

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 3469 of 2014

Md. Sajjad Ali and others

.....petitioners

-Versus-

Md. Nowshad Ali and others

.....opposite parties

Mr. Selim Reja Chowdhury, Advocate

.....for the petitioners

No one appears for the opposite party

Heard on: 03.09.2025, 28.10.2025,  
06.11.2025, 09.11.2025 and 10.11.2025

Judgment on: 12.11.2025

In the instant revision Rule was issued on 14.09.2014 calling upon the opposite party 1 to show cause as to why the impugned judgment and decree dated 13.03.2023 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Chapainawabgonj in Other Class Appeal Number 39 of 2011 allowing the appeal and reversing those dated 01.02.2011 passed by the learned Assistant Judge, Sadar, Chapainawabgonj in Other Suit Number 15 of 2005 dismissing the suit should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The opposite parties as plaintiff filed Other Suit Number 15 of 2005 in the Court of Assistant Judge, Sadar, Chapainawabgonj for declaration of title and recovery of possession upon eviction of the defendants and the suit was filed on 18.01.2005.

The case of the plaintiffs in short is that Hematullah Mondol was the owner of the suit land and his name was recorded in C.S. record. He died leaving behind his only daughter Lalmon Bibi and S.A. record was prepared in the name of Lalmon Bibi. In the month of January 1966 the predecessor of the defendants named Dulal Mondol came from India and converted to Islam and having no place to live in he sought permission to live temporarily upon part of the C.S. and S.A. plot 7762 and the predecessor of the plaintiffs named Lalmon Bibi permitted Dulal Mondol on the last part of January 1966 on a condition to quit the possession on demand. During R.S. operation illiterate Lalmon Bibi had believed that the entire land would be recorded in her name. On 26.04.1986 Lalmon Bibi sold 21 decimals of land from plot 7761 to Hazera Khatun, Sultan Mondol, Santu Mondol. Plaintiffs 12-14 maintained possession in 21 decimals of land of plot 7761 and Lalmon Bibi possessed the rest land. Lalmon

Bibi died in 1986 leaving behind her three sons named Md. Sabur Ali, Md. Nawshed Ali and Md. Hamid Ali. Sabur Ali died leaving behind widow Sabida and five sons named Abul Kashem, Abul Tashem, Md. Ibrahim, Abu Taleb and Abdul Alim. Dulal Mondol then took permission to possess the suit land as permissible possessor from the heirs of Lalmon Bibi. Dulal Mondol died and his heirs who are the defendants now again took permission from the heirs and successive heirs of Lalmon Bibi to continue the permissive possession in the suit land. The defendants while possessing the land of plot 7762 as permissible possessor illegally started construction of a wall of permanent nature on 15.09.2004. At that point of time the plaintiffs opposed but defendants claimed title to the suit land and expressed that R.S. record has been prepared in the name of their father. The plaintiffs after having such knowledge got astonished and went to the concerned record room on 22.09.2004 and obtained certified copy of the R.S. record and for the first time came to know that the 8 annas share of R.S. record has been erroneously recorded in the name of the father of defendants. The R.S. record is wrong and illegal. The plaintiffs withdrew their permission on 04.11.2004 and asked

the defendants to demolish their houses and to leave the suit land but the defendants refused. Hence the suit was filed.

Defendants 1-4 contested the suit by filing written statement denying all the material contentions made in the plaint contending *inter alia* that the father of the defendants Dulal Mondol lived in India before partition in 1947. Before partition the mother of Dulal Mondol came to the suit land with her son Dulal Mondol who was a crippled person and took settlement of 18 decimals from plot 7761 and 4 decimals from plot 7762 as korfa tenant under C.S. tenant Hematullah and constructed dwelling house over the same. After the death of mother Dulal Mondol lived and possessed 22 decimals of the suit land. The documents of korfa settlement which were kept in the house of Dulal Mondol were destroyed by fire. It is further stated that husband of Lalmon Bibi took settlement of the rest 22 decimals from C.S. tenant Hematullah and Dulal Mondol entrusted the husband of Lalmon Bibi with the preparation of S.A. record in his own name but he fraudulently and erroneously recorded the entire land in the name of Lalmon Bibi. Lalmon Bibi is not the daughter of Hematullah. The S.A. plots 7761 and 7762 have been recorded as R.S. plots 4360, 4361 and 4362. The R.S. record 5299 has been

