plaintiffs and executed an agreement on 07.01.2008 in favor of the plaintiffs after receipt of Tk. 2,90,000 out of the total consideration amounting to Tk. 3,00,000 and on 08.01.2008 at 4 p.m., possession was handed over to the plaintiffs after measuring the land through a local Amin. In the said agreement, it has been stipulated that within the next 15 days, after receipt of the remaining 10,000, the deed will be executed and registered. Thereafter, the plaintiffs went to the house of Nasir Uddin on 18.08.2008, along with Tk. 10,000 to pay the remaining consideration, but came to know that Nasir Uddin had fled abroad since he was an accused in a murder case. After the death of Jasim Uddin, his mother, Anjumanara Khatun, transferred 20.25 decimals of land of CS Dag No. 259 by registered deed No. 2870 dated 30.06.2005 to Majida Khatun. Majida Khatun took possession after purchasing the land and, by registered deed No. 1275 dated 15.07.2013, gifted her 20.25 decimals of land to Shohrab Uddin and handed over possession of the land. On 09.09.2017 at 11.00 a.m., the defendant came to the house of the plaintiffs and threatened to dispossess them from the suit land, and thereafter the plaintiffs filed

Title Suit No. 150 of 2017 in the Court of Senior Assistant Judge, Gafargaon, Mymensingh, praying for permanent injunction against the defendants, and the defendants also filed a written statement in the said suit, and the suit was fixed for peremptory hearing. Subsequently, on 25.07.2018 at 10.00/10.30 a.m., the defendants, along with terrorist people, dispossessed the plaintiffs in their absence from the suit land. After that, the plaintiffs filed an application in Other Suit No. 150 of 2017 for withdrawal of the suit to file afresh, and the trial court, by order dated 26.09.2018, allowed the plaintiffs to withdraw the suit. After that, the plaintiffs filed the instant suit praying for a decree of recovery of kash possession.

The defendants contested the suit by filing a written statement denying the assertions made in the plaint, stating that Jasim Uddin, husband of the defendant No. 1 and father of the defendant No. 2 and 3, and Nasir Uddin are full brothers, and both of them, by deed dated 27.07.1997, purchased 61 decimals of land. A dispute has arisen regarding the partition of the suit land between Jasim Uddin and Nasir Uddin. Consequently, Nasir Uddin, along with his relatives and terrorist people, killed Jasim Uddin on 17.11.2004 at night in his house, and Nasir Uddin is an accused in the Jasim Uddin murder case, which is now pending in the Court of the Sessions Judge, Mymensingh. After the death of Jasim Uddin, his wife and two minor daughters inherited the said land of Jasim Uddin and were cultivating the land. The plaintiff created a bainanama in the name of Nasir Uddin in their favour. Witness No. 2, Shapon, of the bainanama is an accused in the Jasim Uddin murder case. The plaintiffs created an agreement in the name of Nasir Uddin to transfer the property of the minor daughters and innocent wife of Jasim Uddin.

During trial, the plaintiffs examined 4 witnesses, and the defendants examined 2 witnesses to prove their respective cases. After

concluding the trial, the trial court, by impugned judgment and decree, dismissed the suit against which the plaintiff petitioner Md. Ekhlash Uddin obtained the Rule.

The learned Advocate Mr. Abdullah Al Bakee appearing on behalf of the petitioner submits that the Nasir Uddin and Jasim Uddin are full brothers and they purchased 61 decimals of land by deed No. 2613 dated 27.7.1997(exhibit-5) and after killing Jasim Uddin, his mother Anjumanara sold 20.5 decimals of land to Mazida by deed No. 2870, dated 30.06.2005(exhibit-4), and subsequently Mazida gifted her purchased land to Shoharab by deed No. 1275 dated 15.07.2013 (exhibit-6) and there was no dispute between Nasir and Jasim regarding other 20 decimals of land, and after transfer of 20.5 decimals of land by Anjumanara, the defendants forcibly dispossessed the plaintiffs from the suit land, and during trial, the plaintiffs proved their possession in the suit land and subsequent dispossession from the suit land, but the trial court on misreading and non-reading of the material evidence dismissed the suit and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

The learned Advocate Mr. Quazi Ferdousul Hasan appearing on behalf of the opposite party Nos. 1 to 3 submits that after purchasing 61 decimals of land by deed No. 2613 dated 27.07.1997 (exhibit-5), both Nasir Uddin and Jasim Uddin took possession of the land and in the deed No. 2870 dated 30.06.2005, it has been clearly mentioned that Anjumanara sold the land inherited by her husband from his father, and after killing Jasim Uddin, the accused persons of Jasim Uddin murder case created an agreement on 08.01.2008 in the name of Nasir Uddin to grave the property of the minor daughters and innocent wife of Jasim Uddin. He further submits that the joint possession in the suit land by Jasim Uddin and Nasir Uddin is

admitted by the plaintiffs and without partition of the suit land, the suit for recovery of Kash possession is not maintainable. He also submits that in the written statement, it has been categorically stated that Jasim Uddin was killed on 17.11.2004 and in the plaint it has been admitted that after killing Jasim Uddin, Nasir Uddin went to Saudi Arabia which clearly proved that the alleged bainapatra dated 08.01.2008 (exhibit-7) is subsequently created, and during trial, neither Nasir Uddin nor any witnesses of the said deed was examined in the case to prove the execution of the agreement dated 08.01.2008 (exhibit-7). Lastly, he submits that none of the witnesses stated that they were present at the time of alleged dispossession and the trial court, on consideration of the evidence adduced by both the parties, correctly arrived at a finding that the plaintiffs failed to prove his dispossession from the suit land. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Abdullah Al Bakee, who appeared on behalf of the petitioner, and the learned Advocate Mr. Quazi Ferdousul Hasan, who appeared on behalf of the opposite parties, perused the evidence adduced by both the parties, the impugned judgment and decree passed by the trial court, and the records.

