

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 30 of 1997

In the matter of:

Mohammad Hossain

Plaintiff-appellant-petitioner

-Versus-

Mafzal Ahmed and another

Opposite parties

None

...For the petitioner

None

... For the opposite parties

Heard and Judgment on: 06.01.2026

The plaintiff-appellant-petitioner has filed this revisional application under Section 115 of the Code of Civil Procedure challenging the judgment and decree dated 29.01.1996 (decree signed on 06.02.1996) passed by the Sub-Ordinate Judge, Patiya, Chittagong in Other Appeal No. 423 of 1994 dismissing the appeal and affirming those dated 31.08.1994 (decree signed on 06.09.1994) passed by the Assistant Judge, Boalkhali, Chittagong in Other Suit No. 55 of 1993 dismissing the suit.

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

The sole plaintiff Sripur Bura Masjid Management Committee through its Secretary (since dead) filed the suit praying for, *inter alia*, a decree for declaration that the plaintiff has got title in the schedule property; that the kabalas dated 25.02.1974 bearing Nos. 1124 and 1125 executed and registered by Sarada Bala Dhar, wife of late Rajani Kanta Banik in favour of the defendant Mofzal Ahmed are void, illegal, fraudulent, without consideration, not acted upon and not binding upon the plaintiff; and that the B.S. record of the suit land containing the remark 'permissive possession' is illegal, void, without any basis and not binding upon the plaintiff.

The plaintiff's case is that the suit land was possessed by Rajani Kanta under the Higher Malik Jamaluddin Ahmed and the R.S. khatian was accordingly recorded; that the same was subsequently sold in auction and Asifudoulla purchased the land as the highest auction bidder. Being owner-in-possession, Asifudoulla gifted the land to the plaintiff by executing deed on 14.01.1990 and since then the plaintiff had been possessing the same. On 08.09.1993 the defendant No.1 wanted to change the nature of the suit land by constructing a pucca house but he could not do that on the face of the protest made by the plaintiff. The defendant No.1 disclosed about 2 deeds dated 25.02.1974 bearing Nos. 1124 and 1125 and stated that he

had purchased the suit land from Sarada Bala wife of Rajani Kanta. After obtaining the certified copies of those on 14.09.1993, the plaintiff filed the suit.

Defendant No.1 contested the suit by filing a written statement stating, *inter alia*, that Rajani Kanta was the owner and possessor of the suit land under the then Higher Malik Jamaluddin Ahmed and others. He died leaving his wife Sarada Bala who subsequently by executing 2 deeds on 25.02.1974 transferred the suit land in favour of this defendant. Since then the defendant had been possessing the suit land by erecting 3-room shop house therein. The plaintiff was a stranger and just to deprive the defendant of the suit land the plaintiff filed the suit by narrating some concocted stories.

The trial Court dismissed the suit. The appeal was also dismissed.

Grounds taken in the instant revisional application, *inter alia*, are that the appellate Court below wrongly found Rajani as a monthly tenant but in fact Rajani was the sub-tenant in the land under the superior landlord and as such the finding regarding tenancy of Rajani is a misreading of the R.S. Khatian; that the Courts below failed to take into notice that the suit land was put in auction in Certificate Case No. 375 of 1938-39 which is binding against Rajani and the same was purchased by Asifudoulla on 08.01.1940 and the auction

sale was confirmed on 12.03.1942 and the said auction purchaser got the delivery of the possession of the land on 03.04.1943 and as such, the auction purchaser having been found in possession the P.S. Khatian was rightly recorded in the name of the said auction purchaser without any objection and the name of the auction purchaser recorded in the B.S. Khatian as title holder of the land; that the Courts below failed to take into consideration that the name of Mafzal Ahmed was recorded in the B.S. Khatian as permissive possessor which does not disclose that his name was recorded as owner of the property but the name of Mafzal in the B.S. Khatian got recorded collusively without any reference to his alleged purchaser from the widow of late Rajani; that the Courts arrived at the decisions on misreading of evidence and document and the finding is based on gross misreading of evidence and non-consideration of material evidence.

