

Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 518 of 2006
Minhazuddin being dead his heirs:
1. A. Mojid Sheikh and others
.....petitioners
-Versus-
Shahidur Rahman and others
.....opposite party

No one appears for the petitioners

Mr. Mahmudur Rashid, Advocate
.....for the opposite parties

Heard on: 21.10.2025, 22.10.2025, 26.10.2025,
03.11.2025, 09.11.2025 and 10.11.2025

Judgment on: 11.11.2025

In the instant revision Rule was issued on 27.02.2006 calling upon the opposite parties to show cause as to why the judgment and decree dated 25.08.2005 passed by the Additional District Judge, 2nd Court, Khulna in Title Appeal 48 of 1999 affirming the judgment and decree dated 29.11.1998 passed by the Assistant Judge, Rupsha, Khulna in Title Suit 160 of 1997 should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The predecessor-in-interest Minhazuddin Sheikh as plaintiff filed Title Suit 292 of 1981 in the First Court of

Munsif, Khulna which was subsequently transferred to the Court of the Assistant Judge, Rupsha, Khulna and was renumbered as Title Suit 160 of 1997 for declaration of title. The suit was filed on 14.05.1981.

The case of the plaintiff in short is that the land of C.S. khatian 155 originally belonged to Miazan Halder under landlord Babu Kiron Chandra Roy. Miazan Halder defaulted in paying rent and accordingly landlord Babu Kiron Chandra Roy instituted Rent Suit 371 of 1911 and got decree and the said decree was put into execution in Rent Execution Case Number 831 of 1913. In order to execute the said decree the land under dispute was sold in auction and landlord Babu Kiron Chandra Roy himself purchased the same in auction on 19.12.1913 and took delivery of possession through court on 12.03.1914. Some under tenants were in possession of the constructed dwelling homesteads in the land under dispute. In order to evict the said tenants landlord Babu Kiron Chandra Roy filed Title Suit 1067 of 1920 in the second Court of the then Munsif, Khulna for eviction of the tenants and obtained decree. Against the said judgment and decree the under tenants preferred Title Appeal 23 of 1922 which was also dismissed and thereafter they left the place. While maintaining

ownership and possession in the said land the landlord settled firstly .28 acres of land and thereafter for the second time settled .35 acres of land out of the disputed khatian in favour of the plaintiff who executed and registered a kabuliyat on 06.04.1938. At the time of C.S. operation the suit land was recorded in the name of Riyezuddin Sheikh with an endorsement that the same was exchanged with Miazan Halder. The C.S. khatian was erroneous. At the time of S.A. operation it was recorded in the names of the heirs of Miazan Halder and Riyezuddin Sheikh. The defendants 1-3 claimed to be the purchasers of the land under dispute on the basis of fraudulent kabala deed showing execution done by defendant 4 who is the son of said Riyezuddin Sheikh. The defendants denied the plaintiff's title on 10th Baisakh, 1388 B.S. and hence the suit.

Defendants 2 and 3 contested the suit by filing written statement denying the material statements made in the plaint contending that the story of auction as pleaded by the plaintiff was absolutely false and concocted. No notice under section 167 of the Bengal Tenancy Act was served upon the tenants for eviction. The land as described in the sale certificate does not tally with the land as recorded in the C.S. and S.A.

khatians. The C.S. and S.A. records of right are correct. Riyazuddin and his predecessors-in-interest have been in possession in the land under dispute. Defendant number 2 and Shahidur Rahman purchased the suit land on the basis of a kabala deed dated 04.12.1961 from defendant 4 and his co-sharers and after purchase they have been maintaining title and possession in the suit land along with other co-sharers of the disputed khatian. Defendant 3 purchased some portion of the suit land from defendant 4 and his co-sharers by kabala deed dated 09.12.1961. They mutated their names in the khatian and have been maintaining title and possession in the suit land upon payment of rent to the Government and the suit being false is liable to be dismissed.

Trial Court framed as many as six issues. During the course of trial plaintiff examined four witnesses and the defendants examined two witnesses and both the parties adduced documentary evidence in support of their respective cases.

The trial court upon perusal of the records and hearing the parties and considering the oral and documentary evidence adduced by both the parties dismissed the suit by judgment and decree dated 29.11.1998.

As against the same the plaintiff as appellant preferred Title Appeal 48 of 1999 in the court of District Judge, Khulna and the appeal was transferred to the court of Additional District Judge, 2nd Court, Khulna who heard the same and was pleased to dismiss the appeal by judgment and decree dated 25.08.2005.

Being aggrieved by and dissatisfied with the impugned judgments passed by the courts below plaintiff came before this court with this revision and obtained rule on 27.02.2006.

This matter has been appearing in the list since 01.09.2025 and the same was heard on several occasions but no one on behalf of the plaintiff-petitioner came before the Court in support of the rule.

