

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 1561 of 1998

In the matter of:

Mohendra Nath Ghorami and others

... Defendants 5 & 6-Respondents

Petitioners

-Versus-

Nalini Kanta Biswas and others

... Plaintiffs-Appellants

Opposite parties

Mr Md. Akber Hossain, with

Ms Quamrun Nessa Ratna, Advocate

.....For the petitioners

No one appears, Advocate

...for the opposite parties.

Date of Hearing: 28.6.2026 and 7.7.2026 A.D.

Date of Judgment: 14.07.2026 A.D.

Tuesday, 30 Ashar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioners under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

"Let a Rule be issued calling upon the opposite party Nos. 1-8 to show cause as to why the impugned judgment and decree dated 19.02.1998 passed by the Additional District Judge, Pirojpur reversing those dated 17.2.91 passed by the learned Assistant Judge, Nazipur, Pirojpur in Title Suit No. 109 of 1986 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper."

At the time of issuance of the Rule, this Court was pleased to call for the records of the learned Subordinate Courts and also stayed the operation of the impugned judgment and decree dated 19.2.98 for a period of 6

months; subsequently, the aforesaid order was extended from time to time.

Facts:

The opposite parties, as plaintiffs, instituted Title Suit No. 109 of 1986 in the Court of the learned Assistant Judge, Nazirpur, Pirojpur, seeking a declaration of title to 10 decimals of the scheduled land. Their case, in substance, was that the entire property under Khatian No.273/2, including 6 annas share of Plot No.4895 measuring 3.18 acres, stood recorded in the names of Sagar Biswas and Laxmi Kanta Biswas, although the real owners were Madhusudan, Pushpamala, Sagar Biswas and Laxmi Kanta.

According to the plaintiffs, Madhubala and Sagar Biswas had originally obtained a settlement of 14.11 acres of land, including 0.76 acres of Plot No. 4895, from the Zamindar on 6th Sraban, 1299 B.S. Upon Sagar Biswas's death, his widow, Pushpamala, inherited his share, although the record remained in her deceased husband's name. Pushpamala subsequently transferred half of her share to Madu Biswas and Laxmi Kanta. Thereafter, through successive inheritance,

the heirs of Madu Biswas and Laxmi Kanta allegedly acquired title to the property.

The plaintiffs further asserted that although Laxmi Kanta resided on another plot, namely Plot No. 4893, Madu Biswas exclusively possessed Plot No. 4895, and after his death, his successors wife Sabitri, and three daughters continued such possession. They also claimed that the land of Plot No.4895 gradually increased by alluvial accretion to 0.81 acres, out of which 10 decimals were erroneously recorded in the name of Sabitri in S.A. Khatian No.452. They alleged that the defendants had no lawful title or possession over the disputed portion and that the cause of action arose when one of the defendants instituted a false case claiming the plaintiffs' homestead land. They further pleaded that an earlier suit, being Title Suit No. 385 of 1982, had been withdrawn on account of a formal defect, with liberty to institute a fresh suit, leading to the present suit.

During the pendency of the suit, the plaintiffs amended the plaint, stating that they had challenged the patta granted in favour of Rupmala, contending that the record in her name

had been wrongly prepared and that she had never acquired title to or possession of the disputed property.

The contesting defendants denied the plaintiffs' assertions and pleaded that Laxmi Kanta and his brothers had originally obtained settlement of the land. They contended that after the death of Sagar Biswas, Pushpamala transferred portions of her inherited share to Laxmi Kanta and Madu Biswas, and that Laxmi Kanta remained the owner and possessor of a substantial portion of the land until his death. According to them, after the deaths of Laxmi Kanta and, subsequently, his wife, their daughters became the absolute owners in possession of the disputed property and constructed dwelling houses thereon.

Defendant No.6 separately pleaded that after the death of Tarani Biswas, his widow, Barnamala, inherited his share, and upon her death, her daughter, Rupmala, became the lawful owner. It was further asserted that the record of rights had correctly been prepared in Rupmala's name and that Defendant No.6, being the successor of Rupmala, inherited and possessed the disputed property.

Thereafter, the learned Assistant Judge, after recording oral and documentary evidence, dismissed the suit by judgment and decree dated 17.02.1991, principally holding that the plaintiffs failed to establish that the disputed 10 decimals represented accreted land of Plot No.4895 and that, in the absence of proper identification of the suit land and impleading of all necessary co-sharers, the suit was not maintainable.

