

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.933 of 2002.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

And

Enamul Huq and others

...Petitioners

-Versus-

Ohidur Rahman and others

...opposite parties

No one appears

...For both the parties

Heard & Judgment on: 01.12.2024.

This Rule was issued calling upon the opposite party Nos.110 at the risk of the petitioners to show cause as to why the impugned judgment and decree dated 22.10.2001 of the learned Joint District Judge, 2nd Court, Feni in Title Appeal No.77 of 1997 affirming those dated 30.07.1997 of the learned Senior Assistant Judge, Chhagalnaiya, Feni Sadar, Feni in Title Suit No.4 of 1996 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 in short are that petitioners as plaintiffs instituted above suit for declaration of title for 99 decimal land as described in the

"Ka" and "Kha" schedule of the plaint and recovery of khas possession for "Kha" schedule land alleging that in the land of C.S. khatian No.3 Ram Sundar had 8 anna share and plaintiffs predecessor Mahabbat Ali and Md. Towki had 4 anna share each which comprises the land of the Ka schedule of the plaint. In the C.S. khatian No.13 plaintiff's predecessor Md. Towki, Jonab Ali and Kala Mia were owners and possessors which comprises Kha schedule land and plaintiffs as successive heirs of above C.S. recorded tenants are owing and possessing above disputed land. But defendant Nos.15-19 have dispossessed the plaintiffs from 25 decimal land of the "Kha" schedule on 28.01.1996 and constructed their dwelling huts and excavated a tank. Above land was also erroneously recorded in the names of the defendant in the relevant S. A. khatian.

Defendant Nos.1-5, 4 and 15-19 contested the suit by filing separate written statements wherein they have denied all claims and allegations made in the plaint and alleged that above C. S. recorded tenants having failed to pay rent of above property the superior landlord filed Rent Suit No.1697 of 1934 in the first court of Munsif and obtained a decree and for

execution of above decree instituted Execution Case No.1453 of 1937 and total 208 decimal land of above two C.S. khatians were sold in auction which was purchased by the predecessor of the plaintiffs Salamatullah, Adhir Kumar Das and by subsequent transfer and of their heirs defendants are in possession in the above land and in their name relevant D.R.R. khatian and S.A. khatian were correctly prepared. Defendant No.1, 4 and 5 transferred "Kha" schedule land to defendant Nos.15-19 by registered kobla deed dated 07.12.1995 and they are in possession in above land by constructing their dwelling house and excavating tank and the plaintiffs do not have any possession in the disputed property.

At trial plaintiff examined three witnesses and defendant examined four. Documents of the plaintiff were marked as Exhibit No.1-3 series and those of the defendant were marked as Exhibit No.Ka-Jha series.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial court preferred Title Appeal No.77 of 1997 to the District Judge, Feni which was

heard by the learned Joint District Judge who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellants as petitioners moved to this court and obtained this rule.

No one appears at the time of hearing of this rule on behalf of the petitioner or the opposite party although the matter appeared in the list for hearing for several dates.

I have carefully examined the judgments of the courts below, evidence and other materials on record.

It is admitted that in C.S. khatian No.3 plaintiff's predecessors Mohabbat and Md. Towki had 4 anna share each and in C.S. khatian No.13 plaintiff's predecessor Md. Towki and Jonab Ali and Kala Mia each had 4 anna share and plaintiffs are successive heirs of above C.S. recorded tenants or subsequent purchaser from them. It is admitted that in the relevant B.R.S. khatian and S.A. khatian above property recorded in name of the defendants and defendant Nos.15-19 have their dwelling huts and tank in the land of "Kha" schedule. Defendants have claimed that above

property was sold in auction in execution of decree of Rent Suit No.1697 of 1934 and above auction was purchased by the predecessor of the defendants. The defendants should have produced and proved at trial the certified copy of the plaint and judgment of Rent Suit No.1697 of 1934 and the certificate of sale of above land and certificate of delivery possession in order to prove that the above land was sold in auction and their predecessor acquired title and lawful possession. But the defendants could not produce and prove certified copy of the judgment of above rent suit or execution Case No.1435 of 1937 nor any certificate of delivery of possession was produced. As such it can be safely held that the defendants could not prove by legal evidence that above land of C.S. khatian No.3 and 13 were sold in auction in execution of rent decree and the predecessor of the plaintiffs purchased the same and got possession of above property.

This is a suit for declaration of title under section 42 of the Specific Relief Act as far as land of "Ka" schedule is concerned but as far as the land of "Kha" schedule is concerned this is a suit under section 8 of the Specific Relief Act. The plaintiffs were required to prove their

lawful possession in the land of "Ka" schedule and prove their previous possession in the land of "Kha" schedule and their alleged dispossession from above land on 28.01.1996. This suit was filed by nine persons as plaintiffs who live in separate villages but in the plaint there is no statement as to the mode and manner of possession of above plaintiffs.

As mentioned above relevant BRS and S. A. khatian were not prepared in the name of the plaintiffs nor they have succeeded to produce any rent receipt showing payment of rent for the disputed land. P.W.2 Fazlu stated that he lives and works at Kaptai in Chattogram P.W.3 Farid stated that he was not present at the time of alleged dispossession of the plaintiffs from Kha schedule land. P.W.4 Delowar does not know anything about the possession of the dispute land before 07.12.2005.

On consideration of above facts and circumstances of the case and oral and documentary evidence adduced by the parties in support of their respective possession in the disputed land the learned Judges of both the courts below concurrently held the plaintiffs could not prove their lawful possession in the

"Ka" schedule land and their previous possession and subsequent dispossession from the land of "Kha" schedule which appears to be based on evidence on record and in the absence of any allegation of non consideration or misreading of any evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

In above view of the materials on record I am unable to find any illegality and infirmity in the impugned judgment and decree passed by the learned Judge of the court of appeal below nor I find any substance in this petition under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

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

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.