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

Present:

Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 845 OF 2006

1(ka) Md. Nuruzzaman and others
Defendant-Respondent-Petitioners

Versus

Md. Abdul Bari and others
Plaintiff-Appellants- Opposite Parties

Mr. Md. Nurul Amin, Senior Advocate
for the petitioner

Mr. A.K.M. Faiz, Senior Advocate with
Ms. Kakoli Akter , Advocate
for the opposite parties

Heard on:08.01.2026, 26.01.2026, 01.02.2026 & 02.02.2026
Judgment on: 22.02.2026.

This Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 05.03.2006 passed by the learned Joint District Judge, 2nd Court, Kushtia, in Title Appeal No.102 of 2003 reversing the judgment and decree dated 12.05.2003 passed by the learned Assistant Judge, Bheramara, Kushtia in Title Suit No.57 of 1995 in dismissing

the suit should not be set aside, and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

The Plaintiffs case in short is that the land measuring 6.41 acres of land in plot No.53 appertaining to C.S khatian No.2 belonged to East Bengla Railway who settled the same to Abdus Sobhan and 16 others. The land measuring .34 acre in Plot No.1059 was wrongly recorded in the name of Akmal Hossain in S.A. Khatian No.855. During S.A. operation the land measuring 7.63 acres was recorded in S.A. Khatian including the Plot No.1059 and other 10 plots. Asir Uddin and Akmal Hossain claimed the 7.63 acres of land, as a result Abduls Sobhan and others as plaintiff filed Title Suit No.387 of 1963 in the Court of the then 2nd Munsiff, Kushtia and that suit was disposed of on compromise and Abdus Sobhan got $.22\frac{1}{2}$ acres of land. Abdus Sobhan mutated his name in the Government Sherista and died leaving the

plaintiffs. The land measuring $31\frac{1}{2}$ decimals was wrongly recorded in the name of the defendant Nos.2-4. Plaintiff Nos.1 and 2 filed objecting case under rule 30 of the State Acquisition and Tenancy Act, 1951 and the case was rejected. Hence, the plaintiffs filed the instant case.

The defendant Nos.1 and 2-4 enter appeared and contested the suit by filing two separate written statements.

The case of the defendant Nos.2-4 in short is that at the time of S.A. operation the area of 6.41 acres of land was increased to 7.63 acres and admittedly S.A. record was prepared in the name of Asir Uddin. Arshad Ali, Azhar Ali, Akmal Hossain and Hares Uddin in different khatians and. the land measuring .34 acres in Plot No.1059 was record in the name of Akmal Hossain in S.A. Khatian No.855. The plaintiff Abdus Sobhan along with 16 others as plaintiffs filed Title Suit No.387 of 1963 in the Court of 2nd Munsiff, Kushtia wherein Asir Uddin was the

defendant No.1 Azhar Ali was the defendant No.2. Akmal Hossain was the defendant No.3. Hares Uddin was the defendant No.4 and Ershad Ali was the defendant No.5 and finally that suit was disposed of on compromise. Plaintiffs of that suit got 8 annas share and the defendants Nos.1-5 got 8 annas share measuring 3.82 and 3.81 acres of land respectively. Hares Uddin, amicably possessed Plot No.1060 and 1063 and thereafter he transferred 0.36 acres of land from Plot No.1063 to defendant No.2 Zamat Ali by registered sale deed dated 17.12.1979 and R.S. record for that land was recorded in the name of Zamat Ali in R.S. Plot No.716. Hares Uddin thereafter transferred 13 acre of land in favour of defendant Nos.2-4 on 17.12.1979. Akmal Hossain transferred .34 acres of land in Plot No.1056 to defendant No.1 by a registered deed of gift dated 11.06.1963. The defendant No.1 possess the plot No.1059 and subsequently the defendant No.1 transferred .34 acres of land in favour of defendant

Nos.2-4 by way of oral exchange and the defendant No.1 got plot No.1063 and the defendant Nos.2-4 got Plot No.1059. The defendant Nos.2-4 constructed homestead on Plot No.1059 and have been living there and in R.S. operation that land was correctly recorded in their name. It was also shown in the record that the plot No.1059 got by way of exchange and also in the remarks column it was mentioned as homestead. The mutation of the plaintiffs is illegal as because all the co-sharers were not made party in the mutation proceedings. Abdus Sobhan filed objection and appeal case before the settlement Officer during R.S. operation and ultimately he was defeated. The present suit is not maintainable without prayer for partition.