correctly prepared in the name of Lalmon Bibi and Dulal Mondol in equal share. Dulal Mondol died around 20 years ago leaving behind four sons defendants 1-4, four daughters and a widow. Those four daughters transferred their share in favour of defendants 1-4 and defendants 1-4 started leaving in the suit land with their mother by constructing more houses over eastern portion of R.S. plot 4360. Defendants thus possess 12 decimals in R.S. plot 4360 and 10 decimals in R.S. plot 4361 upon mutation of khatian by separating the holding through Miscellaneous Case 133/87-88 and also upon payment of rent till 2004. The case of the plaintiffs being false is liable to be dismissed.

The Assistant Judge framed as many as five issues as to maintainability, limitation, whether the plaintiffs have better title over the suit land, whether the defendants are successive permissive possessors under the plaintiffs and whether the plaintiffs are entitled to get relief as prayed for.

During the course of trial plaintiffs examined three witnesses and defendants also examined three witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

The trial court upon perusal of the pleadings and hearing the parties and considering both oral and documentary evidence dismissed the suit by judgment and decree dated 27.01.2011 on the finding that the plaintiffs could not prove their title and the case of licence as alleged in the plaint.

As against the same plaintiffs preferred Other Appeal 39 of 2011 before the District Judge, Chapainawabganj which was transferred to the Court of Joint District Judge, 2<sup>nd</sup> Court, Chapainawabganj who heard the appeal and allowed the same by decreeing the suit by judgment and decree dated 13.03.2013.

Being aggrieved by and dissatisfied with the judgment passed by the appellate court defendants as petitioners came before this court with this revision and obtained the instant Rule on 14.09.2014.

Mr. Selim Reja Chowdhury, learned Advocate appearing on behalf of the defendant-petitioners submits that the appellate court while reversing the decision of the trial court did not consider the evidence on record in its true perspective and without assigning cogent reasons arrived at a wrong finding thus the court of appeal committed error of law resulting in an error in such decree occasioning failure of

justice. He emphasized that the appellate court failed to advert to the reasoning of the trial court passed upon proper appreciation of evidence and also did not reverse the specific material findings of the trial court and the impugned judgment of the appellate court is not sustainable according to order 41 rule 31 of the Code of Civil Procedure. He also submits that a judgment of reversal by making general observations without adverting to the reasons assigned by the trial court is not sustainable in law. He points out that the finding arrived at by the appellate court is clearly based on surmise and conjecture which is not tenable in the eye of law. He again submits that the appellate court failed to consider that admittedly Dulal himself constructed house in the suit land and the suit is barred by law but the appellate court did not follow the relevant law and wrongly decreed the suit thus committed error of law resulting in an error in such decree occasioning failure of justice. He very candidly submits that the R.S. record was prepared in the name of the predecessor of the defendants Dulal Mondol supporting his settlement from C.S. tenant which has presumptive value under section 144A of the State Acquisition and Tenancy Act and the appellate Court also failed to consider that the rent receipts are good evidence of

possession. He finally prays that the rule may be made absolute.

No one appears on behalf of the opposite parties although the matter was heard on 03.09.2025, 28.10.2025, 06.11.2025 and 20.11.2025.

Heard the learned Advocate for the defendant-petitioners and gone through the judgment of the courts below and perused the materials on record as well as the revisional application.

This is a suit for declaration of title and recovery of possession upon eviction of the defendants from the suit land measuring 0.22 acres. It is admitted by both the parties that Hematullah was the C.S. recorded tenant in respect of 44 decimals of land. Plaintiffs claim that Lalmon Bibi being the only daughter of Hematullah acquired the entire property measuring 44 decimals but did not explain as to how under the Muslim law of inheritance she could acquire the entire property since ordinarily a sole surviving daughter does not inherit the entire 16 annas share left by her deceased father. It appears from the record that the acquisition of title by Lalmon Bibi in 16 annas share has not been proved by the plaintiffs by giving evidence. plaintiff 2 is PW 1 and he admitted in cross-

examination that the name of the husband of Lalmon Bibi was Miraz and his residence was in Malka of Ramchandrapur and came to the suit land subsequently. Defendants claimed that Lalmon Bibi was not actually the daughter of Hematullah and she also took settlement from the C.S. tenant as well and the house of her husband was in Malka. Plaintiffs claim that Lalmon Bibi gave permission to Dulal Mondol in 1966 when he asked to have permissive possession in portion of the land of C.S. and S.A. plots 7762 but it does not turn up from reading of the plaint that this material fact of giving permissive possession was clearly depicted in the plaint.

