

District- Jessore.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1843 of 2000.

Md. Rafiqul Islam and others.

----- Plaintiff-Respondent-Petitioners.

-Versus-

Md. Shamser Ali and others.

----- Defendant-Appellant-Opposite Parties.

Mr. Md. Amir Hossain, Advocate

----- For the Plaintiff-Respondent-Petitioner.

No one appears.

----- For the Defendant-Appellant-Opposite Parties.

Heard On: 28.08.2025, 31.08.2025.

And

Judgment Delivered On: 01st Day of September 2025.

Md. Toufiq Inam, J.:

By issuance of this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 10.04.2000 and 13.04.2000 respectively passed by the learned District Judge, Third Court, Jashore in Title Appeal No. 113 of 1998, reversing the judgment and decree dated 31.08.1998 and 07.09.1998 passed by the learned Assistant Judge, Chougacha, Jessore in Title Suit No. 56 of 1997, should not be set aside and/or such other order or orders be passed as to this Court may seem fit and proper.

The plaintiffs' case, in substance, is that the suit plot No. 315, comprising 1.83 acres, originally belonged to one Gorai Biswas. By a registered kabala dated 22.06.1964 Gorai conveyed 66 decimals from the northern portion to plaintiffs Nos. 2 and 3 and to Haider Ali, inducting them into possession. Thereafter Gorai sold further portions to plaintiff No. 2- 16 decimals by kabala dated 13.12.1967 (adjacent to the earlier transfer) and 16.5 decimals by kabala dated 19.05.1969- again inducting him into possession. Separately, Gorai conveyed 33 decimals by kabala dated 15.06.1967 to one Ledu Mollah, who subsequently sold the same to Behula Dashi by kabala dated 08.01.1973; Behula Dashi in turn transferred that 33-decimal portion to plaintiff No. 1 by kabala dated 29.03.1974. Thus plaintiffs Nos. 1–3 and Haider Ali collectively acquired and possessed 1.32 acres from the northern portion of Plot No. 315, the claim being that this excludes a passage/road running along the western boundary from north to south. The purchasers mutated their names in the revenue records (Mutation Case No. 462/IX-1/88-89), regularly paid rent and obtained dakhilas. On the death of Haider Ali, plaintiffs Nos. 4 and 5, his father and mother, succeeded to his share. Subsequently plaintiffs Nos. 2 and 3 sold a significant southern portion of their holding (approximately 75–77 decimals) to Prof. Abul Kashem, Md. Kamruzzaman, Benoy Shaha and Shachin Saha. The plaintiffs contend that they have been in peaceful and continuous possession of the northern portion for over thirty years, that the defendants have no title or possession therein,

and that the defendants threatened forcible dispossession, circumstances which gave rise to the suit for injunction.

The defendants contested the plaint by filing a written statement, denying material averments and, inter alia, raising the objection that the suit is not maintainable in its present form. The defence case is that while Gorai Biswas admittedly owned 1.83 acres and transferred portions to various persons, he retained 18 decimals which he enjoyed and possessed until his death. The defendants claim to be his heirs and assert that they have since been possessing the northern portion of the residual 18 decimals. They therefore contend that the plaintiffs have no right, title or possession over the disputed 18 decimals and are not entitled to the reliefs claimed in the suit.

On consideration of the pleadings, oral testimony and documentary evidence produced by the parties, the learned trial Court concluded in favour of the plaintiffs. The trial Court placed weight on the registered kabalas, the khatian produced by the plaintiffs, the mutation and rent receipts evidencing continuous payment to Government, and the depositions of P.Ws. 1–5 who consistently stated that the plaintiffs had been cultivating and possessing the suit land. Particular reliance was placed on the Advocate-Commissioner's report which confirmed that the suit land corresponded with the plaintiffs' plaint boundaries and

was found to be within their possession. The trial Court found the defence evidence to be weak and inconsistent: the defendants failed to produce any registered deed or khatian in their favour, the testimony of DW-1 and DW-2 appeared self-serving and uncorroborated, and the challenge to the rent receipts was not supported by any official verification or proof of fabrication. On that basis the trial Court held that the plaintiffs had better title and possession and decreed the suit.

