

**Present:**

**Mr. Justice Md. Salim**

**CIVIL REVISION NO.5374 OF 2007.**

Md. Zoinal Abedin

-----*Plaintiff-Petitioner.*

-VERSUS-

Md. Abdur Razzak Mondal and others

-----Defendant-Opposite Parties.

Mr. Mohammad Ali Zinnah, Advocate

--- For the Petitioner.

Mr. M. A. Sobhan, Senior Advocate with

Ms. Shadia Afrin Shapla, Advocates

----- For the Defendant-Opposite Parties.

**Heard on 10.08.2025,  
11.08.2025, 13.08.2025 and  
19.08.2025.**

**Judgment on 10.11.2025.**

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 05.07.2007 passed by learned Joint District Judge, 1<sup>st</sup> Court, Jamalpur in Other Class Appeal No.43 of 2003 dismissing the suit in allowing the appeal and reversing the Judgment and decree dated 30.06.2003 passed by the learned

Assistant Judge, Islampur, Jamalpur in Other Class Suit No.103 of 2001 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief, for the disposal of Rule are that the petitioner herein as plaintiff instituted Other Class Suit No.103 of 2001 before the Assistant Judge, Islampur, Jamalpur for declaration of title and recovery of khas possession over the suit land contending, inter alia, that the suit land originally belonged to Nur Mohammad Mondal, Mohammad Uddin Mondal and Ibrahim Mondal based on sub-kabala deed dated 11.01.1917 in C.S. Khatian No. 80. Mohammad Uddin Mondal got 44 decimals of land of suit plot No.2586, including additional land based on settlement and family amicable partition. Ibrahim Mondal got 85.50 decimals, and Nur Mohammad Mondal and Mohammad Uddin Mondal each obtained 83 decimals of land. Mohammad Uddin Mondal died, leaving two sons, Jogal Mondal and Bhola Mondal, as his heirs and successors in interest. Bhola Mondal, based on family settlement, obtained 22 decimals of land, who transferred 2.78% acres of land, including 22 decimals of the suit land, in favour of the plaintiff by a registered deed of Heba-bil-ewaz

dated 13.09.1978. The plaintiff had been in possession of the aforesaid 22 decimals of land by paying land revenue after obtaining mutation. On 26.08.2001, the defendants forcibly entered the suit land, dispossessed the plaintiff, and erected 4/5 huts thereon, thereby clouding the plaintiff's title and giving rise to the suit.

The opposite parties herein, as defendants, contested the suit by filing joint written statements denying all the material allegations made in the plaint, contending, inter alia, that the plaintiff has no title or interest in the suit land, even though there is no plot as per the plaint's schedule. The defendants further contended that the suit land originally belonged to Ibrahim Mondal, Mohammad Uddin Mondal, and Nur Mahmud Mondal, and Mohammad Uddin Mondal died, leaving two sons and two daughters. Based on a family settlement, Mohammad Uddin Mondal obtained 22 decimals of land, and Ibrahim Mondal also obtained 22 decimals of land in the suit plot No. 2586. That in this way, these defendants, being the heirs of Ibrahim Mondal, have been owning and possessing a portion of the suit land by erecting huts and houses thereon. So the question of dispossessing the plaintiff from the suit land does not arise at all, even if the story made out in the plaint is false,

fabricated, and concocted, and as such, the suit of the plaintiff is liable to be dismissed.

The learned Assistant Judge, Islampur, Jamalpur, framed the necessary issues to substantiate the dispute between the parties. Subsequently, the learned Assistant Judge, Islampur, Jamalpur, by the Judgment and decree dated 30.06.2003, decreed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants, as appellants, preferred Other Class Appeal No.43 of 2003 before the learned District Judge Jamalpur.

