

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.321 of 2002.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

And

Abdur Rashid and others

...Petitioners

-Versus-

Government of Bangladesh and
others

...opposite parties

Mr. Md. Oziullah, Advocate

...For the petitioners

Mr. Md. Mahfuzur Rahman, DAG with
Mr. Md. Moshihur Rahman, AAG with
Mr. Md. Mizanur Rahman, AAG

...For the opposite parties

Heard & Judgment on: 18.11.2024.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 08.11.2001 passed by the learned Joint District Judge, 2nd Court, Feni in Title Appeal No.60 of 1997 reversing those dated 23.03.1997 of the learned Senior Assistant Judge, Chagalnaiya, Feni in Title Suit No.19 of 1996 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title for 6 decimal land appertaining to plot No.3107 alleging that above property belonged to Moharaja of Tripura and accordingly C.S. khatian No.175 was correctly recorded. The predecessor of the plaintiffs, namely Abdur Rashid obtained settlement of above land from the Mojaraha of Tripura by executing and registering a deed of Kabuliyat on 03.05.1941. The Mojaraja accepted above kabuliyat and on receipt of rent granted receipts. Plaintiffs are in continuous and peaceful possession in above land by constructing two shops and carrying out business. Above land has been erroneously recorded in the name of the defendant in S.A. khatian No.1 and on the basis of erroneous record the local Tahsilder refused to accept rent of above land.

Defendants No.1-3 contested the suit by filing a joint written statement alleging that disputed 6 decimal land belonged to government as the abandoned property and the same has been correctly recorded in the name of the government in S.A. khatian No.1. The plaintiffs predecessor Abdur Rashid did not obtain settlement of above land nor

the plaintiffs have any possession in the above same.

At trial plaintiffs examined three witnesses and defendant examined one. Documents of the plaintiffs were marked as Exhibit No.1-3. Defendant did not produce any document.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree above defendants preferred Title Appeal No.60 of 21997 to the District Judge, Feni which was heard by the learned Joint District Judge, 2nd Court who allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit.

Being aggrieved by above judgment and decree of the court of appeal below above respondents as petitioners moved to this court and obtained this rule.

Mr. Oziullah learned Advocate for the petitioner submits that undisputedly 6 decimal land belonged to Mojahra of Tripura which is further proved from the certified copy of C.S. khatian No.175 (Exhibit No.1). Abdur Rashid predecessor of the plaintiffs obtained settlement of above land by registered deed of kabuliyat on

16.05.1941 from above Mojahara of Tripura and a certified copy of above document was produced at trial which was marked as Exhibit No.2. As far as possession of the disputed land is concerned plaintiffs have examined three competent witnesses who gave consistence evidence as to plaintiffs possession in above land by constructing two shops. Above possession of the plaintiffs have been admitted clearly by D.W.1 Mostak Ahmed. Since the plaintiffs have succeeded to prove their peaceful and continuous possession in above 6 decimal land on the basis of settlement vide registered kabuliyat dated 16.05.1941 the larded Judge of the trial court rightly decreed the suit. The learned Judge of the court of appeal below has endorsed the findings of the trail court as to plaintiffs continuous possession in the disputed land but the learned Judge erroneously allowed the appeal and dismissed the suit which is not tenable in law.

Mr. Md. Mizanur Rahman learned Assistant Attorney General submits that undisputedly disputed 6 decimal land belonged to Mojaraha of Tripura and the same has been recorded in the name of the government in the relevant S.A. khatina. It is true that the plaintiffs have produced and proved registered kabuliyat dated 16.05.1941 but above

kabuliyat has not been supported by any deed of patta or rent receipts granted by Mojaraja of Tripura. As such the plaintiffs failed to prove their claim of joma bondobasto of above land from the Mojaraja of Tripura by legal evidence. In above view of materials on record the learned Judge of the court of appeal below rightly allowed the appeal and set aside the flawed judgment and order of the trial court and dismissed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed 6 decimal land belonged to Mojaraja of Tripura and accordingly C.S. khatian No.175 was correctly recorded and above land has been recorded in the name of the defendant in S.A. khatian No.1.

Plaintiffs claim that their father Abdur Rashid obtained settlement of above land from the Mojaraha of Tripura by registered deed of kabuliyat on 16.05.1941. Plaintiff No.2 while giving evidence as P.W.1 produced and proved a certified copy of above deed of kabuliyat dated 16.05.1941 which shows that Abdur Rashid executed above kauliyat in favour of the Moharaja of Tribura for disputed 6 decimal

land. It is true that a deed of is an unilateral illiterate document which creates settlement on receipt of above kabuliyat by the landlord either by executing a deed of patta or by granting a rent receipt. The plaintiffs could not produce any deed of patta or rent receipt granted by the Moharaja of Tripura for the above land. But plaintiffs have examined three witnesses to prove their continuous and peaceful possession in the disputed land on the basis of above settlement. P.W.2 Habibur Rahman and P.W.3 Nurul Haque have given mutually corroborative evidence in support of the claim of P.W.1 as to their possession in the disputed 6 decimal land by constructing two shops. Above claim of possession by the plaintiff has been admitted by D.W.1 Mostak Ahmed who is the Tahsilder of the above area. Above D.W. has stated that the plaintiffs are in possession in the disputed land by constructing two shops. From above evidence on record as to the manner and mode of possession of the plaintiff in the disputed land show that on the basis of above settlement plaintiffs are in continuous and peaceful possession in the dispute land for long time.

On consideration of above evidence on record learned Judge of the trial court rightly held that

the plaintiffs have succeeded to prove their lawful title and possession in the dispute land and accordingly decreed the suit. The learned Judge of the court of appeal below although held that plaintiffs are in peaceful possession in the disputed land on the basis of the registered kabuliyat (Exhibit No.2) committed serious illegality in allowing the appeal and dismissing the suit which is not tenable in law.

In above view of the materials on record I find substance in this revision under section 115(1) of the Code of Civil Procedure and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The judgment and decree dated 08.11.2001 passed by the learned Joint District Judge, 2nd Court, Feni in Title Appeal No.60 of 1997 is set aside and those of the trial court is restored.

Let the lower courts' records be transmitted down at once.