

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 2098 of 2007

In the matter of

Md. Rowshan Ali Mia

... Plaintiff-Appellant

Petitioner

-Versus-

The Government of Bangladesh, represented by
the Deputy Commissioner, Chuadanga

... Defendant/Respondent

Opposite party

Mr Shasti Sarkar Islam, Counsel

.....For the petitioner

Mr Md. Zahirul Islam, Deputy Attorney

General with

Mr Md. Ferdous Sarker, Assistant

Attorney General.

...for the opposite party.

Date of Hearing: 29.6.2026 A.D.

Date of Judgment: 30.06.2026 A.D., Tuesday,

16 Ashar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioner under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

“Let a Rule be issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 01.02.2007 (decree signed on 07.02.2007) passed by the learned District Judge, Chuadanga in Title Appeal No. 10 of 2006 reversing the judgment and decree dated 9.12.2005 and decree signed on 18.9.2005 passed by the learned Joint District Judge, First Court, Chuadanga in Title Suit No. 92 of 2004 dismissing [Sic] the suit should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.”

At the same time, this Court was also pleased to direct the parties to maintain *status quo* in respect of

position and possession of the suit property till disposal of the Rule.

The crux of the facts of the case is that the petitioner, as plaintiff, instituted Title Suit No. 92 of 2004 in the Court of Joint District Judge, First Court, Chuadanga, for declaration of title, and the present R.S. Record is wrong. The specific case of the plaintiff was that Rokman and others were the C.S. recorded tenants. Among the tenants, there was an amicable settlement, and Lal Chad Biswas got a four annas share in respect of the disputed plot; land being Plot No.5745, 5746 and 4061 and other undisputed lands and got Sahams. Lal Chad Biswas died leaving behind two sons, Abdul Karim and Jonab Ali, and daughters Hasina and Robeya. The heirs of Lal Chad used to possess the land as their father, and during S.A. Operation their land was recorded in S.A. Khatian No. 203. They used to possess the land, and due to their need for cash money, they sold the same to Ershad Ali on 27.1.65 by registered deed No. 9569. Subsequently, Ershad owned

and possessed the land and sold it to Moniruddin on 26.5.65 by registered Deed No.4602. Moniruddin Sk died leaving behind two sons, namely Bazlur Rahman and Fazlur Rahman. The heirs of Moniruddin used to possess the lands peacefully when a conflict arose between the heirs of Moniruddin and the heirs of Ershad, then the heirs of Ershad executed and registered a rectified deed on 25.1.94 being No.750. Subsequently, the heirs of Moniruddin sold the said land to the plaintiff by registered deed being No.2764 dated 22.4.99. After purchasing the land, the plaintiff has been in possession of the land. Due to lack of knowledge, the plaintiff did not see the R.S. Record. Subsequently, he came to know that the R.S. & B.S. records had been wrongly recorded in the name of the Government; hence, he filed this suit

The defendant No.1 contested the suit by filing a written statement denying all the material allegations against him and contending, *inter alia*, that the suit land belongs to the Government and the Govt. has been

possessing the suit land; the R.S. record is correctly recorded in the name of the Government. The plaintiff has no right, title, interest and possession in the suit land. The plaintiff has filed this suit to grab the lands of the Government. Hence, the defendant prayed for dismissal of the suit.

Thereafter, the trial court, after completing all legal formalities, passed the impugned judgment and decree dated 12.9.2005 (decree drawn up thereunder and signed on 18.9.2005) decreeing the suit.

Being aggrieved by and dissatisfied with the said judgment, the defendant No.1 preferred an Appeal being No. 10 of 2006 before the learned District Judge, Chuadanga. After hearing both parties, the learned District Judge was pleased to allow the appeal, reversing the judgment and decree passed by the learned trial Court vide its judgment and decree dated 01.02.2007 (decree signed on 07.02.2007). Thereafter, the instant petitioner,

being aggrieved by and dissatisfied with the judgment of the appellate Court, invoked this revisional jurisdiction.