Learned Trial Court on elaborate discussion dismissed the other Suit No.40 of 2003 dated on 30.09.2021 and on Appeal Learned Appellate Court allowed the appeal and set aside the trial Court judgment.

Being aggrieved by and dissatisfied with the impugned judgment and decree these defendant-respondent-petitioners moved this revision before this Court and obtained the Rule.

Learned Advocate Mr. Nurul Amin Senior Advocate appearing for the defendant-respondent petitioners in the course of argument takes this Court through the impugned judgment of both the trial Court and the Court of Appeal, plaint of the suit, written statements, deposition of the witnesses and other materials on record and then submits that the Appellate Court without applying its judicial mind into the facts of the case and law bearing on the subject most illegally allowed the appeal thereof. Learned appellate Court failed to appreciate being one for declaration of title is not maintainable in absence of a prayer for partition in as much as the plaint neither properly identified the suit land nor mentioned any definite boundary nor

is an sketch map appended thereto for proper identification of the suit land. In view of the settled principle laid down by the Appellate Division in Kanchan Mallik and others Vs. Saleha Begum and other reported in 9 ALR (AD) at page 115 the impugned judgment is unsustainable in law and is liable to be set aside.

In such circumstances the only appropriate remedy for the parties is to seek adjudication of their respective shares and position in a properly framed suit for partition. But the plaintiff claims title over the joint property without partition and without exclusive possession, a mere suit for declaration under section 42 of the Specific Relief Act is not maintainable. Admittedly the compromise decree of Title Suit No.387 of 1963 did not allot any specific plot to Abdus Sobhan. There is no pledging or proof that A.Sobhan possessed Plot No.1059. The learned trial Court correctly applied this principle, but the appellate Court misdirected itself thereby

committed error of law. Learned Appellate Court allowed the appeal without reversing the categorical findings of the trial Court and without analyzing the testimony of any witness. Learned Appellate Court did not take into his consideration the matter of mis-impleading the co-shares of the compromise decree in the present suit. Lastly learned Advocate submits that the judgment of the appellate Court is perverse being based on surmise and conjectures, not evidence and as such the appellate Court committed error of law and the impugned judgment is liable to be set aside. And hence the Rule may be absolute.

On the other hand Learned Senior Advocate A.K.M.Faiz for the plaintiff-appellant-opposite parties turned down the contention of the defendant-respondent-petitioner and argues that the trial Court most illegally dismissed the suit of the plaintiff. The appellate Court on clear findings and specific reasoning's allowed the appeal which does not call for any

interference, the plaintiff prosed his possession by adducing evidence and Pw1 clearly mentioned that his is the owner of the suit property and relevant document has also been submitted, the learned trial Court erroneously without considering the documents and plaint case, dismissed the suit thus the Rule is liable to be discharged. The learned appellate Court giving specific reasoning and findings set aside the trial Court judgment, the trial Court did not discharge the Civil Suit No.367 of 1963 which has been decreed on the basis of solenama, the trial Court only considered some of the documents and oral exchange but the solenama decree is the main vital part but without considering this aspect of solenama learned trial court illegality dismissed the suit. Also it is contended by the learned Advocate for the plaintiff-appellant-opposite party that the High Court Division as a Revisional Court had hereby any jurisdiction to set aside the finding of fact by the appellate Court and

that also without discussing any fault in the factual finding of the said Court. The appellate Court came to a clear finding and allowed the appeal and as such his finding cannot be disturbed. In this connection learned Advocate cited the case of 51 DLR(AD) at page 551 where it is held that the High Court Division has interfered with the findings of fact by the last Court of fact but the inference being based on detecting error apparent on the face of the record need not be disturbed. Learned Advocate further argues that a court of revision under section 151 of the Code of Civil Procedure finding of the fact as the final Court of facts only in exceptional circumstances when the finding are shocking perverse or these are vitiated by non-reading and misreading of the mutual evidence or misconstruction of any important document, in the aforesaid case no misreading or non-consideration is made and thus the appellate Court righty allowed the

appeal and hence the learned Advocate prays for making the Rule discharged.

Heard the learned Advocates for both the sides and perused the materials on record.

