

Present:
Mr. Justice Md. Shohrowardi
Civil Revision Number 1779 of 2001
Nurul Hoque alias Noor Mohammad Howlader
The sole petitioner being dead, his heirs are given below:
1(a) Mrs. Anawara Begum alias Alea (Daughter) and others....Petitioners
-Versus-
Munshi Md. Isahak Ali Howlader, opposite party No. 1
being dead, his heirs are given below:
1(a) Md. Abul Jafar and others....Opposite parties
Mr. Anwar Hossain Reza, Advocate with
Ms. Abeda Gulrukh, Advocate
....For the petitioners
Ms. Chowdhury Nasima, Advocate
....For the opposite party No. 1
Heard on 21.06.2026, 22.06.2026 and 23.06.2026
Judgment delivered on 19.07.2026

On an application filed under section 115 of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 21.10.1999 (decree signed on 27.10.1999) passed by Subordinate Judge, Court No. 2, Patuakhali in Title Appeal No. 7 of 1998 affirming those dated 03.11.1997 passed by Senior Assistant Judge, Patuakhali Sadar in Title Suit No. 112 of 1995 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 Tozambar Ali, Lalsan Bibi alias Lalbaru Bibi, Rahimjan alias Kanu Bibi and Sobahan were the S.A. recorded tenants of 1.07 acres of land appertaining to S.A. Khatian No. 711 and 1.27 acres of land appertaining to S.A. Khatian No. 712 of Mouza Lohalia, Thana-Patuakhali Sadar. The plaintiff is the heir of Tozambar Ali. Lalbaru died intestate, leaving behind her heirs, Isab Hawlader and Sona Ali Hawlader, who inherited the land of Lal Baru after her death. After the death of Isaab Hawlader, his sons Halim, Harun, daughters Sufia Begum and Firoza inherited the land. After the death of the sons and daughters of Lal Baru Bibi, the defendant Nos. 9 to 11 inherited the land. The S.A. recorded tenant Sobahan sold 46 decimals of land of Khatian Nos. 711 and 712 on 13.12.1993, and on 11.06.1975 Lalbaru sold 50 decimals of land of said khatians to the plaintiff. Thus, the plaintiff got title and possession of 96 decimals of land and mutated his name in Mutation Case No. 202/93-94. The defendant Nos. 1 and 2 created a false deed on 13.05.1958 in the name of Sobahan and Hakim and filed Mutation Case No. 21/93-94 against the record prepared in the name of the plaintiff, and by order dated 23.04.1995, the record prepared in the name of the plaintiff was cancelled. Consequently, the plaintiff filed the suit for declaration that the deed Nos. 4554 and 4555 dated 13.05.1958

are illegal, collusive and fraudulent and not binding upon the plaintiff and also prayed for setting aside the khatian prepared in the name of the defendant Nos. 1 and 2.

The defendant No. 1 contested the suit by filing written statement denying the assertion made in the plaint, stating that the plaintiff had no title and possession in the suit land and that Katu was the owner of the suit land. After his death, his sons Meher Ali, Nazimuddin, Afser, Kani and Saju inherited the land. Tozamber, daughters of Lalbaru, Rahimjan and Kanu Bibi, and Maiful Bibi inherited the suit land. After the death of Maiful Bibi, her son Sobahan and husband Abdul Hakim inherited her share. Sobahan and Abdul Hakim sold 13 decimals of land by deed No. 4555 dated 13.05.1958 to the defendant Nos. 1 and 2, and 34 decimals of land by deed No. 4554 dated 13.05.1958 to the defendant Nos. 1 and 2, and after purchasing the land, the defendant Nos. 1 and 2 took possession of the suit land and paid the rent of the suit land. Sobahan did not transfer any land to the plaintiff. The suit land was correctly recorded in Review Case No. 21PK/93-94, and they are now enjoying the suit land by paying rent.

During trial, the plaintiff examined 3 P.Ws and the defendants examined 4 D.Ws. After concluding the trial, the Senior Assistant Judge, Patuakhali Sadar, by judgment and decree dated 03.11.1997, dismissed the suit, holding that the plaintiff did not pray for a decree of declaration of title and that no decree has been prayed for cancellation of the deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1) and without praying for a decree of declaration of title, the suit is not maintainable.

Against the said judgment and decree passed by the trial Court, the plaintiff filed Title Appeal No. 7 of 1998 in the Court of District Judge, Patuakhali. The Subordinate Judge, Court No. 2, Patuakhali heard the appeal, and by the impugned judgment and decree, affirmed the judgment and decree of the trial Court, holding that the S.A. record was not correctly prepared and that the plaintiffs failed to prove that deed Nos. 4554 and 4555 dated 13.05.1958 were not executed and registered by Sobhan and that after the execution and registration of the deed Nos. 4554 and 4555 dated 13.05.1958, Sobhan did not pay the rent and that the plaintiffs failed to prove their title and possession and that there was no record in the name of Sobhan and no rent has been paid by him and that Sobhan did not claim his possession after 1958 against which the plaintiff obtained the Rule.

