

Present:-

*Mr. Justice Mahmudul Hoque*

**Civil Revision No. 2069 of 1999**

Hazrat Ali and others

..... Petitioners

-Versus-

Suraiya Begum Choudhury (Dhali) and others

..... Opposite-Parties

Mr. Md. Khurshid Alam Khan, Advocate

... For the Petitioners

**Judgment on 30.01.2025**

In this revision Rule was issued calling upon the opposite party Nos. 1-12 to show cause as to why the impugned judgment and decree dated 08.02.1999 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Tangail in Other Class Appeal No. 165 of 1994 allowing the appeal and reversing the judgment and decree dated 17.08.1994 passed by the learned Sub-ordinate Judge, (now Joint District Judge) 1<sup>st</sup> Court, Tangail, in Other Class Suit No. 49 of 1982 dismissing 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 Nos. 1-12, as plaintiff, filed Other Class Suit No. 49 of 1982 in the court of Sub-ordinate Judge, (now Joint District Judge) 1<sup>st</sup> Court, Tangail praying for simple declaration stating that the suit property

originally belonged to Mashallah and Naribullah in equal share. When they were in possession and enjoyment of 9.47 acres land in Shadhanpur Mouza under Khatian No. 99, Plot No. 3082 including 7.78 acres of land in equal share, took loan of Tk. 200/- from the predecessor of the plaintiffs Munshi Samiruddin. Said loan of Tk. 200/- stood at Tk. 800/- including interest accrued thereon. For recovery of the said money Munshi Samiruddin filed Mortgage Suit No. 319 of 1930 in the court of Munsif, Tangail against Mashallah and heirs of Naribullah and got a decree on 21.06.1930 (decree signed on 30.06.1930). The judgment debtors failed to pay the decretal amount within the time mentioned in the order, but humbly prayed for releasing a portion of the mortgaged property in their favour leaving the rest in favour of decree holders. Prayer was considered by the decree holder and released 5.30 acres of land in favour of the judgment debtors under khatian No. 99. On that understanding Samiruddin and others got a preliminary decree in respect of 4.17 acres of land in Suit Plot No. 3082 and subsequently, the decree was made final. Thereafter, they got dakhila by dint of Pattan from Promath Nath Chowdhury. Jamiruddin and others possessed the suit land as bargadar. After it came under the Jamindary court of wards one Amena

Begum Chowdhury got a dakhila. That a partition suit was filed being Partition Suit No. 88 of 1953 in the 4<sup>th</sup> Court of Subordinate Judge (now Joint District Judge), Mymensingh for partition of the property including a portion of the suit land which was disposed of by amicable settlement. Mamtaz Begum Chowdhury got the suit land in her share and transferred the same to her son Nurul Haider Chowdhury by a registered heba deed dated 11.07.1964. After the death of Nurul Haider Chowdhury the plaintiffs possessed the suit land, but in the last R.O.R. survey the suit land wrongly recorded in the name of defendant Nos. 1-14, 16-19 and 20-23. The defendants had no title and possession in the suit land. When the plaintiffs went to pay rents in the month of Poush, 1388 B.S. in the local Tahshil Office have come to know about wrong record of right, hence, the present suit for declaration of title in the suit land.

The defendant-petitioners contested the suit by filing written statement denying all the material allegations made in the plaint contending inter alia, that the suit is bad for defect of parties. Mashallah and Naribullah were owners of the property under C.S. khatian No. 99, measuring 9.47 acres. Mashallah died leaving behind two sons Hafezuddin and Joyenuddin and one daughter. Hafezuddin died leaving

