

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

Present:

Mr. Justice Md. Lutfor Rahman

Civil Revision No. 2657 of 2011

In the matter of:

Md. Mansur Ali Pramanik.

..... Defendant-Petitioner.

-Versus-

Most. Rezia Begum and others.

..... Plaintiffs-Opposite parties

Mr. Mohammad Shamsul Alam , Advocate

..... Defendant-Appellant-Petitioner.

Mrs. Salina Akter, Advocate with

Mrs. Samia Afroz Khan, Advocate.

..... Plaintiffs-Opposite parties

**Heard on 21.10.2025, 11.11.2025, and
judgment on: 12.11.2025.**

Md. Lutfor Rahman, J.:

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 16.05.2011 passed by the learned Senior Assistant Judge, 2nd Court, and Small Cause Court, Bogura in S.C.C. Suit No. $\frac{3/97}{3/96}$ decreeing 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.

Material facts relevant for disposal of the Rule, briefly, are that the opposite party no.1 filed a suit for eviction of the tenant from the suit premises and praying for recovery of Khash possession against the defendant-petitioner. According to plaint, the suit shop is the part of the market located in plot No. 635 of

MRR Khatian No.195, S.A. Khatian No.189 under Majhira Mouza in Police Station and District-Bogura. The quantum of the suit land on which the suit shop is located is $\frac{1}{2}$ decimal. The suit land originally belonged to Kudrat Ullah and then he sold $10\frac{1}{2}$ decimals of land to Isaratullah and Provat Chandra. Thereafter Isaratullah and Provat Chandra transferred the suit land to Naim, Soim and Mofizuddin on 18.04.1994 vide Kabala deed no. 6752 and thereafter Naimuddin. Saimuddin and Mofizuddin each got $3\frac{1}{2}$ decimals land. Thereafter Abdul Karim and his wife Anjuman Ara purchased $3\frac{1}{2}$ decimals of land located at the western side from Mofizuddin on 04.09.1974 vide Kabala deed no.23849 and then Anjumanara died and Abdul Karim made a market erecting 12 (twelve) shops in the said market and the defendant rented a shop for monthly rent of Tk.200 by executing a deed of rent on 01.10.1989.

Thereafter Abdul Karim and his 2 (two) sons and 1 (one) daughter sold the said land vide registered deed no. 635 dated 10.01.1996 with the 12 (twelve) shops to the plaintiff Nos.1 and 2. Accordingly, the land lordship devolved to the plaintiffs and Abdul Karim told his tenant, the defendant 1 to pay the monthly rent of the shop thereafter to plaintiffs Abdul Karim handed over the photocopy of the deed of rental agreement and also the original copies of counter parts of the rent receipts to the plaintiffs. But the defendant-tenant did not pay heed to the said instruction of the previous landlord and did not pay the rent of the shop to the plaintiffs. Thereafter the plaintiffs gave the defendant a

notice under section 106 of the Transfer of Property Act, 1982 which was served upon him but he did not comply with the direction as contemplated in the said notice and hence this suit.

The defendant filed a written statement denying the material averments made in the plaint and stating inter alia that he purchased the suit land measuring $\frac{1}{2}$ decimal with shop on 09.04.1996 by a registered kabala deed and has been running his business as the owner of the suit property, that the defendant had never been a tenant of Abdul Karim, the predecessor of the plaintiff, rather Abdul Karim took 30,000 taka from him under the pretext of giving him possession, but he did not give him the possession of the suit property. That Abdul Barik, the predecessor of the defendant filed a suit for partition being no. 71 of 1996 which was pending and during the pendency of the said suit, the present suit is not maintainable and as such the suit is liable to be dismissed.

That the suit was decreed on contest on 16.05.2011 in favour of the plaintiffs-opposite parties.

Being aggrieved by and dissatisfied with the judgment and decree dated 16.05.2011 passed by the learned Senior Assistant Judge, 2nd Court, and Small Cause Court (S.C.C) Bogura in S.C.C. Suit No. $\frac{3/97}{3/96}$ the petitioner preferred this revisional application under Section 25 of the Small Cause Courts Act, 1887.

I have heard the learned advocates for both the parties and perused the materials on record including the evidence led by the parties.