PW 2 Akter Morol stated in cross-examination that he could not say as to when, where and how Dulal Mondol wanted permissive possession to Lalmon Bibi.

PW 3 Golam admitted in his cross-examination that he heard about the permissive possession granted to Dulal Mondol but he could not say the date and time. Moreover the further case of the plaintiffs that Dulal Mondol or his successors took further permission from Lalmon Bibi or after her death her successors subsequently also gave permission to the heirs of Dulal Mondol to maintain possession has also not been clearly disclosed in the plaint. PW 2 was 72 years old at

the time of giving testimony and in cross-examination he admitted that he had noticed the defendants to be in possession since his understanding at around 5-7 years of age which clearly indicates that defendants have been maintaining their possession since around the year 1955. PW 3 also was born in 1944. He also saw the defendants' possession since his attaining understanding which also clearly indicates defendants' possession since 1952. Thus the case of the plaintiffs on granting permission in 1966 is not supported by their own evidence.

Plaintiffs further claimed that Dulal Mondol renounced his own religion after coming into this country and converted himself as Muslim. But R.S. khatian 5299/1 exhibit-kha clearly shows that the name of the father of Dulal Mondol is Manuruddin Mondol who was definitely not a Muslim. Besides the three witnesses of the plaintiffs admitted that there is grave of the mother of Dulal Mondol in the disputed land. Thus it does not inspire confidence that the parents of Dulal Mondol embraced Islam merely by reason of the conversion of religion by Dulal himself. In other words it means that the parents of Dulal Mondol were also Muslims.

According to the admitted facts that the houses of Dulal Mondol and also of his sons have been standing on the suit land for about 42-45 years. The houses are both of permanent and semi permanent nature. The graves of Dulal and his mother are also situated on the disputed land. The duplicate carbon receipt exhibit-kha corresponding to khatian 5299/2 showing Separation Case Number 133/IX-I/87-88 in respect of 22 decimals of land and the 10 rent receipts khatian-ka series are the good evidence of possession and may be used as collateral evidence of the claim of acquisition of title by Dulal by settlement from the C.S. tenant Hematulla. Exhibit-Umma series showing payment of tax in the Union Parishad in respect of the homestead of Dulal Mondol also find support from exhibits-ka series, kha, Gha, Ghha but on the other hand plaintiffs could not prove their possession in the entire disputed land to satisfaction and exhibit-2 dated 26.04.1976 being filed by plaintiff clearly shows that Lalmon Bibi sold 21 decimals of land out of her 22 decimals of land as apparent from exhibit-1 to one Hazera Khatun and others and later on she died.

The main dispute as considered by the appellate court that whether Lalmon Bibi is the daughter of Hematulla or not

is absolutely irrational considering the facts and circumstances of the present case thus the finding of the appellate court started with wrong. The main controversy in the suit is actually whether the defendants are licensee under the plaintiffs or not. PW 1 stated in his examination-in-chief that they have no other lands. In fact his mother sold her share to Hazera Khatun and others in 1976 by registered kabala dated 26.04.1976 exhibit-2 and then mother Lalmon Bibi died in 1986. It has been mentioned in the written statement that Dulal Mondal was a disable person and used to sustain his livelihood by begging and on the basis of such statement the appellate court upon surmise came to a decision that the mother of Dulal Mondal held no position to take settlement from the landlord as she had no financial ability and for such reason permission given by Lalmon Bibi is believable considering the financial condition of Dulal Mondal. Thus the appellate court made out a third case upon surmise and conjecture which evidently does not relate to the evidence on record as laid and adduced by both the parties. It is also not unnoticed that appellate court only considered the examination-in-chief led by PW 2 and 3 but the court did not advert to the cross-examination of PW 2 and 3 by which their examination of chief was confronted and

tested and this endeavor cannot be said to be proper appreciation of evidence.