Mr Shasti Sarkar, the learned Counsel appearing on behalf of the petitioner, submitted that the appellate Court has committed an error of law in not holding that the plaintiff has been able to prove their case by adducing evidence by both oral and documentary. It is the settled principle of law that a record of right is not a document of title. There is no basis of recording in the name of the Government, so the Government has no title in the suit land, but the Appellate Court did not consider this, which has caused a failure of justice.

Learned Counsel has further submitted that the Appellate Court has committed an error of law in not holding that the heirs of Chad Ali sold their land on 27.1.65 by registered deed being No.7569, and subsequently Ershad sold to Moniruddin on 26.5.65 by Registered deed being No.4602. There was an accidental mistake in writing Plot No.5745 and 5746 in the deed, but

the same was written as 4745 and 4746, which is wrong. Subsequently, the heirs of Ershad executed and registered on 25.1.94 by Deed No.750. The heirs of Moniruddin have sold '31 acres of land on 4.9.1999 by registered Deed No.2764 to the plaintiff. After purchasing the land, the plaintiffs have been possessing the land with the knowledge of all people. The plaintiffs have been able to prove their title as well as documents; But the appellate court did not consider this, which has caused a failure of justice.

Learned Counsel has further submitted that the appellate court has committed an error of law in not holding that P.W.1-Rawshan Ali has said in his cross examination-in-Chief that- “এরশাদ কিভাবে পেয়ে বিক্রী করে তাহা জানি না। পরে বলে এরশাদ তফসিল বর্ণিত জমি খরিদ করে পেয়েছে । জেরায় বলেছে উত্তরে আবু সাইদ, দক্ষিণে আজগর আলী, পূর্বে বুবই সেখ এবং পশ্চিমে হাজারী সেখ। P.W.2 has said that, নালিশী সম্পত্তি বাদীরা দখল করে। From the above view of the facts that the plaintiff's are in

possession of the suit land but the appellate Court did not consider so which has caused a failure of justice.

Learned Counsel has further submitted that the learned District Judge, Chuadanga, has failed to consider the facts and misread, misinterpret, misappraise, discontinue, and non-consideration of evidence on record and thereby erroneously dismissed the suit.

Learned Counsel has earnestly submitted that the appellate Court has passed the Judgment without considering the properly exhibited documents, which have been exhibited without objection; as such, the documents (Exhibited) should be accepted as genuine, but the appellate court did not consider this, which has caused a failure of justice.

Learned counsel further supporting the decisions of the learned trial court referred to a decision as contained in 50 DLR (1998)134 in respect of rectification of a sale deed does not extinguish the title to the property and

another decision as contained in 32 DLR (1980) 252 in respect of Kabala executed and registered in Bangladesh in 1975.

Conversely, Mr Md. Zahirul Islam, Deputy Attorney General, assisted by Mr Md. Ferdous Sarkar, Assistant Attorney General, respectively posited that the learned trial Court misconceived the facts, decreeing the suit, and thereby the learned Appellate Court rightly reversed the same, giving specific reasons and observations in its judgment, which does not require interference.

Learned Deputy Attorney General further submitted that the plaintiff, during trial, failed to establish any saham between the heirs of C.S tenant and the plaintiff, who purchased the suit land from the content of the wrong record, where the title has not been prescribed to the plaintiff.

Learned Deputy Attorney General submits that the suit was seriously defective in its entirety; the plaintiff

filed the suit providing a false cause of action, and thereby the Rule is liable to be discharged.

In view of the foregoing submissions, the learned Counsel prayed for discharge of the Rule.

I have given my anxious and careful consideration to the revisional application, the Rule issued thereupon, the impugned judgments and decrees passed by both the Courts below, the pleadings of the respective parties, the oral and documentary evidence adduced before the trial Court, the exhibits brought on record, the Subordinate Court's Records (SCR), together with the decisions cited at the Bar.