Being aggrieved, the plaintiffs preferred Title Appeal No.74 of 1991, which was heard by the learned Additional District Judge, Pirojpur. The appellate Court reversed the findings of the trial Court and decreed the suit by judgment dated 19.02.1998. Challenging the legality of the appellate judgment, the defendants invoked the revisional jurisdiction of the High Court Division under section 115(1) of the Code of Civil Procedure, 1908.

Submissions:

Mr Md. Akber Hossain, learned Counsel appearing for the petitioners, assailed the impugned appellate judgment on the ground that the learned Additional District Judge

committed serious errors of law and fact by reversing a well-reasoned judgment of the trial Court without independently analysing the evidence on record. It was contended that the appellate Court misread the oral and documentary evidence, ignored material exhibits and substituted its own conclusions without assigning legally sustainable reasons.

It was further submitted that the plaintiffs instituted the suit merely seeking a declaration of title although the admitted evidence disclosed that the defendants were in actual possession of the disputed land by constructing dwelling houses thereon. In such circumstances, the suit was not maintainable in the absence of a prayer for recovery of possession or other consequential relief, as a mere declaratory decree could not effectively determine the parties' rights.

Learned Counsel further argued that the plaintiffs utterly failed to identify the alleged 10 decimals land to have accrued from Plot No.4895. Neither the pleadings nor the oral evidence disclosed any definite description or demarcation of the disputed portion. No survey map, commission report, or

documentary evidence was produced to establish that the suit land was, in fact, the accreted portion of the original plot.

It was also contended that the appellate Court completely overlooked the admitted deed dated 25th Bhadra, 1302 B.S. (Exhibit-1) executed by Pushpamala in favour of Laxmi Kanta, which substantially supported the defense case regarding the chain of title. Instead of appreciating this admitted document, the appellate Court discarded the defendants' claim without proper legal analysis.

The petitioners further submitted that the suit property admittedly remained joint property of several co-sharers under the same khatian. Nevertheless, all necessary co-sharers were not impleaded as parties, rendering the suit defective for non-joinder of necessary parties and incapable of effective adjudication.

It was further argued that the appellate Court wrongly shifted the burden of proof upon the defendants without first requiring the plaintiffs to discharge their initial burden under sections 101 and 102 of the Evidence Act, 1872. The plaintiffs having failed to establish their own title, possession and

identity of the suit land, no burden ever shifted upon the defendants.

In support of the above submissions, learned Counsel relied upon **39 DLR (AD) 237**, reiterating the settled principle that the weakness of the defendant's case cannot furnish a legal basis for granting a decree unless the plaintiff independently proves his own case. Reliance was also placed upon **19 ADC 351** regarding the application of section 103 of the Evidence Act and upon **26 ALR (AD) 110** concerning the mandatory duty of the first appellate Court under Order XLI Rule 31 of the Code of Civil Procedure to independently discuss the evidence and record its own findings on each material issue.

Accordingly, learned Counsel prayed that the Rule be made absolute.

No one appears on behalf of the opposite parties.

However, the plaintiffs-opposite parties' case, as borne out by the record, is that they instituted the suit seeking a declaration of title over 10 decimals of the scheduled land.

They also asserted that although the suit property was recorded in the names of Sagar Biswas and Laxmi Kanta Biswas, the actual owners were Madhusudan, Pushpamala, Sagar Biswas and Laxmi Kanta. According to the plaintiffs, Madhu Bala and Sagar Biswas obtained settlement of the land from the Zamindar, and upon Sagar Biswas's death, his widow, Pushpamala, inherited his share, though the record remained erroneously in his name. Pushpamala subsequently transferred part of her interest to Madhu Biswas and Laxmi Kanta. Through successive inheritance, the plaintiffs claim to have acquired title and possession over the disputed land, particularly plot No. 4895, which they assert was exclusively possessed by their predecessors. They further alleged that, following accretion, 10 decimals of the land were wrongly recorded in Sabitri's name in S.A. Khatian No. 452, giving rise to the present dispute. According to the plaintiffs, the defendants have neither title nor possession in the suit land. They further contended that the trial Court erroneously dismissed the suit without a proper appreciation of the evidence, whereas the appellate Court, upon a correct

evaluation of the record, rightly reversed the trial Court's findings and decreed the suit.

