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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 6599 of 2002

In the matter of:

Md. Fazlur Rahman and others
...Plaintiff-appellant-petitioners
-Versus-
Government of Bangladesh represented by the Deputy Commissioner, Pabna.
…Defendant-respondent-opposite party

Mr. Md. Taisir Hoque, Advocate
...For the petitioners

Ms. Shahida Khatoon, Deputy Attorney General
.....For the opposite party

Heard on: 15.01.2026, 21.01.2026 and 28.01.2026
Judgment on: 08.02.2026

In the instant revisional application filed under Section 115 of the Code of Civil Procedure (CPC), this Court on 14.12.2002 issued a Rule calling upon the opposite party to show cause as to why the judgment and decree dated 15.04.2002 (decree signed on 22.04.2002) passed by the learned Joint District Judge, 2nd Court, Pabna in Other Class Appeal No. 29 of 1993 dismissing the appeal and affirming the judgment and decree dated 29.11.1992 (decree signed on 01.12.1992) passed by the Assistant Judge, Faridpur, Pabna in Other Class Suit No. 14 of 1992 dismissing the suit should not be set aside.

The plaintiffs filed the suit for declaration of title *simpliciter* in respect of the suit land. The Government being the sole defendant contested the suit. Both the Courts below dismissed the suit solely on the ground that the plaintiffs failed to prove that they were in possession of the suit land and as such the suit for declaration of title *simpliciter* is not maintainable.

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 adverting 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.

In the case in hand there is no dispute between the parties with regard to the relevant C.S. khatian. The plaintiffs claimed title in the suit land based on a registered ewaj deed dated 17.02.1947. According to the plaint, the cause of action arose on 15.04.1992 when the plaintiffs went to the Tahsil office for mutation of the suit land in their names and to pay the rent. They came to learn that the suit land was

not recorded in the S.A. khatian which cast a cloud on the title of the plaintiffs in the suit land. It is stated in the written statement that the nature of the suit land was beel. The then owner of the suit land failed to pay the rent for the same and the same was recorded in the khas khatian in the name of the Government.

Both the Courts below observed that the registered ewaj deed was proved. The appellate Court below observed that it was stated in paragraph 2 of the plaint that the plaintiffs and the co-sharers paid the rent for the suit land. Rent receipts are *prima facie*, documentary evidence of possession. However, the plaintiffs did not produce any rent receipt to prove that they were in possession of the suit land. Learned Advocate appearing for the plaintiff-petitioners submits that the P.W.s proved in their oral evidence that the plaintiffs are in possession of the suit land.

Section 59 of the Evidence Act provides that all facts, except the contents of documents, may be proved by oral evidence. Section 61 states that the contents of documents may be proved either by primary or by secondary evidence. Under Section 63, oral accounts of the contents of a document given by some person who has himself seen it are included in the category of secondary evidence. Under Section 65 of the Evidence Act, secondary evidence including oral evidence can be given in the circumstances mentioned therein. One of the circumstances mentioned in clause (c) to Section 65 is destruction

or loss of the original document. In the case in hand, the plaintiffs failed to make out any case under Section 65 of the Evidence Act to persuade the Court to consider the oral evidence so far as possession is concerned. Accordingly, the oral evidence given by the P.W.s in respect of possession is inadmissible evidence. It is now settled principle of law that suit for declaration of title *simpliciter* is not maintainable in a case where the plaintiff fails to prove the possession.

The learned Deputy Attorney General draws my attention to the schedule of the suit land contained in the decree and submits that the schedule does not comply with the mandatory requirements of Order 7, rule 3 of the CPC.

In the schedule of the plaint, the suit land has been identified by giving old khatian number and old R.S. plot number. The quantum of land mentioned in the schedule is 41 decimals whereas the total are of land in the plot in question is more than 41 decimals. But no boundaries or metes and bounds have been given to identify the suit land. I have no hesitation to hold that the description of the suit land is unspecified. A Court of law cannot pass a decree in respect of unspecified immovable property [(2013) 18 BLC (AD) 144, 2007 BLD (AD) 8]. A plaintiff failing to give specification of the suit land is not entitled to a decree even if he proves his title (10 BLC 767). This is another reason for which the suit must fail although the Courts

below overlooked this aspect of the matter. Accordingly, the Rule fails.

In the result, the Rule is discharged.

Send down the L.C.R. at once.

Mazhar, BO