**In the Supreme Court of Bangladesh**
**High Court Division**
**(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 4059 of 2008**

**IN THE MATTER OF** :

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

-And-

In the Matter of:

Abdul Mannan and others

... Plaintiff-Petitioners

Versus

Government of Bangladesh and others

... Defendant-Opposite Parties

Mr. Md. Abdul Mannan Bhuyean, Advocate

... For the petitioners

Mr. Shahiduzzaman, D.A.G

... For the Government

**Judgment on: 25.06.2026**

**Md. Riaz Uddin Khan, J-**

At the instance of the plaintiffs Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and decree dated 28.07.2008 (decree signed on 03.08.2008) passed by the Additional District Judge, 1st Court, Cumilla in Title Appeal No.177 of 2007 allowing the appeal and thereby reversing the Judgment and Decree dated 28.02.1990 passed by the Senior Assistant Judge, Laksham, Cumilla in Title Suit No.74 of 1987 should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule parties were directed to maintain status-quo in respect of possession and position of the suit land till disposal of the Rule.

Succinct facts for disposal of this Rule are that the plaintiffs instituted Title Suit No. 74 of 1987 in the Court of Senior Assistant Judge, Laksham, Cumilla for declaration of Title of the schedule land measuring .40 acres contending *inter alia* that the suit land originally belonged to Amar Krishna Roy, Nabin Krishna Roy and Chandra Krishna Roy in C.S Khatian No.191. Thereafter, some plaintiffs and their predecessors took settlement of the suit property by executing two *Kabuliyat* registered on 27.09.1927 in favour of the *Zamindar* and obtained delivery of possession therein and also paid rent to the *seresta* of the *Zamindar* receiving rent receipts and since then the plaintiffs have been owning and possessing the same. The plaintiffs have been enjoying the suit property as homestead after filling earth, constructing houses and digging pond therein for more than 12 (twelve) years and have also been paying rent to the Government Tahsil Office since abolition of *Zamindary* system. The 1$^{st}$ week of July, 1987 when the employees of the defendant No.4 disclosed of the suit property as *Khas* land of the Government and threatened to dispossess the plaintiffs, the plaintiffs after obtaining the copy of disputed khatian came to learn of wrong record. On 08.08.1987 the employees of the defendant No.4 for the last time threatened the

plaintiffs to vacate the suit property and hence the suit.

The defendant Opposite Party Nos.1-4 contested the suit by filing joint written statement denying the material claims made in the plaint and further contended *inter alia* that the land measuring .82 acres out of 1.44 acres in Dag No.707 of disputed mouza Bara Rajapur had been recorded in Khas Khatian No.191 in the name of the landlords in C.S Operation. Thereafter said .82 acres land had been recorded in S.A Khatian No.372 in the name of Korban Ali and remaining .62 acres of land had been recorded in government Khas Khatian No.1 in S.A Operation. The plaintiffs have neither title nor possession in the suit property. The suit is not maintainable without ad-valorem court fees and hence the suit is liable to be dismissed.

The trial court framed the following issues: (1) whether the suit is maintainable its present form (2) whether the plaintiffs are entitled to get the decree as prayed for and (3) are the plaintiffs entitled to get any other relief. During trial the plaintiffs examined 3 witnesses and the contested defendants examined one witness and both sides produced some documents which were marked as exhibits.

After hearing both the parties and considering the relevant evidence on record including the exhibited documents all three issues were resolve in favour of the plaintiff-petitioners and ultimately the trial court by its

judgment and decree dated 28.09.1990 decreed the suit.

The contested defendant-opposite parties preferred Other Class Appeal No. 177 of 2007 before the District Judge, Cumilla against the judgment and decree dated 28.02.1990 passed by the trial court which was ultimately heard and disposed of by the Additional District Judge, 1st Court, Cumilla who upon hearing both the parties was pleased to allow the appeal by the impugned judgment and decree dated 28.07.2008 and thereby reversed the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and decree dated 28.07.2008 the plaintiffs moved this Court by filing civil revision and obtained Rule and interim order as stated at the very outset.