It is of material importance to note that the paragraph 2 of the plaint admittedly and very clearly speaks that Dulal Mondol constructed homestead in the disputed plot 7762 of the suit land and also on 04.11.2004 plaintiffs asked for demolition of the said house and release of the suit land. So it is an admitted position that Dulal Mondol constructed the homestead in the suit land and as such he is not evictable and his possession is protected under section 60 of the Easement Act.

The fundamental principle of section 60 is that a licence which is a temporary personal right to do something on another's immovable property is generally revocable at the pleasure of the grantor. However this section lays out two critical exceptions where a license becomes irrevocable. A license may be revoked by the grantor unless one of the following two exceptions applies. Firstly the licence cannot be revoked if it is coupled with a transfer of property and such transfer is still in force. This means that where the licence (right) to use the property forms an integral part of a permanent interest which was transferred to the licensee the

grantor cannot cancel the licence while the transfer itself remains legally valid. For example if A sells a piece of land to B and as part of the sale grants B the licence (right) to use a private road on A's retained property for access to the land A cannot revoke the right to use the road as long as the sale of the property to B subsists. Secondly the licensee acting upon the licence has executed a work of permanent character and incurred expenses in the execution. It means it protects the licensee who has invested afford by spending money into making permanent improvements based on the grantor's permission. If the licence is revoked after such work it would cause substantial loss to the licensee. Thus it reveals that the licensee must have acted upon the licence and the work executed must be a permanent character and also the licensee must have incurred expenses in executing such work. An example may be given here in this regard. C gives D permission to build a storage shed on C's unused land. If D spends money and completes the construction of the permanent shed C can no longer revoke the licence and force D to remove the shed. Therefore section 60 of the Easement Act provides a form of equitable protection to the licensee preventing the grantor from causing harm after the licensee

has executed a work of a permanent nature relying upon the licence and in the instant case it is admitted that Dulal Mondol himself made the construction which is a work of a permanent nature and it is inevitably presumable that Dulal Mondol spent money to execute such construction. So according to section 60(b) the licensee named Dulal Mondol is not subject to eviction. This view finds support from the case of Manasha Dhupi and another Vs. K.M. Manjur Morshed and others reported in 6 BLD page 143 wherein it was held that there is two storied *hoglahut* constructed by the licensee acting on the licence is a work of permanent character and the licensee must have incurred expenses in building the hut and such sort of licence is not revocable by the grantor of the licence.

The court of appeal did not at all consider that the R.S. record 5299/1 exhibit-Ghha was prepared in the name of Lalmon Bibi and Dulal Mondol in equal share under section 144A of the State Acquisition and Tenancy Act. This R.S. record has got strong presumptive value and cannot be disbelieved and presumed to be correct until it is found to be incorrect by cogent and reliable evidence. Since the entry of the name of Dulal Mondol and quantum of land in exhibit-Ghha is not dislodged by any convincing evidence this

exhibit-Ghha presupposes the settlement taken by Dular Mondol from the C.S. tenant Hematullah and there is nothing in record to show that plaintiff ever took settlement of the entire 44 decimals of land by way of any reliable document which accordingly was found to be proved in evidence.

The schedule as given in the plaint is clearly unspecified and inexecutable. Therefore this suit is barred under section 51(a) read with order 7 rule 3, order 20 rule 9, order 21 rule 11(2)(j)(i) of the Code of Civil Procedure. A court cannot pass a decree which would be apparently infructuous being barred for want of specification. Moreover the schedule to the plaint shows possession of defendant is on the eastern part of S.A. plot 4630. But the written statement shows the possession of defendant is on the western side of the plot. But there was no commission held by plaintiff to identify the suit land and make the same executable. PW 1 stated in his examination-in-chief that Lalmon Bibi temporarily gave licence to Dular Mondol to reside in plot 7762 but the schedule to the plaint shows that there are as many as three plots which is against the case as made out in the plaint and evidence.

The court of appeal did not reverse the findings of the trial court based upon proper appreciation of evidence and

since the judgment passed by the appellate Court is not a proper judgment of reversal under order 41 rule 31 of the Code of Civil Procedure the same cannot be sustained in accordance with law. Therefore the judgment and decree passed by the appellate court is set aside and that of the trial court is upheld.

In the result the rule is made absolute.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: