

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

Present

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No.3447 of 2005**

Feroz Alam

..... Petitioner.

Vs.

Md. Jahangir Hossain and others

.....Opposite parties.

Ms. Rezina Mahmud with

Ms. Ziban Nesa Mukta, Advocates

..... For the petitioner.

Mr. Md. Zakir Hossain, Advocate. Advocate.

..... For the opposite parties.

**Heard on :** The 1<sup>st</sup>, 3<sup>rd</sup>, 8<sup>th</sup> & 9<sup>th</sup> July, 2014.

**Judgment on :** The 14<sup>th</sup> July, 2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and order dated 17-07-2005 by which the learned Joint District Judge (in- charge), 1<sup>st</sup> Court, Patuakhali allowed Title Appeal No. 175 of 2002 and thereby decreed Title Suit No. 19 of 1998 on reversing the judgment of dismissal dated 06-11-2002 passed by the learned Assistant Judge, Kolapara, Patuakhali in the said suit.

**Plaintiffs' Case:**

Deceased plaintiff Idris Mia, being predecessor of opposite party Nos. 1-11, instituted the above noted Title Suit for declaration of his title to the suit land measuring 6.48 ½ acres of land appertaining to S.A. Khatian No. 142 as described in the schedule to the plaint.

Plaintiffs claim that the suit land is part of the Petti Settlement (P.S.) Khatian No. 52 measuring a total of 41.34 acres. The entire land of that khatian was put to auction in Certificate Case No. 2428 of 1936-37 and Idrish Mia the deceased plaintiff and his relative Abdur Rahim, being

predecessor of the defendant Nos. 1-13 and 15, auction purchased the same in equal share. They obtained the certificate of sale dated 20-03-1937 and got delivery of possession on 16-06-1937. Subsequently the quantum of the land has increased to 45.25 acres by accretion. Thus Idrish Mia, the deceased plaintiff, as one of the two auction purchasers, had been in possession and title of his 8 annas share amounting to 22.65 acers.

However, after auction purchase, Idrish Mia came to know that the said Abdur Rahim had taken advantage of the responsibility assigned to him by the former for auction purchase and Abdur Rahim got the auction documents prepared and written in his name alone. Then Abdur Rahim executed a registered Nadabi Patra dated 25-06-1940 wherein he admitted plaintiff's possession and title over the 8 annas share of the entire auction purchased land.

Subsequently the land of P.S. Khatian No. 52 was split up into two Revenue Survey (R.S) Khatians being Nos. 36 and No. 37 with wrong entires. While R.S. Khatian No. 36 for 32.28 acres was prepared in the name of Abdur Rahim as owner of the entire land, deceased plaintiff Idrish Mia was shown as the possessor of four anas share. The other R.S. khatian No. 37 for 12.97 acres was wrongly recorded in the names of the children of Abdur Rahim, and the name of the Plaintiff Idrish was not induced in this khatian.

Subsequently two S.A. khatians were prepared against the said two R.S. khatians. S.A khatina No. 54 was correctly prepared in the name of plaintiff Idrish Mia for eight anas share and the remaining eight anas in the name of Abdur Rahim.

But the other S.A khatian No. 142 for 12.97 acres arising from R.S khatian No. 37 was wrongly prepared in the names of the children of Abdur Rahim and Idrish Mia was not included.

So plaintiff Idrish Mia (deceased) filed the instant suit for declaration of his title to and confirmation of joint possession over the suit land.

**Case of defendants:**

Two sets of written statements were filed, one by defendant Nos. 4 and 8 and another by defendant No. 14. being the Government of Bangladesh represented by the Deputy commissioner (D.C), Patuakhali. Defendant No. 15 adopted the written statement filed by defendants Nos. 4 and 8.

Defendant Nos. 4 and 8 contend that the suit is not maintainable in its present form, that it is bad for defect of party and barred by limitation and also by the principles of estoppel, waiver and acquiescence.

These defendants claim that their predecessor Abdur Rahim alone auction purchased the entire land of P.S. Khatian No. 52 measuring 41.34 acres and that as the heirs of Abdur Rahim they have been possessing the suit land.

They contended that the deceased plaintiff Idrish Mia was a relative of Abdur Rahim and by taking advantage of this relationship Idrish Mia got his name included for eight anas share in the S.A khatian No. 54, and now raising the same claim to the land of the other being S.A khatian No.142.