Mr. Mohammad Shamsul Alam, the learned Advocate for the petitioner submits that the plaintiffs adduced 2(two) witnesses but they could not prove their case beyond reasonable doubt against the defendant-petitioner. But the learned trial court without considering the evidences on record illegally decreed the suit. The learned trial court found as evident in its judgment that Abdul Karim, predecessor of the plaintiffs took Tk. 30,000 (thirty thousand) from the defendant under the pretext of giving him possession of the suit property, but he did not hand over the possession of the suit property to him. Moreover a Partition Suit was filed being number 101 of 1998 by the vendors of the defendant-petitioner against the plaintiffs and in this connection Partition Appeal No. 01 of 2009 was pending. Since the share of plaintiff has not yet been decided as to whether the plaintiffs are the owner of the shop or not due to pendency of the aforesaid Appeal. On the other hand, plaintiffs could not prove their prima-facie title to the suit property. The learned trial court without considering these matters illegally decreed the suit

in favour of the plaintiffs though they could not prove the alleged Deed of agreement of Tenancy. The plaintiffs also failed to prove that the defendant petitioner had been a tenant of their predecessors and subsequently came to be their tenant by adducing oral and documentary evidences and as such the impugned judgment and decree passed by the trial court committing errors of law resulting errors in the decision occasioning grave failure of Justice are liable to be set aside.

Mr. Salina Akter alongwith Mr. Samia Afroz Khan, the learned Advocate appearing for the opposite parties submits that the defendant-petitioner is the tenant of the plaintiffs-opposite parties who purchased the suit property from Abdul Karim and others from whom the defendant-petitioner rented the shop as the tenant by a Deed of agreement of Tenancy executed on 01.10.1989. The plaintiffs-opposite parties succeeded the land lordship from the previous owner Abdul Karim and others by way of purchase vide registered kabala deed dated 10.01.1996. That the plaintiffs during trial submitted copies of the Deed of rental agreement (exhibit-6) and the counter parts of the rent-receipts (exhibit-9 Series). The trial court in comparison of the signatures of the defendant-petitioner put on the Deed of agreement of

Tenancy and counter parts of the rent receipts with his signatures put on the written statement and wokalatnama, found similarities among those signature.

She submits that during trial, the plaintiff by sufficient evidence, has been successful in proving that the defendant-petitioner is a tenant of the plaintiff and also a defaulter tenant. According to the decision reported in **48 DLR(AD)205** in the case of **Haji Kasim Uddin Mondal Vs. Jalal Uddin Premanik**; “*A tenant can not set up title to a property of which he is a monthly tenant without surrendering possession to his land Lord.*” She cited another decision reported in **11 MLR (AD) 41** in the case of **Anil Ranjan Das Vs. Y.A. Shaha Banik and others** wherein it was held by the Apex court that; “*Law is well settled that a tenant can not dispute title of the land Lord in the suit for eviction. If he wants to set up claim for title he can do that in a separate suit after surrendering possession of the suit premises.*”

I have heard the learned advocates of both the parties perused the records with utmost care and concentration.

I had to glean the facts of the case from the Judgment of the trial court and relevant documents lying with the lower court records so far as those are available.

The facts are, in a nutshell, that the plaintiffs are the owners of the suit premises by way of purchase from one Abdul Karim and others on the basis of a registered Kabala deed dated

10.01.1996. His predecessor owner Abdul Karim on 10.01.1989 rented out the suit premises to the defendant on monthly tenancy at a rental of Tk. 200 per month. When the plaintiffs purchased the suit property, the vendor Abdul Karim handed over the documents regarding tenancy to the plaintiffs. He handed over copy of the Deed of Tenancy agreement, counter parts of the monthly rents receipts etc. to the plaintiffs and instructed the defendant to pay the onward rentals to the plaintiffs. But the defendant did not give any rent to the plaintiffs which necessitated service of notice under section 106 of the Transfer of Property Act, 1882 on the defendant which was sent on 24.04.1996 and received by the defendant on 05.05.1990. The defendant pleaded on the contrary. that he has been running his business on the suit premises as the owner by purchase, not as a tenant. He purchased $\frac{1}{2}$ decimal of land along with the suit shop on 09.04.1996 by registered Kabala deed and that his previous owners filed a partition suit regarding the suit land and during the pendency of the said suit, the present suit is not maintainable and liable to be dismissed.