Mr. Md. Abdul Mannan Bhuyean, the learned advocate appearing for the plaintiff-petitioners submits that the court of appeal below wrongly made observation that since the disputed land was recorded in the C.S Khatain as "গোবাম ভূমি" (grassing land) in C.S Khatain No.191 as such the land was not available for settlement which is totally wrong, because as per section 20(2a) of the State Acquisition and Tenancy Act this land is not excluded from settlement. The trial court observed that-"বাদীপক্ষের দাখিলী প্রদর্শনী-৩ এবং বিবাদীপক্ষের দাখিলী প্রদর্শনী-ক পর্যালোচনাক্রমে দেখা যায় যে, নালিশা ৭০৭ দাগের ১.৪৪ একর ভূমির মধ্যে ৬২ শতক ভূমি ১নং সরকারী খাস খতিয়ান

অন্তর্ভুক্ত হয়েছে। উক্ত নালিশা দাগের বাড়ী ৮২ শতক ভূমি বন্দোবস্তসুত্রে কোরবান আলী ব্যক্তির নামে এস এ ৩৭২ নং খতিয়ান ভুক্ত হয়েছে। ইহা বাদী বিবাদী উভয়ের দ্বারাই স্বীকৃত।" but appeal court below said that "নালিশী জমি সাধারনের ব্যবহার্য জমি হওয়ায় তা প্রাক্তন জমিদারদের non-retainable খাস জমি ছিল। জমিদারদের non-retainable খাস জমি ব্যক্তির মালিকানায় মালিকানা অর্জনের কোন কারণ নেই। কাজেই উক্ত জমিতে ব্যক্তির মালিকানা স্বত্ব ঘোষনা করার কোন সুযোগ নেই।" But it is evident from the pleadings & evidences of both sides that on the same date predecessors of the plaintiffs & one Korban Ali got land pursuant to different Kabuliyat from the same settlement Khatian No. 191 and Plot No. 707 and the Government did not take any legal step against the inclusion of other recipient of Kabuliyat named Korban Ali in the S.A Khatian while Government included the land of the present petitioner in the Khas Khatain. So Government has taken two different views regarding Korban Ali and the predecessor of the present petitioners which cannot be sustained in the eye of law. Moreover there was no explanation in written statement of Government how the part of grassing land as mentioned in CS khatian is subsequently recorded in the name of Korban Ali in the S.A Khatain and as such the findings of the court of appeal below is not a proper finding in the eye of law. The learned advocate then submits that the trial court appointed an Advocate Commissioner for local investigation who after investigation made a report regarding whether the suit land is

attracted by the plaintiffs' two Kabuliyat of 1927 and after proper scrutiny in the field the Advocate Commissioner submitted a report positively in favour of the petitioners but the court of appeal below did not consider the said commission report.

The learned advocate next submits that the fact that the petitioners have been possessing the suit property since the time of their predecessor Rahimuddin for about 60(sixty) years as homestead and in digging pond therein and also the graveyards of the plaintiffs' predecessors are in the suit property by taking settlement after executing two Kabuliyat dated 23.09.1927 (registered on 27.09.1927) in favour of landlords and paying rents to them and subsequently to the government till 1958. The PWs-1-3 specifically stated in their depositions regarding the said Kabuliyat as well as possession. The registered Kabuliyat as well as rent receipts are very old documents about 60 (sixty) years old which have been placed from the proper custody which certainly carried a legal presumption of due execution and correctness under Section 90 of the Evidence Act which were taken into consideration by the trial court but the court of appeal below without considering the same allowed the appeal. The petitioners claimed their title on the basis of two registered Kabuliyat in the year 1927 which has not been challenged yet by the Government or any one and the established principle of law and precedent is that a registered document cannot be

avoided except by a decree of competent civil court. In support of his contention the learned advocate cited a decision reported in 12 MLR (AD) 16.

Mr. Bhuyean then submits that according to the Evidence Act in case of public document the court shall presume it as genuine document and in case of private document, the parties to the suit is to prove its genuineness. In the instant case the defendants did not raise any objection or challenge the contents of and against the private document (*Kabuliyat and Zamindary dakhila*) as advanced by the plaintiffs in the trial court or the appellate court and as such are to be considered as genuine documents and it is not permissible in law to challenge the contents of the private document for the first time before this Court in a revision. On this contention the learned advocate cited decisions reported in 20 DLR (SC) 205, 30 DLR (SC) 41 and 47 DLR (AD) 45.

The learned advocate further submits that it transpired from the written statement of the Government that there is no information how the S.A record was prepared in the name of Government as Khas land. Since S.A Khatian has no presumptive value therefore it is the duty of the Government to prove how the land in question has been recorded in khas khatian under S.A record and registered deed will prevail over the record of rights. In this connection the learned advocate cited decisions reported in 34 BLD (AD) 227 and 13 MLR (AD) 6. The learned advocate finally submits

that the petitioners claimed 40 decimals of land through two registered deeds being Nos. 4410 and 4411 both dated 27.09.1927 but for mistake committed either by the learned Advocate or by the trial court only deed No.4411 was exhibited as exhibit No.1 and inadvertently the other registered deed no.4410 was not exhibited but those two registered deeds (*Kabuliyat*) are available with the lower court records and the plaintiffs should not be penalized for mistake or laches and negligence of the Advocate or the trial court and in such a situation the this Court is entitled to come to a decision of its own by considering the evidence already on record to secure ends of justice. In this connection the learned advocate cited a decision reported in 43 DLR (AD) 78.

