

District-Brahmanbaria.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1513 of 2003.

Gopal Chandra Banik being dead his legal heirs: 1(a) Anjali Rani Banik and others.

----- Defendant-Respondent-Petitioners.

-Versus-

Mozammel Hossain being dead his legal heirs: 1(ka) Mozaffar Hossain Sohel and others.

----- Plaintiffs-Appellants-Opposite Parties.

Mr. Subrata Chowdhury, Senior Advocate, with
Mr. Rabin Chandra Paul, Advocate
Mr. Azmin Sultan, Advocate and
Ms. Tapaty Gosh, Advocate

----- For the Defendant-Respondent-Petitioner No.1.

Mr. Abdul Mazid, Advocate with
Mr. Asaduzzaman, Advocate

----- For the Defendant-Respondent-Petitioner No.2.

Mr. Abdur Rahim, Advocate

---- For the Plaintiffs-Appellants-Opposite Party Nos. 2(i) to 2(v).

Mr. Abdulla Al Baki, Advocate with
Ms. Wahida Afroz Chowdhury, Advocate and
Mr. Quide Azam, Advocate

----- For the Opposite Party Nos. 10-12 and 13(a)-13(b).

Heard On: 24.06.2025, 25.06.2025, 09.07.2025, 13.07.2025 and
23.07.2025.

And

Judgment Delivered On: 29th Day of July 2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 21.01.2003 (decree signed on 26.01.2003), passed by the learned Additional District Judge, 1st Court, Brahmanbaria, in Title Appeal No. 79 of 1999, reversing the

judgment and decree dated 18.04.1999 (decree signed on 25.04.1999) passed by the learned Subordinate Judge, 2nd Court, Brahmanbaria in Title Suit No. 103 of 1994, should not be set aside.

The opposite parties, as plaintiffs, instituted Title Suit No. 11 of 1976 (which was subsequently renumbered as T.S. No. 120 of 1984, and thereafter as T.S. No. 103 of 1994). The facts and procedural trajectory of the case may be summarized as follows:

- i) The suit land, situated in C.S. Khatian No. 20, Dag Nos. 82 (measuring 9 decimals) and 83 (measuring 10 decimals), was originally owned by four persons, namely, Ram Durlav, Ram Doyal, Shombhu Nath, and Dinonath. Dag No. 82 stood recorded in the names of Shombhu Nath and the sons of Dinonath, namely Umesh and Romesh, while Dag No. 83 was recorded in the names of Ram Durlav and Ram Doyal.
- ii) For non-payment of rent, the suit land was auctioned on 17.11.1943 and purchased by one Mohendra Chakraborty. That auction sale was challenged in Title Suit No. 80 of 1944, which was decreed on 03.07.1945, thereby setting aside the auction.
- iii) Mohendra thereafter preferred Title Appeal No. 210 of 1945. During pendency of the said appeal, a compromise was entered into between Mohendra and the successors of Ram Durlav, namely, Haridas, Mukundo, Subhash (a minor), and one Emdad (the plaintiff herein). By such compromise, the auction sale was accepted, and Mohendra, in turn, settled the land in favour of the said

successors. In consequence, a compromise decree was passed on 11.11.1946 on the basis of a solenama dated 30.10.1946. Pursuant thereto, a registered patta was executed on 22.11.1946, registered on 16.04.1947, followed by a partition deed dated 25.12.1946 among the compromisees.

