

Present:-

Mr. Justice Faysal Hasan Arif

Civil Revision No. 1022 of 2003

Sheikh Kafiluddin and another
..... Petitioners

-Versus-

Rahaman Dewan and others
..... Opposite-Parties

No one appears

... For the Petitioners

Mrs. Anjuman Ara Begum, Advocate
For the Opposite Parties

Heard on 08.03.2026 and Judgment on 09.03.2026

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon Opposite Party No. 1 to show cause as to why the impugned judgment and decree dated 13.11.2002 (decree signed on 19.11.2002), passed by the learned District Judge, Munshiganj, in Title Appeal No. 225 of 2000, allowing the appeal and reversing the judgment and decree dated 26.10.2000 (decree signed on 05.11.2000), passed by the learned Assistant Judge, Gazaria, Munshiganj, in Title Suit No. 51 of 2000 decreeing the suit, should not be set aside.

At the time of issuance of the Rule, the parties were directed to maintain the status quo with regard to possession of the suit property.

The facts relevant for the disposal of this Rule are that the petitioners, as plaintiffs, instituted Title Suit No. 51 of 2000 in the Court of the learned Assistant Judge, Gazaria, Munshiganj, against the defendant-opposite parties seeking a decree of permanent injunction stating *inter alia* that Sheikh Alimuddin, the father of the plaintiffs, was the owner of the suit land and his name was duly recorded in the S.A. Khatian. Sheikh Alimuddin transferred the said land to the plaintiffs by way of oral gift and since then the plaintiffs have been possessing and enjoying the suit land by paying rent therefore. Subsequently the names of the plaintiffs were recorded in the R.S. Khatian. The defendants have no right, title, or interest in the suit property; however, on 24.03.2000, they threatened to harvest the paddy standing on the suit land. Hence, the plaintiffs instituted the suit for permanent injunction.

Defendant-Appellant-Opposite Party No. 1 contested the suit by filing written statement contending *inter alia* that Alimuddin, the father of the plaintiffs, was the owner of the suit property and died leaving behind three sons namely Sarbat Ali, Kafiluddin (Plaintiff No. 1) and Samsuddin

(Plaintiff No. 2) as well as five daughters who inherited the suit property comprised in the suit jote according to their respective shares. After the death of Alimuddin, his son Sarbat Ali died leaving behind his daughter, Anwara. Thereafter Opposite Party No. 1 married Anwara. Late Gulbox Dewan, the father of Opposite Party No. 1, was also a co-owner of the suit jote and his name was recorded in the S.A. Khatian. Opposite Party No. 1 together with his wife Anwara has been possessing and enjoying their respective shares in the suit jote by way of inheritance. He never threatened the plaintiffs with dispossession from the suit property. Accordingly, he prayed for dismissal of the suit.

In support of their respective cases, both the plaintiffs and the defendant adduced oral evidence and produced documentary evidence.

The trial Court, upon considering the evidence adduced by the parties and the materials on record, decreed the suit by judgment and decree dated 26.10.2000 (decree signed on 05.11.2000) and granted a decree of permanent injunction against the defendants. Being aggrieved by and dissatisfied with the said judgment and decree dated 26.10.2000 (decree signed on 05.11.2000), the contesting defendants preferred Title Appeal No. 225 of 2000 before the learned District Judge, Munshiganj.

Upon hearing the parties and perusing the evidence and materials on record, the appellate Court allowed the appeal and reversed the judgment and decree of the trial Court by judgment and decree dated 13.11.2002 (decree signed on 19.11.2002). Being aggrieved thereby, the plaintiffs as petitioners filed the instant civil revision challenging the judgment and decree of the appellate Court and obtained the present Rule along with an order directing the parties to maintain the status quo in respect of possession of the suit property.

Opposite Party No. 1 has entered appearance by filing a Vokatnama to contest the Rule.

The matter was taken up for hearing yesterday; however, none appeared on behalf of the petitioners to press the Rule. On the other hand Ms. Anjuman Ara Begum, learned Advocate appeared on behalf of Opposite Party No. 1 and made her submissions, whereupon the hearing was adjourned. Today also, when the matter was taken up for hearing none appeared on behalf of the petitioners. Accordingly the matter was heard ex parte.

Upon perusal of the revisional application, it appears that the petitioners have challenged the impugned judgment and decree mainly on the ground that they, by adducing both oral and documentary evidence successfully proved their prima facie title to and exclusive possession of the suit property. It is contended that the trial Court upon proper consideration of the evidence and materials on record rightly decreed the suit but the appellate Court without properly considering the aforesaid facts, committed an error of law resulting in an error occasioning failure of justice in allowing the appeal and dismissing the suit of the plaintiff-petitioners.

