

Present:-

Mr. Justice Faysal Hasan Arif

Civil Revision No. 2846 of 1994

Md. Abdul Shonar being dead his legal heirs:
1(a) Most. Jubeda Bibi and others

..... Petitioners

-Versus-

Shamsuddin Chowdhury being dead his legal
heirs: 1(a) Johura Bewa and others

..... Opposite-Parties

Mr. Md. Golam Samdani, Advocate

... For the Petitioners

Mr. Chanchal Kumar Biswas, Advocate with

Mr. Md. Manik Chan, Advocate and

Mr. Mirza Sultan Al Raza, Advocate

..... For the Opposite Parties

Heard on 04.03.2026, 10.03.2026 and 11.03.2026

Judgment on 12.03.2026

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and decree dated 18.06.1994 (decree signed on 22.06.1994) passed by learned Subordinate Judge (now Joint District Judge), Joypurhat in Other Class Appeal No. 169 of 1992 allowing the appeal and reversing the judgment and decree dated 05.09.1992 (decree signed on 12.09.1992) passed by learned Assistant Judge, Akkelpur, Joypurhat in Other Class Suit No. 10 of 1992 dismissing the suit should not be set aside.

At the time of issuance of the Rule, the parties were directed to maintain *status quo* in respect of possession of the suit land for a period of 12 (twelve) weeks.

Facts, relevant for disposal of this Rule, are that opposite party No. 1, as plaintiff, filed Other Class Suit No. 10 of 1992 before learned Assistant Judge Court, Akkelpur, Joypurhat against the defendant petitioner and defendant opposite party Nos. 2-8 for declaration of title to and recovery of khas possession of the suit land stating *inter alia* that one Upchand alias Rupchand was the owner of 9.34 acre land and accordingly his name was recorded in S.A. Khatian No. 121 and said Rupchand died leaving behind his one wife Foyjun Bewa, five sons namely Zinar, Sonarot, Mosorat, Ebarot and Dashmot and one daughter namely Sano Bibi. The heirs of Rupchand by an amicable settlement partitioned the said land vide partition deed No. 3283 dated 20.07.1939 and accordingly Foyjun Bewa became the owner of .58 acre land of Dag No. 1114. Foyzun Bewa transferred said .58 acre land to Kamalakanta vide registered deed No. 3949 dated 09.07.1946 and thereafter Kamalakanta transferred the same to plaintiff opposite party No. 1 vide sale deed No. 5160 dated 14.07.1947 and since then plaintiff opposite party No. 1 has been

possessing the same and accordingly R.S. Khatian No. 240 was prepared in his name. But in the schedule of the sale deed Nos. 3949 dated 09.07.1946 and deed No. 5160 dated 14.07.1947, Plot No. 1131 was inserted instead of Plot No. 1114. Plaintiff opposite party No. 1, after purchase, took possession of the land of Plot No. 1114 and at the time of preparation of field Porcha of upcoming land record opposite party No. 1 came to know about the wrong insertion of plot number in his sale deed. Hence, the plaintiff filed the suit for declaration of title.

During pendency of the suit, the defendant petitioner on 20.07.1994 forcibly entered into the suit land and dispossessed the plaintiff opposite party No. 1. Thereafter, plaintiff opposite party No. 1 by amending the plaint added a prayed for recovery of khas possession.

The petitioner as defendant No. 6 and other defendants contested the suit by filing written statement contending *inter alia* that 9.34 acre land of S.A. Khatian No. 121 originally belonged to Rupchand. Rupchand died leaving behind one wife Foyjun Bewa, five sons, namely Zinar, Sonarot, Mosorat, Ebarot and Dashmot and only daughter namely Sano Bibi. Foyjun Bewa transferred 0.30 acre land from Plot No. 1114 to Abdul Sonar vide registered Kabala dated 02.02.1949 and on the same

