

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

Present :

Mr. Justice Dihider Masum Kabir

CIVIL REVISION NO.1493 OF 2005

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Ferdous Akther Chowdhury
..... Plaintiff-Appellant-Petitioner

- Versus –

Government of Bangladesh, represented by
Deputy Commissioner, Chittagong and others.
.....Defendants-Respondents- Opposite Parties

Mr. Md. Mosabbir Hasan Bhuiyan, Advocate
.....For the Petitioner

Ms. Shamima Sultana (Dipti), DAG with
Mr. Md. Golam Rajib, AAG with
Mr. Ashik Rubaiyet, AAG with
Ms. Sanjida Rahman, AAG with
Mr. Md. Humayun Hossain Tuheen, AAG

.....For the Opposite Party No.1

**Heard on 19.01.2026, 24.02.2026 &
Judgment on 05.03.2026**

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.01.2005 (decree signed on 18.01.2005) by learned Additional District Judge, 4th Court, Chittagong in other Appeal No.398 of 2001 affirming the

judgment and decree dated 01.08.2001 (decree signed on 08.08.2001) by learned Subordinate Judge, 3rd Court, Chittagong in Other Suit No. 157 of 1998 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may deem fit and proper.

The facts relevant for the disposal of this Rule, as set out in the civil revisional application, in short, are that the petitioner as plaintiff filed above suit for declaration of title alleging that the petitioner purchased 4.19 acres land vide Deed No.1802 executed by Badsha Miah on 01.05.1981 and registered on 02.05.1981 and had been possessing and enjoying above land without any hindrances by planting various trees. Furthermore, land revenue was consistently paid to the Government until 1990. RS and PS khatians were recorded in the name of the vendor Badsha Mia. But on 02.08.1998 local Tahsil Office refused to receive rent from the husband of the petitioner and disclosed that the land had been recorded in the name of Government in BS Khatian No.1.

Defendant No.1 contested the suit by filing a written statement denying plaintiff's claims and alleging that the suit land belongs to the Government and plaintiff has no title and possession and the same was rightly recorded in BS Khatian No.1 in the name of the defendant. The suit is barred by limitation. Consequently, defendants contend that the plaintiff is not entitled to any relief and that the suit is liable to be dismissed.

At trial, the plaintiff examined three witnesses (PW 1 to PW 3). In response, the defendant examined one witness (DW 1). Documents

produced and proved by the plaintiff were marked as Exhibits 1 to 7 and that of defendant was marked as Exhibit Ka.

Upon consideration of the facts, circumstances, and evidence on record, the learned Sub-Judge, 3rd Court, Chittagong dismissed above suit.

Being aggrieved by above judgment and decree, the plaintiff as appellant filed other Appeal No.398 of 2001 in the Court of the District Judge, Chittagong which was transferred to the Court of Additional District Judge, 4th Court, Chittagong who disallowed the appeal and thereby affirmed the judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below, the above appellant as petitioner moved to this Court and filed this Civil Revision and obtained this Rule.

Learned Advocate Mr. Md. Mosabbir Hasan Bhuiyan, appearing on behalf of the petitioner submits that the petitioner's title is rooted in registered Sale Deed No. 1802, dated 02.05.1981 from the recorded owner, Badsha Meah, whose name appears in both RS and PS khatians. The subsequent inclusion of the suit land in the BS khas khatian was a procedural error during the survey and does not supersede a valid deed of title. Mere erroneous entry in the record of right shall not create any right and title over any property without any corroborative evidence and materials. This proposition of law gets support from the view taken by the Appellate Division in the case reported in 28 DLR (AD) 61. The Government has consistently accepted land development tax from the petitioner and issued *Dakhilas* (rent receipts). By accepting these

payments, the Government has legally acknowledged the petitioner as a *Rayat* (tenant/owner) and subsequently the Government cannot claim the suit land as *khas*. The learned Courts below committed a grave error by treating the BS khatian as conclusive evidence of title and possession. Petitioner proved peaceful possession since 1981 through oral and documentary evidence. A "Record-of-Rights" creates a presumption of possession but does not extinguish a valid title or possession. He further submits that the Court of appeal below erred in finding that the vendor, Badsha Meah, was not the owner of BS Plot No. 2626. The Court failed to appreciate that BS Plot No. 2626 is the direct sub-division/correlation of the original RS Plot No.1705 which was lawfully owned and possessed by the vendor. He finally submits that both the trial Court and the Court of appeal below failed to consider above material facts and the law regarding the State Acquisition and Tenancy Act which resulted in a gross miscarriage of justice and the impugned judgment and decree of the Court of appeal below is not tenable in law.

On the other hand, the learned Deputy Attorney General Ms. Shamima Sultana (Dipti) on behalf of the opposite party No. 1 submits that the plaintiff-petitioner claims title based on BS Khatian No. 1. However, registered Deed No. 1802 dated 02.05.1981 shows that she purchased land from BS Khatian No. 1547. Therefore, the petitioner's claim over Khatian No. 1 is legally inconsistent and unsubstantiated. Moreover, RS Khatian No.887, Plot No.1705 was recorded in the name of Khash mohal, Sadar, Bharat Samrat, nature of land-Tila, land area

8.37 acres. She also submits that the dakhilas produced (Exhibits 4, 4-ka, and 4-kha) indicate payments of rent for 1983, 1984, and 1990 based on the PS khatian and in the name of Badsha Meah. Since the BS record was finalized in 1986, these payments do not validate the petitioner's claim under the new BS survey. Consequently, the assertion of proper rent payment under the current record is not true. She finally submits that the petitioner's purchased deed dated 02.05.1981 specifically mentions the BS khatian and plot number. This proves that the petitioner was aware of the alleged "wrong record" since the date of purchase. As above suit was not filed until 1998, within the statutory period prescribed by the Limitation Act, 1908, above suit was barred by law. As such, the Rule is liable to be discharged.

I have considered the submissions of the learned Advocate appeared on behalf the petitioner and the learned Deputy Attorney General appeared on behalf of the opposite party No. 1 (Government) and carefully examined the impugned judgment and decree passed by the learned Additional District Judge, 4th Court, Chittagong as well as all other materials on record.

In the plaint column No. 2, the plaintiff claimed that RS Plot No. 1705 consists of 837 decimals of land Badsha Miah Chowdhury and Haji Mofzal Miah Chowdhury both sons of Karim Box were the owners from that Badsha Miah Chowdhury 419 decimals and Mofzal Miah Chowdhury 418 decimals.

From the above averments it was not clear that how did Badsha Miah Chowdhury & Mofzal Miah Chowdhury get their respective shares

because the word was “তাহা হইতে” it may be from 837 decimals or from Karim Box as legal heirs. It was a great ambiguity and both the lower Courts had no finding upon this word. If I think, from 837 decimal of RS Plot No.1705, that means RS Plot No.1705 was in their names. The learned Deputy Attorney General submits that RS Khatian No.887 shows Plot No.1705 is recorded in the name of খাসমহাল, সদর, ভারত সম্রাট, nature of land-Tila, land area 8.37 acres. There was no mention as to how above land was acquired by Badsha Miah Chowdhury and Haji Mofzal Miah Chowdhury.

The learned Advocate for the petitioner strenuously submits that Badsha Miah acquired the land by way of settlement on which the RS khatian of above property was rightly recorded in the name of Badsha Miah predecessor of the plaintiff. But the Khatian No.1358/28 marked as exhibit No.7 shows that the same was not RS khatian or certified copy of that one. Above khatian appears to be a Mutation khatian which has not been explained either in the plaint or in the evidence of PW 1. Since some documents filed by the plaintiff appears to be marked as exhibits- 2, 2(ka), 5,7 and 6 (series)}

Badsha Miah obtained settlement from the Government but no such claim has been made in the plaint by the plaintiff and PW 1 also did not make any claim in his evidence that Badsha Miah obtained settlement.

Due to lack of proper skill and knowledge of the learned Advocate for the petitioner above facts and above settlement of Badsha Miah was not incorporated in the plaint nor was any evidence adduced to

substantiate any such claim. Learned Advocate for the petitioner claims that the petitioner was in peaceful possession of above land purchased by Deed No.1802 dated 02.05.1981. The law abiding and innocent plaintiff should not be suffered due to error of his appointing advocate. In the case of People's Republic of Bangladesh represented by the Deputy Commissioner, Gazipur and others -vs- Md. Idris Ali and others reported in 28 BLC(AD)(2023) 191 and many other cases support above position.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded back to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleading and adduce further evidence if any.

In above view of the facts and circumstances of the case and materials on record I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 12.01.2005 passed by the learned Additional District Judge, 4th Court, Chittagong in other Appeal No.398 of 2001 affirming the judgment and decree dated 01.08.2001 passed by learned Subordinate Judge, 3rd Court, Chittagong in Other Suit No.157 of 1998 is hereby set aside. Above suit is remanded back to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence if any. The learned judge of the trial Court is directed to

conclude retrial of the suit expeditiously within a period of 6 (six) months from the date of receipt of this judgment.

However, there is no order as to costs.

Let a copy of this judgment, along with the Lower Court Records(LCR), be sent to the concerned Court immediately.