

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 3109 of 1998**

**In the matter of:**

Nasiruddin Ahmed Chowdhury

Defendant -respondent-petitioner

-Versus-

Akter Ali being dead his legal heirs Jabeda Khatun  
and others

Plaintiff-appellant-opposite parties

None

...For the petitioner

Mr. Swapan Kumar Mitra, Advocate

... For the opposite party Nos. 1(ka)a-1(ka)g

Heard on: 21.01.2025, 28.01.2025 and 18.02.2025

Judgment on: 19.02.2025

The subject matter of the instant Rule is the judgment and decree dated 27.08.1997 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Cumilla in Title Appeal No. 285 of 1993 allowing the appeal and thereby reversing the judgment and decree dated 15.11.1993 (decree signed on 21.11.1993) passed by the learned Sub-Ordinate Judge, 1<sup>st</sup> Court, Cumilla passed in Title Suit No. 45 of 1984 dismissing the suit.

None appeared for the petitioner when the Rule was taken up for hearing.

I have heard the learned Advocate appearing for the plaintiff-opposite party Nos. 1(ka)a-1(ka)g and perused the materials on record.

The predecessors of the contesting opposite parties as plaintiff filed the suit for declaration of title in respect of 2.29 acres of land described in the schedule of the plaint. The suit was decreed on contest against the defendant No. 1. The appeal was allowed on contest.

The plaintiffs' case, in brief, is that Mainuddin and Bali Mohammad, sons of Ratan Gazi, were the owners of the suit land in equal shares. During the Chakla Roshanabad Settlement Operation, the suit land was recorded in the C.R.S. Khatian No. 23 in the name of the elder brother Mainuddin alone who was the managing member of the family. Mainuddin died leaving the widow Janu Bibi and Son Tamizuddin who transferred their property to Basiruddin son of Bali Mohammad by a registered Kabala dated 07.04.1925. Basiruddin inherited the share of his father Bali Mohammad after his death. Thus, Basiruddin, who was the predecessor of the plaintiffs, became the exclusive owner and possessor of the suit land. Basiruddin mortgaged his entire property to Mohesh Chandra Paul by a registered mortgage deed No. 2190 dated 16.4.1925 and subsequently got the said

mortgaged property redeemed. Earlier, Basiruddin mortgaged 1.20 acres of land out of suit land to one Hamid Ali Chowdhury by a registered mortgage deed dated 18.01.1321 B.S. and later on redeemed the same. Basiruddin died leaving 4 sons, namely Afazuddin, Abdul Aziz, Abdul Hamid and Ramizuddin and a daughter, namely Julekha. Ramizuddin died issueless and Afazuddin died leaving plaintiffs No.1 (Ka) -1(chha). Hamid Ali died leaving plaintiffs Nos. 2(Ka)-2(ga) and Abdul Aziz died leaving 2 sons plaintiff Nos. 3-4 and 3 daughters plaintiff Nos. 5-7. Julekha died leaving 2 daughters plaintiff Nos. 8-9. In this way, the plaintiffs are the owners and possessors of the suit land by way of inheritance. During the R.S. operation, the suit land was wrongly recorded in the R.S. Khatian No. 33 in the names of Mohim Chandra and Omar Ahamed Chowdhury along with the plaintiffs. The plaintiffs came to know about the wrong recording in 1981. Mohim Chandra and Omar Ahamed Chowdhury had no right, title and possession in suit land. The wrong recording of the suit land in the R.S. Khatian has clouded the title of the plaintiffs and hence, they filed the suit for declaration of title to remove the cloud.

Defendant No.1 contested the suit by filing a written statement denying the case of the plaintiffs. It was contended that suit land originally belonged to Moinuddin and the C.R.S. Khatian No. 23 was correctly prepared in his name. After the death of Moinuddin, his

heirs became the owners and possessors of the same. But they defaulted in paying the rent. The landlords initiated Rent Suit No. 5803 of 1927 and got a decree. In the rent execution case, the suit jote was auction purchased by the landlords on 18.04.1931 which was duly confirmed. Then the auction purchaser landlords got delivery of possession of the suit land through Court. By an amicable partition amongst the co-sharer landlords, Omer Ahmed Chowdhury got the suit jote in his exclusive saham and possessed the same through bargadars. During the S.A. operation, S.A. Khatian No. 33 in respect of the suit land was correctly prepared in the name of Omar Ahmed Chowdhury. The plaintiffs and some other persons having no right, title and possession in the suit land surreptitiously got their names recorded in the said khatian. Omar Ahmed Chowdhury died leaving defendant Nos. 1-6 as his heirs and successors. By a subsequent amicable partition, his eldest son defendant No.1 got the suit land along with other lands in his saham and has been possessing those peacefully. Defendant No. 1 transferred portion of the land to his bargadar Ali Mia, Abdul Latif and Abdul Waheed and to Abdul Mojid plaintiff No. 3 and the rest is possessed by him through the bargadars. It is not a fact that Basiruddin became the owner of the suit jote.