Ms. Anjuman Ara Begum, the learned Advocate appearing on behalf of Opposite Party No. 1, submits that the appellate Court being the final Court of fact, upon due consideration and proper appreciation of the evidence and materials available on record, rightly passed the impugned judgment and decree. The learned Advocate further submits that the appellate Court correctly found that in a suit for permanent injunction the plaintiffs failed to establish their prima facie title to as well as their exclusive possession of the suit land. She further contends that the trial Court in rendering its judgment did not adequately address or discuss the

issues relating to the title and possession of either the plaintiffs or the defendant. It is also submitted that the learned Assistant Judge failed to properly evaluate and appreciate the oral evidence adduced by the witnesses during the trial.

Accordingly, she submits that the judgment and decree passed by the appellate Court are lawful, proper, and well-founded in the facts and circumstances of the case. Since the findings of the appellate Court are based upon a proper assessment and appreciation of the evidence and materials on record, no interference by this Court is called for in the exercise of its revisional jurisdiction.

I have heard the learned Advocate for Opposite Party No. 1, perused the revisional application and the grounds taken therein, the judgments of the courts below, the oral and documentary evidence adduced and produced by the parties and other materials available on record.

It appears that the trial Court, upon considering the pleadings of the parties, framed the following six issues for determination:

1. Whether the suit is maintainable in its present form?

2. Whether the suit is barred by limitation?
3. Whether the suit is bad for defect of parties?
4. Whether the plaintiffs have any cause of action for instituting the suit?
5. Whether the plaintiffs have prima facie title to and exclusive possession of the suit land?
6. Whether the plaintiffs are entitled to the reliefs prayed for?

To prove their respective cases, the plaintiffs examined four witnesses.

Among them Plaintiff No. 1, Sheikh Kafil Uddin, deposed as P.W.1 and produced documentary evidence, which were marked as Exhibits-1, 2, 2(Ka) and 3. On the other hand, the defendant examined three witnesses. Defendant No. 1 himself deposed as D.W.1; however, no documentary evidence was produced on behalf of the defendants.

Upon perusal of the record, it appears that Alimuddin was admittedly the original owner of the suit property. The plaintiffs claimed that their father, Alimuddin, transferred the suit property to them by way of oral gift in the presence of their mother and sisters; however, they did not examine any of those persons as witnesses. It further appears that the plaintiffs

failed to adduce any credible oral or documentary evidence to establish their exclusive possession of the suit property.

The trial Court, in the course of its discussion, observed that since the R.S. Khatian in respect of the suit property had been recorded in the name of the plaintiffs, it should be presumed that they had been in possession thereof. However, it appears from the R.S. Khatian (Exhibit-3) that it was prepared in the names of Kafiluddin (Plaintiff No. 1) and one Shahajuddin. The said Shahajuddin is not a plaintiff in the present suit; rather, Plaintiff No. 2 is described as Sk. Shamsuddin @ Sk. Shahajuddin. No evidence was adduced to establish that Plaintiff No. 2 was also known by the name Shahajuddin.

In a suit for permanent injunction, absolute title to the property is not required to be finally determined; however, the plaintiff must establish a prima facie title thereto. In the instant case, the plaintiffs failed to establish even their prima facie title to the suit property. It further appears that the principal basis of the plaintiffs' claim of title was the alleged oral gift made by their father. However, during the trial, they failed to prove the said oral gift by adducing reliable and credible evidence. From the foregoing discussion, it is evident that the plaintiff-petitioners failed to

establish their prima facie title to and exclusive possession of the suit property. They also failed to prove that they had been threatened with dispossession from the suit property. Accordingly, it is evident that the trial Court illegally decreed the suit.

Upon perusal of the impugned judgment and decree and consideration of the evidence and materials on record, it appears that the findings of fact arrived at by the appellate Court are based upon a proper appreciation of the evidence and materials on record. I, therefore, find that the appellate Court in allowing the appeal and dismissing the suit filed by the plaintiffs, committed no illegality or error of law occasioning a failure of justice.

In view of the discussions made hereinabove, I find no merit in the Rule.

In the result, the Rule is discharged without any order as to costs.

The order of status quo granted at the time of issuance of the Rule stands vacated.

Let the Lower Court Records (L.C.R.) be sent down to the court concerned at once along with a copy of this judgment.