

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 398 of 2003.

Abtabuzzaman Khan, being dead his heir Afsana
Jahan.

..... –Petitioner.

-Versus-

Mehbub Hossain and others.

..... Opposite parties.

Mr. Syed Ridwan Husain with
Mr. Shamsad Rahman, Advocates.

..... For the petitioner.

Mr. Sudipta Arjun with
Mr. Bidhayok Sarker, Advocates

..... For the opposite parties.

Heard on: 01.07.2025, 27.07.2025 &

Judgment on: 04.08.2025.

This Rule was issued calling upon the opposite parties No. 1 to 8 to show cause as to why the impugned judgment and decree dated 04.11.2002 passed by the learned Joint District Judge and Artha Rin Adalat, Sylhet in Title Appeal No. 191 of 1999 reversing the judgment and decree dated 18.04.1999 passed by the learned Senior Assistant Judge, Additional Court, Sadar, Sylhet in Title Suit No. 18 of 1996 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.

Relevant facts for disposal of the Rule are that the present opposite party Nos. 1-8, as plaintiffs, instituted the suit impleading the predecessor of the present petitioner and others, as defendants,

seeking a declaration of title and recovery of possession in respect of the suit property. The case of the plaintiffs, in short, is that the suit land originally belonged to Sadrul Hoque, Abdul Hoque Mazumder and Abdul Aziz Mazumder who transferred the same to Abdul Jabbar and Abdul Matin by a registered sale deed dated 18.11.1976 and delivered possession thereof. Thereafter, Abdul Matin transferred his share to plaintiff No.1 by a registered sale deed dated 6.11.1977, while Abdul Jabbar transferred his share in favour of plaintiff No. 2 by a registered sale deed dated 09.12.1977 and also handed over the possession. After the purchase, the plaintiffs erected two houses on the land. The plaintiffs used to reside in the eastern house and let out the northwestern house to Kala Pathan and others, while the remaining land was used for growing vegetables and plants. In the first part of December 1983, the defendant Nos. 1 to 4 unlawfully entered into the southern side of the 2nd schedule land and started construction of a building thereon. The plaintiffs had been trying to resist the same, but at that stage, the defendants instituted several criminal cases against the plaintiffs, and taking advantage thereof, on 27.04.1986, dispossessed the plaintiffs from the suit property i.e., 2nd schedule land, and appointed the defendant No. 5 (Upazila Revenue Officer, Sadar, Sylhet) as the receiver of the property. The illegal act of the defendants clouded the title and possession of the plaintiffs, hence the suit.

Defendant No.1 contested the suit by filing a written statement denying the material allegations made in the plaint and contending, inter alia, that the suit was without cause of action, not maintainable in its

present form, barred by limitation, and bad for defect of parties. The further case of the defendants is that the suit land, along with other lands, originally belonged to Abdul Hoque Mazumder, Syeda Mubareka Khatun, Syeda Amatul Hafsa Begum, Syeda Amatul Fatema Begum, Abdul Aziz Mazumdar and others. Abdul Haque Mazumdar, along with other co-shares, instituted Title Suit No. 264 of 1966 in the Court of Subordinate Judge, 2nd Court, Sylhet for partition of the land. The suit was subsequently transferred to the Court of Additional Subordinate Judge, First Court, Sylhet and was renumbered as Title Suit No. 61 of 1968. The suit was decreed, against which the defendants preferred Title Appeal No. 180 of 1975, but the same was withdrawn on compromise. Accordingly, an Advocate Commissioner was appointed to make the partition according to the preliminary decree. Abdul Haque Mazumder along with other co-sharers received the suit land along with other lands in their saham. Thereafter, Abdul Haque Mazumder and others sold the suit land, along with other lands, to Abdul Khaleque, Peari Bibi, Sundari Bibi, Maya Bibi, Sufia Bibi and Asia Bibi by two registered sale deeds dated 18.11.1976. By way of an amicable settlement amongst the said purchasers, Sundari Bibi, Peari Bibi and Asia Bibi received 14 decimals of land, including the suit land, which they transferred in favour of defendant No.1 by four registered sale deeds dated 25.04.1080, 26.04.1080 and 24.04.1980 respectively and delivered the possession in his favour. Being the owner and possessor, defendant No. 1 obtained permission from the Sylhet Pourashava on 18.02,1982 and constructed a tin-shed house on the northern side of the