Eventually, the learned Joint District Judge, 1<sup>st</sup> Court, Jamalpur, by the Judgment and decree dated 05.07.2007, dismissed the suit, allowing the appeal, and reversed the Judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiff, as petitioner, preferred an application under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Notably, the instant Rule was made absolute by a Single Bench of this Division by the Judgment and decree dated 02.06.2013. Against that Judgment, the defendants, as

petitioners, preferred Civil Petition for Leave to Appeal No. 2289 of 2014 before the Appellate Division. The Appellate Division, by the Judgment dated 06.06.2016, sent this Civil Revision back to the High Court Division for hearing afresh and for disposal on merit in accordance with law.

Mr. Mohammad Ali Zinnah, the learned Counsel appearing on behalf of the petitioner, submits that the court of appeal below while reversing the Judgment and decree passed by the trial Court did not at all discuss any evidence of witnesses of the plaintiff side as well as the defendant side, even failed to controvert the findings of the trial Court below as per Order XLI Rule 31 of the Code of Civil Procedure, although the plaintiff-petitioner proved his case by adducing oral and documentary evidence beyond any reasonable doubt.

Mr. M. A. Sobhan, the learned Advocate appearing for the opposite parties, submits that the court of appeal below, as a last Court of facts, committed no error of law in reversing those of the trial court in view of the fact that the plaintiff failed to prove the title as well as dispossession. Moreover, the decision of the appellate court below, being the last court of facts, is not open to interference unless it is shown that the same has been based upon a misreading of evidence, a misconception of law, or

any misinterpretation of any material document, or otherwise perverse, contrary to law, evidence, and materials on record.

We have considered the submissions advanced by both parties, perused the Judgment and decree of the courts below, and considered the evidence and other materials on the record. It appears that the plaintiff instituted the instant suit for a declaration of title and recovery of khas possession. The opposite parties, as defendants, contested the suit by filing a written statement.

In order to prove the case, the plaintiff examined as many as 7(seven) witnesses and adduced material evidence which has been exhibited in accordance with the law.

On the contrary, the defendant side examined as many as 5 (five) defence witnesses to prove their case and adduced material evidence which has been exhibited in accordance with the law.

We have also scrutinized each deposition and each witness's cross-examination. Analyzing the evidence on record, it appears that the plaintiff, Md. Zoynal Abedin has examined as P.W.1 wherein in his deposition stated that how he has got the suit land based on a registered deed No.3976 dated 13.09.1978 from Bhola Monal who had got the suit land including other

land from his predecessor Mohammad Uddin Mondal who got his share based on registered sub kabala deed No.240 dated 11.01.1917, and he by mutating the land of the purchase deed including the suit land while has been owning and possessing, the defendants forcibly dispossessed him from the suit land on 26.08.2001. This witness also categorically mentioned the specification of the suit land. P.W.2- Shahed Ali Akando, in his deposition, stated that- “২৫৮৬ দাগের জমি। নালিশী দাগে ৪৪ শতক জমি। ২২ শতক ভোলা মন্ডল ও ২২ শতক যুগল মন্ডল দখল করিতেন। ভোলা মন্ডল নালিশী জমি বাদীকে লিখিয়া দিয়া গেছেন। and also made deposition that গত ভাদ্র মাসের আগের ভাদ্রের ১১ তারিখ রবিবার বিবাদীরা নালিশী জমিতে ঘর বাড়ী উঠাইয়া বেদখল করিয়াছে। in his cross examination stated that ৪০ / ৪২ বছর যাবৎ নালিশী দাগ দেখিতেছিল আমি গুরু থেকেই ২টি খন্ড নালিশী দাগে দেখিয়াছি। উত্তর পাশেও ভোলা মন্ডল ও যুগল মন্ডল এবং দখিন পাশেও ভোলা মন্ডল এবং যুগল মন্ডল দখল করিত। He further stated that- বিবাদীরা ঘর উঠাইবার সময় আমি বাজারেই ছিলাম। ১০/১১ টার দিকে বাড়ী ঘর তুলিয়াছে। আমি ঘর তোলেন দেখিয়া চলিয়া গিয়াছি।” P.W.3-Ketu Mulla also stated in his deposition that-“নালিশী জমি বাদীকে দিয়া গেছে। নালিশী জমি বাদী দখল করিত। গত ভাদ্র মাসের আগের ভাদ্রে রোববার বিবাদী ঘর তুলিয়া নালিশী জমি থেকে বেদখল করিয়াছে। In cross examination he stated that- ভোলা মন্ডল ও যুগল মন্ডলকে চাষাবাদ করিতে বেখিয়াছি। তাহাদের ২ জনকে অনুমান ৩০ / ৩৫ বছরের বেশি সময় ভোগ দখল করিতে দেখিয়াছি। বাদীকে ১৫/২০ বছর দখল করিতে দেখিয়াছি। ভোলা মন্ডল ২২ শতক জমি দিয়াছে বাদীকে জমি বেদখলের কথা শুনিয়াছি। দুই দিন পর আমি জমিতে গিয়াছি। আমরা গিয়া তিনটি ঘর দেখিয়াছি।”.