Per-contra Mr. Shahiduzzaman, the learned Deputy Attorney General (DAG) appearing for the government supporting the judgment and decree passed by the court of appeal below submits that the learned Additional District Judge, rightly allowed the appeal as the suit was not maintainable as the plaintiff did not challenged the wrong record of R.S Khatain. It is evident from the C.S Khatain that it was recorded in the landlord's name as grassing land (গোবাম ভূমি) which land is to be used by the public and hence it is not retainable and cannot be given settlement to any person. Moreover, the rent receipts produced by the petitioners show that there is no number of

dag and Khatain hence the plaintiffs failed to relate the rent receipts with the disputed land.

I have heard the learned advocates for both the parties, perused the revisional application along with the annexures. I have also perused the Lower Court Records including the plaint, written statement, depositions of both parties and exhibited documents. I have carefully examined both the judgments passed by the courts below.

The plaintiffs by filing the suit for declaration of Title of .40 acres of land which they claimed acquired by two registered *Kabuliyat* of 1927 A.D and they have filed two *Zamindari Dakhila* contending that both the *Kabuliyat* were acted upon by the landlord by issuing rent receipts in favour of the predecessor of the plaintiffs. The government did not challenge those two registered *Kabuliyat* or could not prove that those *Kabuliyat* were forged or fake. The government contended that the *Kabuliyat* and rent receipts do not attract the disputed land. On careful examination of those exhibited rent receipts it is found that in the rent receipts the boundary of the land as per the schedule of the *Kabuliyat* has been clearly mentioned. Moreover, the report filed by the advocate commissioner also reveals that the disputed land is attracted by the boundary as mentioned in the *Kabuliyat* of 1927. From those documentary evidence it is clear that the predecessor of the plaintiffs got title of the suit land. Regarding the possession of the suit land the plaintiffs submitted some rent receipts

issued by the government beside the *Zamindari Dakhila* upto 1958. This also suggests that after promulgation of State Acquisition and Tenancy Act when the rent receiving interest was vested in the government the government officials issued the rent receipts recognizing the predecessor of the plaintiffs as the tenant. Hence, the documentary evidence suggests that the plaintiffs are in possession beside the oral evidence given by the PWs-1,2 & 3. The court of appeal below without referring any law held that the settlement of grassing land "গোবাম ভূমি" was not retainable by the landlord for which was not eligible for settlement. Both the kabuliyat were executed in 1927 A.D and S.A record shows that there are homestead, pond and trees over the suit land which means the land were no more grassing land to be used by the public in general. Section 20 of the State Acquisition and Tenancy Act, 1950 deals with the retainable and non-retainable lands relevant portions of which reads as follows-

> Section-20. **Lands to be retained in the possession of rent-receivers, cultivating raiyats, cultivating under-raiyats and non-agricultural tenants-** (1) On the acquisition of the interests of rent-receivers in any area under Chapter-V no rent-receiver, cultivating *raiyat*, cultivating under-raiyat or non-agricultural tenant shall be entitled to retain possession of any of his khas lands in such area except as provided in sub-section (2).

(2) A rent-receiver, a cultivating raiyat, a cultivating under-raiyat, or a non-agricultural tenant shall be entitled to retain, as a tenant under the Government, possession of-

(a) lands covered by his homestead or any other building belonging to him with necessary adjuncts thereto, other than such building or part of a building outside his homestead as is used primarily as office or *kutchery* for the collection of rents of any estate, *taluk* or tenure and may be decided to be acquired by the [Government);

(b) lands in his *khas* possession of the following classes [other than derelict tea gardens], namely-

(i) lands used for agricultural or horticultural purposes including tanks,

(ii) lands which are cultivable or which are capable of cultivation on reclamation, and

(iii) vacant non-agricultural lands:

(2a) Notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court, the lands of the classes referred to in the clauses (a) and (b) of sub-section (2) do not include and shall be deemed never to have included-

(i) any land or building in a hat or bazar, or,

(ii) any fishery other than a tank constructed solely by process of excavation, or,

(iii) any land consisting of forest, or,

(iv) any land actually in use for a ferry.

