

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4178 OF 1994

In the matter of:

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

And

Abdur RAb

.... Petitioner

-Versus-

Government of Bangladesh and another

.... Opposite parties

Mr. Minhazul Haque Chowdhury, Advocate

.... For the petitioner.

Mr. Saifur Rahman, Deputy Attorney General

Mr. Md. Moshihur Rahman, Assistant Attorney General.

Mr. Md. Mizanur Rahman, Assistant Attorney General.

Mr. Md. Arifur Rahman, Assistant Attorney General.

....For the opposite parties.

Heard and Judgment on 29.07.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 15.11.1994 passed by the learned Sub-ordinate Judge, 2nd Court, Feni in Title Appeal No.67 of 1989 affirming the judgment and decree dated 26.06.1989 passed by the Assistant Judge, Feni Sadar, Feni in Title Suit No.36 of 1987 dismissing the suit should not be set aside and/or

other or further 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 33 decimal land appertaining to S.A. Khatian No.709 alleging that above land belonged to the Government who gave 3 years term lease to Ibrahim Miah on 20.08.1943 who transferred above land to his two sons and wife namely Mahmudul Hasan, Rashid Ahmed and Anowara Begum respectively who transferred 48 decimal land to Abdul Khaleque by a registered kabla deed dated 03.07.1978 and 23 decimal land to the plaintiff by a registered kabla deed dated 09.12.1978. Above Abdul Khaleque transferred 10 decimal land to the plaintiff by registered kabla deed dated 02.08.1982. Plaintiff is possessing above 33 decimal land by erecting shop. Defendant No.2 issued a notice on 23.03.1987 to the plaintiff for removing above shops. Defendant Nos.1-3 contested above suit by filing a joint written statement alleging that above land is adjacent to the high way and belongs to the Government which was rightly recorded in S.A. Khatian No.1. The plaintiff admitting the title of the defendant submitted a petition for taking temporary lease of above land and Miscellaneous Case No.270XII of 1986-87 was initiated by the Upazilla Revenue Office. Plaintiff does not have any right, title and possession in above land.

Plaintiffs examined 4 witnesses and defendants examined 1. Documents of the plaintiffs were marked as Exhibit No.1-5 and those of the defendants were marked as Exhibit No."A".

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

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Appeal No.67 of 1989 to the District Judge, Feni which was heard by the learned Subordinate Judge, 2nd Court who dismissed above appeal and affirmed the judgment decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of the Civil Procedure and obtained this Rule.

Mr. Minhazul Haque Chowdhury, learned Advocate for the petitioners submits that the disputed land originally belonged to the Government and the Government gave settlement of above land to plaintiffs predecessors Md. Ibrahim Miah on 20.08.1943 and from his heirs plaintiffs acquired 33 decimal land by a two registered kabla deed dated 09.12.1978 and 02.08.1982. The plaintiffs produced above deed of settlement and above kabla deeds as well as S.A. Khatian No.709 which were marked as Exhibit No.1, 2, and 5 respectively. Above land has been erroneously recorded in the name of the

Government in S.A. Khatian No.1. The appointed Advocate of the plaintiffs erroneously mentioned that out of S. A. Khatian No. 709 plaintiffs acquired 33 decimals land out of 130 decimal of the disputed plot and above land was not specified. Above deficiencies in the plaint caused due to professional inefficiency and lack of skill of the appointed Advocate of the plaintiffs. As such the appellant submitted a petition to the Court of Appeal below for remand of above suit to the trial Court for retrial but the learned Sub-ordinate Judge rejected above petition and dismissed above appeal. As such for the ends of justice the impugned judgment and decree of the Court below may be set aside and above suit may be remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

On the other hand Mr. Saifur Rahman, learned Deputy Attorney General submits that disputed land belongs to the Government and the same is needed for own use of the Government and the defendants issued a notice upon the plaintiffs for removal of his structure from above land. The plaintiffs instead of removing his unlawfully constructed structures from above land filed this false suit on the basis of unlawful documents. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below concurrently held that the plaintiffs did not have any lawful title and possession in above land and accordingly the learned Judge of the Court of Appeal below rightly

affirmed above judgment and decree of the trial Court and dismissed the appeal 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 33 decimal land and other land of above plot belonged to the Government and above land has been recorded in the name of the Government in S.A. Khatian No.1. Plaintiff's claims that the Government gave lease of above 1.30 acres land to Ibraim Miah for a term of three years by deed of settlement dated 20.08.1943. While giving evidence as PW1 the plaintiff produced a certified copy of above deed of settlement which was marked as Exhibit No.1. Clause No.7 of above deed of settlement provides that above leasee shall hand over vacant possession of above land to the Government on a notice for 30 days. There is nothing on record to show that at any point of time above term of the settlement was extended beyond above three years term or above temporary lease was converted to a lease in perpetuity by another registered instrument. Above deed of three year lease dated 20.08.1943 (Exhibit No.1) did not create any lawful title in favour of Ibrahim Miah in above 1.3 acres land and by alleged successive purchase from the heirs of above Ibrahim Miah the plaintiff did not get any lawful title in above land. A vendee does not acquire a better title or status than of his vendor. As such the claim of title of the plaintiffs in above 33 decimal land does not have any lawful basis at

all. PW1 claimed that above land was recorded in the name of his predecessor in S.A. Khatian No.709 but the learned Advocate for the petitioners has admitted that above land in fact was recorded in S.A. Khatian No.1 in the name of the Government. It further turns out from the schedule of the land as set out in the that the plaintiff did not provide any specification of disputed 33 decimal out of 1.30 acres land of above plot. As such the disputed land remained unspecified and vague and no decree for declaration of title can be passed in respect of an immovable property which remains unspecified.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Subordinate Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection liable to be discharged.

In the result, this Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Courts records immediately.