

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

**Present :**

Mr. Justice Dihider Masum Kabir

**CIVIL REVISION NO.2754 OF 2014**

**IN THE MATTER OF:**

An application under Section 115(1) of the  
Code of Civil Procedure, 1908.

-AND-

**IN THE MATTER OF:**

Legal heirs of Murari Mohon Roy Chowdhury  
and others.

.... Petitioners

- Versus -

Chairman, Khulna Development Authority,  
Khulna and others.

..... Opposite Parties

No one appears

.....For the Petitioners

Mr. Ahmed Nowshed Jamil , Advocate with  
Ms. Sayeda Shoukat Ara, Advocate

.....For the Opposite Party No.1

**Heard on 18.01.2026, 08.02.2026 &  
10.02.2026 & Judgment on 23.02.2026**

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.05.2014 (decree signed on 19.05.2014) passed by the learned Joint District Judge, 2nd Court, Khulna in Title Appeal No. 225 of 2011 allowing the said appeal and thereby reversing the judgment and decree dated 14.07.2011 (decree signed on 20.07.2011) passed by learned Senior Assistant Judge Sadar, Khulna in Title Suit No. 96 of 2005 decreeing

the suit should not be set aside and/or to pass such other or further order or orders as to this court may seem fit and proper.

The facts relevant for the disposal of this Rule, as set out in the civil revisional application, in short, are that the petitioners as plaintiffs filed the above suit for permanent injunction alleging that 1.38 acres land under CS Khatian No. 2626 (Plot No. 50) and SA Khatian No. 2795 (Plot No. 49) belonged to Raj Kumar Dutta and Panchanan Dutta, sons of Naba Kumar Dutta. Out of above 1.38 acres, defendant No. 1 (Khulna Development Authority) acquired 0.64 acres vide LA Case No. 2/1976-1977, leaving a remainder of 0.74 acres. From the remaining 0.74 acres, 0.37 acres devolved to Shova Rani and her subsequent legal heirs (the Plaintiffs). This interest is currently reflected in RS Plot Nos. 5068 and 5067. During a recent survey, the defendants allegedly amalgamated a portion of the plaintiffs' land specifically the western roadside strip into their own holdings. This was erroneously recorded under DP Khatian No. 44, Plot No. 5067. The plaintiffs successfully contested above entry by Objection Case No. 3666. As a result, the record was corrected to show 0.1632 acres within plot No. 5067 under the plaintiffs' exclusive Khatian No. 12268. On 01.06.2005, KDA published an advertisement for the allotment of plot Nos. 36 to 40. Plaintiffs contend that above designated plots unlawfully encompass their 0.1632 acres land. Consequently, the plaintiffs filed a suit for permanent injunction to protect their interest.

Defendants (KDA) contested the suit by filing a written statement but failed to produce any evidence to support their claim that the land fell within the acquired 64 decimals.

At trial, the plaintiffs examined four witnesses including Advocate Commissioner (PW 1 to PW 4). Documents produced and proved by the plaintiffs were marked as Exhibits 1 to 7 (series).

On consideration of the facts, circumstances and evidence on record, the learned trial Court decreed the suit, restraining the defendants from allotting plot Nos. 36 to 40 (Schedule-Kha) until a formal demarcation of the suit land is conducted.

Being aggrieved by above judgment and decree, defendant No.1 as appellant filed Title Appeal No. 225 of 2011 in the Court of the District Judge, Khulna which was transferred to the 2<sup>nd</sup> Court of the Joint District Judge, Khulna who allowed the appeal and set aside the judgment and decree of trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of Title Appeal No. 225 of 2011, the plaintiffs as the petitioners moved to this Court with this Revisional Application under section 115(1) of the Code of Civil Procedure, 1908 and obtained the present Rule.

No one appears on behalf of the petitioners, despite the matter being fixed for hearing and the names of the learned advocate appearing in the daily cause list for several consecutive days.

On the other hand, the learned Advocate, Ms. Sayeda Shoukat Ara, appearing on behalf of the Opposite Party No.1, Chairman of the Khulna Development Authority (KDA), Khulna, submits that KDA

acquired 64 decimals land vide L.A. Case No.2/1976-1977 from the plaintiff's predecessor and subsequently merged this land with other non-suited land to develop residential and commercial plots. She further asserted that being in peaceful possession KDA was allotting above plots through tender process and did not possess any land beyond what was legally acquired. She maintained that the land designated as plot Nos. 36 to 40 did not belong to the plaintiffs. Finally, she relied upon the judgment and decree passed by the Court of appeal below in Title Appeal No.225 of 2011.

I have considered the submissions of the learned Advocate for the opposite parties and have carefully examined the impugned judgment and decree passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Khulna as well as all other materials on record.