- iv) The heirs of the other recorded owners, namely, Ram Doyal, Shombhu Nath, and Dinonath, sought to challenge the ex parte decree by filing Misc. Cases Nos. 42–45 of 1946. Those applications were allowed on 26.07.1947. They then filed review petitions being Misc. Cases Nos. 32–35 of 1947, which led to the restoration of the appeal by Order No. 96 dated 29.07.1950.
- v) However, in Civil Revision No. 575 of 1950, the High Court Division by judgment dated 02.12.1953 made the Rule absolute, holding that the restoration of the appeal would apply only in respect of the petitioners therein (i.e., the non-compromising parties), thereby leaving intact and binding the compromise decree as against those who were parties to it. Eventually, the restored appeal was dismissed for non-prosecution on 26.02.1955, rendering the compromise decree final, operative, and binding on the parties thereto.
- vi) Emdad thereafter instituted Title Suits Nos. 83 and 84 of 1958, one of which was dismissed for want of court fees and the other for lack of jurisdiction. He claims that following a fresh compromise in 1958, he took possession but was forcibly dispossessed in 1972. Hence,

the present suit was instituted in 1979 seeking declaration of title and recovery of khas possession.

- vii) In parallel proceedings, REP Case No. 5 of 1972 filed by the petitioners was dismissed. Arbitration Case No. 01 of 1972, though decreed in their favour, was set aside in Title Suit No. 95 of 1973, which decision was subsequently affirmed in appeal.
- viii) The Government also attempted to evict Emdad through Title Suit No. 229 of 1973. However, the suit was decreed in appeal in Emdad's favour. The Government's Civil Revision (CR No. 389 of 1983) and subsequent Civil Petition (CP No. 95 of 1986) were both dismissed, the Appellate Division upholding that the compromise decree remained effective and binding upon the compromising parties.

Mr. Subrata Chowdhury, learned Senior Advocate, assisted by Mr. Rabin Chandra Paul, submits that the compromise decree dated 11.11.1946, relied upon by the plaintiffs, does not create any valid title in their favour. He argues that the alleged compromise was executed only by the successors of Ram Durlav, who never had any interest in Dag No. 82, which was recorded in the names of Shombhu Nath and the sons of Dinonath, namely Umesh and Romesh. Similarly, Dag No. 83 had already been transferred to one Sona Miah by a registered kabala dated 14.05.1940. Hence, when the compromise was made in 1946, the executants had no subsisting title,

and under Section 43 of the Evidence Act, such a compromise decree cannot confer title against true owners or strangers to the proceeding.

He further contends that the compromise decree stood effaced once the appeal was restored by Order No. 96 dated 29.07.1950. In law, when an appellate proceeding is restored, any earlier compromise decree passed therein automatically ceases to exist, unless expressly revived. He argues that the court below erred in law in not appreciating that the compromise decree had no subsisting legal effect. Learned counsel relied upon the principle under Section 115 of the Code of Civil Procedure, submitting that failure of the appellate court to consider this aspect amounts to acting with material irregularity warranting interference in revision.

On the question of party status, Mr. Chowdhury argues that Emdad, the predecessor of the plaintiffs, was not a party to Title Suit No. 80 of 1944 and therefore could not derive any benefit from the compromise decree. A decree, whether on contest or compromise, is binding only upon parties and their privies under Section 43 of the Evidence Act, but cannot operate in favour of or against strangers. Thus, the plaintiffs' reliance upon the compromise decree is wholly misconceived.

With respect to limitation, learned counsel submits that the plaintiffs' claim is hopelessly barred under the Limitation Act, 1908. Earlier

suits (T.S. Nos. 83 and 84 of 1958) having been dismissed, the present suit filed in 1979 is beyond the 12-year limitation prescribed by Article 142 for suits based on recovery of possession. He argues that limitation begins to run from the date of the alleged compromise or at least from the date of the earlier dismissals, and therefore the suit is not maintainable.

Finally, he submits that possession follows title, and unless title is proved, the plea of possession is immaterial. The plaintiffs failed to prove valid title, while the kabala dated 14.05.1940 being more than 30 years old enjoys a presumption of genuineness under Section 90 of the Evidence Act, which the appellate court failed to appreciate. He therefore prays that the impugned appellate decree be set aside and the trial court's judgment dismissing the suit be restored.