The trial Court dismissed the suit observing that:

“উভয় পক্ষের সাক্ষ্য ও circumstantial evidence পর্যালোচনাক্রমে আমার নিকট প্রতীয়মান হইল ১নং বিবাদি মামলার নোটিশ যাওয়ার পর আঃ লতিফ আহিদ ও আলি মিয়া নামীয় ৩ জন ব্যক্তিকে পনে ৮২ শতক জমি দলিল করিয়া দিয়া তাহাদের দ্বারা নালিশা ভূমি হইতে বাদি পক্ষকে মোকদ্দমা পরবর্তীকালে কোন এক সময় বেদখল করাইয়াছেন। ..... ১নং বিবাদি ও তাহার সাক্ষীদের সাক্ষ্য পর্যালোচনা পূর্বক আমি নিশ্চিত যে, অত্র মোকদ্দমা দায়ের করার পূর্বে ১নং বিবাদি কথিত ৩ জন বর্গাদার দ্বারা নালিশা ভূমি ভোগ দখল করিতেন না।

উভয় পক্ষের দালিলিক ও মৌখিক সাক্ষ্য পর্যালোচনান্তে প্রতীয়মান হইল বাদি পক্ষ নালিশা ভূমিতে পূর্ববর্তীক্রমে স্বত্ববান থাকা প্রমান করিতে সক্ষম হইয়াছে। তবে নালিশা ভূমিতে বাদি পক্ষ বর্তমানে দখলকার থাকা প্রমান করিতে সক্ষম হয় নাই। পক্ষান্তরে ১নং বিবাদি কথিত নিলাম খরিদ মূলে নালিশা ভূমিতে স্বত্ববান হওয়া আদালত যোগে দখল প্রাপ্ত হইয়া দখল করা প্রমান করিতে সম্পূর্ণরূপে ব্যর্থ হইয়াছে।

.....বাদিপক্ষ বর্তমানে নালিশী ভূমিতে দখলকার থাকা প্রমান করিতে সক্ষম হয় নাই। বর্তমানে দখলকার থাকা প্রমান করিতে সক্ষম না হওয়ায় বাদি পক্ষের অত্র মোকদ্দমা বর্তমান আকারে ও প্রকারে রক্ষণীয় নহে।”

It appears from the above-quoted observations of the trial Court that it found that the plaintiffs proved their title in the suit land but the suit was dismissed on the ground that during the pendency of the suit, the plaintiffs were dispossessed from the suit land. The appellate Court below allowed the appeal and decreed the suit. It found that the plaintiffs are in possession of the suit land. The appellate Court below observed:

“The learned Court below although found title of the plaintiffs to the suit land, did not find possession of the plaintiffs to the suit land. But it is the established principle of law that possession goes with title (Ref: 36 DLR at page

191)..... It is nobody's case that the defendant No.1 got the plaintiffs dispossessed from the suit land after institution of the suit by Ali Mia, Abdul Latif and Abdul Majid. As per the decision reported in 28 DLR at page 392 if after institution of any suit some events take place and the plaintiff is dispossessed from a part of the suit land, the subsequent event will not affect the suit as framed. So, even as per the finding of the learned court below if the plaintiffs were dispossessed after institution of Title Suit No.45 of 1984 it will not affect that suit as framed and that there is no scope to say that the suit in its present form is not maintainable. But the fact in this case is otherwise. The P.W.1 Aktar Ali, the P.W.2 Abdul Majid, the P.W.4 Abdus Sobhan and the P.W.5 Ali Ahmed say categorically in their evidence that Ali Mia, Abdul Latif and Abdul Majid did not possess the suit land. From the discussion made so far, the finding of this court is that the plaintiffs have been able to prove their possession in the suit land. In the light of discussion made hereabove, this court is led to find that the plaintiffs have been able to prove their exclusive right, title, interest and possession in the suit land.”

The learned Advocate for the plaintiff-opposite parties submits that the appellate Court being the last court of fact has properly assessed the evidence and materials on record and came to the conclusion that the plaintiff-opposite party has proved his case successfully. The defendant-petitioner, on the other hand, utterly failed to prove his case. The learned Advocate further submits that the judgment passed in Title Appeal No. 285 of 1993 does not suffer from any error of law resulting in an error in the decision occasioning

failure of justice and as such, the instant Rule is liable to be discharged.

The plaintiff's title in the suit land is not disputed. The trial Court dismissed the suit solely on the ground that during pendency of the suit, the defendants dispossessed the plaintiffs from the suit land. The appellate Court below rightly found that it was not the case of either side that the plaintiffs were dispossessed during the pendency of the suit. No averment was made by way of amendment of pleadings. Moreover, the appellate Court below assessed the evidence on record independently and came to the conclusion that the plaintiffs are in possession of the suit land. Upon examination of the evidence on record, I concur with the findings arrived at by the lower appellate Court on question of possession. Hence, the Rule fails.

In the result, the Rule is discharged. The judgment and decree passed by the lower appellate Court are affirmed.

Send down the L.C.R.