

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

Present:
Mr. Justice Md. Shohrowardi

Civil Revision No. 4274 of 2011

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:

Most. Shamsun Nahar Begum and
others

.....Petitioners

-Versus-

Most. Mondirer Nahar and others

... Opposite parties

Mr. Md. Salauddin Talukder, Advocate

....For the petitioners

Mr. Md. Abul Kalam Chowdhury,
Advocate with

Ms. Maksuda Akhter, Advocate

...For the opposite parties.

Heard on 22.04.2026, 26.04.2026,

28.04.2026 and 06.05.2026.

Judgment on: 11.05.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 at the instance of the defendant petitioners Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated

21.04.2011 (decree signed on 27.04.2011) passed by Joint District Judge, Court No. 3, Noakhali in Title Appeal No. 05 of 2005 affirming the judgment and decree dated 28.10.2004 (decree signed on 04.11.2024) passed by Senior Assistant Judge, Companygonj, Noakhali in Title Suit No. 16 of 1996 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 are that the opposite party Nos. 1 and 2 as plaintiffs filed Title Suit No. 16 of 1996 in the Court of Assistant Judge, Companygonj, Noakhali praying for a decree of rectification of instrument and recovery of kash possession of the suit land stating that Deed No. 6328 dated 12.12.1991 executed between the defendant Nos. 1 and 2(exhibit-5) is not binding on the plaintiff. The husband of the plaintiff purchased 6 decimals of land of SA Dag No. 1991 by registered deed No. 1617 dated 20.02.1990 (exhibit-3) from defendant No. 1, and he also purchased 2 decimals of land of SA Dag No. 1603/2565 by registered deed No. 1641 dated 20.02.1990 from the defendant No. 1. The plaintiff purchased 1 decimal of suit land of SA Dag No. 3989 from the defendant No. 1 by registered deed No. 4715 dated 31.08.1991(exhibit-4), but inadvertently in the deed, Dag No. 3990 was wrongly written in place of Dag No. 3989. A 11/7 feet shop is situated in the suit land. After the said transfer of 1 decimal of land in favour of the plaintiff, the defendant No. 1 transferred 1 decimal of land of Dag No. 3989 by registered gift deed No. 6328 dated 12.12.1991 in favour of his wife, defendant No. 2. Infact, the defendant No. 1 transferred 1 decimal of land of Dag No. 3989 to the plaintiff

and after execution of the deed No. 4715 dated 31.08.1991 no property remain in the name of the defendant No. 1 to transfer or gift to the defendant No. 2. The scheduled land described in the plaint attract SA Dag No. 3989.

The defendant No. 1 contested the suit by filing written statement denying the assertion made in the plaint stating that the plaintiff purchased 1 decimal of land of SA Dag No. 3990 which has been correctly stated in the schedule of the deed and the boundary of the land described in the deed No. 4715 dated 31.08.1991 attract the SA Dag No. 3990 and no land of SA Dag No. 3989 was transferred to the plaintiff by the defendant No.1. The defendant No. 5 is the tenant of the defendant No. 1 and the possession of the land of Dag No. 3989 was never handed over to the plaintiff.

During trial, the plaintiff examined 3 PWs to prove the case, and the defendant examined 5 DWs. After concluding trial, the trial court by impugned judgment and decree dated 28.10.2004 decreed the suit in favour of the plaintiff holding that at the time of selling the land by registered deed No. 6328 dated 12.12.1991, the defendant No. 1 had no title in the Dag No. 3989 and there is no shop in Dag No. 3990 and that the shop attract the Dag No. 3989, and Dag No. 3990 was wrongly written in the deed. In fact, Dag No. 3989 corresponds to deed No. 4715/1991, and defendant No. 3 was the tenant of defendant No. 1 before transferring 1 decimal of land to the plaintiff, and in connivance with defendant No. 1, he refused to pay the rent to the plaintiff and that after transfer of 1 decimal of land of Dag No. 3989 to

the plaintiff by the defendant No. 1, no title remained with the defendant No. 1.