On meticulous and close perusal of the case record and the evidence adduced by the both the parties oral and documentary, this Court found that both the party admitted the execution of Solenama in the Suit No. 387 of 1963. Also they admitted that the predecessor of the plaintiff got 8 anna share measuring 3.82 acres and the predecessor of the defendant got remaining 8 anna share measuring 3.81 acres of land by way of that Solenama in Title Suit No. 387 of 1963. Also it is admitted that S A record was exclusively published and that was incorporated in the plaint and Solenama of case No.387 of 1963. The defendant-respondent-petitioner claimed that there were as many as 17 plaintiffs in the case No.387 of 1963 and these plaintiffs got 8 anna and the defendant got 8 anna share in plot no.1059 which stands half of 0.34 acres

of land measuring 0.17 acres for each group. In this context each of the plaintiffs got 0.01 acre and the defendant got 0.17 acres in the suit No.387 of 1963. The next contention of the defendant's petitioner is that their predecessor Akmol Hossain got 0.034 acres of land in plot no.1059 by an amicable settlement of the parties of suit No.378 of 1963. The predecessor of the plaintiff Abdus Sobhan got 0.01 acre in the suit plot no.1059 calculating the share of each plaintiff but they now claimed 31½ acres of land. Plaintiffs-respondent-opposite party did not claim that their predecessor Abdus Sobhan obtained .34 acres land in the suit plot 1059 nor they brought this version in their plaint to that effect. Abdus Sobhan did not get any specific plot by way of the compromise decree nor he ever possessed plot No.1059 exclusively.

It is found that the defendant no.1 by way of an ewaz deed got 0.32 acres of land in plot No 1063 and the defendant nos.2-4 got 0.3150 acres from plot no.1059. This

contention of the defendant-respondent-petitioner is reflected in R.S. khatian no.5 by inserting the word 'ewaz'. That Khatian is submitted in trial Court as Exbt. 'Ga'. Though the plaintiff-appellant-opposite party claimed that their predecessor Abdus Sobhan and thereafter they possessed the suit land including other non suited land and paying rent by way of a pattan in case no.2/x111(143)/90 and this version of the plaintiff is admitted by the defendants in case nos.104 of 1998 and 44 of 1998, but the plaintiff-appellant-opposite party did not submit any documents to demonstrate this claim. The testimony of Pw1 Md. Abdul Bari is very significant to determine the dispute relating to title and possession in the present suit. He categorically stated in his evidence that after Solenama, no further compromise is happened to them and the party to the Solenama possess the land according to their earlier possession. This version of Pw1 Abdul Bari endorse that the S A record was in the name of Akmol Hossain and this

very Akmol Hossain now possesses the suit land which he thereafter transferred to the contesting defendants-respondent-petitioner.

Learned Appellate court found that the defendant-respondent-petitioner could not satisfy how their predecessor Akmol Hossain obtained 0.34 acres of land in plot no.1059, so the S A record in the name of Akmol Hossain is wrong. But learned trial court categorically mentioned in his judgment that the predecessor of the defendant petitioner Akmol Hossain by way of an oral amicable settlement between the parties of the case No.387 of 1963, he got 0.34 acres of land in plot no.1059 of S.A. khatian no.855. This contention of the defendant petitioner is reflected in the S A khatian No.855. So Learned Appellate Court was misconceived to hold the view that alleged 0.34 acres of land is wrongly recorded in S.A. khatian No.855 in the name of Akmol Hossain. In many cases Honorable higher court observed that entries of record of rights carry a presumption of correctness untill rebutted

by cogent evidence. The R.S khatian clearly recorded possession of defendants over the suit land. Also the said record reflects the exchange in respect of property describe the nature and classification of the land as homestead. The plaintiffs failed to rebut this presumption.

Plaintiff-appellant-opposite party claim that by way of Solenama they got 0.34 acres of land in plot no.711 under R S khatian no. 5. Defendant-respondent-petitioner rebutted this claim of the plaintiff opposite party. Defendants-opposite party's positive case in this regard that by amicable settlement with the other contesting party of case no. 387 of 1963 they took 0.34 acres of land in plot no.711 and finding their possession R. S. record is prepared in their name. Learned Appellate Court without appreciating the evidence of PW1 and materials on record raised the question of title of the defendant petitioner over the suit plot No. 711.