The appellate Court took a different view. It noted that it was not disputed that Gorai Biswas originally owned 1.83 acres and that, between 1964 and 1969, he transferred 1.32 acres to the plaintiffs and 33 decimals to a third party, leaving 18 decimals with himself and, after his death, with his heirs (the defendants). The appellate Court observed that the plaintiffs' assertion that Gorai had abandoned the road-portion was unsupported by documents: neither the S.A. khatian (Exhibit 6) nor the sale deeds (Exhibits 1–5) expressly mention or exclude a road, and therefore an express exclusion of any passage does not appear on the face of the deeds. The 1964 deed transferred 66 decimals from the northern end without any express reservation of a passage; subsequent deeds conveyed portions which, on their face, were taken from the southern side. On that footing the appellate Court regarded the defendants' account that the road/passage developed only after the Liberation War, in connection with the establishment of a college and a brickfield, as a plausible explanation.

The appellate Court further observed that the plaintiffs themselves had admitted selling a large portion of their purchase (approximately 75–77 decimals) and were now claiming only 57 decimals “excluding the road”. The appellate Court considered such an exclusion to be vague and inconsistent with the textual terms of the deeds and recorded that PW- 4, on cross-examination, admitted that the passage lies within the land originally purchased by the plaintiffs; on that basis the appellate Court held that the plaintiffs had failed to prove exclusive possession of 57 decimals or to establish that the defendants had no rights in the disputed portion.

The appellate Court, however, reversed the decree. Aggrieved by that reversal, the plaintiffs as petitioners invoked the revisional jurisdiction of this Court under section 115(1) CPC and obtained the present Rule.

Mr. Md. Amir Hossain, learned Counsel for the petitioner submits that the appellate Court committed errors of law by reversing the well-reasoned trial decree without applying the correct legal test for injunction, by failing to dislodge the trial Court’s specific findings with cogent reasons, by misreading documentary evidence (deeds, khatian, mutation, rent receipts), by wrongly shifting the burden of proof, and by not fully complying with the requirements of Order XLI Rule 31 CPC.

Mr. Hossain further contends that the plaintiffs have been in peaceful possession of the purchased land since 1964, and that the 18 decimals now said to be a passage were abandoned by Gorai Biswas during his lifetime in the presence of local elites. It is urged that the defendants, who have no subsisting right or possession, attempted forcible dispossession and that the appellate Court erred in disbelieving the plaintiffs' evidence and in misreading the sale deeds. Counsel also points out that in the revenue/B.S. record the disputed 18 decimals had been recorded as the 'road'.

It is also to be noted that following the demise of the engaged counsel for the opposite parties, notice under Form N-10 was issued in 2022 but no one appeared to oppose the Rule. As this matter has been placed before this Court by administrative direction of the Hon'ble Chief Justice, the Court proceeds to determine the controversy on its merits.

The case pleaded by the opposite parties is, in brief, that the plaintiffs have failed to prove exclusive title or possession; that the western passage never formed part of the plaintiffs' purchase; that the plaintiffs' schedule is vague; and that, since 18 decimals remained with the vendor, the possibility of the defendants' co-sharership cannot be excluded.

Upon a careful re-examination of the materials on record, the following legal infirmities in the appellate judgment become apparent:

Possession and Injunction Law

It is a settled principle that possession, once established, is protected by law even against the true owner unless dispossession is through due process. The possession is itself a substantive right, and a person in settled possession cannot be dispossessed otherwise than in accordance with law. Even a co-sharer cannot forcibly dispossess another; his remedy lies in partition. The trial Court applied this principle correctly, but the appellate Court misdirected itself by demanding proof of exclusive title instead of lawful possession.