wife, 2 sons and one daughter. Wife Sabjan transferred her share. One son Faraj Ali died leaving wife Bahatan, Imam and Based defendant Nos. 1(kha) and 1(Ga) and 4 daughters Jarina, Hasna, Hazera and Rahima as heirs. Joyenuddin died leaving behind two sons Moyenuddin and Hazrat Ali and daughter Surjaban. Mainuddin died leaving behind wife Rubia, two sons Motahar, Rubel and three daughters Bedana, Sumona and Nazma. Naribullah died leaving behind 5 sons Jaharuddin, Kasimuddin, Osimuddin and A. Sheikh. Jaharuddin died leaving behind his wife Osiran, 3 sons Renu Sheikh, Elamuddin and Salimuddin. Elamuddin died leaving behind wife Joygun, one son Alam and two daughters Begum and Nurjahan. Salimuddin died leaving behind his wife Rezia, two sons A. Rashid and Karim. Kasimuddin died leaving behind his wife Moyfal, two sons soleman and Gafur and one daughter Rahitan. Osimuddin died leaving behind his son Ahasanuddin. A. Sheikh died leaving behind his two sons Jabed Ali and Hasen Ali.

The suit Plot No. 3082 wrongly recorded in the name of Hudu Sheikh in R.O.R. No. 204. On 07.06.1973, .33 acre of land sold by Felu Sheikh to Ahsanuddin, Kasimuddin, Idris Ali and Foyezuddin. Joyen Sheikh on 30.09.1946 sold  $.16\frac{1}{2}$  sataks of land to Daroga Ali Sheikh and

Jamat Ali Sheikh. Felu Sheikh on 30.09.1943 sold a portion of the land to Daroga Ali and others. Daroga Ali sold  $14\frac{1}{2}$  sataks of land on 08.02.1953 to Akkel Ali Sheikh. Moyenuddin and Hazrat Ali, on 23.01.1931 sold .33 acre of land to Khoyaz Ali and Hatem Ali. Moyezuddin again sold .11 acres of land on 03.10.1974 to Khoyaz Ali and Hatem Ali. Moyezuddin and Hazrat Ali sold their purchased land including some other land on 29.12.1964 to Fazar Ali and Foyezuddin. Sabjan Bewa on 03.04.1925 sold some land to Farazuddin and Foyezuddin. Plaintiffs have had no title and possession in the suit land. The suit land meaning 4.17 acres are in possession of the petitioners A. Baset, Imam Ali and Hazrat Ali and some other persons. Claim of the plaintiffs are false, vague and based on some forged papers and hence, the suit is liable to be dismissed.

The trial court framed six issues for determination of the dispute. During trial the plaintiff-opposite parties examined seven witnesses and exhibited a series of documents, on the other hand the defendant petitioners examined four witnesses and exhibited a series of documents. The learned Subordinate Judge, (now Joint District Judge) 1<sup>st</sup> Court, Tangail after hearing by judgment and decree dated 17.03.1994 dismissed the suit against the defendants.

Against the said judgment and decree dated 17.03.1994 (decree signed on 24.08.1994) passed by the learned Subordinate Judge (now Joint District Judge) 1<sup>st</sup> Court, Tangail in Other Class Suit No. 49 of 1982, the plaintiff opposite party Nos. 1-12, as appellant, preferred Other Class Appeal No. 165 of 1994 before the District Judge, Tangail. The appeal was heard and disposed of by the learned Additional District Judge, 1<sup>st</sup> Court, Tangail on transfer who allowed the appeal and decreed the suit by reversing the judgment and decree of the trial court by the impugned judgment and decree dated 08.02.1999. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Khurshid Alam Khan, learned Senior Advocate appearing for the petitioners submits that, admittedly predecessor of the petitioners named Mashallah and Naribullah were owners in possession of the property as riyat under zaminder in equal share. The plaintiff claimed that Mashallah and Naribullah obtained loan from the predecessor of the plaintiffs, Munshi Samiruddin and others amounting to Tk. 200/- by mortgaging the suit property a security against loan. When they failed to