The underlying suit seeks permanent injunction to restrain the defendants from transferring plot Nos. 36 to 40 (described in 'Schedule-Kha'). These plots are situated within the plaintiff's larger landholding described in 'Schedule-Ka'. Plaintiffs contend that the defendants unlawfully amalgamated a western portion of the plaintiffs' land adjacent to the road side into their own acquired holdings. This encroachment was originally recorded under DP Khatian No. 44 (Plot No. 5067). Plaintiffs successfully challenged this erroneous entry in Objection Case No. 3666. Consequently, 0.1632 acres within Plot No. 5067 was extracted and recorded in the plaintiffs' names under a separate and distinct Khatian No. 12268. It is admitted that the defendants hold title to 0.64 acres, while the plaintiffs hold absolute title to the 0.1632 acres.

Plaintiff while giving evidence as PW 1 stated that while the Government acquired the land for the Khulna Development Authority (KDA), the KDA subsequently demarcated plot Nos. 36 to 40 on that acquired land. He admitted that they were in possession of this area previously; KDA currently maintains possession in above plots. PW 2, PW 3 & PW 4 corroborated the testimony of PW 1, admitting that KDA is in possession of the land of plot Nos. 36 to 40. PW 4 Mr. Pronob Kanto Golder, Advocate Commissioner provided technical evidence, stating unequivocally that plot Nos. 36 to 40 overlap with and are included within the 0.1632 acres of land under Khatian No.12268, which is fully owned by the plaintiffs. The plaintiffs could not prove their possession.

In the case of Ahsanul Haq -vs- Md. Abdul Ahad reported in 11 ALR (AD) 82, held that “The plaintiff have admitted they are not in exclusive possession in entire suit land so they are not entitle to get decree of permanent injunction for the entire land.”

Upon a thorough review of the facts and circumstances of the instant case, I am of the view that the learned Judge of the trial Court delivered the judgment and decree without a comprehensive examination of the plaint and the materials on record. Consequently, several "core facts" essential to the proper adjudication of the dispute were either ignored or overlooked. These include: The actual possession of the land at the time of the suit. The specific schedule of the property as delineated in the pleadings. The legal sanctity and conclusive value of the DP khatian, particularly those resulting from Objection Case No. 3666 or orders passed by the Settlement Officer.

In Title Appeal No.225 of 2011, the Court of appeal below, despite being the final Court of fact reversed the judgment and decree without properly reviewing the plaint or the impugned judgment, thereby committing an error of law. Specifically, the learned Court of appeal below erred in holding that:

*"Since the KDA has included the plaintiff's 0.1632 acres within Plots 36-40, granting a permanent injunction against the defendant's Tender Notice would be contrary to the National Interest. In this instance, individual interest must not take precedence over the National Interest."*

This reasoning suggests that permanent injunction against KDA tender notification is "hostile" to the state, even if it concerns the rightful ownership of 0.1632 acres. Notably, the trial Court did not stay the entire tender notification; it merely restrained the defendants from allotting plot Nos.36 to 40 (as specified in Schedule-Kha) until the suit land could be properly demarcated.

Plaintiffs, in their prayer for permanent injunction, erroneously included two distinct schedules without providing a singular, cohesive identification of the suit land. Crucially, plaintiffs failed to identify the property through a Gazette-published survey khatian or officially gazetted plot numbers with clearly defined boundaries. In this instance, schedule-kha describes the KDA's internal plot Nos. 36 to 40. These are administrative demarcations rather than "finally published" survey plots recognized by the government. A court cannot legally grant permanent injunction to restrain an authority from

allotting its own internal plots unless a "line in the sand" a precise boundary is established through recognized survey records.

Plaintiffs' reliance on a DP (Draft Publication) khatian or a khatian resulting from an Objection Case is legally misplaced. Under established land laws, a khatian carries no presumptive value regarding title until it has undergone final publication and is officially notified vide Gazette.

No specific boundaries were provided to substantiate the plaintiffs' claim of possession. Instead of defining their own boundaries, the plaintiffs relied on the negative assertion that KDA had never conducted a formal demarcation of its internal plots.

In the case of Sarhab Ali Molla -vs- Md. Farid Master reported in 29 BLC (AD) 185, held that "The plaintiff had to prove his case in order to get the decree prayed for, in no way the burden can be shifted over the defendants to do so."

The trial Court committed a material irregularity by shifting the burden of proof. Rather than requiring the plaintiffs to prove their prime facie title and possession, the court focused on identifying perceived "loopholes" in the defendants' (KDA) case.

While the Court of appeal below correctly reversed the trial Court's decree, it reached its conclusion based on findings that are arguably irrelevant and contrary to law. An injunction granted over internal administrative plots (Schedule-Kha) without a finally published khatian to support the plaintiffs' title, constitutes an illegal exercise of judicial discretion. An injunction cannot be granted over

property that is not defined by "metes and bounds" or recognized survey plots.

The suit for permanent injunction is found to be improperly filed due to lack of description and proof of possession, demarcation, missing of boundaries in the plaints and reliance on non-finalized khatians.

In above view of the facts and circumstances of the case and materials on record, I am unable to find any substance in this Civil Revision and the Rule issued in this behalf is liable to be discharged.

Accordingly, the Rule is discharged. The order of stay granted earlier by this Court is hereby recalled and vacated.

However, there is no order as to costs.

Let a copy of this judgment, along with the Lower Court Records (LCR), be sent to the concerned court immediately.