Learned Appellate Court observed that "এই দাগের ভিতরে কোন কোন পক্ষ কতটুকু প্রাপ্ত হইবে ইহা সুনিদিষ্ট ভাবে উল্লেখ না থাকায় কোন পক্ষই অনির্দিষ্ট সম্পত্তি কোন ভাবেই কোন প্রজার বরাবরে হস্তান্তর বা এওয়াজ করিতে পারে না । যেক্ষেত্রে বাদী বিবাদীদের ভিতরে ৭.৬৩ শতাংশ সম্পত্তি সুনির্দিষ্ট করন করা হয় নাই সেই ক্ষেত্রে কোন ভাবেই প্রতিদ্বন্দ্বিতাকারী-রেসপনডেন্ড পক্ষ কোন সম্পত্তি হস্তান্তর করিতে পারে না এবং মৌখিক এওয়াজ বিনিময় মূলে হস্তান্তর করিতে পারে না । যদি বাদী বিবাদীদের ভিতরে জমির সুনির্দিষ্ট করন করা হইত তাহলে যে কোন পক্ষই তাদের নিজ স্বত্ব দখলীয় সম্পত্তি হস্তান্তর করিতে পারিত । অত্র মোকদ্দমার ক্ষেত্রে দেখা যায় প্রতিদ্বদ্বিতাকারী-বিবাদী-রেসপনডেন্ট পক্ষ ২/১ টি দাগের সম্পত্তি কবলা মূলে ও মৌখিক এওয়াজ মূলে দাবী করিয়াছে । কিন্তু এই দাবীর পক্ষে আইনগত ভাবে কতটুকু যুক্তি আছে ইহা একবার দেখা দরকার । যে ক্ষেত্রে বিবাদী-রেসপনডেন্টপক্ষ কবলা বা মৌখিক এওয়াজের সম্পত্তি কোন পক্ষ প্রাপ্ত হইবে ইহা নির্নয় না করিয়া কোন ভাবেই বিরোধীয় দাগ খতিয়ান হইতে ১৭/১২/৭৯ এবং ১১/৬/৬৬ তারিখে সম্পত্তি হস্তান্তর কিংবা মৌখিক এওয়াজ বিনিময় মাধ্যম জমি হস্তান্তর করিতে পারে না ।"

This observation of Learned Appellate Court approved the observation of learned trial Court where it is mentioned that without partition among the contesting party, simple declaration is not maintainable. Learned trial court rightly hold that the number of plaintiffs in the suit No.378 of 1963 are 17 in number and they altogether got their share without any specification. So a partition by metes and

bound is necessary to resolve the matter advanced by the plaintiff appellant opposite party. The suit land is neither properly indentified nor mentioned any definite boundary, nor is any sketch map appended thereto for proper identification, so this is not sustainable in law. In this contest learned Advocate referred the case of Kanchn Mallik and others Vs Saleha Begum and others reported in 9 ALR (AD) at page 115.

Learned Appellate Court expressed its opinion that without determining which party will get how much land in pursuant their kabala or ewaz, no one is entitled to transfer that undivided property to any other else. This observation of learned Appellate court again led the plaintiff-appellant-opposite party to sue for partition suit. Admittedly Akmol Hossain transferred 0.34 acres of land by way of gift deed dated 11.06.1966 to the defendant no.1 and that deed was submitted by the defendant opposite party as Exbt. ‘Gha’. Haresddin, defendant no.4 of the case no.387

of 1963 transferred 0.36 acres of land dated 17.12.79 to the defendant Zamat Ali and Haresuddin again transferred 0.13 acres of land dated 17.12.79 to the defendant nos.2-4 and those kabala deeds are submitted as Exbt.'Kha' 1 series. These deeds are registered kabala deeds. The plaintiff-appellant-opposite party claimed that those kabala deeds are illegal but they did not seek any relief against these deeds in the prayer of the plaint. The plaintiff-appellant petitioner ought to have prayed for setting aside those deeds and to have declared illegal and not binding those deeds upon them. But without praying such consequential relief the present suit is not maintainable. In this connection we can get support from the case of Rafiqul Islam Vs. Zahirul Islam cited in 70 DLR (AD) 2018 at page 135 which reads as follows:-

"It the question is whether the deed is genuine or not, the simple answer is, it being a registered document, is showered

with a strong presumption as to genuineness."