Learned Advocate Mr. Anwar Hossain Reza, appearing along with the learned Advocate Ms. Abeda Gulrukh on behalf of the petitioners, submits that after selling the suit land by deed No. 5052 dated 13.12.1993 (exhibit 1) to the

plaintiff, the vendor Sobhan handed over possession of the suit land to the plaintiff, which is corroborated by P.W. 3 Md. Sobhan Hawlader, and P.W. 3 also denied the execution of the deed Nos. 4554 and 4555 dated 13.05.1958, and considering the title of the plaintiff, the suit land was correctly recorded in the name of the plaintiff by the AC Land, Patuakhali, Sadar. During trial, the plaintiff proved their title and possession of the suit land, and the defendant failed to prove original deeds purchased by them from P.W. 3 Md. Sobhan Hawlader, and both the Courts below, on misreading and non-reading of the material evidence, arrived at a concurrent finding of fact that the plaintiff failed to prove title and possession of the suit land and thereby the Courts below committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

Learned Advocate Ms. Chowdhury Nasima, appearing on behalf of the opposite party No. 1, submits that the defendant Nos. 1 and 2 purchased the land from Sobhan and Hakim Ali, who are the heirs of Maiful Bibi, C.S. recorded tenant of the suit land, by deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1), and their names were recorded in khatian, and now possessing the suit land, paying rent, and after transfer of the suit land by Sobhan and Hakim Ali, there was no title of Sobhan in the suit land to subsequently transfer the suit land by deed No. 5052 dated 13.12.1993 (exhibit 1) to the plaintiff. She further submits that the plaintiff failed to prove that exhibits Kha and Kha/1 were not executed and registered by P.W. 3 Md. Sobhan Hawlader. She also submits that the plaintiff did not make any prayer in the plaint for declaration of title and cancellation of the deeds (exhibits Kha and Kha/1) and failed to prove their title and possession in the suit land, and both the Courts below, on correct assessment and evaluation of the evidence, arrived at a concurrent finding of fact that the plaintiff had no title and possession on the suit land. She prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Anwar Hossain Reza, who appeared along with the learned Advocate Ms. Abeda Gulrukh on behalf of the petitioners, and the learned Advocate Ms. Chowdhury Nasima, who appeared on behalf of the opposite party No. 1, and have perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the Courts below, and the records.

On perusal of the evidence, it reveals that Tozambar Ali, Lalsan Bibi alias Lalbaru Bibi, Rahimjan alias Kanu Bibi and Sobhan are the S.A. recorded tenants. The case of the plaintiff is that the plaintiff purchased 46 decimals of land of S.A. Khatian Nos. 711 and 712 of Mouza Lohalia of Patuakhali Sadar by deed No.

5052 dated 13.12.1993 (Exhibit 1) from the S.A. recorded tenant Sobhan. The plaintiff also claimed that Nurul Haque purchased 50 decimals of land of S.A. Khatian Nos. 711 and 712 from Lalsan Bibi alias Lalbaru Bibi by deed No. 10078 dated 11.06.1975 (exhibit 1/Ka) and obtained title to 96 decimals of land, which was correctly recorded in Mutation Case No. 202/93-94 in the name of the plaintiff, but said record was illegally cancelled, recording the name of the defendant Nos. 1 and 2 regarding 46 decimals of land. The plaintiff is the son of S.A recorded tenant Tozambar. P.W. 1 denied that P.W. 3 Md. Sobahan Hawlader did not transfer any land to the plaintiff and that deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1) were executed and registered by S.A. recorded owner Sobahan and Hakim Ali in the name of the defendant Nos. 1 and 2. The case of the defendant Nos. 1 and 2 is that they purchased 34 decimals of land by deed No. 4554 dated 13.05.1958 (exhibit Kha) of the S.A. Khatian Nos. 711 and 712 from Sobahan and Hakim Ali Hawlader and 13 decimals of land by deed No. 4555 dated 13.05.1958 (exhibit Kha/1) from Sobahan and Hakim Ali, who inherited the land from C.S. recorded tenant Maiful Bibi.

On perusal of the evidence, it further reveals that admittedly Sobahan and Hakim Ali are the S.A. recorded tenant of the suit land, and both the plaintiff and defendants claimed that they purchased the land from Sobahan and Hakim Ali. No statement is made in the plaint that Sobahan and Hakim Ali did not execute and register the deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1). Since the execution and registration of the said deeds by Sobahan and Hakim Ali in favour of the defendant Nos. 1 and 2 is not denied by the plaintiff and no relief is prayed for cancellation of the said deeds, I am of the view that the exhibits Kha and Kha/1 were executed and registered by Sobahan and Hakim Ali in favour of the defendant Nos. 1 and 2.