Mr. Abdul Mazid, learned Advocate appearing with Mr. Asaduzzaman for the Defendant-Respondent-Petitioner No. 2, fully adopts the above submissions and supported the prayer for setting aside the impugned appellate judgment.

In reply, Mr. Abdur Rahim, learned Advocate for the Plaintiffs-Appellants-Opposite Party Nos. 2(i) to 2(v), submits that the compromise decree dated 11.11.1946 is valid, binding and operative. He points out that the decree was acted upon through execution of a registered solenama, registered patta, partition deed and delivery of

possession. He relies upon Section 74 of the Evidence Act, contending that such judicial records constitute public documents, admissible in evidence, and must be given due effect. He further argues that the Appellate Division in C.P. No. 95 of 1986 has already upheld the validity of the compromise decree, which precludes further challenge in this revisional forum.

He next argues that Order No. 96 dated 29.07.1950, which restored the appeal, was subsequently set aside by the High Court Division in Civil Revision No. 575 of 1950. As a result, the earlier Order No. 48 dated 26.07.1947 stood revived, under which restoration was allowed only in respect of certain non-compromising parties. Therefore, the compromise decree remained binding and operative against those who executed it, including the plaintiffs' predecessor. In his submission, the trial court committed a serious error of law in holding that the compromise decree stood annulled in its entirety.

Mr. Rahim further argues that the defendants themselves admitted in their written statement that a patta and partition deed were executed pursuant to the compromise. Having made such an admission, they are estopped from denying the same under the principle of Section 115 of the Evidence Act. He submits that the appellate court was correct in relying upon these admissions and documentary evidence.

On the question of limitation, Mr. Rahim submits that the cause of action arose only when the plaintiffs were dispossessed in 1972. Since the suit was filed in 1976, it was well within 12 years as prescribed by Article 142 of the Limitation Act for recovery of possession. He further contends that earlier suits having been dismissed for want of court fee or jurisdiction cannot operate as res judicata, and the present suit is based on a distinct cause of action.

Lastly, he submits that the appellate court rightly invoked Order 41 Rule 27 of the Code of Civil Procedure to admit additional documentary evidence such as certified copies of the solenama, patta and partition deeds, which are necessary for complete adjudication of the dispute. He argues that the trial court erred in ignoring such vital public documents admissible under Sections 74 and 43 of the Evidence Act. He therefore prays to discharge the Rule.

Mr. Abdulla Al Baki, learned Advocate, appearing with Ms. Wahida Afroz Chowdhury and Mr. Quide Azam, also argues on behalf of the Opposite Party Nos. 10–12 and 13(a)–13(b), endorsing the submissions of Mr. Subrata Chowdhury.

Having heard the learned Advocates for both sides, perused the judgments of the courts below, and carefully examined the pleadings, evidence on record, and the applicable provisions of law. The rival contentions revolve around (i) the validity and effect of the

compromise decree dated 11.11.1946, (ii) whether the said decree stood annulled upon restoration of the appeal, (iii) the effect of earlier orders in Civil Revision No. 575 of 1950 and Civil Petition No. 95 of 1986, (iv) the question of limitation, and (v) the admissibility of documentary evidence under Order 41 Rule 27 CPC and the Evidence Act.

It is well established that a compromise decree, once passed and acted upon, binds the parties unless explicitly set aside. In the present case, the compromise led to the execution of a registered solenama, patta, and partition deed, followed by delivery of symbolic possession. These facts were admitted in the pleadings of the petitioners themselves, and therefore, the binding nature of the compromise cannot be denied at this stage.

The plaintiff's claim of possession is further supported by both oral and documentary evidence. Notably, the defence witnesses (DW1 and DW2) in Title Suit No. 95 of 1973 admitted that Emdad, the predecessor of the plaintiffs, remained in possession until 1972, when he was dispossessed with the aid of the Muktibahini [Ext. X(13), X(13)(1)]. This admission, coupled with the documentary evidence, corroborates the plaintiff's version and fortifies the genuineness of the compromise transaction.