suit land. In 1983, with further permission from the Paurashava, defendant No. 1 also constructed a pucca building and pucca boundary walls over the suit plot. On 28.11.1985, when the plaintiffs attempted to evict defendant No. 1 from the suit property, defendant No.1 instituted Non-G.R. Case No. 717 of 1985, and with the help of the police, resisted the same. It was further contended that the plaintiff had earlier filed Title Suit No. 30 of 1981 in the court of the First Subordinate Judge, Sylhet against one Advocate, namely, Shamsuddin Ahmed and the same ended with compromise. The plaintiffs have neither any right, title, interest, nor have they ever been dispossessed from the suit property by the defendants. The suit of the plaintiffs, on false averments, should be liable to be dismissed with costs.

During the trial, both the plaintiffs and the defendant No.1 adduced four witnesses each in support of their respective cases and the documentary evidence adduced by the parties was duly exhibited.

Upon conclusion of the trial, the learned Senior Assistant Judge, Additional Court, Sylhet, by the judgment and decree dated 18.04.1999, dismissed the suit holding, inter alia, that the plaintiffs had failed to prove their title to the suit land and their possession thereof before the alleged dispossession. The Court further found that the plaintiffs had not established that defendants Nos. 1 to 4 had dispossessed them from the suit land in the first part of December 1983.

Against the said judgment and decree, the plaintiffs preferred the appeal in the Court of District Judge, Sylhet, which was heard by the learned Joint District Judge, Sylhet who by the impugned judgment and

decree dated 4.11.2002 allowed the appeal and thereby decreed the suit. The appellate Court held, inter alia, that there is sufficient evidence to believe that the plaintiffs had title to the suit land and were in possession thereof before their dispossession. The Court further held that the defendants, taking advantage of their deeds of 1980, unlawfully dispossessed the plaintiffs from the suit land by unfair means, and thereafter constructed a pucca house thereon. It was also held that defendant No.1 fabricated some documents only to secure an undue advantage.

Being aggrieved thereby, the predecessor of the present petitioners obtained the instant Rule and an order of stay.

Mr. Syed Ridwan Husain, the learned Advocate appearing for the petitioners submits that as per the Advocate Commissioner's Report dated 19.3.1992, the sale deeds No. 26535 and 26536 appertain to the suit land, thus, the plaintiffs did not acquire any title from their vendors Abdul Matin and Abdul Jabbar, who purchased the land under sale deed No. 26534, the appellate court below wholly ignored these facts and erroneously held that the plaintiffs have title in the suit land. He further submits that in a suit for declaration of title and recovery of possession, the plaintiffs must prove his cause of action, specifically, their possession of and dispossession from the suit land, but in present suit, the plaintiffs failed to produce any evidence to prove that they were in possession of the suit land and were dispossessed from the suit land by the defendant, on the other hand, the defendant produced the rent receipts, tax receipts, gas bills, electricity bills and other documentary

evidence before the court to prove the possession, the impugned judgment and decree is in total ignorance of the said material evidence and is liable to be set aside. In support of the said submission he refers to the cases of Wazuddin vs. Serajuddin reported in 61 DLR (2009) 788 and Erfan Ali vs. Joynal Abedin reported in 35 DLR (AD) (1983) 216. Mr. Husain next submits that as per the written statement, the plaintiffs were dispossessed by one Advocate Shamsuddin, and P.W.4 in his deposition corroborated the said facts, but the impugned judgment and decree was passed without considering this aspect. He lastly contends that the plaintiffs illegally entered the suit land, and the defendant merely ousted them with the assistance of law-enforcing authorities, so no illegal act was committed by the defendants, but without considering this aspect the appellate court below most erroneously held that the plaintiffs were illegally dispossessed by the defendants and reversed the judgment and decree of the trial court and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Per contra, Mr. Sudipta Arjun, learned Advocate appearing for the opposite party, submits that the Court of appeal, being the final Court of fact, after proper consideration of the evidence on record, held that the plaintiffs had both title to and possession of the suit land prior to their dispossession, therefore, this revisiaonal Court had hardly any jurisdiction to set aside the said factual findings of the appellate court. In support of the submission he placed reliance upon the decision of our apex Court in the case of Kochi Mia vs. Suruj Mia reported in 51 DLR (AD) (1999) 56.