S.A. recorded tenant Md. Sobahan Hawlader is examined as P.W. 3, and he denied the execution of the deeds in favour of the defendant Nos. 1 and 2, but the plaintiff did not take any steps to prove that the exhibits Kha and Kha/1 were not executed and registered by P.W. 3 Md. Sobahan Hawlader and Hakim Ali. Exhibits Kha and Kha/1 are old registered documents executed and registered in 1958.

After issuance of a certificate under section 60 of the Registration Act, 1908 regarding the registration of a deed, it is to be presumed that the deed has been duly registered in the manner provided under the Registration Act and that the facts mentioned in the endorsement referred to in section 59 of the Registration Act, 1908 have been complied with. The presumption under section 60 of the Registration Act, 1908 is rebuttable. If any person disputes the

registration of the deed after issuance of the certificate under section 60 of the Registration Act, 1908, he may adduce evidence to prove that the deed was not executed and registered by the executant of the said deed. D.W. 1 produced the original deed Nos. 4554 and 4555 dated 13.05.1958, which have been destroyed by termites, and proved the certified copy of the said deeds as exhibits Kha and Kha/1. Therefore, D.W. 1 legally proved the exhibits Kha and Kha/1 in accordance with law. In the instant case, no application has been filed by the plaintiff for sending the LTI of P.W. 3 and Hakim Ali on the LTI register kept in the office of the concerned Sub-Registrar to the handwriting expert for ascertaining that P.W. 3 and Hakim Ali did not execute and register the disputed deeds (exhibits Kha and Kha/1).

As old documents of more than 30(thirty) years, there is a presumption under Section 90 of the Evidence Act, 1872 that deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1) were executed by Sobahan and Hakim Ali unless proved by the plaintiff that the said deeds were not executed and registered by Sobahan and Hakim Ali. The plaintiff did not take any steps to prove that the exhibits Kha and Kha/1 were not executed by Sobahan and his father Hakim Ali by sending those exhibits to a handwriting expert. I am of the view that Sobahan and Hakim Ali transferred the suit land in 1958 in favour of the defendant Nos. 1 and 2 by exhibits Kha and Kha/1 and their title passed to the defendant Nos. 1 and 2, and no title passed by subsequent execution and registration of the deed No. 5052 dated 13.12.1993 (exhibit 1) in favour of the plaintiff.

It is a settled proposition that documentary evidence will prevail over oral evidence. Oral evidence of P.W. 3 Sobhan Howlader cannot be relied on to hold that the registered deed exhibits Kha and Kha/1 were not executed and registered by P.W. 3 and his father Hakim Ali without expert opinion. No statement is made by P.W. 3 that his father Hakim Ali did not sell the suit land by Exhibits Kha and Kha/1.

Admittedly, the record prepared in the name of the plaintiff was cancelled in Review Case No. 21C/93-94. The plaintiff ought to have filed the suit for declaration of their title in the suit land and, without praying for declaration of title, filed the suit for declaration that the exhibits Kha and Kha/1 are not binding on the plaintiff. I am of the view that without declaration of title, the suit in its present form is not maintainable in law. The appellate Court found that the plaintiff failed to prove his title and possession in the suit land. Since Sobahan and his father Hakim Ali transferred the suit land by deed Nos. 4554 and 4555 dated 13.05.1958 (exhibits Kha and Kha/1) to the defendant Nos. 1 and 2, no title

passed to the plaintiff by subsequent deed No. 5052 dated 13.12.1993 (exhibit 1) executed by Sobahan.

P.W. 3 Md. Sobahan Hawlader did not say that he paid the rent after 1958. It is found that the defendants paid the rent after purchase and proved the rent receipts as Exhibits Cha-Cha14. After transfer of the suit land by Sobahan and Hakim Ali in favour of the defendant Nos. 1 and 2, they did not pay any rent of the suit land, although they are the S.A. recorded tenants, which indicates that Sobahan and Hakim Ali transferred the suit land and handed over possession to the defendant Nos. 1 and 2.

In view of the above findings, observations, and the proposition, I am of the view that P.W. 3 Md. Sobahan Hawlader and his father Hakim Ali Hawlader transferred 34 decimals of land by deed No. 4554 dated 13.05.1958 (exhibit Kha) to the defendant Nos. 1 and 2 and they also sold 13 decimals of land appertaining to S.A. Khatian Nos. 711 and 712 of Mouza Lohalia of Patuakhali Sadar by deed No. 4555 dated 13.05.1958 (exhibit Kha/1) to the defendant Nos. 1 and 2 and no title passed to the plaintiff by subsequent deed No. 5052 dated 13.12.1993 (exhibit 1), and both the Courts below, on correct assessment and evaluation of the evidence, legally passed the impugned judgments and decrees.

I do not find any misreading or non-reading of material evidence. No perverse finding has been arrived at by the Courts below.

I find no merit in the Rule.

In the result, the Rule is discharged.

The ad-interim order of status quo granted earlier is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court's records at once.