

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 4599 of 1991

Johara Begum

..... Petitioner.

-Versus-

Abul Kalam and others.

..... Opposite parties.

No one appears

..... For the petitioner.

No one appears

..... For the opposite parties

Heard on: 13.08.2025 and

Judgment on: 20.08.2025.

This Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the judgment and decree dated 30.09.1987 passed by the learned Subordinate Judge, First Commercial Court, Chattogram in Other Appeal No. 98 of 1985 dismissing the appeal and thereby affirming the judgment and decree dated 19.01.1985 passed by the learned Munsif, 5th Court, Chattogram in Other Suit No. 22 of 1983 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 relevant facts for disposal of the Rule are that the present petitioner, as plaintiff, filed Other Suit No. 22 of 1983 in the Court of 5th Munsif, Sadar, Chattogram against the defendants praying for permanent injunction. The case of the plaintiff, in short, is that the land appertaining to R.S. Plot No. 515, R.S. Khatian No. 3747 of Mouza-Bakalia, P.S. Chandgaon, District Chattogram originally belonged to

one Haji Noor Ahmed Sowdagar. Upon his death, he left behind one wife, three sons and five daughters including the plaintiff. After his death, the suit property was partitioned amicably and as per said amicable partition the plaintiff obtained the suit land in his share. The plaintiff, having got possession, filled it up with earth at considerable expense. In 1981, being in need of money, the plaintiff took a loan from the proforma defendants by executing a bainanama in their favour merely as security, while actual possession of the land remained with the plaintiff. On 18.02.1983, defendant No. 1 attempted to forcibly enter the suit land with the help of several men, but they could not succeed. Hence, the suit.

Defendants No. 1 and 1A contested the suit by filing a written statement denying the material allegations made in the plaint. The case of the contesting defendants, in short, is that the suit land originally belonged to one Haji Noor Ahmed Sowdagar. After the death of Haji Noor Ahmed Sowdagar, by an amicable settlement, his heirs namely Abdul Karim, Fazal Karim and Rezaul Karim, being brothers of the plaintiff, along with her mother and three sisters got the suit land in their saham. While in possession, they exchanged their respective shares of the property, including the suit land with defendant No. 1A (wife of defendant No. 1) through three registered deeds of exchange dated 26.08.1982 and 25.10.1982 and delivered possession to her. Defendant No. 1A thereafter filled up the suit land, constructed a hut and enclosed it with boundary fencing on three sides. The plaintiff obtained his saham outside the fenced property of the defendant No.

1A. The suit of the plaintiff, based on false averments, is liable to be dismissed.

During the trial, both parties adduced oral and documentary evidence. Upon conclusion of the trial, the learned Munsif, 5th Court, Sadar, Chattogram, by the judgment and decree dated 19.01.1985 dismissed the suit.

Against the said judgment and decree, the plaintiff filed Other Appeal No. 98 of 1985 in the Court of District Judge, Chattogram, which was subsequently transferred to the Court of Subordinate Judge, Chattogram who by the judgment and decree dated 30.09.1987, dismissed the appeal and thereby affirmed the judgment and decree of the trial Court.

Being aggrieved thereby the petitioner filed this civil revision and obtained the Rule.

No one appears to contest the Rule.

I have perused the revisional application, the impugned judgment and decree, and other connected materials on record.

It appears that the plaintiff filed the suit seeking permanent injunction over 2 ganda of land, out of 22.50 ganda of land of the suit plot, without any specific boundary. It also appears that defendant No. 1A by virtue of three registered exchange deeds, executed with the mother, brothers, and sisters of the plaintiffs, who were also co-sharers of the plaintiff, became a co-sharer in the holding.

It is well settled principle of law that in a suit for permanent injunction, the plaintiff must prove his exclusive possession over a specific land.

Both the courts below, upon proper appreciation of oral and documentary evidence, concurrently held that the suit land is unspecified and unidentified, the plaintiff failed to prove her specific possession in the suit land and that the defendant No. 1A is a co-sharer in the case holding. I do not find any legal evidence to hold that such concurrent findings suffer from non-consideration or misreading of evidence.

It is well-settled that concurrent findings of fact recorded by the courts below should not ordinarily be interfered with in revision (*Mofizuddin v. Narayan Chandra*, 4 MLR (AD) 127). The revisional court is not to act as a court of appeal by re-appreciating evidence (*Abdul Mannan v. Lal Miah Haji*, 16 DLR (AD) 68). Interference is permissible only when such findings are shown to be perverse, based on misreading or non-consideration of material evidence, or where the courts below acted without jurisdiction or committed an error of law apparent on the face of the record (*Joynab Begum v. Shaheb Ali*, 12 MLR (AD) 337).

In view of the above, I do not find any merit in this Rule. Accordingly, the Rule is discharged without any order as to costs.

Let the lower court record be sent down along with a copy of this judgment at once.

Therefore, I do not find any merit in the Rule accordingly, the Rule is discharged without any order as to costs.

Send down the lower court record along with a copy of this judgment at once.

Kashem, B.O