Against the said judgment and decree passed by the trial court, the defendant No. 1 filed Title Appeal No. 05 of 2005 in the Court of the District Judge, Noakhali. The Joint District Judge, Court No. 3, Noakhali heard the appeal and the appellate court by impugned judgment and decree dated 21.04.2011 affirmed the judgment and decree passed by the trial court holding that admittedly defendant No. 1 was the owner of 5 decimals of land of Dag No. 3989 and there is a tin shade shop in the said land and that by deed No. 4715/91, 2.5 decimals of land of Dag No. 3991 and 1 decimal of land of Dag No. 3989 was transferred and there is no dispute regarding the transfer of the land of Dag No. 3991 and that the trial court rightly hold the view that 1 decimal of land described in the schedule of deed No. 4715/91 attract Dag No. 3989 and Dag No. 3990 was wrongly written in the said deed and after transfer 1 decimal of land in favour of the plaintiff, the defendant No. 3 become the tenant of the plaintiff and after transfer 1 decimal of land, the defendant No. 3 cannot continue as the tenant of defendant No.1.

The learned Advocate Mr. Salauddin Talukder appearing on behalf of the defendant petitioner submits that the defendant No. 1 transferred 1 decimal of land of Dag No. 3990 by the deed No. 4715/1991 which has been correctly recorded in the said deed and after transfer 1 decimal of land of Dag No. 3990 by defendant No. 1 in favour of the plaintiff, he transferred 1 decimal of land of Dag No. 3989 in favour of his wife. The plaintiff never received the rent from the defendant No.

3(P.W.3), who admitted that he is the tenant of defendant No. 1. During trial, the plaintiff failed to prove his possession, and he is not entitled to get a decree for recovery of the kash possession and the correction of the deed. He further submits that since 1 decimal of land of Dag No. 3990 was legally transferred in favour of defendant No. 2, wife of the defendant No. 1, the plaintiff is not entitled to get a decree for declaration of title that the deed No. 6328 dated 12.12.1991 is not binding upon him. He vehemently argued that both the courts below misread the material evidence of both the parties and committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for setting aside the impugned judgment and decree passed by the courts below.

The learned Advocate Mr. Abul Kalam Chowdhury appearing on behalf of the plaintiff opposite party Nos. 1 and 2 submits that the plaintiff purchased 1 decimal of land of Dag No. 3989 by deed No. 4715 dated 31.08.1991(exhibit-4), but inadvertently Dag No. 3990 was written in the deed in place of Dag No. 3989. Having drawn the attention of this court to the deed No. 4715 dated 31.08.1991, he submits that in the deed, it has been stated that the possession of the land was handed over to the plaintiff and D.W. 3 illegally denied to pay the rent of the suit shop to the plaintiff, which is clear evidence of dispossession of the plaintiff from the suit land. He further submits that P.W. 1 admitted that he transferred 11/7 feet shop to the plaintiff. Since before transferring 1 decimal of land by deed No. 6328 dated 12.12.1991 (exhibit-5), the defendant No. 1 transferred 1 decimal of land by the deed No. 4715 dated 31.08.1991 (exhibit-4), the

defendant No. 1 had no title on 1 decimal of land gifted by deed No. 6328 dated 12.12.1991 to the defendant No. 2, wife of the defendant No. 1. Therefore, both the courts below legally passed the impugned judgment and decree declaring that the deed No. 6328 dated 12.12.1991 executed by defendant No. 1 in favour of the defendant No. 2 is not binding on the plaintiff and on correct assessment and evaluation of the evidence of both the parties arrived at a concurrent findings of fact that 1 decimal of land was sold to the plaintiff by the defendant No. 1 by deed No. 4715 dated 31.08.1991(exhibit-4) attract Dag No. 3989, and Dag No. 3990 was wrongly written in the said deed and that the defendant No. 3 was the tenant of the plaintiff. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Salauddin Talukder who appeared on behalf of the petitioner and the learned Advocate Mr. Md. Abul Kalam Chowdhury who appeared on behalf of the opposite parties, perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the courts below and the records.