pay the loan Munshi Samiruddin Chowdhury and others filed Mortgage Suit No. 319 of 1930 in the Court of 3<sup>rd</sup> Munsif, Tangail for recovery of loan along with interest accrued thereon amounting to Tk. 918/-. Learned Munsif decreed the suit in preliminarily form by its judgment and decree dated 30.06.1930 directing the judgment debtor Mashallah and heirs of Naribullah to pay the said amount within 22.07.1930. Being failed the court on an application filed by the plaintiffs made the preliminary decree final on 30.07.1930, but that decree was not put in execution by the decree holder. Consequently, after expiry of three years from the date of decree passed by the court in Mortgage Suit No. 319 of 1930 lost its force against the judgment debtors. Therefore, story of having compromise with Mashallah and heirs of Naribullah sharing the property under two plots are only oral statement supported by no document or application of compromise. Consequently, Mashallah and heirs of Naribullah remained in possession as it was under zaminder. By the decree passed in Mortgage Suit No. 319 of 1930 plaintiffs predecessor acquired no right, title and possession in the suit property.

He submits that the plaintiffs claimed that after compromise of Mortgage Suit No. 319 of 1930 with Mashallah and heirs of Naribullah

predecessor of the plaintiffs Momtaz Begum and others obtained settlement of the property from zaminder Promoth Nath Roy Chowdhury by two pattan nama dated 18.04.1944 and 28.07.1944 for entire land under Plot Nos. 3085 and 3082 which contradicts the statement made in the plaint about sharing of the property under Plot Nos. 3085 and 3082 with Mashallah and heirs of Naribullah after passing decree in Mortgage Suit No. 319 of 1930.

He argued that those two settlements receipts were not submitted in Partition Suit No. 88 of 1953. Moreover, this petitioners or their predecessor were not made party in the partition suit as defendant though the plaintiffs clearly stated in the plaint that there has been a compromise with Mashallah and others and they gave up 5.30 acres land in favour of Mashallah and others, meaning thereby, they were co-sharers in the suit plot, as such, the decree whatever passed in Partition Suit No. 88 of 1953 is not at all binding upon the present petitioners.

He submits that there are series of litigation between the plaintiffs and defendants before criminal court, one of which was subsequently withdrawn by the plaintiffs and in another case all the accused were acquitted. He argued that after SAT Act came into force entire property



was acquired by the government as Santosh Pachani Estate and prepared ROR Khatian No. 203 in the name of the present petitioners and their predecessors by modifying the khatian under Section 46 of the EBSA Act, 1950 recognizing the defendants and their predecessor as direct tenants under the government. The petitioners from the time of their predecessor continued in possession of the suit property and finding their possession the government modified ROR khatian under Section 46 of the SAT Act. Therefore, in the suit property, the plaintiffs neither by virtue of decree passed in Mortgage Suit No. 319 of 1930 nor decree passed in Partition Suit No. 88 of 1953 acquired any title and possession.

It is argued that admittedly the plaintiffs failed to prove their possession in suit property, consequently, they got their plaint amended on various occasions, finally filed an application for amendment of the plaint before this Court admitting that the defendants are co-sharers in the property and they could not prove their exclusive possession, consequently, prayed for adding a prayer in the form of decree of partition.

He submits that the petitioners by several registered deeds dated 30.09.1943, 07.06.1943, 29.12.1964, 03.04.1973 and 24.03.1976 made

inter transfers between the co-sharers who have been possessing the same with the petitioners on payment of rents to the government. Since the plaintiffs are not in possession simple suit for declaration is not maintainable without consequential relief. He submits that the trial court while dismissing the suit discussed all the evidences both oral and documentary and held that the plaintiffs could not able to prove their title and possession in the suit property on the basis of the documents exhibits-1-8, but on appeal the appellate court while setting aside the judgment and decree of the trial court, most unfortunately misconceived and misconstrued the law in this regard and found possession of the plaintiffs in the suit property which is absolutely contrary to the evidences on record. The appellate court also failed to give any conclusive findings how the plaintiffs acquired title in the suit property on the basis of decree passed in Mortgaged Suit No. 319 of 1930 and decree passed in Partition Suit No. 88 of 1953, as such, committed an error of law in the decision occasioning failure of justice.