Defendant No.14, the D.C, Patuakhali contends that part of the suit khatian i.e. 10 decimals plot No. 676 is সিকস্তি or dillvated land and it has legally vested in the Government. It is used by the members of the public, but it has been wrongly recorded in the said khatian in the names of the plaintiff and defendants .

**Proceedings and decisions of the courts below:**

At the trial, plaintiff and defendant Nos. 4 and 8 produced oral and documentary evidence. Defendant No. 14 did not adduce any evidence.

The trial Court upon consideration of the evidence on record, decided the issues with regard to limitation, defect of party and estoppel and waiver in favour of the plaintiff.

With regard to merit of the claims of the parties, the trial Court recorded findings that the plaintiff could prove his title to the suit land, but failed to prove possession over any specific portion of the suit land. Accordingly the trial Court decided that the suit was not maintainable and dismissed the suit.

The plaintiff preferred the Appeal and defendant Nos. 1-8 filed a cross objection against the decision of the trial court. After contested hearing the appellate court agreed with the finding of the trial Court with regard to plaintiff's title .

However with regard to possession, the appellate court relied on the observations of the Appellate Division made in the case of Enjaheruddin Mia alias Md. Enjaheruddin Mia-Vs.- Mohammad Hossain and others, reported in 50 DLR(AD)(1998), page-84 and recorded a finding that since the plaintiff has prayed for declaration of title and confirmation of his joint possession along with the defendants there was no legal bar in allowing the relieves prayed for by the plaintiff.

The appellate court discarded the objection raised by the defendant respondent Nos. 1-8 in their cross-objection.

Accordingly the appellate court set aside the judgment of the trial court and decreed the suit by the impugned judgment.

**Deliberation in Revision:**

At the hearing of this Revision, Ms. Rezina Mahmud, the learned Advocate for the petitioner-defendants, submits that appellate court has misread the material evidence on record, particularly the statement of the deceased plaintiff himself as P.W. 1 to the effect that defendants possess excess land to the tune of 12.97 acres and that he could not say the quantum of the land under his own possession and thus he admitted defendants' possession.

In reply, Mr. Md. Zakir Hossain, the learned Advocate for the plaintiff opposite parties, submits that the possession of Idris Mia has been admitted by Abdur Rahim, being the predecessor of the defendants, in the registered Nadabi Patra in the year 1940 and it is further reflected in at least one of the subsequent R.S. and in one of the S.A khatians.

Mr. Hossain the learned Advocate next submits that title of the plaintiffs have been decided concurrently by the courts below and according to the principle laid down in the aforesaid 50 DLR decision there is no legal bar in allowing a decree of joint possession and declaration of title.

On my query about the statement of the plaintiff as P.W.1 about defendants' possession, Mr. Hossain the learned Advocate replies that plaintiffs title has been concurrently decided by the courts below and plaintiffs as co-sharers are entitled to get partition of their share and therefore the suit may be sent back on remand for proper adjudication.

**Findings and decision in Revision:**

From the materials on record, I find that the plaintiffs have failed to produce any credible evidence with regard to possession over any specific part of the suit land. So I hold that a decree of confirmation of joint possession cannot be granted.

However in consideration of the concurrent decision of the court's below with regard to plaintiff's co-sharership in the suit jote, I hold that the suit may be sent back on remand so that plaintiffs may get an opportunity for getting partition of their due share.

It is noted that plot no 676 measuring two decimals as recorded in .S.A khatian No. 142, Exhibit-Gha(1), appears to be a dilluvated (সিকান্তি) land. So this aspect also requires to be decided in deciding title of the plaintiffs and others.

In view of the above I hold that the suit should be sent back on remand to the trial court for proper adjudication of the dispute.

In the result, the Rule is made absolute. The judgment and decree dated 17-07-2005 passed by the learned Joint District Judge, in-Charge, Ist Court, Patuakhali in Title Appeal No. 175 of 2002 and also that of the trial Court are set aside. The suit is sent back on remand.

The trial Court shall allow the plaintiffs to amend their plaint so that they get an opportunity to claim partition of their share. The defendants shall also be allowed to file additional written statement on that aspect. Both parties shall be allowed to produce further evidence in support of their respective amendment, if any.

No order as to cost.

Send down the lower court record along with a copy of this judgment and order.

Habib/B.00