Learned Appellate Court did not peruse the evidences of the trial Court but as Appellate court is obliged to appreciate the evidence under Order 41 Rule 31. So the appellate court without perusing the testimony of the witnesses, could not arrived at a decision of possession. On the contrary learned trial court appreciated the testimony of Pw1, Pw2 and Pw3. Pw1 indirectly supported the possession of Akmol Hossain on the suit land. He deposed that the party's to the Solenama possess the land as they possess before execution of that Solenama. It is admitted by the plaintiff that the S A record for the plot no.1059 is recorded in the name of Akmol Hossain. So according to the S. A. record Akmol Hossain is in possession on the suit land. Other two witnesses have no land contiguous to the suit land, so they have no knowledge regards to the possession of the suit land. The Appellate Court was not satisfied regarding

the possession of the plaintiff-appellant by saying " ১নং বিবাদী-রেসপনডেন্ট এর নামে আর, এস, ৭১১ নং দাগের সম্পত্তি কিভাবে রেকর্ড হইল ইহা আদালতের নিকট বোধ গম্য নয় । বিজ্ঞ নিম্ন আদালত কেবল বন্টনের অজুহাত দেখিয়ে মোকদ্দমাটি ডিসমিস করিয়াছেন । কিন্তু দেং ৩৮৭/৬৩ নং মোকদ্দমায় সোলে ডিক্রির সর্ম্পত্তি আইনগত দিক আলোচনা করেন নাই । কেবল বিজ্ঞ নিম্ন আদালত হস্তান্তরের কিছু দলিল ও মৌখিক বিনিময়ের উপর ভিত্তি করিয়া তর্কিত রায় ও ডিক্রী প্রদান করেন ।"

Also it appears on scrutiny of the judgment of the Appellate court that nothing reversal findings are found against the observation of the learned trial Court. Learned Appellate court did not reverse the findings of the trial court that without partition the suit is not maintainable.

Learned Appellate Court was also silent about the observation of defect of parties as alleged in judgment of the trial court. The plaintiff-appellant did not implead the co-sharers of the compromise decree in the case of 387 of 1963 and the tenants of R S khatians related to the suit land. So learned Appellate court committed error in not considering the defect of parties as alleged by the trial court.

Learned Counsel for the opposite party referred the decision of Md. Shah Alam vs Mosammat Farida Begum cited in 17 BLD(AD) 1992 at page 145 which reads as follows:

"Without reversing the findings of fact concurrently arrived at by the courts below on the grounds covered by section 115, CPC, the High Court Division has no jurisdiction to disturb the findings of facts. It cannot super impose itself as a third Court for fresh appreciation of the evidence on record, this being not the function of a court of revision."

The findings of the Learned Appellate court in the present case is not a concurrent findings, rather it is reversal to the findings of the trial court. Learned Appellate court without reversing some substantive observation of the trial court, reversed the judgment. The judgment of Learned Appellate court suffers from non-consideration of evidence as it did not appreciate the testimony of the witnesses. Learned Appellate court considered the

possession of the plaintiff-appellant on imaginary findings. So this Court has authority to interfere the judgment of the Appellate court as it is based on misconception of law and non-consideration of evidences.

In this context authority is available in many decision cited in 64 DLR(AD) 2012 at page 133, 54 DLR (2002) at page 349, 50 DLR 1998 at page 167. All these decision contain the principle that 'when a finding of fact is based on record, those findings are immune from interference by the revisional court except there is non-consideration or misreading of the materials of evidence on record.' It is also adopted in the decision of the High court division that "A court of Revision can interfere with the findings of facts by court of appeal below as a final court of facts only in exceptional circumstances when the findings are shockingly perverse."

Learned trial court categorically found that as per Solenama the appellant got 8

anna and the defendant got 8 ana out of 7.63 acre. According to that the plaintiff got 8 anna out of 0.34 acres of land from plot no. 1059 and the defendant got rest of 8 anna. In this calculation the Plaintiff got 17 acres of land by way of Solenama in case no.387 of 1963. Admittedly there were 17 plaintiffs in suit No.387 of 1963. So, each of the plaintiff got 0.01 acre in plot no.1059. Learned trial court elaborately discussed this matter in his judgment but Learned Appellate court did not reverse these findings of the trial court.

In view of the discussion as made above this court led to hold that Appellate court reversed the judgment of the trial court on misconception of law and non-reading and mis-reading of evidence. So the Judgment of the Appellate court warrants interfering.

In the result the Rule is made absolute without any order as to costs.

The impugned judgment and decree dated 05.03.2006 passed by the learned Joint District Judge, 2nd Court, Kushtia, in Title

Appeal No.102 of 2003 reversing the judgment and decree dated 12.05.2003 passed by the learned Assistant Judge, Bheramara, Kushtia in Title Suit No.57 of 1995 in dismissing the suit is hereby set aside.

The order of stay and status-quo granted earlier, at the time of issuance of Rule, is hereby vacated.

Send down the lower Courts' record with a copy of this Judgment to the Courts' below at once.