Misreading and Non-Consideration of Evidence

The plaintiffs produced registered kabalas (Exhs. 1–5), khatian (Exh. 6), mutation records, and rent receipts (Exh. 7), corroborated by oral testimony of PW-1 to PW-5 and the Advocate Commissioner’s report. The appellate Court misread this evidence. Non-consideration of material evidence and misreading of documents amounts to an error of law revisable under section 115 CPC. The omission of the word “road” in the deeds of the 1960s cannot defeat continuous possession corroborated by revenue and boundary records.

Burden of Proof

Once the plaintiffs produced registered deeds and revenue records showing possession, the burden shifted to the defendants to prove a superior right. The burden lies upon the party who asserts subsisting title; mere denial is insufficient. Here, the defendants produced no registered deed, no khatian, and no rent receipt. Their claim is entirely unsubstantiated.

Order XLI Rule 31 CPC Compliance

Though the appellate Court framed points of determination, it failed to discharge its duty under Order XLI Rule 31 CPC. It is the settled position that an appellate judgment must engage with the trial Court's findings and record cogent reasons; mere conclusions are not compliance. It was emphasized by our apex court that perfunctory reversal of a trial decree amounts to a jurisdictional error. The appellate Court's judgment suffers from this fatal defect.

Abandonment of Residual Land

It is undisputed that Gorai Biswas owned 1.83 acres and transferred 1.65 acres between 1964–1969, leaving 18 decimals. Unchallenged evidence shows that Gorai abandoned the residual land as a passage in presence of local elites, never reasserting possession. Abandonment

can be inferred from long non-use coupled with conduct inconsistent with ownership. Here, the plaintiffs' uninterrupted possession since the 1960s is the strongest evidence of abandonment.

Alleged Vagueness of Schedule

Even if minor ambiguity exists in the schedule, the identity of the land can be ascertained with reasonable certainty from deeds, boundaries, and the Commissioner's report. Technical vagueness in schedule cannot defeat substantive possession rights where the land is otherwise identifiable. Hence, the appellate Court erred in dismissing the claim on this ground.

Proof of Possession through Records and Conduct

The plaintiffs' possession over the suit land stands further corroborated by official records and long-standing conduct. They mutated their names in the revenue office through Mutation Case No. 462/IX-1/88-89, regularly paid rent, and obtained dakhilas, which are strong indicators of lawful possession recognized by the State. Their names were also recorded in the khatian, reflecting continuous enjoyment of the property. The Advocate Commissioner's local investigation confirmed that the land described in the plaint tallied with the boundaries on the ground and was in the plaintiffs' possession. Such documentary and physical evidence, taken together

with more than three decades of peaceful and uninterrupted possession, provide strong corroboration of ownership and possession, outweighing the defendants' unsupported oral claim.

In view of the foregoing discussions, this court finds that the appellate judgment suffers from misreading of evidence and non-consideration of material facts, resulting in miscarriage of justice. The trial Court's decree, grounded on registered instruments, revenue records, oral testimony, and the Commissioner's report, was correct. The plaintiffs have successfully established exclusive possession over the 57 decimals claimed, while the defendants have failed to show any subsisting right or title therein. The plaintiffs are, therefore, entitled to a decree of permanent injunction as prayed for.

Accordingly, **the Rule is made absolute.**

The judgment and decree dated 10.04.2000 and 13.04.2000 passed by the learned District Judge, Third Court, Jashore in Title Appeal No. 113 of 1998 are set aside. Consequently, the judgment and decree dated 31.08.1998 and 07.09.1998 passed by the learned Assistant Judge, Chougacha, Jashore in Title Suit No. 56 of 1997 are restored, and the decree of permanent injunction stands in favour of the plaintiffs.

It is, however, clarified that the decree of permanent injunction shall not restrain the plaintiffs-petitioners from transferring their rights in the suit land, including selling or delivering possession thereof to third parties.

Let the lower Court records be transmitted back together with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.