I have also attentively considered the elaborate submissions advanced by the learned Counsel appearing on behalf of the petitioner as well as the learned Deputy Attorney General representing the opposite parties. Upon an independent scrutiny of the entire record, viewed in the light of the applicable principles of law governing

appreciation of evidence and the scope of revisional jurisdiction under section 115(1) of the Code of Civil Procedure, I now proceed to examine whether the learned Appellate Court committed any error of law resulting in an erroneous decision occasioning failure of justice.

A close examination of the judgment and decree rendered by the learned trial Court reveals that the learned Judge meticulously evaluated both the oral and documentary evidence available on record and arrived at his findings after assigning cogent and convincing reasons. The learned trial Court, while appreciating the evidentiary value of the documents and depositions, observed as follows:

“ বাদীপক্ষ তাহাদের কথিত মতে সি.এস. ও এস.এ. পর্চা এবং তাহাদের দাবিকৃত রেজিস্ট্রিকৃত মূল দলিলসমূহ দাখিল করিয়াছেন। বাদীপক্ষের দাখিলকৃত দলিলসমূহের মধ্যে ৩০ বৎসরের পুরাতন দলিলও রহিয়াছে। নালিশী খতিয়ানের অপর কোনো শরিক নালিশী জমি দাবি করে নাই। (চলমান পাতা নং-৪) নালিশী খতিয়ানের মালিক কোনো হিন্দু ছিল না;

সুতরাং ইহাও ধারণা করার সুযোগ নাই যে, হিন্দু ব্যক্তিগণ এদেশ ছাড়িয়া ভারতে যাওয়ার কারণে নালিশী জমি পরিত্যক্ত বা অর্পিত সম্পত্তি হইয়াছে। সরকার বিবাদীর বক্তব্য যে নালিশী জমি সরকারি খাস জমি। সরকারের নামে কিভাবে খাস হইল, ইহার কোনো প্রার্থ ব্যাখ্যা সরকার বিবাদীর জবাবে বা বিবাদীপক্ষের সাক্ষী ডি.ডব্লিউ.-১, ভূমি সহকারী কর্মকর্তা মোঃ জবলুল রহমানের জবানবন্দিতে নাই। বরং জেরায় সে বলিয়াছে, এস.এ. রেকর্ড সঠিক না বেঠিক তাহা সে বলিতে পারে নাই। ডি.ডব্লিউ.-১ আত্মবিশ্বাসের সহিত বলিতে পারে নাই যে, এস.এ. রেকর্ড সঠিক নয়। এস.এ. রেকর্ড সংশোধনের জন্য উহার বিরুদ্ধে সরকারপক্ষ কোনো মামলা করে নাই। স্বত্বের ভিত্তি না থাকিলে শুধু রেকর্ড দ্বারা স্বত্বের সৃষ্টি হয় না। আবার যদি স্বত্বের ভিত্তি থাকে, তাহা হইলে শুধুমাত্র রেকর্ড না হওয়ার কারণে স্বত্ব নষ্ট হয় না। এ সম্পর্কে উচ্চ আদালতের নজির রহিয়াছে। নালিশী জমিতে বাদীপক্ষের দখল আছে—উক্ত মর্মে বাদীপক্ষের সকল সাক্ষীগণ সাক্ষ্য প্রদান করিয়াছেন। বাদীপক্ষের সাক্ষীদের বক্তব্যে কোনো কনট্রাডিক্টরি বা সেক্স-কনট্রাডিক্টরি বক্তব্য নাই। উপরোক্ত সরকারী বিবাদীপক্ষের সাক্ষী ডি.ডব্লিউ.-১ মোঃ জবলুল রহমান জেরায় বলিয়াছেন, সরকার নালিশী জমির সরেজমিনে দখল করে না। জেরায় আরও বলিয়াছেন, নালিশী জমি সরকার কাহাকেও লিজ প্রদান করেন নাই। সুতরাং দেখা যায়, বাদীপক্ষ নালিশী জমি দখল ও ভোগ করে। বাদীপক্ষ তাহাদের দাবিমতে সি.এস. ও এস.এ. পর্চা এবং খরিদা দলিল দাখিল করিয়াছে। নালিশী জমি দখল করে, ইহাও প্রমাণ করিয়াছে। অপরদিকে সরকার বিবাদীপক্ষ প্রমাণ করিতে পারে নাই যে,