I have perused the application, and the documents annexed thereto, and have also considered the submission of the learned counsel for the petitioners.

Observations of the Subordinate Courts:

On perusal of the judgment of the learned trial Court, which dismissed the suit by observing the following:

“বাদীর সাবেক ৪৮৯৫ দাগ হাল ১৬৫৫ দাগ পরিমিত হয়েছে এবং ওই বৃদ্ধি প্রাপ্ত ১০ শতক মালিকানা অন্য দাগ থেকে দ্রুত হয় নাই তা নির্ণয়ের জন্য কোন কাগজপত্র দাখিল করে নাই। বাদীর দাখিলী দাগ সূচীপত্র (এনেক্স-৫) থেকে দেখা যায় সাবেক ৪৮৯৫ দাগ হয়েছে। তাই বাদীর কথিত মতে ৪৮৯৫ দাগের জমি ১৬৫৫ দাগ তা প্রমাণিত নহে। উপরন্তু, নালিশী সাবেক খতিয়ানদ্বয়ের সম্পূর্ণ জমি মোকদমাভুক্ত করা ছাড়া এবং ইহা সঠিক পরিমাণ সম্পর্কে তথ্যসংগ্রহ ছাড়া ওই বৃদ্ধি প্রাপ্ত ১০ শতক জমির সঠিকতা নির্ণয়যোগ্য নহে। এহেতু উভয়পক্ষের সাক্ষ্যপ্রমাণ দ্বারা প্রমাণিত হয় যে, লক্ষীকান্ত ও মধু বিশ্বাসের ওয়ারিশদের বর্তমান বসতঘর একই বাড়িভুক্ত ও লাগোয়া, সেহেতু সাবেক ৪৮৯৩ দাগের জমি মোকদমাভুক্ত না করাতে অত্র মোকদমা পরিচালনযোগ্য নহে।”

On the other hand, the learned Appellate Court reversed the judgment and decree of the learned Trial Court and finally decreed the suit. Thereby, sifting the judgment of the learned Appellate Court, it is found that it made observations which are as follows:

“এদি লক্ষীকান্ত ৬ আনা অংশের রেকর্ড, তথাপি মধু ও পুষ্পের নামে রেকর্ড হওয়ায় পুষ্প জমি বিক্রয় করিয়াছে লক্ষীর নিকট, তথাপি লক্ষীকান্তের দলিল বিবাদীপক্ষ প্রমাণ করিতে পারে নাই। উক্ত দলিল বিশ্বাসযোগ্য নহে বলিয়া অত্র আদালত মনে করেন। --- বিজ্ঞ নিম্ন আদালত বাদীপক্ষের ৩ জন এবং দুই সেট বিবাদী পক্ষের মোট ৪ জন সাক্ষীর জবানবন্দী ও জেরা মোটেই আলোচনা করেন নাই। বিজ্ঞ নিম্ন আদালত বাদী এবং বিবাদীপক্ষের দাখিলী দলিলাদি জাল বানাইয়াছেন কিনা, এই মর্মে একটি মন্তব্যও করেন নাই বা বিবাদীর দাখিলী দলিলাদির বিষয় রায়ে আলোচনা করেন নাই।”

Findings:

Having examined the pleadings, evidence, judgments of both the Subordinate Courts and the submissions advanced by the learned Advocate for the petitioners, this Court finds that the principal controversy mingles upon the identity of the disputed 10 decimals, the proof of title and possession

thereof, and the legality of the appellate Court's reversal of the findings recorded by the trial Court.

The learned trial Court dismissed the suit upon detailed findings that the plaintiffs failed to establish, by any documentary evidence, that the alleged 10 decimals represented accreted land originating from former Plot No. 4895. It further held that the plaintiffs failed to produce any reliable document identifying the corresponding revisional plot or proving that the disputed land exclusively belonged to them. The trial Court also found that, in view of the admitted existence of adjoining homesteads belonging to the heirs of both Laxmi Kanta and Madu Biswas, the omission to include the relevant adjoining plots and all necessary co-sharers rendered the suit legally defective.

The appellate Court reversed the above findings mainly on the ground that the trial Court did not properly discuss the witnesses' evidence and failed to evaluate the documentary evidence produced by the parties. However, upon careful scrutiny of the impugned judgment, this Court finds that although the appellate Court criticized the trial Court for

inadequate discussion of the evidence, it itself failed to undertake the comprehensive reappraisal of evidence required of a final Court of fact.

