

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 4125 of 2014

In the matter of:

Nasrin Begum and others

.....Plaintiffs-Respondents

Petitioners

-Versus-

Md. Kamal Sarkar and others

.....Defendants Appellants

Opposite parties

Mr Md. Bodruddoza, Senior Advocate, with

Ms Laila Nasrin, Advocate

.....For the Petitioners.

No one appears

...for the opposite parties.

Date of Hearing: 22.6.2026 and 28.06.2026 A.D.

Date of Judgment: 28.06.2026 A.D.,

Sunday, 14 Ashar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and decree dated 17.06.2014 (decree signed on 26.06.2014) passed by the learned Additional District Judge, Jamalpur in Other Appeal No. 41 of 2010, allowing the appeal and reversing those dated 27.06.2010 passed by the learned Assistant Judge, Islampur, Jamalpur in Other Class Suit No. 160 of 2006, decreeing the suit, should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper."

Concomitantly, this Court, by way of an ad-interim order, directed both parties to maintain **the status quo** with respect to possession of the suit land. The said order was subsequently extended from time to time and remained in force till the disposal of the Rule.

The **material facts**, shorn of unnecessary details, are that the petitioners, as plaintiffs, instituted Other Class Suit No. 160 of 2006 in the Court of the learned Assistant Judge, Islampur, Jamalpur, seeking a declaration of title in respect of

the suit land. The plaintiffs asserted, *inter alia*, that one Yar Hossain Sarker was the original owner and C.S. recorded tenant of the disputed land along with other properties. Upon his death, he left four sons, namely, Mufazzal Haq Sarker alias Mofizul Haq Sarker, Tofazzal Haque Sarker, Fazlul Haq Sarker and Wasuddin Sarker.

It was further pleaded that Mofizul Haq Sarker died leaving behind three sons, namely, Motiar Rahman, Sirajul Islam and Lutfor Rahman, and two daughters, namely, Ambia and Majeda. Subsequently, the Record of Rights was prepared and finally published in the names of Lutfor Rahman and others. Lutfor Rahman died, leaving behind his wife, Golla Bewa, three sons, namely, Mukul Sarkar, Nasiruddin Sarkar and Kamal Sarkar, and one daughter, Rani Sarkar. It was further alleged that Golla Bewa was the second wife of Lutfor Rahman, and Kamal Sarkar and Rani Sarkar were born out of the second wedlock. According to the plaintiffs, Nasiruddin Sarkar remained in possession of the suit land along with other co-sharers pursuant to a family arrangement and, upon his death, the plaintiffs inherited his interest as his legal heirs.

The plaintiffs further stated that when the widow of Nasiruddin approached the Tahsil Office on 27.02.2006 for mutation of their names and payment of rent, the concerned authority refused to accept the rent on the ground that the name of Nasiruddin had not been recorded in the B.R.S. Khatian. Consequently, according to the plaintiffs, a cloud was cast over their title, compelling them to institute the present suit.

The opposite party 1-3, as defendant 2-4, contested the suit by filing a joint written statement denying the material allegations made in the plaint. They contended, *inter alia*, that although Yar Hossain Sarker was the C.S. recorded tenant, the lands had subsequently devolved upon his heirs through family arrangement. According to them, Lutfor Rahman died leaving behind only Mukul Sarkar, Kamal Sarkar, Rani Sarkar and Golla Bewa as his legal heirs and that Nasiruddin Sarkar was never the son or heir of Lutfor Rahman. They further asserted that the B.R.S. Record of Rights had rightly been prepared in the names of the lawful heirs, that they had been possessing the lands covered by different B.R.S. Khatians by

constructing dwelling houses thereon, and that the plaintiffs acquired no right, title or interest in the suit property. Accordingly, they prayed for dismissal of the suit.

Upon framing the necessary issues and after recording oral and documentary evidence adduced by both parties, the learned Assistant Judge, by judgment and decree dated 27.06.2010, decreed the suit.

Being aggrieved thereby, the defendants preferred Other Appeal No. 41 of 2010 before the learned District Judge, Jamalpur, which was subsequently transferred to the Court of the learned Additional District Judge, Jamalpur for disposal. Upon hearing the parties, the learned Additional District Judge, by judgment and decree dated 17.06.2014 (decree signed on 26.06.2014), allowed the appeal, reversed the judgment and decree passed by the trial Court and dismissed the suit.

Being dissatisfied with the judgment and decree of the appellate Court, the plaintiffs have preferred the present revisional application.

Mr. Md. Bodruddoza, learned Senior Counsel, appearing with Ms. Laila Nasrin, learned Counsel, on behalf of the petitioners, submits that the lower Appellate Court committed a serious error of law in travelling beyond the pleadings and deciding the appeal on an issue which was neither pleaded by the defendants nor framed by the trial Court. He submits that the defendants never disputed that the suit property was sufficiently identified, yet the appellate Court unnecessarily made the alleged uncertainty of the suit land on the principal basis for reversing the decree.