কিসের ভিত্তিতে নালিশী জমির আর.এস. রেকর্ড সরকারের নামে হইয়াছে।”

It further transpires from the impugned appellate judgment that the learned District Judge, while reversing the well-reasoned findings of the trial Court, made the following observations:

“সি.এস. খতিয়ান প্রদর্শনী-১-এ নালিশী দাগদ্বয়ের মন্তব্য কলামে নবীন ও রোকমানের নাম লিখিত আছে। উক্ত খতিয়ান দৃষ্টে দেখা যায় যে, মন্তব্য কলামে লিখিত নামগুলোর মধ্যে উত্তর সীমানার দখলকার হিসেবে নবীন এবং রোকমানের দখলের বিষয়টি বুঝানো হইয়াছে। কাজেই এই ক্ষেত্রে বাদীপক্ষের দাবিমতে সি.এস. রেকর্ডীয় প্রজাগণের মধ্যে আপোষ চাহামে লালচাঁদ নালিশী দাগদ্বয়ের জমি দখল করিতেন— সেই বিষয়টি প্রমাণিত হয় না। কাজেই এই ক্ষেত্রে বিজ্ঞ নিম্ন আদালত এ দেশের ভূমি ব্যবস্থাপনায় শরিকগণের আপোষ ছাহাম মতে শরিক একজনের দাগ বা অংশে ভোগদখল করার বিষয় উল্লেখ করিয়া, বহু পূর্ব হইতে প্রচলিত নিয়মের উল্লেখপূর্বক লালচাঁদ বিশ্বাস আপোষ ছাহাম নালিশী দাগদ্বয়ের জমি ভোগদখল করিত মর্মে যে সিদ্ধান্ত গ্রহণ করিয়াছেন, তাহাকে সঠিক সিদ্ধান্ত বলা যায় না।”

The learned Appellate Court also proceeded to observe that:

“বাদীপক্ষ হইতে নালিশী জমির দখলের সমর্থনে কোনো দালিলিক প্রমাণ দাখিল করা হয় নাই। পি.ডব্লিউ.-১ তাহার সাক্ষ্য বলিয়াছেন যে, নালিশী জমির উত্তরে আবু সাঈদ, দক্ষিণে আযাহার আলী, পশ্চিমে ফজর শেখ, বর্তমানে তাহার ছেলেরা আছে। পি.ডব্লিউ.-২ আযাহার আলী তাহার সাক্ষ্য বলিয়াছেন যে, নালিশী জমির দক্ষিণে তাহার ২ (দুই) টুকরা জমি আছে। রমজান আলীকে নালিশী জমি খরিদের পর হইতে ভোগদখল করিয়া আসিতে দেখিয়াছেন। নালিশী জমি সরকার ভোগদখল করে না। বাদী খরিদের পর নালিশী জমিতে কোন মাসের কত তারিখে, কোন দিনে দখলে গিয়াছে, তাহা সঠিকভাবে বলিতে পারেন নাই। বাদীর সাক্ষ্যের সময় তিনিও এজলাসে উপস্থিত ছিলেন। উপর্যুক্ত আলোচিত পি.ডব্লিউ.-১ ও পি.ডব্লিউ.-২-এর সাক্ষ্য হইতে দেখা যায় যে, পি.ডব্লিউ.-২ নালিশী জমিতে বাদীর দখলের বিষয়ে সাক্ষ্য প্রদান করিলেও অপর কোনো সাক্ষীর সাক্ষ্য দ্বারা তাহার দখল বিষয়ক প্রদত্ত সাক্ষ্যটি সমর্থিত হয় নাই।”