Heard the learned Advocates for the contending parties, perused the impugned judgment and decree, and other materials on record.

Admittedly, the suit land, along with other lands, originally belonged to Abdul Haque Mazumder and others. A suit was instituted for the partition of these lands, which was decreed. An appeal was preferred against the said decree, but it was subsequently withdrawn on the basis of a compromise. Thereafter, an Advocate Commissioner was appointed to make a separation of the land in accordance with the preliminary decree. Although the judgment and decree of the partition suit were not exhibited in the present suit, the report of the Advocate Commissioner and the chita were produced as evidence. Upon completion of the separation, on 18.11.1976, three deeds bearing Nos. 26534, 26535, and 26536 were executed in respect of a portion of the land of that suit. However, the schedules of those deeds did not specifically identify the land in accordance with the report of the Advocate Commissioner. By deed No. 26534, S.M. Sadrul Huq, S.M. Badrul Huq, and Abdul Aziz Majumder transferred 14 decimals of land to Abdul Jabbar and Abdul Matin. The land was described as bounded on the north by plot No. 9308, on the east by plot No. 9308, on the south by a 12-foot road, and on the west by Abdul Khaliq (Ext. 6). By deed No. 26535, Hafsa Begum, Fatema Begum, and Abdul Aziz Majumder transferred 14 decimals of land to Syed Abdul Khaliq and Peari Bibi. The land was described as bounded on the north by Sundari Bibi (purchased from A. Huq Majumder), on the east by Syed Abdul Matin and others, on the south by a 12-foot road, and on the west by the vendors (Ext. Kha).

By deed No. 26536, Abdul Haque Majumder and Mobareka Khatun transferred 14 decimals of land to Sundori Bibi, Maya Bibi, Sufia Bibi, and Asia Bibi, the predecessors-in-interest of the defendants. The land was described as bounded on the north by plot No. 9308, on the east by Abdul Matin, on the south by Abdul Khaliq (purchased from Badrul Huq), and on the west by the vendors (Ext. Kha 1). From the pleadings, it transpires that neither the plaintiffs nor the defendants have disputed the fact that the vendors of these three deeds were parties to the partition suit, that they had received their respective shares of land in accordance with their saham, and that they were competent to execute the said deeds.

The plaintiffs contended that the suit land corresponds to the land described in Sale Deed No. 26534, which they subsequently purchased. Per contra, the defendants contended that the suit land corresponds to the lands described in Sale Deeds No. 26535 and 26536, which were amicably obtained by Piari Bibi and others and subsequently purchased by him.

Therefore, the first question to be adjudicated is whether the deeds of the plaintiffs attract the suit land.

As observed earlier, by deed No. 26534, S.M. Sadrul Huq, S.M. Badrul Huq and Abdul Aziz Majumder transferred 14 decimals of land to Abdul Jabbar and Abdul Matin. The schedule of the said deed was in the northern boundary plot No. 9308, in the eastern boundary plot No. 9308, in the southern boundary 12-foot road, and in the western boundary Abdul Khaliq. Abdul Jabbar and Abdul Matin, subsequently,

transferred the land to the plaintiffs vide two registered deeds dated 06.11.1977 and 09.12.1977. During the trial of this suit, an Advocate commissioner was appointed to elucidate the fact that amongst the deeds of the plaintiffs and the defendants, the land of which deed attracts the suit land, accordingly, a report was filed. In the said report, the assertion regarding the deed dated 06.11.1977 of plaintiff No. 1, Ishaque, is as follows:-