(3) Allotments of lands, of which a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant is entitled to retain possession under clause (b) of sub-section (2), shall be made by the Revenue-officer according to the choice of such rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant or, where no such choice is exercised within a prescribed period, according to the rules to be made in this behalf by the Government.

From plain reading of the section it appears that the law provides some classes of lands not to be retained by the landlord, raiyat and non-agricultural tenant which means those lands cannot be given settlement with the private person. In those classes of lands there is no mentioning of grassing land or "গোবাম ভূমি". Furthermore, 1.44 acres of land of C.S dag No. 707 was recorded in the C.S Khatain as "গোবাম ভূমি" but in the S.A Khatain admittedly out of that 1.44 acres .82 acres of land is recorded in the name of

one Korban Ali, a private person while the rest .62 acres of land is recorded in the S.A Khatain in the Government Kash Khatain No.1. Out of this .62 acres of land, the predecessor of the plaintiffs got settlement .40 acres of land by two registered Kabuliyat at the same time that Korban Ali got the land through another kabuliyat from the same landlord. Consequently, the government cannot claim one part of the same plot is non retainable and another part is retainable as it is discriminatory. So, from S.A record it seems that those "গোবাম ভূমি" or grassing land was subsequently made agricultural land and homestead for which the landlord settled those lands with different tenants including that Korban Ali and Rahimuddin, the predecessor of the plaintiffs. It is also supported by the advocate commissioner's report and oral evidence i.e the depositions by both the parties.

It is true that record of right shows the prima facie possession but it is long settled principle of law that it is rebuttable. In the present case, the plaintiffs sufficiently by giving oral and documentary evidence proved that they are in the possession though their disputed land was recorded wrongly in the S.A Khatain as government khas land. The government could not show any basis for recording the suit land as khas land which the petitioners got settlement through registered kabuliyat and Dakhila from the landlord. It is also settled by our Apex Court that by mere wrong record the title of any party

cannot be taken away if that party can prove that within reasonable and limitation period they came before the court.

It is on record that the plaintiffs submitted two registered Kabuliyat; both dated 27.09.1927 but one was marked as exhibit-1 but the other was not marked though it was submitted by the plaintiffs in due time and is laying on the record. I have carefully examined the Lower Court Records, particularly two registered kabuliyat regarding .40 acres of suit land. The registered deed no.4411 was marked as exhibit-1 contained .20 acres of suit land of dag no.707 under khatian no.191 but the other registered deed no.4410 was not marked as exhibit though was submitted by the party also contained .20 acres of suit land of dag no.707 under khatian no.191. Both the kabuliyat were executed on 23.09.1927 corresponding to 6$^{th}$ Ashwin, 1334 B.S and registered on 27.09.1927. Now, only for not marking the deed as exhibit, I do not find it prudent to send the same on remand to the lower court only for marking the exhibit number. It will only consume time and nothing else. Consequently, I find no reason to consider the deed No. 4410 which has not been marked as exhibit as this Court has ample power/jurisdiction to consider that document which has been submitted by the party concerned in due time but inadvertently the trial court did not marked it as exhibit and in my view, for non-marking one of the registered kabuliyat as exhibit will not vitiate plaintiffs' claim of total .40 acres of land

contained in two registered *kabuliyat*. As such the plaintiff-petitioners are entitled to get the title of entire .40 acres of suit land contained in two registered *kabuliyat*. In the facts and circumstance as described above I am of the view that the plaintiffs have successfully proved their case by adducing their title documents as well as by producing oral and documentary evidence regarding their possession. On the other hand the defendants could not prove their title and possession over the suit land by adducing any evidence and the basis of S.A record. Since the plaintiff-petitioners successfully proved their title and possession over the suit land there was no need to seek declaration to the effect of wrong S.A or any other subsequent records and the instant suit is maintainable in its present form.

Facts and circumstance of the case as discussed above and the position of law the judgment passed by the court of appeal below is liable to be set aside and as such I am constrained to interfere with the impugned judgment and decree passed by the learned Additional District Judge, 1st court, Cumilla as I find merits in the Rule.

In the result the Rule is made **absolute**. However, without any order as to cost.

The impugned judgment and decree dated 28.07.2008 (decree drawn on 03.08.2008) passed by the Additional District Judge, 1st court, Cumilla in Title Appeal No.177 of 2007 is hereby set aside and the judgment and decree dated 28.02.1990

passed by the Senior Assistant Judge, Laksham, Cumilla in Title Suit No.74 of 1987 is restored.

The interim order passed earlier by this court stands vacated.

Send down the Lower Court Records along with a copy of this judgment at once.

Ziaul Karim
Bench Officer