Having examined the above findings of both the Courts below in juxtaposition with the evidence available on record, I am unable to persuade myself to subscribe to the conclusions ultimately reached by the learned Appellate Court. The reversal of the decree passed by the learned trial Court appears to have been founded not upon a comprehensive re-appreciation of the entire

evidence but rather upon isolated observations detached from the totality of the materials on record.

At the very outset, the learned Appellate Court appears to have misdirected itself in holding that the plaintiff's claim based upon *aposh saham* was not established. It is evident from the record that no rival heirs of the original C.S. tenants ever disputed the alleged arrangement, nor did any co-sharer come forward claiming any portion of the suit land. The existence of an *aposh saham* is essentially a question of fact which may be established not merely by documentary evidence but also by long, uninterrupted possession coupled with the conduct of the parties. The learned trial Court rightly took into consideration the prevailing customary practice among co-sharers whereby possession over specific plots is enjoyed in accordance with family arrangement or mutual partition without immediate mutation or formal documentation. Such findings were reached after

evaluating the evidence in its entirety and could not have been lightly interfered with unless shown to be perverse.

Moreover, the testimony of P.W.2, Azahar Ali, in my considered opinion, substantially corroborates the evidence of P.W.1. P.W.2 not only identified the boundaries of the suit land with certainty but also categorically deposed regarding the plaintiff's possession after purchase. His testimony is consistent with the surrounding circumstances and is not shaken in cross-examination. The learned Appellate Court, however, isolated a portion of his deposition while completely overlooking those parts which materially corroborate the plaintiff's case. Such selective appreciation of evidence amounts to misreading of material evidence and non-consideration of relevant facts, which undoubtedly constitutes an error of law warranting interference in revisional jurisdiction.

The learned Appellate Court further observed that the certified copy of the registered deed dated

22.04.1999, marked as Exhibit-3 (Gha), had been accepted by the learned trial Court at the stage of delivery of judgment. Even assuming the same to be correct, I do not find any illegality committed by the learned trial Court. It is well settled that a Civil Court possesses ample power to receive or call for documentary evidence at any stage of the proceeding if such evidence is necessary for determining the real controversy between the parties, provided no prejudice is occasioned to either side. The exercise of such judicial discretion cannot, by itself, constitute a ground for reversing an otherwise well-reasoned judgment, particularly when the authenticity of the document itself remained unquestioned.

On an independent examination of the documentary evidence, it further appears that the heirs of Ershad Ali had already executed and registered a deed of rectification being Deed No.750 dated 25.01.1994, much prior to the execution and registration of the plaintiff's purchase deed being No.2764 dated 22.04.1999. The

existence of the rectification deed substantially clarifies the identity and description of the property and removes any ambiguity regarding the subject matter of the transfer. Consequently, the subsequent registered deed executed in favour of the plaintiff cannot be discarded merely because a correction had earlier been incorporated by way of a rectification deed.

Significantly, the evidence of D.W.1, Md. Fazlur Rahman, particularly his admissions elicited during cross-examination, assumes considerable importance. His testimony unmistakably demonstrates that the Government failed to disclose the legal foundation upon which the suit land allegedly vested in the Government. Neither acquisition proceedings, nor requisition, nor vesting under any statutory provision, nor any lawful process by operation of law has been established by reliable evidence. On the contrary, the witness candidly admitted material facts which substantially weaken the Government's defence and lend support to the plaintiff's

claim. Such admissions constitute substantive evidence against the party making them and cannot be ignored while appreciating the evidence as a whole.