The petitioners' contention that Emdad was not a party to the original suit (T.S. No. 80 of 1944) is of no avail. The record demonstrates that he was expressly included in the compromise, that the patta was executed in his favour, and that he received and exercised possession. His rights did not flow from the auction of 1943 but from the subsequent compromise settlement and the consistent conduct of the parties thereafter.

The argument that the kabala dated 14.05.1940 extinguished rights in Dag No. 83 is also without merit. The compromise decree, which postdates the kabala, was never directly challenged and continues to stand. Even if the kabala is presumed genuine under Section 90 of the Evidence Act, its effect is rebuttable, particularly since the alleged purchaser was neither a party to the compromise decree nor to the subsequent litigations spanning several decades. Thus, the compromise decree prevails over the kabala.

As to the question of limitation, this Court finds that the cause of action arose upon dispossession in 1972. The instant suit having been filed in 1976, is well within the statutory limitation period of 12 years prescribed under Article 142 of the Limitation Act for recovery of possession. Earlier suits of 1958, dismissed either for want of court fees or for lack of jurisdiction, do not create a legal bar. Such dismissals being technical, do not operate as *res judicata*, nor do they

extinguish the recurring cause of action based on fresh dispossession in 1972.

The appellate court, in reversing the trial court, also correctly exercised its discretion under Order 41 Rule 27 of the Code of Civil Procedure. Certified copies of the solenama [Ext. X(5)], possession certificate [Ext. 7(a)], registered patta [Ext. X(3)], partition deed [Ext. X(2)], the judgment in Civil Revision No. 575 of 1950 [Ext. 7(b)], and the decision in Civil Petition No. 95 of 1986 were rightly admitted. These documents are public documents within the meaning of Section 74 of the Evidence Act and are relevant under Section 43. The trial court committed a grave error in failing to admit and appreciate their legal weight, which the appellate court duly rectified.

It is also a matter of record that in Title Appeal No. 79 of 1999, by Order No. 28 dated 05.05.2002, paragraph 2 of the plaint was amended to reflect the outcomes of Civil Revision No. 575 of 1950 and Civil Petition No. 95 of 1986. The petitioners have suppressed this significant fact in their revisional application, which undermines the bona fides of their challenge.

This Court finds that the trial court committed a manifest error in assuming that the restoration of the appeal in 1950 nullified the entire compromise decree. The High Court Division in Civil Revision No. 575 of 1950, a binding judgment, expressly held that the restoration

applied only to the non-compromising petitioners. The compromise decree remained fully binding upon the parties who had voluntarily executed it. The Appellate Division in Civil Petition No. 95 of 1986 further reaffirmed this legal position, holding that the appeal was restored only in respect of those respondents who were not parties to the compromise, while the decree remained operative against those who had compromised.

Therefore, the trial court's finding that the solenama "stood cancelled" reflects a misreading of the legal effect of Order No. 96 dated 29.07.1950, which was subsequently set aside. The valid and subsisting Order No. 48 dated 26.07.1947 restored the appeal only "so far as the petitioners are concerned." The compromise decree thus continues to stand binding on the opposite parties.

In light of these findings, this Court holds that the appellate judgment reversing the trial court's decree is not only well reasoned but also firmly grounded in law, fact, and precedent. No jurisdictional error or material irregularity has been demonstrated that could justify interference under Section 115 of the Code of Civil Procedure.

For the reasons stated above, **the Rule is discharged.**

The judgment and decree dated 21.01.2003 (decree signed on 26.01.2003) passed by the learned Additional District Judge, 1st

Court, Brahmanbaria in Title Appeal No. 79 of 1999 is hereby affirmed.

There will be no order as to costs.

Let the lower court records be sent down at once along with a copy of this judgment.

(Justice Md. Toufiq Inam)

Ashraf /ABO.