day she transferred another 0.24 acre land along with other lands to her son Doshorot. Mosorot died leaving behind his mother Foyjun Bewa, only son Abdul Sonar, 2 daughters namely Zobeda and Amena. Hosmot died leaving behind 2 sons namely Wayez and Tayez and mother Foyjun Bewa. Foyjun Bewa died leaving behind only son Doshorot who inherited the whole land left by Foyjun Bewa and accordingly R.S. Khatian No. 283 was prepared in his name. Doshorot died leaving behind 2 daughters namely Rahima and Halima and 2 brothers Zinar and Sonarot. That Sonarot died leaving behind 2 paternal uncle's sons namely Wayez and Tayez. After transfer, Wayez and Tayez obtained 0.38 acre land from the suit plots and rest obtained by Sonarot and Zinar. Zinar died leaving behind 2 sons Md. Jonab Ali (defendant No. 1 and Md. Ataur Rahman (defendant No. 2). That Sonarot died leaving behind 3 sons, defendant Nos. 3-5. There was no existence of the said partition deed dated 20.07.1939. Foyjun Bewa solely possessed the suit land and transferred .38 acre land of the suit plot to Wayez and Tayez vide kabala dated 22.02.1989. The Sale Deed dated 09.07.1946 claiming to be executed in favour of opposite party No. 1 is forged, Kamolakanta or opposite party

No. 1 was never in possession of the suit land. The plaintiff with a false plea filed the suit and as such, the same is liable to be dismissed.

To prove their respective case, the plaintiff, and the defendants adduced oral witnesses and produced documentary evidence. Learned Assistant Judge, Akkelpur, Joypurhat after considering the evidence of the parties dismissed the suit vide judgment and decree dated 05.09.1992 (decree signed on 22.09.1992).

Being aggrieved by and dissatisfied with said the judgment and decree passed by the trial Court, plaintiff opposite party No. 1 preferred Other Class Appeal No. 169 of 1992 before learned District Judge, Joypurhat, which was subsequently transferred to learned Subordinate Judge, Joypurhat who upon hearing the parties allowed the appeal vide judgment and decree dated 18.06.1994 (decree signed on 22.06.1994) and thereby reversed the judgment and decree passed by the trial court and decreed the suit.

Challenging the legality of the judgment and decree passed by the Court of appeal, defendant No. 6 as petitioner has preferred the instant

civil revisional application and obtained the present Rule and order of *status quo*.

Plaintiff opposite party No. 1 has entered appearance by filing *Wakalatnama* to contest the Rule.

Mr. Md. Golam Samdani, learned Advocate appearing on behalf of the petitioner submits that the Court of appeal below without adverting to the reasons assigned by the trial court reversed its findings and decision.

Learned lawyer further submits that opposite party No. 1 as plaintiff filed the suit claiming 0.58 acre land out of 1.12 acre of C.S. and S.A. Plot No. 1114 without mentioning its boundary in the schedule of the plaint and thereby failed to give specification of the suit land and as such he is not entitled to get a decree of declaration of title to and recovery of khas possession of the suit land and the learned trial Court below rightly dismissed the suit. In support of his aforesaid submission learned Advocate has cited the case of *Mahaprabhu Vs. Gopal Ram Ram* reported in *42 DLR (AD) 154*, *Tayeb Ali Vs. Abdul Khaleque* reported in *43 DLR (AD) 87*, *Ershad Ali Howlader Vs. Shanti Rani Dhupi* reported

in *12 BLC (AD)36, Dulal Krishna Basu Vs. Fakir Ziauddin and others* reported in *2 SCOB [2015] HCD 44*.

The learned lawyer further submits that the plaintiff did not plead the case of adverse possession in the plaint and the trial court did not frame any issue regarding adverse possession, but the appellate Court travelled beyond the pleading of the parties and decreed the suit holding that the plaintiff acquired title by adverse possession. In support of his said submission learned Advocate cited the case of *Abdul Kader and others Vs. Noor Mohammad and others* reported in *5 BLD (AD) 33*, *Salma Khatun Vs. Zilla Parishad* reported in *51 DLR (AD) 257*.