The appellate Court below found that in order to prove that Rajani Kanta was a mere tenant under Jamaluddin and others, the plaintiff did not file a single scrap of paper before the trial Court. In the column “অত্র স্বত্বের বিবরণ ও দখলকার” in the R.S. Khatian No. 758 [ext. 1Ka], the name of Rajani Kanta was recorded and he was shown as the possessor of the suit land. In no part of the R.S. Khatian No. 758, there is any entry showing Rajani Kanta as tenant of the suit land.

The appellate Court below further observed that it is stated in the plaint, “the property described in the schedule below along with other lands originally belonged to Rajani Kanta and it was under the superior R.S. Khatian No. 753 in the name of Jamaluddin Ahmed under Taluk Anwarullah and the true R.S. record stands accordingly”. The plaintiff (P.W.1) admitted the defence case in cross-examination by stating, “আর. এস. মতে রজনীর চাঁদনীর স্বত্ব ছিল এবং উক্ত সময়ে রজনীর দখলে ছিল।”

The appellate Court further observed that in spite of Rajani Kanta's ownership and possession in the suit land the so-called Certificate Case bearing No.375/A of 1938-39 was disposed without making him a party which did not take away the right, title, interest and possession of Rajani Kanta in the suit land.

The appellate Court below further observed that on a close analysis of the concerned B.S. Khatian (ext. ga) it appears that the name of Mafzal Ahmed *i.e.* the defendant is recorded there as permissive possessor of the suit land, but till date the plaintiff-appellant did not challenge the said B.S. khatian before any authority. The Court below observed that the ownership and possession of Rajani Kanta in the suit land was not mopped up due to the so-called certificate proceeding and on the death of Rajani Kanta his wife Sarada Bala inherited the suit land and subsequently sold the same to the defendant by executing 2 deeds bearing Nos.1124 and 1125 dated 25.02.1974.

The exercise of power under Section 115 of the Code of Civil Procedure is supervisory. A series of judicial decisions has settled the principles that the revisional Court can dispose of a revision on merits even when the petitioners failed to appear to press the Rule. It is no function of the revisional Court to sit in appeal over the findings of the appellate court. A revisional Court will not, except on limited grounds, interfere with findings of fact arrived at by the trial court and appellate court. It will not also decide a contested question of fact raised for the first time in revision. The revisional Court can interfere with an impugned decision which is vitiated by an error of law.

Judicial decisions have further settled the principles that appreciation of evidence is the function of the trial Court and the appellate Court. A finding of fact, whether concurrent or not, arrived by the lower appellate Court is binding upon the High Court Division in revision, except in certain well defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case or misconception, misapplication or misapprehension of law or misinterpretation of any material document or manifest perversity. The High Court Division is in error when it reverses the findings of the appellate Court without advert to the reasons given by the appellate Court for its findings. The revisional Court cannot interfere with a finding of fact even though it may differ with the conclusion reached by the court below

in the absence of legal infirmities. Legal infirmities occur if the Court below, in arriving at the finding, has misread the evidence, or misconstrued a material document, or failed to consider material evidence, or relied on inadmissible evidence, or based on no evidence, or failed to apply the correct legal principles of law in arriving at the finding of fact, the finding will not be immune from interference in revision. The revisional Court cannot embark upon re-assessment of evidence. A finding of fact is not immune from interference if it is based on surmise or conjecture, or it is arbitrary or perverse in the sense that on the materials available on record no reasonable judge can arrive at such finding.

On perusal of the materials on record, I find that the appellate Court below analysed the relevant facts and applied the law in correct perspective. The appellate Court below did not commit any error of law resulting in an error in the decree occasioning failure of justice. Grounds taken in the revisional application are not tenable. Hence, I find no reason to interfere with the finding and decision of the appellate Court below. Therefore, the Rule fails.

In the result, the Rule is discharged. The judgment and decree passed by the appellate Court below is affirmed. The suit is dismissed.

Send down the L.C.R.