Mr. Mahmudur Rashid, learned Advocate appearing on behalf of the opposite parties submits that both the courts below committed no error of law resulting in an error in such decree occasioning failure of justice and the impugned judgments being passed upon proper appreciation of evidence are immune from interference by this Court. He submits that the concurrent findings of fact cannot be disturbed in revision unless any misreading or non-consideration of material evidence touching the root and merit of the case is shown. He

then submits that the settlement taken by kabuliyat and the subsequent oral settlement as claimed by the plaintiff having not been proved in evidence plaintiff is not entitled to get any decree and both the courts below rightly dismissed the suit. He very candidly submits that the claim of the plaintiff on the basis of sale certificate and kabuliyat is unfounded in evidence and it is the settled principle of law that plaintiff has to prove his own case independent of defence weakness. He also submits that there is no evidence on the alternative prayer of adverse possession and as such both the courts below rightly decided that plaintiff cannot have any remedy under such prayer. He finally submits that the rule having no merit may be discharged.

Heard the learned Advocate for the opposite parties and perused the materials on record and gone through the judgments passed by the courts below as well.

Initially this was a suit for declaration of title filed on 27.05.1981 and the trial court dismissed the suit on 18.10.1993. Plaintiffs then preferred Title Appeal 134 of 1994 and in that appeal plaintiff amended the plaint by incorporating the alternative prayer of declaration of title acquired by adverse possession. Appellate court allowed the

application and set aside the judgment passed by the trial court and sent the suit down on remand to the trial court on 02.07.1997.

During hearing of the suit plaintiff amended their plaint on several occasions and further added prayer for confirmation of possession on 08.09.1998. Defendants also filed additional written statement on 08.11.1998 and on the same day PW 1 and DW 2 were recalled and examined and advocate commissioner was also examined as PW 4.

PW 1 admitted in cross-examination that after the execution of the kabuliyat exhibit-2 he took a further oral settlement supported by rent receipts and the identification of the land is given in exhibit-2 by depicting boundaries as in 1938 no khatian and plot numbers had been prepared. He also admitted that he filed the suit for wrong record and there was no other reason for filing the suit. It appears from perusal of sale certificate exhibit-1 that the land of item 12 of exhibit-1 is not identical with the schedule of the plaint as has been claimed by the plaintiff and also on the other hand the land as depicted in exhibits 5 series and 6 series which were plaint, judgment and decree passed in Title Suit 1067 of 1920 and Title Appeal 23 of 1922 is also not identical with the land

described in the present plaint. Plaintiff also could not prove that the landlord got delivery of possession of the suit land through court as he neither made out a definite case in his pleading nor adduced any oral or documentary evidence in this regard by producing and proving writ of delivery of possession. Furthermore plaintiff did not formally prove exhibit-2 in evidence by calling the volume from the office of the registrar. The general diary exhibit-4 which was lodged after over 10 years of the filing of the suit clearly shows that the original kabuliyat was lost from the custody of the plaintiff. Thus the entire case of the plaintiff falls through because had the kabuliyat being acted upon the original of the same would have been in the custody of the landlord and there is no question of losing the same from the hands of the plaintiff. Moreover exhibit-2 is an unilateral document because no rent receipt or patta claimed to have been granted by the landlord was filed. The oral settlement as claimed by the plaintiff in respect of .35 acres of land is also not proved in evidence by the plaintiff by tendering any rent-receipt issued by landlord. Mere statement of claim does not prove the case of the plaintiff.

It appears that the certified copies of exhibit-1 and exhibit-2 were obtained by plaintiff on 26.05.1990 and 27.08.1990 after 10 years of the presentation of the plaint in the court. The subsequent S.A. record exhibit-Kha(1) also was not prepared in the name of the plaintiff on the basis of exhibits-1, 2, 5 series and 6 series. Considering all aspects it is not difficult to understand that the suit was filed by fraudulent means in collusion with the interested quarter of government employees.

The prayer portion of the plaint shows that the plaintiffs by amending the plaint alternatively sought for declaration of title by way of adverse possession although their title is based on exhibits-1, 2, 5 series and 6 series. Plaintiff did not make out any definite case on adverse possession showing their entry in the land to be hostile and without any protest from the true owners. The doctrine of adverse possession arises only when a party disclaims the title of the real owner and establishes that he remained in exclusive possession to the knowledge of the real owner which was hostile to such title. The essential elements required to obtain a decree of title by adverse possession have not been established in the instant case. Decree for declaration of title on the basis of certain

documents and also on the basis of adverse possession cannot be claimed simultaneously. Claim of title on adverse possession must be specifically pleaded in pleading and proved by adducing evidence. Claim of title upon exhibits-1, 2, 5 series and 6 series never show that the entry in the suit land by the plaintiff started with wrong. Plaintiffs have failed to prove their case. This view finds support from Akramullahh and Pushpa Rani cases reported in 11 ADC page 146 and 10 MLR(AD) page 345 respectively. Both the courts below found weakness in the case of defence but such weakness does not mean that the case of plaintiff is proved in evidence. In the instant revision there remains no scope to go against the concurrent findings arrived at by both the courts below being passed in accordance with the law touching the root and merit of the case. Thus the revision fails and the judgments passed by the courts below are hereby upheld.

In the result the Rule is discharged.

The order of *status quo* passed by this Court stands vacated.

Communicate this judgment to the concerned Court and
send down the lower Courts' record.

Md. Ali Reza, J:

Naher-B.O