Learned lawyer further submits that, as per his claim, opposite party No. 1 purchased the land of Plot No. 1114 from Kamala Kanta vide registered Kabala No. 5160 dated 14.07.1947 and accordingly R.S. Khatian No. 240 was prepared in his name but in the sale deed and R.S. Khatian wrong plot No. 1131 was inserted and as such without rectification of said documents the plaintiff cannot claim title to plot No. 1114.

Conversely, Mr. Chanchal Kumar Biswas, learned Advocate appearing with Mr. Md. Manik Chan, learned Advocate and Mr. Mirza Sultan Al Raza, learned Advocate appearing on behalf of the plaintiff opposite parties submits that Foyju Bewa executed sale deed No. 3949 dated 09.07.1946 wherein wrong plot number was inserted and when the suit was filed she was not alive and as such the plaintiff filed suit for declaration of title against the heirs of Foyjun Bewa, because her heirs claimed title to the suit land and accordingly, the suit is maintainable under section 42 of the Specific Relief Act, 1877 without correction of the said deed dated 09.07.1946.

Learned lawyer further submits that plaintiff opposite party No. 1 claimed title on the basis of two registered documents, one is Partition Deed No. 3283 dated 20.07.1939 executed between the co-sharers of Foyjun Bewa and another is registered Sale Deed No. 3949 dated 09.07.1946 executed by Foyjan Bewa in favour of Kamalakanto, the vendor of the deed of purchase of opposite party No. 1 opposite party No. 1 proved the execution and registration of said deeds by producing Volume of those deeds through the Record Keeper as witness (P.W.-7) but the defendant petitioner did not cross examine P.W.-7, which clearly

proved that the plaintiff discharged his onus regarding genuineness of the two registered deeds.

I have heard the learned Advocates of both parties and perused the revisional application as well as the grounds taken therein, judgments of the courts below, the oral and documentary evidence adduced and produced by the parties and other materials available on record.

It appears that the trial Court, upon considering the pleadings of the parties, framed as many as 5 (five) issues as follows:

1. Whether the suit is maintainable in its present form ?
2. Whether the plaintiff has title to and possession in the suit property?
3. Whether the suit is barred by limitation?
4. Whether the suit is barred under section 42 of the Specific Relief Act?
5. Whether the plaintiff is entitled to get relief as prayed for?

To prove their respective case:

- (1) The plaintiff adduced seven P.W.s including himself as P.W. 1 and produced R.S. Khatian No. 240 (Exhibit- 1), Khazna

Dakhila as Exhibit 2(1)-2(8), certified copy of sale deed No. 3949 dated 09.04.1946 (Exhibit- 3), amicable partition deed No. 3283 dated 20.07.1939 (Exhibit- 4) and sale deed No. 516 dated 14.07.1947 (Exhibit- 5)

(2) Defendants adduced two oral witness including defendant No. 6 as D.W.1 and produced MRR Khatian No. 283 (Exhibit- ka) and one Khazna Dakhila No. 876896 dated 29.07.1990 (Exhibit- kha).

On perusal of the records, it appears that, admittedly one Upchand alias Rupchand was the owner of 9.34 acre land and he died leaving behind his one wife Foyjun Bewa, five sons namely Zinar, Sonarot, Mosorat, Ebarot and Dashmot and one daughter namely Sano Bibi. Plaintiff opposite party No. 1 filed the suit asserting that, Foyjun Bewa obtained her respective portion of land by way of amicable partition deed No. 3283 dated 20.07.1939 (Exhibit-4) with her co sharers and became the owner of the land of plot No. 1114 and thereafter, she transferred .58 acre land to Kamala Kanto vide sale deed No. 3949 dated 09.07.1946 (Exhibit- 3). The defendant petitioner in his written statement challenged those two deeds claiming the same as forged, collusive, illegal and