On perusal of deed No. 4715 dated 31.08.1991 (exhibit-4) reveals that the possession of 1 decimal of land of deed No. 4715 dated 31.08.1991 was handed over by defendant No. 1 in favour of the plaintiffs before registration. P.W. 1 stated that the defendant No. 3 was the previous tenant of the shop sold to the plaintiffs and the defendant No. 1 (D.W.1) requested him to receive the rent from the defendant No. 3. It is a settled proposition that the documentary evidence shall prevail over the

oral evidence. In view of the provision made in section 91 of the Evidence Act, 1872, parties to the deed cannot dispute the content of the deed. Although a party to the deed is entitled to deny the execution of the deed. D.W.1 did not deny that he did not execute the deed No. 4715 dated 31.08.1991 (Exhibit-4). There is no scope to hold a different view as to the statement made in the deed regarding the handing over possession of the land to the plaintiff.

At this stage, it is pertinent to rely on a decision made in the case of Basiruddin Ahmed and others vs. Dhirendra Mohan Das and others, reported in 36 DLR(AD)(1984) 191, in which our Apex Court has held that;

“Deposit of rent in favour of the previous landlord became totally irrelevant as soon as that landlord ceased to have any interest in the suit premises after the transfer; deposit in her favour cannot be taken as a ground to resist ejectment when sought by the new landlord to whom no rent was paid despite notice of the transfer.”

In this respect it is relevant here to cite a decision made in the case of Moyez Uddin Ahmed vs. Dr. Mamun ur-Rashid, reported in 23 BLC(2018) 24, in which, High Court Division has held that;

“It is a decided matter that under section 91 of the Evidence Act, 1872, the court cannot go behind the intention of the parties in executing the deed of transfer. The contents of the deed are the matter of consideration,

and nothing apart from the deed itself can be taken into consideration, and any evidence to vary the terms of such deed is barred under the provisions of section 91 of the Evidence Act.”

P.W. 1 stated that a shop, measuring 11/7 feet, is situated within 1 decimal of land sold to the plaintiffs by the defendant No. 1. During cross-examination, D.W. 1 admitted that a shop, measuring 11/7 feet, is situated in Dag No. 3989, which clearly proved that the shop measuring 11/7 feet is part of Dag No. 3989. D.W. 1 did not say that the plaintiffs are possessing Dag No. 3990. I am of the view that the shop measuring 11/7 feet situated in 1 decimal of land attracts Dag No. 3989 and Dag No. 3990 was wrongly written in the deed No. 4715 dated 31.08.1991 (Exhibits-4).

After the transfer of 1 decimal of land by deed No. 4715 dated 31.08.1991 (Exhibit-4) of Dag No. 3989 by the defendant No. 1 to the plaintiffs, he had no title on any land of Dag No. 3989. The title of 1 decimal of land transferred by defendant No. 1 by deed No. 6328 dated 12.12.1991 (exhibit-5) was not passed to the defendant No. 2.

In view of the above evidence, findings, observation and the proposition, I am of the view that both the court below on correct assessment and evaluation of evidence arrived at a concurrent finding of fact regarding the transfer of possession of the suit shop by the defendant No. 1 to the plaintiff and dispossession of the plaintiff by defendant No. 3 denying to pay the rent and 1 decimal of land sold by the defendant No. 1

(exhibit-4) to the plaintiffs attract Dag No. 3989 and after transfer 1 decimal of land by the defendant No. 1 in favour of the plaintiffs, the defendant No. 1 had no title in Dag No. 3989 to transfer it again by the deed No. 6328 dated 12.12.1991 (exhibit-5) to his wife, defendant No. 2 and no illegality was committed by the courts below in decreeing the suit in favour of the plaintiffs. I do not find any misreading and non-reading of material evidence.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

The ad-interim order of status quo dated 10.10.2011 granted at the time of issuance of the Rule is hereby vacated.

Send down the LCR at once.