

**District-Naogaon.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 3741 Of 2003.**

Abdul Hamid Sheikh being dead his legal heirs  
Most. Koraisha Begum and others  
----- Plaintiff-Appellant-Petitioner.

-Versus-

The Government of Bangladesh and others.  
----- Defendants-Respondents-Opposite Parties.

Mr. Md. Faizullah, Advocate with  
Mr. Md. Abul Hossain, Advocate  
----- For the Plaintiff-Appellant- Petitioner.

Mr. Md. Yousuf Ali, DAG with  
Mr. Kazi Rahman (Manik), AAG,  
Mr. Md. Siddik Ali, AAG and  
Ms. Kamrunnahar Lipi, AAG,  
----- Defendants-Respondents-Opposite Parties.

Heard On: 16.07.2025 and 21.07.2025.

And

**Date of Judgment: 30.07.2025.**

**Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 04.06.2003 passed by the learned Additional District Judge, 2nd Court, Naogaon, in Title Appeal No. 278 of 1996 dismissing the appeal and thereby affirming the judgment and decree dated 28.11.1995 passed by the learned Subordinate Judge, 2nd Court, Naogaon, in Other Class Suit No. 35 of 1994 dismissing the suit, should not be set aside.

The petitioners, as plaintiffs, instituted the suit before the learned Subordinate Judge, 2<sup>nd</sup> Court, Naogaon, seeking a decree declaring

their title to the entire sixteen annas share in the suit land measuring 2.78 acres, recorded in C.S. Khatian No. 3 and R.S. Khatian No. 1 of Mouza Gopalganj. Briefly stated, their case is that the suit land originally belonged to Haji Aftabuddin, in whose name the C.S. record was prepared. Due to rent arrears, the Nowabgonj Estate was acquired by the Government, and the land was subsequently sold at a certificate auction held on 15.06.1962. One Zinnatun Khatun purchased the land in that auction, which was confirmed on 21.09.1962, and she was delivered possession on 14.12.1962. Her name was thereafter mutated on 22.08.1963, and she continued to pay rent. Despite this, the R.S. record was erroneously prepared in the name of the Government.

Subsequently, Zinnatun Khatun instituted Miscellaneous Case No. 136 of 1968 under Section 143A of the State Acquisition and Tenancy Act against the Government. The then Province of East Pakistan contested the matter by filing a written objection. By a contested judgment and order dated 31.01.1970, the learned Munsif allowed the case and directed correction of the relevant record-of-rights.

During her possession, Zinnatun Khatun sold 0.78 acres by a registered deed dated 14.06.1980 to plaintiff No. 1 and one Ekramul Hoque. On the same date, she sold 1.00 acre to plaintiffs Nos. 2 to 6, and another 1.00 acre to one Elhan Mia. The purchasers got their names mutated and paid rents accordingly. Later, Ekramul Hoque transferred 0.39 acres by two deeds dated 23.04.1982 and 09.01.1989 in favour of plaintiff No. 5. Similarly, Elhan Mia sold 1.00 acre by four deeds dated 23.04.1982 to plaintiff No. 5. As a result, plaintiffs Nos. 1 to 4 claim title to 1.39 acres, with the rest claimed by plaintiff No. 5.

On 26.11.1993, one A. Kuddus claimed the suit land to be Government khas land. Upon searching records at the Collector's

office, the plaintiffs discovered on 29.11.1993 that the R.S. record was prepared in the name of defendant No. 1, the Government of Bangladesh, casting a cloud over their title, prompting the present suit.

The Government, as defendant No. 1, contested the suit by filing a written statement denying the plaintiffs' claims. The Government asserted that the suit land was khas land; that the plaintiffs collusively opened khatians and paid rent fraudulently; and that the documents relied on were forged. It further claimed that the land had already been leased to third parties, and that the plaintiffs had no lawful title or possession. The learned trial court framed the following issues. Notably, the Government did not deny that Zinnatun Khatun had filed Miscellaneous Case No. 136 of 1968 before the Munsif, Nowabgonj, and that the Government lost the case on contest.

The plaintiffs examined three witnesses (P.Ws. 1–3), all of whom supported their case as to both title and possession. However, the Government failed to produce any evidence, either oral or documentary, proving that the land had been declared khas under Section 20 of the State Acquisition and Tenancy Act or rebutting the plaintiffs' possession. Nevertheless, the learned trial court, dismissed the suit by judgment and decree dated 28.11.1995.

