

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.279 OF 2010**

In the matter of:

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

And

Government of Bangladesh and others  
.... Petitioners

-Versus-

Bankim Behari Halder and others  
.... Opposite parties

Mr. Saifur Rahman, Deputy Attorney General with  
Mr. Md. Moshihur Rahman, Assistant Attorney General  
Mr. Md. Mizanur Rahman, Assistant Attorney General  
Mr. Md. Arifur Rahman, Assistant Attorney General  
.... For the petitioners.

Mr. Tapan Kumar Bepary, Advocate  
.... For the opposite party No.2.

Mr. Biplob Goswami, Advocate  
.... For the opposite party No.3.

**Heard on 27.07.2025 and Judgment on 28.07.2025**

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 24.10.1996 passed by the learned Additional District Judge, Pirojpur in Title Appeal No.32 of 1989 reversing those of the judgment and decree dated 31.07.1988 passed by the learned Sub-ordinate Judge, Pirojpur in Title Suit No.165 of 1985 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party No.1 as plaintiff instituted above suit for declaration that the Certificate Case as described in Kha schedule to the plaint is unlawful, illegal, not acted upon and not binding upon the plaintiff and for further declaration of title for 21 decimal land of the "Ka" schedule and confirmation of possession or if the plaintiff is proved to be dispossessed recovery of possession. It was alleged that above 21 decimal land belonged to Rajendranath Saha and for recovery of outstanding rent defendant No.1 filed Certificate Case No.1604(N)/59 and sold above land in auction which was purchased by the plaintiff for Taka 41/- on 28.04.1907. Above sale was confirmed on 01.07.1960 and the plaintiff was given sale certificate on 30.03.1961 and possession was delivered on 28.04.1962. On 16.01.1985 plaintiff came to know that above property has been sold by the Government by a subsequent Certificate Case No.1228(N)/1959 and purchased by the Government. The plaintiff filed a Miscellaneous Case to defendant No.1 for cancellation of above Certificate Case. But he came to know that Government is trying to lease out above land to a third person.

Defendant Nos.2 and 3 and added defendant No.4 contested above suit by filing two separate written statement. Defendant Nos.2 and 3 stated that the Government did not initiated Certificate Case No.1604(N) of 1959 nor above 21 decimal was auction sold in connection of above case on 28.02.1960. The plaintiff did not purchase

above auction nor he got possession of above land. Above documents of the plaintiffs are forged and ineffective documents. Defendant Nos.2 and 3 filed Certificate Case No.1228 of 1959 for recovery of outstanding rent of above 21 decimal land and auction purchased above land on 22.10.1960 and got possession and they have leased out above land to defendant No.4 in 1391 B.S.

At trial plaintiffs examined 4 witnesses and defendants examined 5. Documents of the plaintiffs were marked as Exhibit Nos.1 - 8 and those of the defendants were marked as Exhibit No. A - I.

On consideration of the facts and circumstances of the case and evidence on record the learned Sub-ordinate Judge dismissed above suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Title Appeal No.32 of 1989 to the District Judge, Pirojpur which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below appellant Nos.1-3 as petitioners moved to this Court with the Civil Revisional Application under Section 115 of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Saifur Rahman, learned Deputy Attorney General submits that on a detailed analysis of the certificated of sale, certificate

of delivery of possession and other document produced by the plaintiffs the learned Judge of the trial Court rightly found that all above documents were forged documents. But the learned Judge of the Court of Appeal below without reversing above findings of the trial Court most illegally shifted the burden of prove upon the defendants and held that defendants failed to prove that above documents were forged and on the basis of above erroneous perception allowed the appeal and decreed the suit which is not tenable in law.

On the other hand Mr. Tapan Kumar Bepary, learned Advocate for opposite party No.2 submits that disputed 21 decimal land was purchased by the Government in auction pursuant to Certificate Case No.1228(N) of 1959 and gave yearly lease in 1984 to defendant No.4 who is in possession in above land by constructing his kitchen, latrine and planting trees. All documents of opposite party No.1 as to auction purchase of above land are forged, concocted and ineffective and he had no possession in above land. As far as the kabla deed of opposite party No.3 from opposite party No.1 for above 21 decimal land is concerned above document is a forged and ineffective document. Opposite party No.1 died long before and opposite party No.3 did not get possession of above land.

On the other hand Mr. Biplob Goswami, learned Advocate for opposite party No.3 submits that undisputedly above 21 decimal land belonged to Rajendra Nath in whose name S.A. Khatian No.2 was

correctly prepared and for recovery of outstanding rents defendant Nos.1-3 filed Certificate Case No.1604(N) of 1959 and sold above land in auction and opposite party No.1 purchased above auction on 28.04.1960 and receipt certificate of sale on 30.03.1961 and delivery of possession on 28.04.1962. Opposite party No.1 gave evidence as PW1 and produced above original certificate of sale and certificate of delivery of possession which were marked as Exhibit Nos.2 and 2A respectively. PW1 also produced a certified copy of the relevant sale register of the defendant which was marked as Exhibit Nos.3 and 4. The plaintiff also submitted a rent receipt which was marked as Exhibit No.5. DW1 Enayet Hossain Tahshilder of the defendant gave evidence as DW1 and he brought relevant sale register to Court and stated that above auction purchase of the plaintiff was rightly entered into the sale register and he admitted the genuinity and correctness of the certificate of the sale and delivery of possession of the plaintiff. DW5 a Tahshilder of the disputed mouza admitted in cross examination that the plaintiff paid rent for the disputed 21 decimal land period from 1379 to 1390 B.S. and upto 20.12.1984. On consideration of above documents of the plaintiff and admission of the defendant witnesses the learned Judge of the Court of Appeal below rightly allowed the appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed 21 decimal land of S.A. Khatian No.222 belonged to Rajendra Nath Saha and for recovery of outstanding rent defendant Nos.1-3 sold above land in auction.