P.W.4-Md. Shaheb Ali in his deposition stated that- “ভোলা মন্ডলের অংশ বাদীকে

ভোলা মন্ডল লিখিয়া দিয়াছে বাদী ভোগ দখল করিয়াছে। বিবাদীরা বেদখল করিয়াছে নালিশী জমি। In his cross examination he stated that- নালিশী দাগটি আমার বুদ্ধি হওয়া থেকে দেখিতেছি। বাদীর জায়গায় বিবাদী ঘর তুলিয়াছে তাই জানি। নালিশী জমির পূর্ব পাশে আক্তার। উত্তর পাশে চান মাষ্টার। চান মাষ্টারের পূর্ব পাশে আক্তার। পশ্চিম পাশে বাদীর নিজ জমি। ঘর তুলতেই দেখিয়াছি। বিবাদীরা ৪/৫ টা ঘর উঠায়। P.W.5-Md. Chan Master in his deposition stated that- “নালিশী জমি চিনি। নালিশী জমির উত্তর পাশে আমার জমি। নালিশী জমির পূর্বে আক্তার আলী। পশ্চিম পাশে জয়নাল আবেদীনের পুকুর, দক্ষিণে আইয়ুব আলী। নালিশী জমি আগে ভোলা মন্ডল দখল করিত। ভোলা মন্ডল মারা যাওয়ার পর থেকে জয়নাল দখল করিত। ২৬/০৮/২০২১ ইং তারিখে আব্দুর রাজ্জাক বিবাদীরা নালিশী জমিতে ঘর উঠাইয়াছে বাদীকে বেদখল করিয়াছে। In his cross examination he stated that- নালিশী দাগটি চিনি। ঘর উঠায় সকাল ১০টায়। ৩/৪ টি ঘর উঠায়। টিন সেড ঘর। ভোলা মন্ডলকে ৩০/৪০ বছর এই জমি দখল করিতে দেখিয়াছি।” P.W.6 and P.W.7 are the deed writers who identified the registered deed of the petitioner. P.W.6 is the writer of Deed No.6973 dated 12.12.1984 and Deed No.1654 dated 07.03.1985. P.W.7 is the son of the deed writer, Shafiuddin, who identified the signature of the deed writer on Heba Bil Ewaz Deed No. 3978 dated 13.09.1978.

It appears that the plaintiff, in his evidence, provided details about his title, possession, and dispossession of the suit land, and that other witnesses corroborated his evidence.

On the contrary, D.W. 1 in his deposition admitted that- নাঃ ২৫৮৬ দাগের ২২ শতক উদ্দিন মন্ডলের নামে এবং ২২ শতক ইব্রাহীম মন্ডলের ছাহামে পড়ে। নালিশী দাগে ভোলা মন্ডল কোন জমি পায় নাই। আমরা নালিশী দাগের ৪৪ শতকের মধ্যে ২২ শতক জমি দখল