On perusal of the evidence, it reveals that, admittedly, Nasir Uddin and Jasim Uddin are full brothers who purchased 61 decimals of land of CS Khatian No. 13 CS Dag Nos. 259 and 185 by deed No. 2613 dated 27.7.1997 (exhibit-5), and after purchase both of them jointly took possession of the land, and both of them are equal owners of 61 decimals of land purchased by them. Out of 61 decimals of land, both Nasir Uddin and Jasim Uddin amicably possess 20 decimals of land of Dag No. 185 and there is a dispute regarding 41 decimals of the suit land of Dag No. 259.

P.W.1. stated that after the death of Jasim Uddin, his mother sold 20 decimals of land by deed No. 2870 dated 30.6.2005 to Mazida Khatun, which has been proved as Exhibit-4. In the said deed (Exhibit-4), it has been mentioned that Abdur Rashid, husband of Anjuman Ara inherited the property from his father. It appears that after the death of Abdur Rashid, Anjuman Ara and her sons inherited 20.25 decimals of land but Anjuman Ara alone sold the said land to Mazida Khatun by deed No. 2870 dated 30.06.2005. It is apparent that Anjumanara did not sell any land of Jasim Uddin after his death. Nasir Uddin and Jasim Uddin purchased the land jointly. No partition took place between them and the name of Jasim Uddin does not appear in the schedule of the disputed agreement dated 08.01.2008 (exhibit-7). I am of the view that the deed No. 2870 dated 30.06.2005 (exhibit-4) and agreement dated 08.01.2008 (Exhibit-7) do not attract the suit land purchased by Jasim Uddin.

In the plaint, it has been stated that Nasir Uddin executed a bainanama on 08.01.2008 on the condition that within the next 15 days he would execute and register the deed. On perusal of the agreement dated 08.01.2008 (Exhibit-7) reveals that it was executed in the name of Nasir Uddin on 8.01.2008 and P.W. 3 Rafiqul Islam is the deed writer, but he did not prove his signature or handwriting on Exhibit-7. Although the names of Mafiz Uddin and Md. Eklas, son of Md. Siraj Uddin are mentioned in the deed (Exhibit-7), but they did not sign Exhibit-7. Furthermore, witnesses Md. Shapon Mia and Kamal of the said deed were also not examined in the case. None of the witnesses proved the signature of Nasir Uddin on Exhibit-7. Nasir Uddin was also not examined in the case. Therefore, I am of the view that the plaintiffs failed to prove that the agreement dated 08.01.2008 was executed by Nasir Uddin.

In the written statement filed by the defendants, it has been specifically stated that Jasim Uddin was killed on 17.11.2004 and after the death of Jasim Uddin, Nasir Uddin went to Saudi Arabia. D.W. 1 stated that , Nasir, Shapon, Ratan, and others are accused in the Jasim murder case P.W. 1 Eklash Uddin admitted that Shapan and Ratan is accused of Jasim murder case but he could not say the date when Nasir went to abroad. Therefore, I am of the view that immediately after killing Jasim Uddin, his brother, who is an accused in the Jasim Uddin murder case, fled to Saudi Arabia. Therefore, the execution of the deed dated 08.01.2008 (exhibit-7) by Nasir Uddin will not arise at all.

Admittedly, after purchasing 61 decimals of land, both Nasir Uddin and Jasim Uddin jointly took possession of 61 decimals of land, including the suit land purchased by them by deed No. 2613 dated 27. 07.1997 (exhibit-5), and the possession of Jasim Uddin in the suit land is admitted by the plaintiff. D.W. 2 Hasina Khatun is the sister of Jasim Uddin. She stated that the defendants are possessing the land of Jasim Uddin and that it is a false case. The assertion made by P.W.1 that Anjumanara, mother of Jasim Uddin, sold 20.25 decimals of land by deed No. 2870 dated 30.06.2005(exhibit-4), inherited by her from Jasim Uddin, is found not true. The defendants inherited 20.5 decimals of land from Jasim Uddin, and they did not transfer the land. Therefore, it is crystal clear that the defendants owned 20.5 decimals of land after death of Jasim Uddin. None of the PWs stated that in their presence, the defendants dispossessed the plaintiffs. I am of the view that the plaintiffs failed to prove their possession in and dispossession from the suit land, and the trial court, on correct assessment and evaluation of the evidence, correctly arrived at a finding that the plaintiffs failed to prove their dispossession from the suit land on 25.07.2018.

No specific boundary of 41 decimals of land of Dag No. 259 is given in the plaint, and without ascertaining the specific boundary of 41 decimals of land jointly possessed by Nasir Uddin and Jasim Uddin, the boundary of 20.5 decimals of suit land cannot be ascertained. I am of the view that a vague schedule and boundary is stated in the plaint.

In view of the above findings, observations and the proposition, I am of the view that the plaintiffs failed to prove their possession in and subsequent dispossession from the suit land. Therefore, they are not entitled to get a decree of recovery of possession, and the trial court, on correct assessment and evaluation of the evidence adduced by both parties, arrived at a correct finding that the plaintiffs failed to prove their dispossession from the suit land.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the LCR at once.