inoperative. Plaintiff opposite party No. 1 produced certified copies of those deeds and to prove their genuineness called for volume of the said deeds (Exhibit- 3 & 4) through the Record Keeper (P.W.-7) but the defendant petitioner did not cross examine the P.W.- 7. It also appears that the plaintiff's vendor Kamola Kanta purchased the suit land from Foyjun Bewa vide registered sale deed dated 09.07.1946 (Exhibit-3) and thereafter the plaintiff opposite party No. 1 purchased the said land from Kamola Kanta by registered deed dated 14.07.1947 (Exhibit-5) but the defendants purchased the land by the registered deed dated 02.02.1949 from the same vendor namely Foyjun Bewa. But they could not produce said deed as evidence. It also appears that the instant suit is for declaration of title to and recovery of khas possession of the suit land and the PW-1 to P.W.-5 in their deposition corroborated each other regarding previous possession and subsequent dispossession. The Court of appeal found that the statements of the P.W.s regarding the possession of the plaintiff in the suit land since 1947 are very much corroborative with each other. Moreover, the D.W.-1 in his cross examination stated that the plaintiff never possessed the land of Plot No. 1131, scheduled in his sale deed dated 14.07.1947. Accordingly, the learned Judge of the appellate Court

rightly took into consideration the *Math Porcha* of the last land record, where it is seen that, the land of Plot No. 1114 has been recorded in the name of the plaintiff.

In this context, learned lawyer for opposite party No. 1 submits that when there is an invalid transfer in favour of a person and he holds possession of the property transferred as transferee, his possession is his own right and adverse to the transfer. If he continues in possession of immovable property for more than 12 years he will acquire indefeasible title.

Learned lawyer for the defendant petitioner finally argued that the plaintiff holding the title deed which contains Plot No. 1131, on which plot he does not claim title, the opposite party No. 1 without rectification of the said Kabal cannot seek for declaration of title on the Plot No. 1114.

He also submits that a registered kabala is an evidence of title which will prevail over the other records of rights as such until and unless such kabala is cancelled on a specific allegation of fraud by any civil court in an appropriate civil suit.

Conversely, learned lawyer on behalf of the plaintiff opposite party No. 1 submits that the plaintiff obtained the registered deed of sale from Foyju Bewa, predecessor of the defendants which contains wrong plot number and the defendants as heirs of Foyjun Bewa claiming title over the suit land and as such suit for declaration of title under section 42 of the Specific Relief Act 1877 is maintainable against the heirs of the executants of the said deed of sale. He also submitted that rectification of a deed whether such relief can be granted in a suit for declaration. A Court of law would always be competent even in a declaratory suit to correct mistake even when the plaintiff does not bring a separate action for the rectification of the instrument within 3 years.

The learned lawyer further cited the case of *Hazari Bala Sana Vs.*

Niron reported in **17 BLD (AD) 295**, wherein it is held as follows:

“It is a settled principle that the findings of fact, whether concurrent or not arrived at by the lower appellate court, which is the final court of fact, is binding on the High Court Division, as a revisional court except in certain well defined exceptional circumstances, such as non-consideration or misreading of the material evidence affecting the merit of the case.”

Accordingly, the appellate Court properly reversed the findings of the trial Court regarding the possession of the plaintiff opposite party No.

1 over the suit land as well as the maintainability of the suit. The Court of appeal in its judgment rightly concluded that the vendor of the sale deed dated 14.07.1947 handed over possession of the land Plot No. 1114 to the plaintiff and since then he has possessing the same and his title on the suit property very much exists.

It appears from the impugned judgment dated 25.05.2017, the Court of appeal, as the last Court of facts, elaborately discussed oral and documentary evidence adduced by the parties and the impugned judgment is based on sound reasoning and appreciation of relevant laws and legal provisions. The learned judge of the appellate Court upon proper consideration and discussions of the evidence of the parties rightly came to his findings and decision and rightly reversed the findings and decision of the trial Court which are based on misinterpretation of fact and misconception of law and as such, the impugned judgment of the Court of appeal does not call for any interference by this Court.

In view of the above, I find no merit in this Rule.

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

The judgment and decree of the Court of appeal are affirmed.

The order of status quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.