করি। ঘর বাড়ী করিয়া দখল করিতেছি। ঘর বাড়ী এক বছর আগে করিয়াছি। পরে বলেন মামলা হইবার ১ বছর আগে করিয়াছি। In his cross examination he stated that- বাদীর দ্বন্দ্বীদের আমি চিনি। নালিশী জমি তাহারা চিনে। গ্রামেরই লোক তাহারা। ৩ বছর আগে বাড়ী করিবার আগে আমাদের বাড়ী গুচ্ছ গ্রামে ছিল। এখনও গুচ্ছগ্রাম বাড়ী আছে। গুচ্ছগ্রামে আমার ছেলে ভূমিহীন হিসাবে বাড়ী পায় ২৫৮৬ দাগে ২২ শতক উদ্দিন মন্ডল ও ২২ শতক ইব্রাহীম মন্ডলের ছাহামে পরে ঘরোয়া বন্টন লিখিত হয় নাই। দলিল মূলে উদ্দিন মন্ডল নূরো মন্ডল ও ইব্রাহীম মন্ডল ৮২ শতক করে ভাগে পায়। মামলার ১ বছর আগে নালিশী জমিতে ঘর বাড়ী করিয়াছে। He admits that-আমি জানিনা যে, ভোলা মন্ডল ১৩/০৯/১৯৭৮ইং তারিখে নালিশী ২৫৮৬ দাগের ২২ শতক সহ ২.৭৮১/২ শতক বাদী বরাবর হেবা দেয়। পরে বলে যে, উহা সত্য নয়। D.W.2 in his deposition stated that-নালিশী দাগ চিনি। পূর্ব খন্ড ও পশ্চিম খন্ড। পূর্ব খন্ডের ২২ শতক আমি ও আমার ৪ ভাই দখল করি। পশ্চিম খন্ডের ২২ শতক ১নং বিবাদী আব্দুর রাজ্জাক ও তাহার ভাইয়েরা দখল করে। আগে পশ্চিম খন্ডের ২২ শতক চাষী জমি ছিল। বর্তমানে অনুমান ৩ বছর আগে ১ নং বিবাদীরা বাড়ী ঘর তৈরি করে দখল করে। In cross examination he stated that- অনুমান ৪০ বছর আগে উদ্দিন মন্ডলরা খারিজ করে। নালিশী জমি ২২ শতক করে ২ ভাগ হয়। ৩০/৩৫ বছর আগে এই বন্টন লিখিত হয় নাই। In his cross examination lastly admits that- উদ্দিন, ইদ্রিস এবং ভোলা নালিশী জমি বন্টন করে দখল করত। D.W.3 in his deposition stated that-নালিশী দাগের জামি চিনি। আব্দুর রাজ্জাক গং পশ্চিম খন্ডে ৩ বছর যাবত ঘর বাড়ী করিয়া বসবাস করিতেছে। In his cross examination he admits that- নালিশী জমি আমি চিনি না। বিবাদীরা আগে বাদী চেয়ারম্যানের বাড়ীতে ছিল। ৩ বছর আগে। পরে বলেন তাহারা একই বাড়ীতে ছিলেন। বিবাদীদের জমা জমি বিশেষ কিছু নাই। D.W.4- in his deposition stated that- নালিশী দাগের জমি চিনি। ৩ বছর যাবত উক্ত পশ্চিম খন্ডে রাজ্জাক বাড়ী করিয়াছে। In his cross examination he stated that- ২৪ শতক জমি নিয়ে মামলা ২৫৮৬ ও ২৫৯৭ দাগের জমি জয়নাল দখল করে মর্মে দাবী

সত্য নয়। ২৫৯৭ দাগেও বাদী কিছু জমি খরিদ করিয়াছে এবং উহাতে তাহার পুকুর আছে। D.W.5 neither support the plaintiff's case nor support the defendant's case.

