

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.3619 of 2002.**

In the matter of:

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

Md. Shorifullah Patwary @ Md.  
Jilan Patwary

**...Petitioner**

-Versus-

Hajee Ali Ajgar and others

**...opposite parties**

No one appears

**..For both the opposite parties**

**Heard & Judgment on: 26.11.2024.**

This rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and decree dated 29.01.2002 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Chandpur in Title Appeal No.30 of 2000 in allowing the said appeal and thereby setting aside the judgment and decree dated 27.01.2000 passed by the learned Senior Assistant Judge, Matlab, Chandpur in Other Class Suit No.93 of 1996 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title for 63 decimal land by adverse possession.

It was alleged that above land belonged to Md. Osman Goni Patwary who entered into a bainapatra to sale above land to the plaintiff for Tk.22,000/- and on receipt of Tk.21,000/- he executed above Bainapatra. Above Md. Osman Goni went to Jessore in search job and after return to home plaintiff requested him on 11.11.1996 to execute and register kobla deed but he refused. Plaintiff is in peaceful possession in above land since 20.03.1977 which has created valid title by adverse possession.

Defendant No.1 contested the suit by filing a written statement alleging that Md. Osman Goni Patwary transferred 33 decimal land to his cousin Md. Mobin and after demise of above Md. Osman Goni plaintiff inherited remaining land as his heirs. Md. Osman Gazi never entered into any contract to sell above land to the plaintiff and above bainapatra was a forged document and plaintiff did not have any possession in the disputed land.

At trial plaintiff examined three witnesses and documents of the plaintiff were marked as Exhibit No.1-2. But the defendant did not examine any witness nor produce any document.

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

Being aggrieved by the above judgment and decree of the trial court above plaintiff preferred Title Appeal No.30 of 200 to the District Judge, Chandpur which was heard by the learned Joint District Judge who allowed the appeal set aside the judgment and decree of the trial court and remanded the suit for retrial.

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

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

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

It is admitted that disputed 63 decimal land belonged Md. Osman Gani Patwary. Plaintiff has claimed that Osman Gani on receipt of Tk.21,000/- inducted the plaintiff in the possession of above land on 20.03.1977. P.W.1 in his evidence claimed

title in above land by adverse possession since the plaintiff is in possession from 20.03.1977 claiming himself to be the owner of above land and above continuous and peaceful possession of the plaintiff has matured into valid title. But P.W.3 did not support the claim of the plaintiff that above Osman Gani Patwary entered into any contract for sale of the disputed land. In cross examination P.W.3 stated that the impugned bainapatra deed was a forged document and the same was not executed by Osman Gani Patwary.

It is well settled that title by adverse possession is the wildest form of acquisition of title and he who claims title by above unlawful means must prove the same strictly by legal evidence.

Plaintiff claims that he was inducted in the possession of the disputed land by the true owner of above land namely Osman Gani Patwary on 20.03.1977. As such above entry of the plaintiff in the disputed land was not adverse to the real owner.

A deed of bainapatra is not a deed for title. It is a contract between the parties to sell the land and title can be obtained by execution and registration of a sale deed.

It is not understandable as to why the plaintiff did not institute a suit for Specific Performance of above bainapatra and thereby acquire by valid title in the disputed land.

The plaintiff could not mention in the plaint or his evidence in court as to when his possession in the disputed land became adverse to real owner Osman Gazi Patwary and when above adverse possession matured into title.

In above view of the facts and circumstances of the case and evidence on record I hold that the plaintiff has miserably failed to establish the claim of title in above 63 decimal land by adverse possession against the real owner Osman Gani Patwary. As such the learned Judge of the court of appeal below should have allowed the appeal and dismissed the suit but instead the learned Judge has erroneously remanded the suit for retrial which will be a futile exercise.

In above view of the materials on record I find substance in the Civil Revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The judgment and decree dated 29.01.2002 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Chandpur in Title Appeal No.30 of 2000 is set aside

and the judgment and decree dated 27.01.2000 passed in Other Class Suit No.93 of 1996 is by the trial court is restored.

The ad-interim order passed at the time of issuance of the rule is hereby vacated.

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

Md. Kamrul Islam  
A.B.O