

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.701 OF 1997

In the matter of:

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

And

Kalachand Deb Nath and others

... Petitioners

-Versus-

Swarna Lakshmi Debi and others

... Opposite parties

Mr. Purobi Saha, Advocate

... For the petitioners.

Mr. Md. Saifur RAhman, Advocate

....For the opposite party Nos.4-6.

Heard on 07.07.2025, 17.07.2025 and 18.08.2025.

Judgment on 19.08.2025.

This Rule was issued calling upon the opposite party Nos.4-6 to show cause as to why the impugned judgment and decree dated 12.03.1995 passed by the learned Sub-ordinate Judge, 1st Court, Jhalokati in Title Appeal No.32 of 1990 affirming the judgment and decree dated 30.11.1989 passed by the learned Senior Assistant Judge, Jhalokati in Title Suit No.325 of 1980 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 in short are that the petitioners as plaintiffs instituted above suit for declaration of title by adverse possession for 0.014 $\frac{1}{4}$

sahassranso land appertaining to Plot No.1804 of S.A. Khatian No.827 alleging that 43 sahasranso land including above land belonged to defendant Nos.1 and 2 who left this country for good after 1965 Pakistan India war abandoning above land. Plaintiff started possessioning above land adversely against defendant Nos.1 and 2 since 15 Poush 1374 B.S. by erecting a dwelling hut, a kitchen, a toilet and a tailoring shop by paying taxes to the Jhalokati Municipality for more than 12 years and thereby acquired valid title by adverse possession. The local Tahashilder having refused to receive rent the plaintiff filed above suit.

Defendant Nos.4-6 contested above suit by filing a joint written statement alleging that defendant Nos.1 and 2 were owners and possessors of 43 sahasrangso land of S. A. Khatian No.7-8 and they transferred $28\frac{1}{2}$ sahasrangso land to Debendra Kundu by registered kabla deed dated 22.09.1960 and defendant No.4-6 acquired $0.014\frac{1}{2}$ sahasrangso land of Plot No.1804 and 1808 of above khatian by purchase from Debendra Nath Kundu and by decree of Title Suit No.325 of 80 and Kabla deed from the transferees of above Debendra Nath Kundu. In 1971 plaintiff being as a helpless poor person obtained permission of above defendants to live in the above land as a licensee. Plaintiff does not have any lawful title and possession in above land.

At trial plaintiffs examined 5 witnesses and defendants examined 2. Plaintiffs did not produce and prove any document. The

documents of defendant Nos.4-6 were marked as Exhibit Nos."A" to "D" series.

On consideration of the facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed above suit holding that the plaintiff's possession in above land being beyond the knowledge of defendant Nos.1 and 2 above possession did not constitute title by adverse possession.

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Title Appeal No.11 of 1989 to the District Judge, Jhalokati which was heard by the learned Sub-ordinate Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court holding that the possession of the plaintiffs was proved but above land being vested and nonresident property of the Government above possession did not create title by adverse possession.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Ms. Purobi Saha, learned Advocate for the petitioners submits that admittedly defendant Nos.1 and 2 were the rightful owners and possessors of 43 sahasrangso land appertaining to Plot Nos.1804 and 1808 of S. A. Khatian Nos.827 and they transferred $28\frac{1}{2}$ sahasrangso land to Debendra Nath Kundu predecessor of defendant Nos.4-6 and

left this country abandoning $14\frac{1}{2}$ sahasrangso land. Plaintiff does not claim title and possession in the land of defendant No.4-6 which they acquired by purchase from Debendra Kundu and his transferees. Similarly defendant Nos.3-4 did not have any claim of title in disputed $0.014\frac{1}{4}$ sahasrangso land. Plaintiff claim's title by adverse possession in above $0.014\frac{1}{4}$ sahasrangso land is against defendant Nos.1 and 2 who did not contest above suit. Plaintiff himself gave evidence as PW1 and reiterated his claim of uninterrupted, continuous and peaceful possession in above land since 15 Poush 1374 B. S. by constructing dwelling huts and tailoring shop. Above possession of the plaintiff has been admitted by the defendant Nos.4-6 in their written statement and evidence of DW1. Above land has not been enlisted as enemy property or vested and nonresident property. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal should have allowed above appeal and decreed the suit. But the learned Additional District Judge most illegally dismissed above appeal and affirmed the unlawful judgment of the trial Court on erroneous perception of facts and law which is not tenable in law.