“কবালাতে লিখিত চৌহদদার সংগে সরজমিনের পশ্চিম দিক ব্যতিত ৩ দিকের মিল পাওয়া গিয়াছে। পশ্চিম দিকের চৌহদদার প্রমান বাদীপক্ষ সাক্ষ্য দ্বারা আদালতে প্রমান রাখিবেন।
সরজমিনে জমির পরিমাণ ০.০৬ একর পাইয়াছি। কবালাতে ০.০৭ একর লিখা আছে।
উলিখিত কবালার ভূমি সেঃ জরিপী ৯৩০৮ দাগের ০৪.২০ একর পরিমাণ ভূমি এবং ৯৩০৯ দাগের .০১৮০ একর ভূমি আকর্ষণ করিয়াছে। উক্ত কবালার ভূমি ১৯৬৫ ইং বাটোয়ারা নকসার চিঠার ৩৬, ৩৭, ৪৫, ৪৪ দাগের পূর্বাংশ আকর্ষণ করিয়াছে। ঐ নকসাতে চিঠার ৩৫ ও ৩৬ দাগের উপর আবদুল খালেকের নাম লিখা আছে। উক্ত কবালার ভূমির উপর একটি পাকা দালানের ও তৎউত্তরের একটি টেউটিনের কাঁচাগৃহের পূর্বাংশপড়িয়াছে।”

(Underline supplied)

As observed earlier, according to the schedule of deed No. 26534 of Abdul Jabbar and Abdul Matin, the land on the western side of the property transferred under the said deed belongs to Abdul Khaleque. Abdul Khaleque, who deposed as D.W. 2, admitted in his testimony that the shares of Abdul Jabbar and Abdul Matin lie to the east of his own share, and that Abdul Jabbar and Abdul Matin had sold their share to Ishaque (plaintiff No. 1). D.W.2 further deposed that there was a hut on the eastern side, which Ishaque constructed. However, he stated that he

did not know Kalu Pathan. On the other hand, D.W.3 Nur Miah admitted that Ishaque Miah had a hut on the land and Kalu Pathan resided there. D.W.4 Abdul Karim also admitted the said fact.

Considering the evidence adduced by the parties, together with the report of the commissioner, I have no hesitation in holding that the deeds of the plaintiffs attract the suit land. Accordingly, the Court of Appeal below rightly held that the plaintiffs had a valid title to the suit land.

The next question to be adjudicated is whether the plaintiffs were able to prove their possession and the subsequent dispossession by the defendants.

As per the plaint, in the first part of December 1983, the defendant Nos. 1 to 4 entered upon the southern portion of the land described in the second schedule land and started construction of a building thereon. The plaintiffs attempted to resist such illegal act. At that stage, the defendants filed certain criminal cases against the plaintiffs, and taking advantage of the pendency of those criminal cases, dispossessed the plaintiffs from the suit property on 27.04.1986 and appointed the defendant No. 5 (Upazila Revenue Officer, Sadar Sylhet) as the receiver.

Admittedly, there is no clear evidence to establish that in early December 1983, defendant Nos. 1 to 4 entered the southern portion of the 2nd schedule land and dispossessed the plaintiffs. However, the facts regarding the filing of criminal cases, the plaintiffs' arrest on 27.04.1986 from the suit property, and the appointment of a receiver are

duly supported by documentary evidence. On the basis of this evidence, it appears to me that taking advantage of the kabalas of 1980, the defendants, on 27.04.198, dispossessed the plaintiffs from the suit land by unfair means. The learned trial judge, without considering these aspects properly, dismissed the suit. However, the Court of Appeal below, upon a thorough assessment of the evidence on record, rightly held that the plaintiffs acquired valid title to the suit land and had been in possession thereof prior to their dispossession, and were dispossessed by the defendants and thereby passed the impugned judgment and decree. The learned Advocate for the petitioner has failed to show any misappreciation or non-consideration of material evidence in the said judgment.

Therefore, I find nothing to interfere with the impugned judgment and decree, and accordingly, the Rule is liable to be discharged.

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

The office is directed to send down the lower Court's record along with a copy of this judgment to the concerned court for information and necessary action.

Kashem, B.O