

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

Present

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No.120 of 2004**

Md. Shetaur Rahman

..... Petitioner..

Vs.

The Government of Bangladesh  
, represented by the Deputy Commissioner,  
Chapai Nawabganj and others

.....Opposite parties.

Mr. Tushar Kanti Roy with

Runa Iqbal, Advocates

..... For the petitioner.

Mr. Md. Jaber, A.A.G.

..... For the opposite parties.

**Heard on : The 14<sup>th</sup> and 28<sup>th</sup> May, and 11<sup>th</sup>, 19<sup>th</sup>  
June and 13<sup>th</sup> July, 2014**

**Judgment on :The 22<sup>nd</sup> July, 2014.**

The Rule issued in this Civil Revision under section 115(1) of the Code of Civil Procedure, 1908 (shortly the Code, 1908) is about sustainability of the judgment and order dated 22-07-2003 by which the learned Joint District Judge, Chapai Nawabganj dismissed Title Appeal No. 142 of 2001 and thereby affirmed the judgment of dismissal dated 16-10-2001 passed by the learned Senior Assistant Judge, Chapai Nawabganj in Other Class Suit No. 187 of 1997.

**Plaintiff's Case:**

The plaintiff claims that the original owner being the C.S. recorded tenant Panchu Halder sold the suit land to one Saad Imani Mondal by kabala dated 09-4-1946. Plaintiff's grand father Abdus Sattar purchased the suit land by kabala dated 21-04-1975 from the said Saad Imani Mondal and subsequently transferred the same to the plaintiff by a registered deed of heba-bil-ewaj dated 05-08-1997. Since before the said hiba-bil-ewaj, plaintiff with the

consent of his grandfather, has been running his business of motor repairing by constructing a garage on the suit land. But on 21-8-1997 the local Tahshilder refused to accept the rent from the plaintiff on the ground that the suit land is a khas land of the Government recorded in Khaktian No. 1. Hence the suit.

**Defendants' Case :**

The defendant No.1 being the Government of Bangladesh represented by the Deputy Commissioner, and No. 2 the Additional Deputy Commissioner (Revenue), Chapai Nawabganj have filed a joint written statement. They contend that the suit is not maintainable that it is barred by limitation and suffers from the defect of party.

The defendants deny plaintiffs title and possession as stated in the plaint. They claim that the suit land was the excess land of the C.S. recorded Zaminder and that it has been correctly recorded in the S.A. and R. S. khatian in the name of the Government. The local people have been running a school on the suit plot named Nawabganj Zilla School since 1996. However a portion of the plot measuring 3.02 decimal is a vacant land which is under process of lease to a private individual named Jarjis.

**The proceedings and decisions in the courts below**

The trial Court framed five issues, namely on (1) maintainability of the suit, (2) limitation, (3) defect of party, (4) title and possession of the plaintiff, and (5) the relief prayed for.

At the trial plaintiff produced oral and documentary evidence through four witnesses including an Advocate Commissioner (P.W. 4) who conducted local inspection. Plaintiff's documents have been marked as Exhibit-1-4.

The defendant also produced oral and documentary evidence through two witnesses, being a local Tohshildar (D.W.1) and the Head Master of Nawabganj Zilla School. (D.W.2). The documents filed by the defendants have been marked as Exhibit-A and B.

The trial Court decided issue Nos. 1-3 with regard to maintainability, limitation and defect of party in favor of the plaintiff. But the trial Court decided issue No. 4 against the plaintiff upon recording a finding that the plaintiff failed to prove his title and possession. Accordingly the trial court dismissed the suit.

In appeal preferred by the plaintiff the Appellate court concurred with the findings and decision of the trial court and accordingly dismissed the Appeal.

#### **Deliberation in Revision**

At the hearing, of this Revision, Mr. Tushar Kanti Roy, the learned Advocate for the plaintiff (petitioner), submits that the courts below failed to consider the material evidence on record about plaintiff's title and possession namely the original copy of the kabala dated 09-4-1946 (Exhibit-2) executed by the C.S. tenant Panchu Halder in favour of Saad Imani Mondaol and the original copy of kabala dated 21-04-1975 executed by the said purchaser Saad Imani Mondal in favour of plaintiff's grand father and the deed of Heba-bil-Ewaz dated 05-08-1997 Exhibit-2(a) executed by the grandfather in favour of the plaintiff.

Mr. Roy, the learned advocate next submits that the Government could not produce any documentary evidence to prove that suit land was the excess land of the Zemindar.

Mr. Roy, the learned advocate next submits that remaining part of the C.S. plot being 15 decimals have been recorded in various R.S. khatians in the names of four different persons and plaintiff has filed the certified copies of those documents in this Court, and therefore there is no legal or factual justification for recording the suit land measuring 12.19 decimals is part of the same C.S. plot in the name of the Government.

Mr. Roy the learned advocate lastly submits that possession of the plaintiff has been proved by the oral evidence of the local witnesses and also by the certified copy of the Rent Register and the municipal tax receipts filed in this Court.

In reply Mr. Jabber, the learned Assistant Attorney General (AAG) submits that the courts below recorded concurrent findings on the relevant questions of fact with regard to the title and possession and therefore no interference is necessary in this Revision.

Mr. Md. Jaber, the learned A.A.G next submits that the learned Advocate Commissioner, after local inspection, submitted his report Exhibit-3 (series) to the effect that there is a school on the suit plot and there is a garage in front of the said school and these two establishments are intervened by a canal and therefore plaintiff's possession over the suit land has not been proved.

Mr. Jaber, the learned AAG next submits that the total quantum of the land as recorded in the 4(four) R.S. khatians filed in this court is about 40 decimals which exceeds the total quantum of the original C.S. plot measuring 27 decimals and therefore the story presented by the plaintiff about the remaining 15 decimals of the suit plot is not at all credible. .

**Findings and decision in Revision:**

On perusal of the materials on record I find that the trial Court has considered the oral and documentary evidence on record except the purchase document of plaintiff's grand father being kabala dated 21-04-1975, on the ground that this document was available on record, but not produced in evidence.

The trial Court considered other evidence on record and recorded finding that plaintiff totally failed to prove his title and possession.

The appellate Court made independent assessment of the evidence on record, including the aforesaid kabala dated 21-04-1975 executed by Sad Imani Mandal being the purchaser from the C.S tenant in favour of plaintiff's grand father Abdus Sattar.

The appellate Court with reference to contents of the original kabala dated 09-04-1946 executed by C. S. tenant Panchu Haldar in favour of he said Saad Imani Mondal recorded a finding to the effect that the kabala is not a credible evidence. Because it

contains overwriting on the signature of the executant and there are clear marks of erasing and some writing with different ink. The appellate Court recorded a further finding that seal of the Sub-registry office was not as old as of 1946 but clearly indicates that it was recently affixed.

The appellate Court with reference to other evidence on record also found that the plaintiff failed to prove his possession.

I find no material no record to disagree with the concurrent findings of the courts below.

With regard to the amendment of the plaint and adducing additional evidence of some documents filed in this Court I have recorded my findings and rejected the two applications by separate order passed today. I have decided that the amendment sought for by the plaintiff (petitioner) and those documents will not help adjudicate the dispute. So further discussion on those documents are not necessary in this Judgment.

In view of the above I hold that this Rule has no merit and it is liable to be discharged.

In the result, the Rule is discharged.

No order as to costs.

Send down the lower court records and the copy of this judgment and order to the courts below.

The plaintiff may take back the Annexures by substituting attested photo copies thereof except the impugned Judgment order.

Habib/B.0