On the other hand Mr. Md. Saifur Rahman, learned Advocate for opposite party Nos.4-6 submits that the petitioners are in possession of $14\frac{1}{3}$ sahasrangso land of Plot No.1808 which is in fact the land of

defendant Nos.4-6 who purchased above land from Debendra Nath Kundu and his transferees by a registered kabla deed and decree of Title Suit No.325 of 80. Plaintiff entered into possession of disputed land on permission of the defendants in 1971 and started residing there as a licensee. As such above possession of the plaintiff was not adverse against defendant Nos.1 and 2 and above possession did not mature into valid title by adverse possession. On correct appreciation of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal below rightly dismissed above appeal and affirmed the lawful judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that 43 sahasrangso land of Plot Nos.1804 and 1808 of S.A. Khatian No.827 belonged to defendant Nos.1 and 2 and they transferred 28 sahasrangso land to Debendra Nath Kundu and defendant Nos.4-6 acquired above $28\frac{1}{2}$ sahasrangso land from above Debendra Nath Kundu by two registered kabla deed and by execution of decree of Title Suit No.378 of 1979, a suit for specific performance of contract. On the other hand plaintiff claims title by adverse possession in $14\frac{1}{2}$ sahasrangso land of Plot No.1804 against defendant Nos.1 and 2. Plaintiff does not claim title or possession in any land owned by defendant Nos.4-6.

Learned Advocate for the opposite parties submits that disputed $14\frac{1}{2}$ sahasrangso land of Plot No.1804 is in possession of defendant Nos.4-6 and not in possession of the plaintiff. Above submission of the learned Advocate for the opposite party is beyond pleadings and not based on evidence on record. The nature, character and quantity of disputed $14\frac{1}{2}$ sahasrangso land and plaintiff's possession in above land all are admitted by the defendant Nos.4-6 both in their written statement and evidence of defendant No.6 who gave evidence as DW1.

It has been admitted in the written statement that in disputed $14\frac{1}{2}$ sahasrangso land there are dwelling huts and a tailoring shop and the plaintiff as a licensee of defendant Nos.4-6 is possessing of above land since 1971. Since the defendant has admitted the nature and character of above land and the possession of the plaintiff the onus shifted upon the above defendants to prove that the plaintiff is residing in above home and running tailoring business in above land as a licensee of defendant Nos.4-6.

Plaintiff himself gave evidence as PW1 and reiterated all claims and allegations as set out in the plaint. It was alleged that he entered into the vacant disputed $14\frac{1}{2}$ sahasrangso land of defendant Nos.1 and 2 on 15 Poush 1314 B.S. and erected dwelling huts and started living alongwith his brother and started tailoring business and his

continuous, uninterrupted and peaceful possession has matured into valid title by adverse possession against defendant Nos.1 and 2. He denied that he was a tenant of the defendant Nos.4-6 or he entered into possession of above land on the permission of defendant Nos.4-6. Above witness was cross examined by the defendant but above witness was not given any suggestion that he was in possession in above property as a licensee of the defendants. PW1 denied in cross examination that he was a tenant under the predecessors of defendant Nos.4-6. PW2 Ratan, PW3 Gopal, PW4 Kader and PW5 Jibon have stated in their respective evidence that disputed land belonged to defendant Nos.1 and 2 and plaintiff is in possession in above land continuously and peacefully for more than 20 years. Above witnesses were cross examined by defendant No.4-6 but their evidence remained consistent, unshaken and credence inspiring.

DW6 gave evidence as DW1 and stated that defendant Nos.1 and 2 were owners and possessors of 43 sahasrangso land of above khatian and they transferred $28\frac{1}{2}$ sahasrangso land to Debendra Nath Kundu and $14\frac{1}{2}$ sahasrangso land remained in their possession. By purchase by registered kabla deed and execution of decree of Title Suit No.378 of 1979 they acquired $28\frac{1}{2}$ sahasrangso land. As to the possession of the plaintiff in disputed land DW1 stated that plaintiff

was their tenant for above property but he did not pay rent on various pretexts and filed this false case.

As mentioned above in the written statement defendant Nos.4-6 claimed that plaintiff entered into possession of above land in 1971 as their licensee and they gave him permission to reside in above land on humanitarian consideration. But DW1 has and claimed that the plaintiffs was their tenant. The defendants could not produce any evidence oral or documentary to substantiate above claim.

In view of above facts and circumstance of the case and evidence on record I hold that the plaintiff has succeeded to prove beyond reasonable doubt that defendant Nos.1 and 2 were the owners and possessors of disputed $14\frac{1}{2}$ sahasrangso land and the plaintiff entered into above vacant and abandoned land unlawfully on 15 Poush 1374 B.S. and erected dwelling hut and a tailoring shop and above continuous, uninterpted and peaceful possession of the plaintiff claiming to be the rightful owner of above land against defendant Nos.1 and 2 matured into valid title by adverse possession.

The learned Judge of the Court of Appeal below rightly found that plaintiff is in possession in above land but erroneously held that above property is vested and nonresident property out of blue which is not tenable in law.

In above view of the facts and circumstances of the case and evidence on record I find substance in this Civil Revisional

Application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute. The impugned judgment and decree dated 12.03.1995 passed by the learned Subordinate Judge, 1st Court, Jhalokati in Title Appeal No.32 of 1990 affirming the judgment and decree dated 30.11.1989 passed by the learned Senior Assistant Judge, Jhalokati in Title Suit No.325 of 1980 is set aside and above suit is decreed on contest against defendant Nos.4-6 and ex-parte against the rest without any cost. Plaintiff title in disputed $0.04\frac{1}{2}$ sahasrangsa land is hereby declared.

However, there will be no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER