

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4334 OF 2011

In the matter of:

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

And

Md. Shahabuddin being dead his heirs- Md. Suzauddin Sarker @ Md. Sirajul Islam Sujan and others

... Petitioners

-Versus-

Government of Bangladesh

... Opposite party

Mr. Md. Mohsin Miah, Advocate

... For the petitioners.

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

....For the opposite party.

Heard on 26.05.2025 and 24.06.2025.

Judgment on 25.06.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 06.06.2011 passed by the learned Additional District Judge, 8th Court, Dhaka in Title Appeal No.56 of 2010 reversing those dated 24.07.2008 passed by the learned Assistant Judge, 4th Court, Dhaka in Title Suit No.466 of 2007 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 petitioners as plaintiffs instituted above suit for declaration of title for 50 decimal land appertaining to C. S. Khatian No. $\frac{27}{70}$ corresponding to R. S. Khatina No.1 alleging that above land was recorded in the name of Adittonath Basu, Joth Haran Sarkar and as a heir Sreemoti Kiran Bala Debi transferred above land to Momotaz Uddin and others by registered kobla deed No.15704 dated 21.12.1960. The plaintiffs purchased above land from above Momtaz Uddin by several kabla deeds dated 31.01.1978, 09.06.1992, 29.09.1992, 01.02.1992, 03.03.1992, 30.05.1999 and 30.01.2001 and possessing above land by constructing dwelling huts. On 07.02.2006 local Tahshilder refused to accept rent disclosing that R. S. Khatian of above land has been recorded in the name of the Government.

Defendant No.1 contested above suit by filling a written statement alleging that above land was recorded in the name of Nil Kamol Sarkar as possessor in the relevant S. A. Khatian but at the time of R. S. survey no owner of above land was found available and above land was recorded in the name of the Government. Plaintiffs have filed this suit on the basis of forged kobla deeds to grab above Government property.

At trial plaintiffs examined 6 witnesses and the documents of the plaintiffs were marked as Exhibit Nos.1-8. On the other hand

defendants examined 1 witness and documents of the defendant were marked as Exhibit No.“Ka”.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial Court above defendant preferred Title Appeal No.56 of 2010 to the District Judge, Dhaka which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Mohsin Miah, learned Advocate for the petitioners concedes that due to lack of professional skill of the appointed Advocate of the plaintiff detailed genealogy of the C. S. recorded tenants of disputed 50 decimal land was not rightly described in the plaint. But the fact remains that PW1 Mohammad Shahabuddin has given a detailed description of genealogy of Haran Sarker who was the C. S. recorded tenant of above land. He has stated that Nehar Bala was the daughter of Haran Sarker and Kiron Bala Debi was the daughter of Nehar Bala and who acquired above land by inheritance

transferred to Momtazuddin. The plaintiffs on the basis of purchase from Momtazuddin by several kabla deeds got their names mutated and paid rent to the Government and possessing above land by constructing dwelling house for long time. On consideration of above materials on record the learned the Judge of the trial Court rightly decreed above suit but the learned Judge of the Court of Appeal below utterly failed to appreciate above materials on record and most illegally allowed the appeal, set aside the lawful judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

On the other hand Mr. Md. Saifur Rahman, learned Deputy Attorney General for the opposite party submits that the plaintiffs at paragraph No.1 of the plaint plaintiff claimed that above 50 decimal land belonged to Adittonath Basu and the plaintiffs claim title on the basis of kobla deed dated 21.12.1960 allegedly executed by Kiron Bala Debi who had no connection with above owner of the land. As far as possession of the plaintiff by constructing dwelling houses are concerned DW1 Soilen Chandra Das local Tahshilder has stated in cross examination that he himself visited disputed land but did not find any dwelling hut in above land. In the plaint plaintiffs have claimed that the local Tahshilder refused to receive rent from the plaintiffs since R. S. Khatian was recorded in the name of the Government. As such the claim of the plaintiffs that they got their

names mutated and paid rent to the government does not have any leg to stand. Above land was rightly recorded in the name of the Government under Section 92(A) of the State Acquisition and Tenancy Act, 1950. Plaintiffs have tried to grab the Government property by creating some ineffective, forged and collusive documents from some persons who had no title and possession in above land. On correct appreciation of materials on record 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 dismissed the suit which calls for no interference.

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

At paragraph No.1 of the plaint the plaintiffs have claimed that disputed 50 decimal land belonged to Additanath Basu under Haran Sarkar and accordingly C. S. Khatian No.27 was recorded. The certified copy of above C. S. Khatian also shows that Adittonath Basu was the tenant of above land while Haran Sarker was the **রায়ত** of the **জোত**। Plaintiffs have claimed that their predecessor Momtoz Uddin and others purchased above 50 decimal land from Kiron Bala Debi by registered kabla deed dated 21.12.1960. The plaintiffs did not produce above kobla deed at trial not the same was marked as an

exhibit. The learned Advocate for the petitioners submits that the plaintiffs produced a certified copy of above kobla deed at trial but since the same could not be proved in accordance with law and the trial court did not mark the document as an exhibit. The plaintiffs could not prove their claim that Kiron Bala transferred above 50 decimal land to Momtaz Uddin and others by registered kabla deed dated 21.12.1960. As such the claim of the plaintiffs that they acquired valid title in above land by purchase from above Momtaz Uddin and others by several kabla deeds does not have any lawful basis.

In the plaint there is no description as to how Kiron Bala became a heir of above C.S. recorded tenant and owner of above 50 decimal land. The learned Advocate for the petitioner has repeatedly stated that while giving evidence as PW1 plaintiff No.1 has in his evidence provided a detailed description of genealogy of C. S. recorded tenant Haran Sarker. As mentioned above no claim was made in the plaint that Haran Sarker was the rightful owner and processor of above 50 decimal land. PW1 has stated that S. A. Khatian of above land was recorded in the name of Nehar Bala Sarker but it turns out from a photocopy of the S. A. Khatian that above land was recorded in the name of Nehar Kona Sarker in S. A.

Khatian No. $\frac{27}{70}$. As mentioned above plaintiffs predecessor Momtaz and others did not purchase above land from Nehar Kona Sarker. PW1 stated that Kiron Bala Debi was daughter of Nehar Bala. PW1 Shahabuddin did not say anything about his capacity to give evidence as to the genology of Haran Sarker or Nehar Bala Sarker.

The learned Advocate for the petitioners refers to exhibit Nos.6 and 7 series as prove of payment of rent to the Government. But at paragraph 5 of the plaint it has been stated that the local Tahshilder refused to receive rent from the plaintiffs due to recording of the name of the Government in the R.S. Khatian.

Plaintiffs claimed that they were possessing above land by constructing dwelling house but no holding tax, electricity bill or any other documentary evidence was produced in support of above claim. DW1 Soilen Chandra Das did not mention anything in his evidence as to the possession of above land but in cross examination he stated that he went to the disputed land but did not find any dwelling huts and in the disputed land.

On consideration of above facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the findings arrived the learned Additional District Judge that the plaintiffs could not prove their lawful title and

possession in above land by legal evidence 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 discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER