

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No.3490 of 2005**

Abdus Samad and others

... Petitioners

-Versus-

Jarina Khatoon being dead her legal heirs;

1(a) Mohammad Farid and others

...Opposite-parties

Mr. Abdul Momen Chowdhury, Advocates

...For the petitioners

Mr. Farid Uddin Khan with

Mr. G.M. Mamunur Rashid and

Mr. Gazi Rakibur Rahman, Advocates

...For the opposite-party No.1.

**Judgment on 26<sup>th</sup> August, 2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 24.03.2005 passed by the learned Joint District Judge, Patiya, Chattogram in Other Appeal No.135 of 2004 disallowing the same and thereby affirming the judgment and decree dated 16.03.2004 passed by the learned Assistant Judge, Lohagara, Chattogram in Other Suit No.135 of 1995 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party No.1, as plaintiff, filed Other Suit No.135 of 1995 in the Court of Assistant Judge, Lohagara, Chattogram for establishment of title, confirmation of possession and in the alternative recovery of khas possession of the suit land, stating that the schedule land belonged to Nazar Ali, accordingly, R.S. record of right stands recorded in his name. Nazar Ali died leaving daughter Sayeda Khatoon. Sayeda Khatoon died leaving the plaintiff-opposite party. Uzir Ali's name was wrongly recorded in the remarks column of R.S. khatian who had no title in the suit land. Nazar Ali had not sold the suit land to Uzir Ali. The defendants are encouraged by the erroneous R.S. khatian and are trying to invade the plaintiffs title and possession claiming title in the suit property acquired by purchase by their predecessor Uzir Ali, on the basis of a created sale deed, hence, the present suit.

The defendant Nos.2-7 contested the suit by filing written statement denying the material allegations of the plaint and inter-alia, contending that Nazar Ali sold 55 decimals of land in 1916 to Uzir Ali and placed him in possession, R.S. khatian accordingly,

reflected the sale by Nazar Ali in favour of Uzir Ali and his name was correctly recorded in the remark column of R.S. khatian. Again Nazar Ali sold 40 decimals land (non disputed) on 02.06.1922 to Uzir Ali. Nazar Ali again sold 40 decimals land on 21.04.1927 (not disputed) to Uzir Ali. Nazir Ali's daughter Syeda Khatoon inherited rest portion of land. Sayeda Khatoon sold 60 decimals land (non disputed) on 27.01.1944 to Abdur Rahman, Amir Ali and Nur Ahmed. Uzir Ali died leaving defendant No.1 and Nur Ahmed. Nur Ahmed died leaving defendant Nos.2-7. The defendants have been possessing the land over the period of limitation. P.S. and B.S. khatians are correctly recorded in the name of the defendants and they are paying rents to the government regularly. The plaintiffs have become financially rich and claimed the suit land.

The trial court framed 3(three) issues for determination of the dispute. In course of hearing, the plaintiffs examined 4 witnesses as P.Ws and the defendants examined 2 witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after

hearing by its judgment and decree dated 16.03.2004 decreed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendants preferred Other Appeal No. 135 of 2004 before the learned District Judge, Chattogram which was transferred to the Court of learned Joint District Judge, Patiya, Chattogram for hearing and disposal who after hearing by the impugned judgment and decree dated 24.03.2004 disallowed the appeal affirming the judgment and decree passed by the trial court. At this juncture, the petitioners, moved this Court by filing this revision and obtained the present Rule and order of stay.

Mr. Abdul Momen Chowdhury, learned Advocate appearing for the petitioners at the very outset submits that admittedly suit property belonged to one Nazar Ali who sold the same to Uzir Ali by a registered Sale Deed No.186 dated 19.01.1916, accordingly in the remark column of R.S. khatian name of Uzir Ali recorded as purchaser. He submits that Uzir Ali also purchased the non-suited property covered by Plot No.3394 by other deeds. He submits that the defendants filed original sale deed before the trial court as

Exhibit-Ka which is a registered deed of more than 30 years old not required to be formally proved by adducing witness. The trial court disbelieved the document observing that the deed in question having different dates of execution, presentation for registration and date of registration. Moreover, by calling a patta of the year 1916 held that there was no existence of such document in the registration office, as such, committed illegality and error of law in the decision occasioning failure of justice.

He finally submits that right from R.S. record then S.A. and B.S. records stand recorded in the name of Uzir Ali and then his heirs who paid rents to the government and have been possessing the same with the knowledge of the plaintiff. The plaintiff could not submit any paper or documents showing payment of rents or any record of right in their names, as such, the Rule is liable to be made absolute by setting aside the judgment and decree of both the courts below.

Mr. Farid Uddin Khan, learned Advocate appearing for the opposite-party No.1 submits that admittedly the property covered by R. S. Plot No.3998 measuring 45 sataks originally belonged to

Nazar Ali. But in the remark column it has been wrongly noted that the property was purchased by Uzir Ali and on the basis of said wrong record of right, subsequent S. A. record and B.S. record stands recorded in the name of Uzir Ali. Nazar Ali did not sell any property of Plot No.3998 to Uzir Ali, but other Plot No.3994 was sold to him. The defendants claimed that Uzir Ali purchased the property covered by Plot Nos.3998 and 3995 from Nazar Ali by a registered Sale Deed No.186 dated 19.01.1916 and on the basis of purchase, in the remark column of R. S. khatian, name of Uzir Ali has been mentioned as purchaser. Because of such situation the plaintiff by filing application before the trial court called for the volume of the said Sale Deed No.186 of the year 1916. Concerned Sub-registry Office sent the volume of the year 1916 containing Deed No.186. From the volume, it has been proved that Deed No.186 is dated 20.01.1916 and that deed is a patta deed executed by one Jogendra Lal Chowdhury in favour of Abdul Karim relating to properties other than the suit property. Contrary to the said deed or volume, the defendants could not produce any other deed in

support of their claim that Nazar Ali executed any sale deed in favour of Uzir Ali on 19.01.1916.