Analysing the above evidence it appears that, admittedly, the suit land originally belonged to Nur Mohammad Mondal, Mohammad Uddin Mondal, and Ibrahim Mondal, as per a sub-kabala deed dated 11.01.1917. Mohammad Uddin Mondal got 44 decimals of land of suit plot including additional land based on settlement and family amicable partition. Ibrahim Mondal got 85.50 decimals, and Nur Mohammad Mondal and Mohammad Uddin Mondal obtained 83 decimals of land each. Mohammad Uddin Mondal died, leaving two sons, Jugal Mondal and Bhola Mondal, as his heirs and successors in interest. Bhola Mondal, based on family settlement, obtained 22 decimals of land, who transferred 2.78% acres of land, including 22 decimals of the suit land, in favour of the plaintiff by a registered deed of Heba-bil-ewaz dated 13.09.1978.

It is the cardinal principle of law that the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. This principle has been reaffirmed in the case of Moksed Ali Mondol -Vs- Abdus Samad Mondol, reported in 9 BLC (AD) 221, wherein it was held that:

The plaintiff is to prove his case, and he must not rely on the weakness or defects of the defendant's case.

Similarly, in the case of Md. Naimuddin Sarder-Vs- Md. Abdul Kalam Biswas and another reported in 39 DLR (AD) 237, and Bangladesh -Vs- Israil Ali and others reported in 1981 BLD (AD) 371. In the two cases mentioned above, their Lordships of the Appellate Division observed that:--

The plaintiff, in order to succeed, must establish his own case, and the weakness of the defendant's case is no ground for passing a decree in favour of the plaintiff.

In the instant on consideration of the oral and documentary evidence adduced by the parties, it appears that the plaintiff has been able to prove his title and possession of the suit land, and his alleged date of dispossession from the suit land. The trial court while concluding as to the possession of the plaintiff till his dispossession, the first court of fact considered the evidence adduced by the parties vividly, but from the Judgment and decree of the appellate court, it appears that the appellate court without taking into consideration of the evidence as quoted by the trial court abruptly reversed the

finding as to the possession of the plaintiff till his dispossession from the suit land. In the plaint, the plaintiff stated that he was dispossessed by the defendant on 26.08.2001 from the suit land. The plaintiff was examined as P.W. 1, who, in his evidence, clearly stated the alleged date of dispossession. Similarly, his other witnesses have supported the date of the plaintiff's dispossession from the suit land. Therefore, we are of firm view that the trial Court below separately discussed each issue and found a prima facie case in favour of the plaintiffs, and elaborately discussing the oral and documentary evidence on record came to a finding that all the P.Ws supported and corroborated the plaintiffs' case, even all of them mentioned the boundary of the suit land, possession and dispossession of the plaintiff of the suit land.

Notably, according to Order XLI Rule 31 of the Code of Civil Procedure, 1908, the court of appeal below, while disposing of an appeal, is mandatorily required to frame the points for determination, record its decision thereon, and state the reasons for such decision. The object of the Rule is to ensure that the Judgment of the judicial mind advert to and deal with the specific findings of the trial court. This view gets support in the case of *Jahanara Begum vs. Md. Aminul Islam*

Chowdhury, and others reported in 8BLC (AD)77, wherein it was observed that:-

“The lower appellate court, being the final court of fact, will have to discuss and reassess the evidence on record independently while either reversing or affirming the findings of the trial court.”

In the instant case, the appellate court dismissed the suit, and it reversed the trial court's findings without adverting to the trial court's findings, pleading, and materials, which were placed on the record in contravention of Order 41, Rule 31, of the Code of Civil Procedure. Thus, the appellate court below committed an error of law, resulting in a decision that occasioned a failure of justice.

In view of the above facts and circumstances and discussion herein above, we find merit in the Rule.

Resultantly, the Rule is made absolute without any order as to the cost.

The impugned Judgment and decree dated 05.07.2007 passed by learned Joint District Judge, 1<sup>st</sup> Court, Jamalpur in Other Class Appeal No.43 of 2003 is set aside and the Judgment and decree dated 30.06.2003 passed by the learned

Assistant Judge, Islampur, Jamalpur in Other Class Suit No.103 of 2001 is hereby affirmed.

Communicate the Judgment and send down Lower Court Records at once.

.....

**(Md. Salim, J).**