The appellate court affirmed that decision by its judgment and decree dated 04.06.2003. The appellate court concluded that the plaintiffs' claim that the Government auctioned its own khas land to recover dues from Aftab Uddin was illogical. It found several anomalies in the plaintiffs' documentation:

- i) The auction deed (Exhibit-4) refers to the Rajshahi district, while Exhibit-3 indicates Dinajpur.

- ii) C.S. Khatian names both Aftab and Mahatab Uddin as co-sharers, yet only Aftab was shown as a defaulter.
- iii) There is a mismatch between Touzi Nos. (No. 455 vs. No. 6).
- iv) Discrepancy in the area of land (2.78 acres vs. 2.28 acres).
- v) Overwriting in Exhibit-4 raised suspicion.
- vi) The plaint in Misc. Case No. 136/68 cited a cause of action in 1971, but the decree was dated 1970-chronologically impossible.

The appellate court noted that no original kabalas were marked as exhibits. Mutation and rent records only show entries from 1994–95 and fail to trace ownership back to Zinnatun Khatun. Address inconsistencies further undermined the plaintiffs’ case.

On possession, P.W.2 stated the plaintiffs were in possession of 2.78 acres, although only 2.28 acres were allegedly purchased. The court held that no legal possession could be inferred without proof of title. The appellate court found the plaintiffs’ claim to be false and collusive, and upheld the trial court’s judgment. Aggrieved by the concurrent findings, the plaintiffs filed the present revisional application and obtained this Rule.

Mr. Md. Faizullah, with Mr. Abul Hossain, learned Advocates for the petitioners, submits that both courts erred in law by disregarding the binding effect of the contested judgment in Miscellaneous Case No. 136 of 1968 under Section 143A of the State Acquisition and Tenancy Act. That decision, being unchallenged and final, estops the

Government from denying Zinnatun Khatun's title, and consequently, the title of her transferees, the plaintiffs.

He also submits that since the Government accepted rent from the plaintiffs, it is estopped under the doctrine of estoppel by conduct from denying their title.

Per Contra, Mr. Md. Yusuf Ali, learned Deputy Attorney General, argues on behalf of the Government (Defendant–Opposite Party No. 1) that the land is recorded as khas in the S.A. khatian, and the plaintiffs' claim based on a certificate case and auction sale is fabricated and untrustworthy. He points out that there is no reliable documentation of a valid auction or delivery of possession to Zinnatun Khatun.

Referring to the cross-examination of PW-1, he notes the witness could not identify the court that allegedly issued the certificate. The absence of evidence showing possession also supports the inference of forgery. He argues that the plaintiffs exploited the burning of court records during the Liberation War to create fabricated documents. Accordingly, he contends, no valid title passed to Zinnatun Khatun, and thus her successors, the plaintiffs have no right, title, or interest in the suit land.

Upon hearing both parties and reviewing the records, this Court finds no reason to interfere with the concurrent findings. The suit land is recorded as Government khas land in both the C.S. and R.S. khatians. The plaintiffs' assertion that the Government auctioned its own khas land is inherently implausible. The plaintiffs failed to explain why khas land was auctioned to recover arrears from a private individual.

Significant inconsistencies further weaken the plaintiffs' claim:

- 1) Conflict in district names across documents.

- 2) Contradictory Touzi numbers.
- 3) Discrepancy in land area.
- 4) Auction against only one co-sharer.
- 5) Overwriting in the auction deed.

The alleged Misc. Case No. 136 of 1968 is also unreliable. The plaint refers to a cause of action after the date of decree, supporting the Government's allegation of fabrication. There is no credible evidence to prove the case ever existed. Exhibit-3 itself shows Aftab and Mahatab Uddin as equal co-sharers. Plaintiffs failed to establish that the auction covered the entire sixteen annas.

Moreover, the plaintiffs failed to prove possession or produce the original sale deeds. Mutation and rent receipts only appear from 1994–95 and do not trace title to Zinnatun Khatun. The address discrepancy of the seller and vague witness statements further damage their case.

In a suit for declaration of title, the burden lies squarely on the plaintiff. Here, the plaintiffs failed to establish any valid title or lawful possession. Their documents are riddled with inconsistencies and lack probative value. This Court finds no illegality or irregularity in the findings of the courts below. The suit was rightly dismissed.

**Accordingly, the Rule is discharged.**

The judgments and decrees of the courts below are hereby affirmed. Let the Lower Court's Record be sent back and this judgment be communicated to the court concerned for information and necessary action.

**(Justice Md. Toufiq Inam)**