He submits that the trial court as well as the appellate court concurrently found that on an old stamp the defendants created the sale deed showing purchase of the land from Nazar Ali which is from the face of it shows that it was executed in the month of August, 1916, presented for registration on 19.07.1916 and it was registered on 19.01.1916 and as such, there is serious anomalies in the date of execution, presentation for registration and date of registration. Moreover, in the volume mentioned in the deed there exist no such document, consequently, both the courts below concurrently observed that this is a forged document created by the defendants only to establish wrong remark in the R.S. khatian and as such, the Rule is liable to be discharged.

Heard the learned Advocates of both the sides, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Both the parties admitted that the suit property under R.S. Khatian No.1479, Plot Nos.3998 along with 3994 and 3995 belonged to Nazar Ali as recorded in R.S. khatian. The plaintiff claimed that in the remark column of R.S. Khatian name of Uzir Ali has been mentioned as purchaser wrongly and on the basis of wrong remark column, subsequent S. A. Khatian No.1630 and B.S. Khatian No.3324 stand recorded in the name of heirs of Uzir Ali. The plaintiff asserted that Nazar Ali and his daughter transferred the property under Plot No.3994 to Uzir Ali and others, but did not sell any property under Plot Nos.3998 and 3995. Taking advantage of purchase of Plot No.3994, Uzir Ali got his name recorded in the remark column as purchaser of all the 3 plots. In fact, Nazar Ali transferred only Plot No.3994. On the basis of R.S. khatian subsequent S.A. and B.S. khatian wrongly recorded in the name of heirs of Uzir Ali, but they never possessed the suit land. Heirs of Nazar Ali right from R.S. record till today has been possessing the suit land with the knowledge of the defendants and D.W.1 in his cross-examination admitted that plaintiffs are in possession of the suit plot. The sheet anchor of the defendants is the Deed No.186



dated 19.01.1916 by which it is alleged that Nazar Ali sold the suit property to Uzir Ali covered by Plot Nos.3998 and 3995. Because of claiming the property by purchase the plaintiff by filing application before the trial court called for the Volume No.12, Book No.1, Page Nos.19 and 20, Deed No.186 dated 19.01.1916 from the Sub-registry Office of Satkania and Sub-registry Office, Sadar, Chattogram. One Md. Moslem Ahmed, Lower Division Clerk, Sub-registry Office, Sadar brought the volume to the trial court and deposed that in Volume No.12 of the year 1916 existence of Deed No.186 is not found. One Mostafa Kamal as P.W.4 Moharar, Sub-registry Office, Sadar, Record Room, appeared before the trial court with Volume No.3 in the year 1916 in which a registered Patta Deed No.20.01.1916 at Page Nos.154-156 was written, duly executed by one Jogendra Lal Chowdhury representing Aparna Charan Chowdhury in favour of Abdul Karim. In both the Sub-registry Offices namely Satkania and Sadar, Sub-registry existence of Sale Deed No.186 dated 19.01.1916 has not been found.

In the absence of said deed in the concerned volume, both the courts below examined the Sale Deed No.186 dated 19.01.1916, whether Nazar Ali at all executed the said deed in favour of Uzir Ali transferring the suit property covered by Plot Nos.3998 and 3995 along with non-suited property. Both the courts below after examination of the deed found that the deed was executed in the month of August, 1916, presented for registration on 19.07.1916 and the deed was registered on 19.01.1916, meaning thereby, the deed was registered 8 months before its execution and 7 months before its presentation for registration. Moreover, last 3 lines of schedule has been written by erasing original writing. Thumb impression on the deed and back side of the deed are seems to be illegible and endorsement on the back side has been written by erasing name and address of another person in whose name the stamp was purchased.

From the face of the sale deed Exhibit-Ka, it appears that, to establish wrong remark in the R.S. khatian, the defendants created the said deed on an old stamp showing the same registered with the Registry Office.

Apart from this number of the deed 186 has been written with Ballpen (বলপেন) by erasing another number. Though in the remark column of R.S. khatian name of the Uzir Ali has been mentioned as purchaser and subsequent S.A. and B.S. khatians stand recorded in the name of Uzir Ali, in fact, the suit property covered by Plot No.3998 was not sold by Nazar Ali to Uzir Ali or to any other person, as such, on the wrong record of right, the defendants acquired no title in the property and admittedly the suit property is still in the possession of the plaintiff. The trial court as well as the appellate court rightly found title and possession of the plaintiff in the suit land and rightly held that the defendants only to substantiate their illegal claim of purchase created the Sale Deed No.186 dated 19.01.1916 for the purpose of present suit and to give support of wrong writing in the remark column of R.S. khatian.

In view of the above, I find nothing illegal in the judgment of the trial court and error in the judgment of the appellate court occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference by this Court.

In the result, the Rule is discharged with costs.

The order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.