Plaintiff claims that above defendants sold above land pursuant to Certificate Case No.1604(N) of 1959 which was purchased by the plaintiff on 28.04.1960 and he obtained a certificate of sale on 30.03.1961 and certificate of delivery of possession on 28.04.1962. The plaintiff while giving evidence as PW1 produced above original certificate of sale and certificate of delivery of possession which were marked as Exhibit Nos.2 and 2A respectively.

As soon as the plaintiff produced and proved above original sale certificate of sale and certificate of delivery of possession the burden of prove shifted upon the defendant to prove that above documents were forged deeds and above land was not sold in auction pursuant above Certificate Case No.1604(N) of 1959 but the same was sold in auction pursuant to Certificate Case No.1228(N)/59.

Defendant Nos.1-3 examined two witnesses. Mr. Enayet Hossain, Surveyor of Upazilla Revenue Office as DW1 gave following evidence-  
 “আমি বাদীর তলব মতে সেল রেজিস্ট্রার নিয়ে এসেছি এবং উহা আদালতে দাখিল করিলাম। আমার দাখিলী উক্ত সেল রেজিস্ট্রার ৭ নং ফর্মিকে রাজেন্দ্র নাথ সাহার ভীমকাঠী মৌজার ২২২ নং এস, এ খতিয়ানের ২১ শতক জমি নিলাম বিক্রি লেখা

আছে। উক্ত এমিকে নিলাম খরিদার হিসাবে অম্বিকা চরনের ছেলে বংকিম বিহারীর নাম লেখা আছে। নিলাম ৪১/- টাকায় খরিদ করেছিল মর্মে লেখা হয়েছে। নিলামের তারিখ ২৮-০৪-৬০ লেখা আছে। ৭নং এমিকে ১৬০৪/(এন)/৫৯ নং সার্টিফিকেট মোকদ্দমা লেখা আছে। উহা দাখিল করেছি। উক্ত সেল রেজিস্ট্রারের ৭ নং এমিকের লেখক বাদীপক্ষের বিবাদীর দাখিল মতে প্রদঃ-৪ চিহ্নিত হইল।” DW1 has admitted the claim of the plaintiff that above 21 decimal of land was sold in auction on 28.04.1960 pursuant to Certificate Case No.1604(N)/59 and purchased by the plaintiff.

As far as payment of rent by the plaintiff for above 21 decimal land DW5 Sekander Ali, the Tahshilder of Bhimkathi mouza gave following evidence in cross examination “আমার দাখিলি ভিম কাঠি মৌজার এস, এ ২২২ নং খতিয়ানের রেজিস্ট্রার দুই এ রাজস্ব দাতা হিসেবে বংকিম চন্দ্র হালদার হিসাবে লেখা আছে। বংকিম চন্দ্র হালদার এই মামলার বাদী। তাকে আমি ব্যক্তিগতভাবে চিনি। জি ৯৭৩৫৩১ তারিখ ১০-১২-৮৪ তারিখ ১০-১২-৮৪ দাখিলায় বংকিম চন্দ্র হালদারের নিকট হইতে খাজনা পাইয়া তাহাকে দাখিলা দেওয়া হইয়াছে। ১৩৭৯ হইতে ১৩৯০ সাল পর্যন্ত দাখিলা দিয়া খাজনা আদায় করা হইয়াছিল।” PW5 has also admitted the claim of the plaintiff that on the basis of above auction purchase he mutated his name for above 21 decimal land and paid rent upto 20.12.1984. An admitted fact does not require further prove by legal evidence and on consideration of above oral and documentary evidence of the plaintiff and admission of DW1 and DW5 the learned Judge of the Court of Appeal below rightly held that above 21 decimal land was auction sold by the Government pursuant to Certificate Case No.1604(N)/95 and the same was

purchased by the plaintiff on 28.04.1960 and on the basis of above auction purchase plaintiff got possession and mutated his name and paid rent to the Government.

The defendants could not produce any certificate of sale or delivery of possession pursuant to alleged Certificate Case No.1228/(N) of 59. Above land was sold in auction and purchased by the plaintiff on 28.04.1960. As such the same property cannot be sold in auction on 12.10.1960. The plaintiff filed this suit on 23.07.1985 and defendant Nos.1-3 has claimed that they gave yearly lease of above land to defendant Nos.4 in 1984.

In above view of the facts and circumstances of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Additional District Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Courts records immediately.