The trial court, on consideration of the facts and circumstances of the case and on perusal of the material evidences on record found that the defendant had been a tenant under previous owner of the plaintiffs having been inducted into the suit premises on 01.10.1989 and subsequently, devolved as a tenant

under the plaintiffs for acquiring title and ownership of the suit premises by way of purchase since 10.01.1996. In arriving at this finding the learned Judge of the trial court relied upon the ***Exhibits 6 and 9*** series as well as the oral evidence in support. Exhibit 6 is the copy of the Deed of Tenancy agreement and exhibit (9) series are the counter parts of the rent-receipts in connection with the Tenancy between the defendant petitioner and the previous owners of the plaintiffs opposite parties.

The trial court found that the signatures of the defendant-petitioner on the deed of agreement of Tenancy (Exhibit-6) and on the counter-parts of the monthly rental receipts (exhibit-9 Series) appear to be similar to his signatures put on his written statement and Wokalatnama. The trial court also found that the defendant in his deposition while being examined in cross tells that the Abdul Karim, the previous owner of the suit land took Tk. 30,000/- from him for giving him the possession of the suit premises, but he did not do so. The learned Judge further found that the defendant was a defaulter in payment of rent in respect of the suit premises. In these premises, the trial court decreed the suit in favour of the plaintiffs.

That the main issue of the instant revisional application is whether the petitioner is a tenant or a defaulter tenant under the plaintiffs so the question of title is irrelevant.

That the defendant-petitioner claims that he is not a tenant but an owner by purchase in respect of the suit property. In the instant case, the suit is in essence and substantially a suit by the landlords for ejection of their tenant. In such a case the question of title to the disputed suit premises is not relevant at all.

So far as the question whether in the face of the finding that there was relationship of landlord and tenant between the plaintiffs and the defendant, the defendant could raise any plea of title to the disputed premises, it has been consistently laid down by the Superior Courts including the Apex Court of Bangladesh that a Tenant can not set up title to a property of which he is a monthly tenant without surrendering possession to his landlord in view of Section 116 of the Evidence Act. If the landlord can prove, as in the instant case, that the defendant was inducted by him on the disputed premises or that the defendant has attorned to him and has continued in possession on payment of rent after recognizing him as the landlord he can not turn round and deny the title of the said landlord. Reference may be made in this connection to the case of *Abdus Sattar Vs. Mohiuddin* 38 DLR(AD) 97. His lordship Mr. Justice Shahab Uddin Ahmed, as he then was, expounded the principle of law embodied in Section 116 of the Evidence Act thus:

“The estoppel as described in this section is known as tenant’s estoppels or estoppels by contract. This estoppel is

founded upon a contract between the tenant and the landlord. It provides that when a person enters into possession of immovable property as a tenant of another person then neither he nor anybody claiming through him shall be permitted during the continuance of the tenancy to deny the landlord's title however defective that title might be. This necessarily implies that in case the tenant sets up a claim of title in himself he shall firstly surrender possession to the person from whom he had taken it".

The same view has been laid down in the case of Kasimuddin Mondal Vs. Jalaluddin Pramanik 48 DLR(Ad)205. It was also held in the case of Selina Begum Vs. Azizun Nessa reported in 6 BLC (AD) 115 that once the relationship of landlord and tenant is established between the parties, the tenant is estopped from challenging the title of the plaintiff without surrendering possession in view of section 116 of the Evidence Act, 1872.

So it is clear from the above mentioned facts and circumstances that the plaintiffs-opposite parties are the owners of the disputed shop. On the other hand, the defendant-petitioner is a tenant under them and as a defaulter tenant he is liable to be ejected.

For all these reasons, I find that the trial court has arrived at a correct finding and decision in decreeing the suit in favour of the plaintiffs-opposite parties.

Considering the facts and circumstances of the case, I do not find any reason to interfere with the observations of the trial court. I hold that that the trial court on proper appreciation of facts and law rightly passed the impugned judgment and decree for which it does not warrant any interference by this court. Thus I find no substance in this Rule.

Accordingly, the rule is discharged without any order as to costs.

The judgment and decree dated 16.05.2011 passed by the learned Senior Assistant Judge, 2nd Court and the Small Cause Court, Bogura in S.C.C. Suit No. $\frac{3/97}{3/96}$ decreeing the suit is hereby affirmed.

The petitioner is directed to handover the possession of the suit Property i.e the disputed shop to the opposite parties within 30 (thirty) days from the date of receipt of this order passed by this Hon'ble Court.

The order of the stay granted earlier by this Court is hereby vacated.

Send down the Lower Court records with a copy of the Judgment to the courts below at once.

(Md. Lutfor Rahman)