Learned counsel further submits that the defendants' own witnesses, particularly D.W.1, unequivocally admitted during cross-examination that Nasiruddin was the full brother of Mukul Sarkar, thereby conclusively establishing that Nasiruddin was one of the sons of Lutfor Rahman. Such admission, according to the learned Counsel, constitutes the best evidence against the defendants and fully corroborates the plaintiffs' claim.

He further submits that Exhibit-10, being the legal heir certificate, and Exhibit-11, being the death certificate,

unequivocally establish that Nasiruddin was the son of Lutfor Rahman. The Chairman of the concerned Union Parishad, examined as P.W.6, duly proved the issuance of those certificates, and despite lengthy cross-examination, nothing could be elicited to discredit either the documents or his testimony. The learned trial Court, therefore, rightly relied upon those exhibits in decreeing the suit.

It is further argued that the learned lower appellate Court completely ignored the categorical admission made by D.W.1 that Nasiruddin was his brother and, instead, arrived at an entirely contrary finding that Lutfor Rahman had no son named Nasiruddin. Such a finding, according to the learned counsel, is manifestly contrary to the evidence on record and amounts to a clear misreading and non-reading of material evidence, thereby occasioning failure of justice.

Although the opposite parties entered appearance by filing Wokalatnama, none appeared at the time of the hearing of the Rule, and no counter affidavit has been filed to controvert the statements made in the revisional application.

I have perused the revisional application, the judgments and decrees of both the Subordinate Courts, the oral and documentary evidence available on record and have considered the submissions advanced by the learned Counsel for the petitioners.

It appears from the written statement that the defendants themselves admitted the genealogy beginning from Yar Hossain Sarker and further admitted that Lutfor Rahman left behind Mukul Sarkar, Kamal Sarkar, Rani Sarkar and Golla Bewa. Their sole dispute was that Nasiruddin was not the son of Lutfor Rahman.

On perusal of the judgment and decree passed by the learned trial Court, it is found, it was observed that:

“বিবাদীপক্ষ দাবী করেন যে, বি আর এস জরিপে নালিশী জোত সহ অন্যান্য জোতের ভূমিতে লুৎফর রহমানের হিস্যার জমি তার পুত্র মুকুল সরকার ও কামাল সরকার কন্যা রানী সরকার এবং স্ত্রী গোলাবেওয়ার নামে শুদ্ধ রূপে রেকর্ড হইয়াছে। নাসির সরকার লুৎফর রহমানের কোন পুত্র নয়। নালিশী জোত সহ অন্য কোন জোতে নাসির সরকারের নামে কোন রেকর্ড হয় নাই। নাসির সরকার নালিশী জোতের কোন ওয়ারিশ নয়। বাদীপক্ষ নালিশী জোত ওয়ারিশ মূলে কোন সম্পত্তি পায় নাই। কিন্তু দাবীর সমর্থনে বিবাদীপক্ষ কোন সাক্ষ্য প্রমাণ আদালতে দাখিল করতে

পারেন নাই। বাদীপক্ষ নিজেদেরকে নাসির সরকারের ওয়ারিশ হিসেবে দাবী করিয়া নালিশী ভূমিতে তাহাদের স্বত্ত্ব আছে মর্মে দাবী করেন। দাবী সমর্থনে প্রদর্শনী ১০ এবং প্রদর্শনী ১১ অত্র আদালতে দাখিল করেন। উক্ত প্রদর্শনী চিহ্নিত ওয়ারিশ সনদ পর্যালোচনায় বাদীপক্ষের দাবীর সত্যতা পরিলক্ষিত হয়।”

On the other hand, learned Appellate Court in its judgment, observed that:

“পি ডাব্লিউ-৬, স্থানীয় ইউপি চেয়ারম্যান তার জেরায় বলেন, “নাসির সরকারকে ঠড় হওয়ার পর দেখিনি ছোট মেলায় দেখেছি। আমাকে মৃত্যু রেজিস্ট্রার আনতে লাগায় তাই আনিনি। নাসির সরকারের পিতা লুৎফর এ মর্মে কোন ভোটার লিষ্ট আনিনি। আমি নাসিরের পিতা লুৎফর এটা জানি। মৃত্যু ও ওয়ারিশ সনদ আমার কাছে চাইবার পর এাদীদের দিয়েছি। ওয়ারিশ সনদে ঐ ওয়ার্ডের মেম্বারের কোন স্বাক্ষর নাই। নাসির উদ্দিন সরকারের দাদা মৃত মফিজুল হক সরকারের ভাই কোন কতজন জানিনা। তাদের ওয়ারিশ কারা জানিনা। তার কবর কোথায় জানিনা। ” দেখা যায় যে, স্থানীয় ইউপি চেয়ারম্যানও নাসির সরকারের অস্থান ও অস্তিত্বের বিষয়ে সন্দেহান।”

From the aforesaid observations of the learned Subordinate Courts, it is manifested that the learned Appellate Court did not consider the deposition of the PW6, whereas he specifically stated in his cross-examination that, “আমি নাসিরের পিতা লুৎফর এটা জানি।”. Moreover, the learned Appellate Court failed to appreciate the deposition of D.W.1,

Mukul Mia (Defendant No.1), who specifically admitted in cross-examination that Nasir is his germane brother.