None appears for the opposite parties to oppose the Rule, though the matter has been appearing in the cause list for couple of days and

earlier heard the rule in presence of both the learned Advocates for the parties and fixed for delivery of judgment.

Heard the learned Advocates for the petitioners, have gone through the revisional application under section 115(1) of the Code of Civil Procedure, plaint in suit along with amendments thereto, written statement, additional written statement, evidences both oral and documentary available in lower court records and impugned judgment and decree of both the courts below.

Admittedly that the property belonged to Mashallah and Naribullah as raiyat in possession under zaminder, accordingly, C.S. Khatian No. 99 stand recorded in their names in equal share, wherein, it was noted that they are in possession of the suit property along with other plots since 1314 B.S. The plaintiffs filed the suit for declaration of title claiming that ROR Khatian No. 203 wrongly recorded in the name of defendants who raised claim of title in the suit property. The plaintiffs in their plaint at the 1<sup>st</sup> instance at paragraph 03 claimed that Mashallah and Naribullah failed to pay rents to the zaminder, consequently, for arrear rents zaminder by initiating legal proceeding purchased the property in execution of the decree. Thereafter, predecessor of plaintiffs named

Jahanara Begum and others took settlement of the suit property in the year 1944 and continued in possession on payment of rents to the zaminder obtaining dakhilas and acquired an indefeasible title in the property. Subsequently, the government acquired the property and placed the same under Court of wards. Their predecessor paid rents to the government through court of wards and obtained dakhila, thereafter, they filed Partition Suit No. 88 of 1953 which was decreed on compromise and the suit property along with other non-suited property fell in the share of Momtaz Begum Chowdhury. Subsequently, Momtaz Begum Chowdhury by a registered deed of Heba-bil-ewaz dated 11.07.1964 transferred the property to her son Nurul Haider Chowdhury, predecessor of the present plaintiffs.

Thereafter, they got the plaint amended on 15.05.1993 deleting the statements made in paragraph 3 and 4 inserting the statements that Mashallah and Naribullah obtained loan of Tk. 200/- from Munshi Samiruddin Chowdhury and others but failed to pay the same. Consequently, they filed Mortgaged Suit No. 319 of 1930 in the court of 3<sup>rd</sup> Munsif, Tangail which was decreed in preliminary form on 30.06.1930 and by the said decree the defendants were directed to pay the amount

within 22.07.1930 failing which the decree will be made final. Accordingly, the decree was made final, but that decree was not put in execution for recovery of money or for selling the property in auction, but the plaintiffs claimed that after obtaining decree there has been a compromise with defendants Mashallah and heirs of Naribullah. By the said compromise the decree holder obtained 4.17 acres of land and gave up remaining quantum of land to the defendant-judgment debtors out of 9.47 acres, but they could not show any document how the said arrangement was done between the parties and could not show any paper that on the basis of decree passed in Mortgaged Suit No. 319 of 1930 they got their names mutated in the khatian or separated joma in their names. In this situation, it is difficult to come into conclusion that Mashallah and others gave up 4.17 acres of land to the decree holder. Unless decree passed in Mortgage Suit No. 319 of 1930 put in execution for recovery of money or for selling the mortgage property in auction effect of that decree ended and lost its force with the expiry of three years. From the trend of proceeding and the statement made by the plaintiffs in their plaint it is obvious that Mashallah and heirs of Naribullah were in possession of the suit property.

The plaintiffs claimed that their predecessor obtained settlement of the property from zaminder by two settlement dakhilas in the year 1944 and paid rents to the zaminder, subsequently, to the government through court of wards. In support of their such contention the plaintiffs submitted DCR in the name of Momtaz Begum and defendants Hafizuddin and others, Rent receipts dated 23.12.1957, 20.05.1969, 27.08.1967, 07.09.1959, 07.02.1959 and 22.11.1957 in the name of Momtaz Begum Chowdhury and rent receipt dated 01.04.1986 in the name of defendants Hafizuddin and others (exhibit-‘2 series’). Nothing has come to this court from plaintiffs side how all those rent receipts were issued by the government in the name of Momtaz Begum Chowdhury without recording her name in record of right. The rent receipts filed in the name of Momtaz Begum Chowdhury show nothing for which plot of land and khatian rents were paid and all those rent receipts written with pencil and description of joma bondi and quantum of land defers from each others. Exhibits- ‘2Cha’ and ‘2 Chha’ show that plaintiffs paid rent to the government in the name of defendants Hafizuddin and others. In Partition Suit No. 88 of 1953 present defendants or their predecessors were not made party as defendant. In the decree of said partition suit under

schedule 43 property under Plot No. 3082 measuring 4.17 acres under khatian No. 99 has been included but mouza has been mentioned as Jahanchala and Plot No. 3082 has been interpolated by over writing figure 8 in red ink. From C.S. Khatian No. 99 we find that Plot No. 3082 contain 7.78 acres, meaning thereby, for the rest quantum of land predecessor of the defendants were co-sharer, but they were not made party, as such, the decree so have been obtained by the predecessor of the plaintiffs Momtaz Begum Chowdhury including the property, is not at all binding upon the present petitioners. They also could not show on the basis of compromise decree Momtaz Begum Chowdhury got possession of the suit plot through court.

By a registered deed of Heba-bil-Ewaz Momtaz Begum Chowdhury gifted the suit property along with other non-suited property to her son Md. Nurul Haider Chowdhury on 11.07.1964, but Nurul Haider Chowdhury did not take any step for recording his name in the khatian. After a long time, present plaintiffs filed the suit claiming title in the property on the basis of two documents one is decree passed in Mortgage Suit No. 319 of 1930 which was not executed by the decree holder and another a compromise decree passed in Partition Suit No. 88 of 1953

wherein present petitioners; predecessor were not made party. Though in the schedule a plot has been included showing the same under mouza Jahanchala, but the suit property is under mouza Sandhanpur, as admitted by both the parties. Rent receiving interest of the property in question was acquired by the government and with the acquisition of rent receiving interest from zaminder, predecessor of the present defendants as riyat in possession were recognized by the government as direct tenant and prepared ROR Khatian No. 203 in their names by modifying record of right under Section 46 of the EBSAT Act 1950, as appearing from the ROR khatian (exhibits-‘5-A’, ‘F-1’ and ‘F-2’) filed by the defendants.

Section 46 (i) of the SAT Act, clearly provides that;

*“After the Compensation Assessment-roll or Compensation Assessment-rolls in respect of all estates, tenures, and interest of rent-receivers in holdings or tenancies comprised within a district, part of a district or local area, in respect of which a record-of-rights has been prepared or revised and finally published under Chapter IV, has or have been published, such record-of-rights shall be modified by eliminating therefrom the entire chain of interest of rent-receivers and showing therein only the tenants who will come directly under the Government as a result of the acquisition of such interests; and one or more numbers to be borne on the Revenue-roll of the district shall be assigned by the Collector in respect of the areas to which such record-of-rights relates in accordance with such rules as the Government may make in this behalf; and the record-of-rights so modified shall be reprinted.”*



As per provisions in Section 46, had the predecessor of the plaintiffs in possession of the suit plot by way of settlement from the then zaminder, the government would have modified the ROR khatian in the name of predecessors of the plaintiffs, Momtaz Begum Chowdhury instead of recording the name of the predecessor of defendants. By recording the name of defendants predecessor by modification under Section 46 of the SAT Act, it proves that they were in possession as tenant under the zaminder. Consequently, the government by recording their names in ROR khatian recognized them as direct tenant under the government and as tenant accepted rents from them. Therefore, it cannot be said that ROR khatian wrongly recorded in the name of the defendants.

It is true that mere recording of name of some persons in the khatian does not ipso facto establish title without basis for recording such khatian. In the present case, admittedly, predecessor of the defendants Mashallah and Naribullah were tenant under zaminder and C.S. record stand recorded in their names. The plaintiff claimed that by the decree in Mortgage Suit No. 319 of 1930 and decree in partition suit title of the predecessor of defendants Mashallah and Naribullah ceased, but the said decree in mortgage suit though obtained, was not put in execution,

consequently predecessor of the defendants Mashallah and heirs of Naribullah remained in possession of the property. Subsequent, settlement as claimed by plaintiffs in the year 1944 by two documents (exhibits '6' and '6A') show that both the documents written by same persons with same pen and ink one showing settlement of 4.17 acres from Plot No. 3082 in the name of Amena Begum Chowdhury and others and another one for 4.71 acres seems to be interpolated in the name of Amena Begum Chowdhury and others. Exhibit-'6' pattan nama discloses the fact that the property in question was sold in auction in Execution Case No.  $9\frac{1800}{2936}$  and taken possession by zaminder, but the case of the plaintiffs is otherwise which contradicts their chain of acquisition of title in the property and in both the alleged settlement dakhila several words have been interpolated. If the property acquired by zaminder in execution of a decree the story made in the plaint that the predecessor of the plaintiff got the property on the basis of a decree passed in Mortgage Suit No. 319 of 1930 contradicts with their settlement which were not filed in earlier Partition Suit No. 88 of 1953. Had the predecessor of the plaintiffs obtained settlement from zaminder and continued in possession of the same ROR khatian ought to have been modified in their names recognizing them as direct tenant

under the government, but all those documents though filed by the plaintiffs in suit could not connect with the chain of title and the statements made in the plaint.

I have gone through the judgment of the trial court and find that the trial court discussed all the evidences both oral and documentary and rightly held that because of non-execution of the decree passed in mortgage suit and not making the predecessor of the defendants as party to the Partition Suit No. 88 of 1953 and not showing any document of compromise between the predecessor of the defendants and the plaintiffs sharing the quantum of land between them and absence of rent receipts showing payment of rents to the zaminder after obtaining settlement no title established in favour of the plaintiffs. Moreover, from the decree passed in Partition Suit No. 88 of 1953, it appears that the predecessor of the plaintiffs had vast property in the area and after SAT Act came into force their predecessor ought to have furnished a statement of landed property to the Government, but no such statement showing entire property owned by the predecessor of the plaintiffs was filed before the court. Rent receipts showing payment of rents in the name of Momtaz Begum Chowdhury upto 1969 do not support that she paid rent for the

suit property in her name in the absence of any record of right. On the other hand, ROR khatian stand recorded in the names of Hafizuddin and others, predecessor of the defendants.

The appellate court while reversing the judgment and decree of the trial court failed to appreciate the provisions of law and wrongly considered decree passed in Mortgage Suit No. 319 of 1930, in Partition Suit No. 88 of 1953 and two settlement orders showing settlement of the property in favour of Amena Khatun Chowdhury and others and also failed to appreciate that had there been a compromise decree between Mashallah and the decree holder in mortgage suit giving up major portion of the property to them how Amena Begum Chowdhury and others again could obtain settlement for entire quantum of land under Plot No. 3082 from zaminder. He also misread the evidences and misconstrued the law in this regard and came to a finding that the plaintiffs acquired title in the property on the basis of decree passed in Mortgage Suit No. 319 of 1930 and Partition Suit No. 88 of 1953, hence committed error of law in the decision occasioning failure of justice.

In view of the above, I find that the appellate court while reversing the judgment and decree of the trial court and decreeing the suit in favour

of the plaintiffs failed to appreciate the findings and observations made by the trial court in its true perspective calling for interference by this Court.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and decree of the appellate court is hereby set aside and the judgment and decree of the trial court is hereby restored.

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

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