The inevitable consequence of the aforesaid admissions is that the R.S. Record standing in the name of the Government loses much of its evidentiary value. It is a settled proposition of law that an entry in the record-of-rights neither creates nor extinguishes title. Unless the Government is able to establish the source from which it derived title, a mere recording of its name in the R.S. Khatian cannot prevail over valid documents of title coupled with possession. The learned Appellate Court unfortunately overlooked this settled principle and treated the R.S. record almost as conclusive proof of title, which is legally impermissible.

Equally significant is the fact that neither of the Courts below raised any issue regarding absence of cause of action. The written statement filed by defendant No.1 also does not contain any specific pleading challenging the

maintainability of the suit on that ground. It is a cardinal principle of civil jurisprudence that no party can be permitted to travel beyond its pleadings. In the absence of a specific plea, any argument advanced subsequently regarding want of cause of action cannot be entertained to defeat an otherwise maintainable suit.

In this regard, the decision reported in **50 DLR (1998) 134**, in the case of **Binode Bihari Ghose Vs Assistant Custodian, Vested and Non-Resident Property and others**, squarely supports the plaintiff's case. Their Lordships categorically held that failure to rectify a sale deed does not extinguish the title acquired thereunder and that Section 31 of the Specific Relief Act is merely an enabling provision. It was further held that where possession has already been delivered pursuant to the sale, a Court exercising equitable jurisdiction is competent to rectify an obvious mutual mistake even in a declaratory suit instead of relegating the parties to another round of litigation. The ratio of the aforesaid decision is directly

applicable to the facts of the present case and completely answers the objections raised regarding the alleged defect in the description of the property.

Likewise, in **32 DLR (1980) 252**, in **Sultanuddin Chowdhury Vs. Government of the People's Republic of Bangladesh and others**, their Lordships authoritatively declared that entries in the record-of-rights are merely evidence of possession at the time of preparation of the records and do not constitute proof of title. A registered conveyance, unless avoided or cancelled by a competent Civil Court on proof of fraud or other recognized legal grounds, shall prevail over inconsistent entries in the record-of-rights. This principle has consistently been followed by our superior Courts and leaves little room for controversy.

Applying the aforesaid settled principles to the facts of the present case, it becomes manifest that the learned Appellate Court failed to appreciate the legal effect of the registered deeds, the rectification deed, the admissions

made by the Government witness, and the consistent oral evidence adduced by the plaintiff's witnesses. Instead of meeting the well-reasoned findings recorded by the learned trial Court with convincing reasons, the learned Appellate Court reversed the decree on assumptions and conjectures unsupported by the evidence on record. Such an approach amounts to misreading of evidence, non-reading of material evidence, and misapplication of settled principles of law. Consequently, the impugned judgment suffers from patent errors of law as well as errors of fact, thereby occasioning failure of justice.

In the result, I find considerable substance in the Rule. The learned Appellate Court travelled beyond the evidence on record and failed to assign legally sustainable reasons for reversing the comprehensive findings of the learned trial Court. The impugned judgment and decree, therefore, cannot be allowed to stand.

Accordingly, the Rule is made **absolute** without any order as to costs.

The impugned judgment and decree dated **01.02.2007** (decree drawn up thereunder and signed on **07.02.2007**) passed by the learned District Judge, Chuadanga, in **Title Appeal No. 10 of 2006**, allowing the appeal, are hereby **set aside**.

However the judgment and decree dated **09.12.2005** (decree drawn up thereunder and signed on **18.09.2005**) passed by the learned Joint District Judge, First Court, Chuadanga, in **Title Suit No.92 of 2004**, decreeing the suit, are hereby **restored and affirmed**.

The order of **status quo** earlier granted by this Court stands **recalled and vacated**.

Let the Subordinate Court's Records be transmitted to the concerned Courts forthwith, along with a copy of this judgment and order, for information and necessary action.

(Abdur Rahman, J.)