It is judicially settled that the appellate Court occupies a unique position in the civil judicial hierarchy. Being the final Court of fact, it is under a legal obligation to independently assess the entire oral and documentary evidence, formulate the points for determination, evaluate each material exhibit and assign its own reasons for either affirming or reversing the findings of the trial Court. A mere criticism of the reasoning adopted by the trial Court does not satisfy the mandatory requirements of Order XLI Rule 31 of the Code of Civil Procedure, 1908.

The record further discloses that the plaintiffs themselves failed to specify with certainty the precise location and identity of the alleged 10 decimals. Even P.W.1, in cross-examination, could not identify the exact boundaries of the suit land. Likewise, P.W.2 admitted his inability to state how many persons possessed the disputed plot, while P.W.3 similarly failed to identify either the extent of the land or the

persons possessing it. Such admissions materially weaken the plaintiffs' case regarding identification and possession of the disputed property.

Conversely, the defendants' witnesses consistently asserted their possession over the suit land. D.W.1 specifically deposed regarding his possession, and no effective contradiction could be elicited during cross-examination. D.W.2 further corroborated the existence of four dwelling houses belonging to the defendants on the suit property. These material pieces of evidence received little or no consideration from the appellate Court.

This Court further finds that the appellate Court failed to properly appreciate **Exhibit-1**, namely the admitted deed dated 25.02.1907, which significantly supported the defendants' claim regarding Laxmi Kanta's title. Instead of examining the legal effect of this admitted document together with Exhibits "Ka" to "11(Thha)", the appellate Court discarded the defendants' evidence without assigning legally sustainable reasons.

The appellate Court also appears to have shifted the burden of proof upon the defendants by drawing adverse inferences from the absence of certain supporting documents, notwithstanding that the plaintiffs themselves had not discharged their primary burden of establishing title, possession and identity of the suit property. Such an approach is inconsistent with the settled principles governing the law of evidence.

Furthermore, where the plaintiffs seek only a declaration of title while the evidence on record indicates that the defendants are in actual possession of the disputed property through permanent dwelling houses, the omission to seek consequential relief assumes considerable legal significance. The appellate Court failed to advert to this material aspect while decreeing the suit.

In the considered opinion of this Court, the appellate Court approached the appeal as if exercising only supervisory jurisdiction over the trial Court, rather than independently acting as the final Court of fact. The impugned judgment of the learned Appellate Court thus suffers from misreading of

evidence, non-consideration of material exhibits, improper shifting of the burden of proof and failure to discharge the statutory duty imposed by Order XLI Rule 31 of the Code of Civil Procedure, 1908.

Decision:

Considering the aforementioned scenario and proposition of law, I am constrained to hold that the learned Additional District Judge committed substantial errors of law by reversing the judgment of the trial Court without independently analyzing the entire evidence and without properly considering the admitted documentary evidence and material admissions of the witnesses.

I am also of the view that the plaintiffs failed to establish the precise identity of the disputed 10 decimals, failed to prove exclusive title and possession over the suit property, and failed to seek consequential relief despite the defendants' established possession. The appellate Court also wrongly shifted the burden of proof upon the defendants before the plaintiffs had discharged their initial burden under the Evidence Act.

Consequently, the impugned appellate judgment was vitiated by **misreading of evidence, non-consideration of material documents, improper appreciation of oral testimony, violation of the mandatory requirements of Order XLI Rule 31 of the Code of Civil Procedure, and consequent miscarriage of justice.**

Accordingly, the Rule has merit and is therefore made **absolute** without any order as to costs.

However, the judgment and decree dated **19.02.1998** (decree drawn up thereunder and signed on 19.02.1998) passed by the learned Additional District Judge, Pirojpur in **Title Appeal No.74 of 1991** is hereby set aside, and the judgment and decree dated **17.02.1991** (decree drawn up thereunder and signed on **23.02.1991**) passed by the learned Assistant Judge, Nazirpur, Pirojpur, in Title Suit No.109 of 1986 dismissing the suit is restored.

The order of stay granted earlier by this Court is recalled and vacated.

Let the records be directed to be transmitted to the Court concerned along with a copy of this judgment forthwith.

(Abdur Rahman, J)