The learned trial Court, after a meticulous examination of the evidence on record, particularly Exhibits-10 (legal heir certificate) and 11 (death certificate), and the testimony of P.W.6, accepted the plaintiffs' case and decreed the suit. The trial Court specifically found that the defendants failed to adduce any reliable evidence to substantiate their plea that Nasiruddin was not the son of Lutfor Rahman.

More importantly, D.W.1, namely Mukul Mia, during cross-examination, specifically admitted that Nasiruddin was his own brother ("নাসির আমার আপন ভাই"). Such admission, having come from the principal contesting defendant himself, constitutes substantive evidence against the defendants and strongly supports the plaintiffs' case. The said admission has neither been explained nor withdrawn at any stage of the proceedings.

The learned appellate Court, however, while reversing the judgment of the trial Court, primarily relied upon certain

answers elicited from P.W.6 during cross-examination and observed that the Chairman himself appeared doubtful regarding the existence of Nasiruddin. In arriving at such a conclusion, the appellate Court completely overlooked the specific admission made by D.W.1 as well as the documentary evidence proved through P.W.6. The appellate Court also failed to assign any convincing reason for discarding the findings of the trial Court regarding Exhibits 10 and 11.

In the present context, the learned Appellate Court ought to have considered undertaking an appropriate inquiry to ascertain the biological relationship, if any, between Mukul Mia (Defendant No. 1) and the heirs of Nasir Uddin by directing a DNA test or by adopting any other legally admissible scientific method of proof. Instead, the learned Appellate Court proceeded to disbelieve the pleaded facts without insisting upon any cogent, convincing, or reliable evidence capable of rebutting the asserted biological relationship. Such an approach, founded on conjecture rather than satisfactory proof, is inconsistent with the settled principles governing the grant of equitable relief, where the

Court is expected to act upon the best available evidence before rejecting a material factual assertion. Consequently, the impugned finding cannot be regarded as a proper exercise of judicial discretion in matters invoking equitable jurisdiction.

However, the Subordinate Courts Record revealed that the plaintiff brought an application for amendment of the plaint on 23.03.2008, and after hearing the said application, the learned trial Court allowed the same vide Order 27, dated 01.04.2008. But the learned Appellate Court, without considering said amendment, drew an adverse remark upon the chain of title and possession of the plaintiffs as to the suit property. It is also noticeable that all the PWs supported the plaintiffs' claims, and all the DWs admitted that Mukul Mia is a consanguine brother of Kamal Mia, and that Mukul Mia, the son of Lutfor Rahman's 1st wife, admitted Nasir Uddin as his germane or full brother. In this context, I am of the opinion that Nasir Uddin was the son of Lutfor Rahman.

It is a settled principle of law that although the appellate Court is the final Court of facts, where it seeks to reverse findings of fact recorded by the trial Court, it must

independently analyze the entire evidence on record and assign cogent and convincing reasons for disagreeing with the findings of the trial Court. Failure to consider material evidence or omission to deal with important admissions on record amounts to misreading and non-reading of evidence, which constitutes an error of law warranting interference under section 115(1) of the Code of Civil Procedure, 1908.

In the present case, I find that the learned Appellate Court failed to consider the material admission made by D.W.1, who deposed in support of solenama, ignored the evidentiary value of Exhibits-10 and 11, and reversed the well-reasoned findings of the trial Court without assigning legally sustainable explanations. The impugned judgment, therefore, suffers from misreading and non-reading of the evidence on record, resulting in an error in the decision occasioning failure of justice.

Accordingly, I find substance in the Rule.

In the result, the Rule is made **absolute** without any order as to costs.

The judgment and decree dated 17.06.2014 (decree drawn up thereunder and signed on 26.06.2014) passed by the learned Additional District Judge, Jamalpur, in Other Appeal 41 of 2010 are hereby set aside, and the judgment and decree dated 27.06.2010 (decree drawn up thereunder and signed on 04.07.2010) passed by the learned Assistant Judge, Islampur, Jamalpur, in Other Class Suit No. 160 of 2006 are restored.

The order of ***status quo*** granted earlier by this Court stands recalled and vacated.

Let the Subordinate Courts Record (SCR) be transmitted forthwith along with a copy of this judgment.

(Abdur Rahman, J)