

District-Barishal.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 650 of 2010.**

Firoja Begum and others.

---- Defendant-Respondent-Petitioners.

-Versus-

Abu Motaleb being dead his legal heirs Begum
Kulsum Akter and others.

---- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Ariful Islam, Advocate.

---- For the Defendant-Respondent-Petitioners.

Mr. Md. Abul Fazal, Advocate with

Mr. Sk. Omar Sharif, Advocate

----For the Plaintiff-Appellant-Opposite Parties.

Judgment Delivered On: 26.02.2026.**Md. Toufiq Inam, J:**

This Rule was issued calling upon the plaintiff–opposite parties to show cause as to why the judgment and decree dated 19.10.2009 (decree signed on 25.10.2009) passed by the learned District Judge, Barishal in Title Appeal No. 8 of 2009, reversing the judgment and decree dated 23.11.2008 (decree signed on 25.11.2008) of the learned Joint District Judge, 1st Court, Barishal in Title Suit No. 83 of 1994 dismissing the suit, should not be set aside.

The plaintiffs instituted Title Suit No. 83 of 1994 seeking declaration of title over the suit land and further declaration that a Heba-Bil-Ewaj deed was forged, collusive and not binding upon them. Their case, in short, was that defendant No. 1, having acquired the land by auction purchase, sold a portion under Plot No. 305 to them by registered kabala dated 15.12.1981. Though the deed mentioned 02 decimals, they claimed entitlement to the land within the specified boundaries and asserted long possession, alternatively claiming title by adverse possession.

The contesting defendants denied the claim, asserting that only 02 decimals were sold to the plaintiffs and that 08 decimals under Plot No. 305 were subsequently gifted to them by Heba dated 28.09.1994, followed by mutation and possession. They challenged the maintainability of the suit as barred under section 42 of the Specific Relief Act, 1877 and contended that the plaintiffs failed to prove possession.

The trial court dismissed the suit, holding that the plaintiffs failed to prove possession or definite identification of the land and that the deed conveyed only 02 decimals. It further found that the plaintiffs could not claim 08 decimals merely on the basis of boundary description and that the defendants were in possession of the remaining land.

On appeal, the learned District Judge reversed the decision, holding that a suit for declaration is maintainable if the plaintiffs are in possession. Upon assessing the oral evidence, the appellate court found possession in favour of the plaintiffs. It further held that where there is conflict between area and boundary in a registered deed, definite boundaries prevail, and thus decreed the suit.

Challenging the appellate judgment, Mr. Md. Ariful Islam, learned Advocate for the petitioner, submits that the schedule of the plaint does not contain definite or identifiable boundaries. He contends that the learned appellate court failed to properly appreciate and address the findings of the trial court. Upon careful scrutiny of the oral evidence, particularly the testimonies of the P.Ws., it is evident, according to him, that the plaintiffs failed to prove the boundaries of the suit land and also failed to establish long, continuous and uninterrupted possession necessary to sustain a claim of adverse possession. The appellate court, without adequately dealing with these material findings, committed an error of law resulting in failure of justice.

He further submits that the plaintiffs purchased only 02 decimals of land by registered sale deed dated 15.12.1981. The deed clearly states, both in its body and schedule, that ownership related to 02 decimals, even if the actual measurement varied slightly. Therefore, the

subsequent claim over 08 decimals is vague, beyond the scope of the deed and legally unsustainable. It is also contended that the defendants lawfully held 08 decimals under Plot No. 305 by a registered Heba-Bil-Ewaj deed dated 28.09.1994, mutated their names in the revenue records, regularly paid rent and obtained B.S. record in their favour. In such circumstances, the appellate court, by misreading and failing to consider material evidence on record, wrongly reversed the trial court's judgment.

He emphasizes that the plaintiffs failed to prove exclusive, continuous and hostile possession to the knowledge of the true owner—an essential ingredient for establishing title by adverse possession. The sale deed mentions only 02 decimals; there is no conveyance of 08 decimals, and the boundary clause cannot enlarge the extent of land transferred. P.W.1 himself admitted that out of 15 decimals in Dag No. 305, 05 decimals were acquired by the government and only 02 decimals were sold to him. Defence witnesses (D.W.1 to D.W.3) consistently deposed that the defendants possessed the remaining portion. This, he argues, clearly establishes that the plaintiffs have neither title nor possession over the disputed 08 decimals.

Conversely, Mr. Md. Abul Fazal, learned Advocate for the opposite party, referring to the decision reported in 8 BLC (AD) 149, submits that although the deed mentions 02 decimals, the deed's boundary

description reflects the parties' intention to transfer the land within the specified boundaries. In case of conflict between area and boundary in a registered deed, the boundary prevails. On that principle, he contends, the appellate court rightly decreed the suit.

Having carefully considered the evidence, the arguments advanced by the learned Advocates on both sides, this court proceeds to render its decision on merit. The core dispute concerns the plaintiffs' claim to 08 decimals of land under Plot No. 305 of S.A. Khatian Nos. 2632 and 2633, while the sale deed (Ext.1) executed on 15.12.1981 by Mosammat Jahanara Begum clearly records the sale of only 02 decimals. The trial court dismissed the suit, holding that the plaintiffs failed to prove possession or title beyond 02 decimals, and that the suit was barred by section 42 of the Specific Relief Act, 1877 due to vagueness in the plaint.

Ext.1, the registered sale deed, unambiguously specifies the sale of 02 decimals of land, with a detailed description of the boundaries (chowhaddi). There is no reference to 08 decimals anywhere in the deed. The clause regarding future survey—that if additional land is found no further consideration would be claimed—does not confer ownership over unsold land. The deed thus passes title only over the 02 decimals expressly described, and the plaintiffs cannot rely on the boundary clause to extend their title. This is further corroborated by

the cross-examination of P.W.1 Abu Motaleb, who admitted that out of 15 decimals in Dag No. 305, 02 decimals were sold to him and 05 decimals were acquired from the vendor; no sale or conveyance of 08 decimals occurred.

The plaintiffs claimed adverse possession over the disputed 08 decimals; however, the witnesses examined by them (P.W.1–3) failed to establish exclusive, continuous, and hostile possession. They could not correctly delineate boundaries of the claimed area, and no rent receipts or documentary proof of possession were adduced. Conversely, D.W.1–D.W.3 consistently testified that the defendants have been in possession of the 08 decimals for 13–14 years, with no contradictions elicited in cross-examination.

The trial court carefully examined the evidence and concluded that the plaintiffs' claim to 08 decimals is vague, indefinite, and legally untenable. The court also expressed concern regarding certain recitals of the deed (alleging possible subsequent insertion), but even disregarding that suspicion, the deed and admissions of P.W.1 confirm that only 02 decimals were transferred. The trial court correctly held that, in a suit for declaration of title, both title and possession must be proved, and the plaintiffs failed on both counts.

The appellate court allowed the plaintiffs' appeal primarily on the basis that the suit was maintainable and that the plaintiffs were in possession. While it is correct that a simple declaratory suit is maintainable and section 42 of the Specific Relief Act does not bar such a claim, the appellate court failed to appreciate that the plaintiffs' claim to 08 decimals exceeds the title and possession proven. The appellate judgment does not properly distinguish between the 02 decimals sold and the 08 decimals remaining under defendants' possession. This misreading of evidence results in failure of justice.

The plaintiffs relied on 8 BLC (AD) 149, which holds that in case of conflict between the area mentioned in a deed and the boundary described, the boundary shall prevail. This Court finds this decision inapplicable here because, unlike that case, the present sale deed clearly specifies 02 decimals, and there is no dispute regarding the area being transferred. The boundary clause concerning future survey merely governs the price adjustment, not the title. Hence, the ratio in 8 BLC (AD) 149 cannot be invoked to extend plaintiffs' title to the untransferred 08 decimals.

From the above discussion, this court is of the considered view that a sale deed confers title only over the land expressly described in the schedule, regardless of any mention of boundaries or clauses relating to future survey. Proof of possession is essential to sustain a

declaratory suit claiming title, especially when the claimed area exceeds the area actually conveyed by the deed. In cases where plaintiffs seek declaration over land not transferred by deed, vague or contradictory assertions cannot confer title.

On careful scrutiny of the oral and documentary evidence, the admissions in Ext.1, and the depositions of P.W.s and D.W.s, it is manifest that the plaintiffs are entitled to declaration only over the 02 decimals of land sold to them under Ext.1. They have failed to prove ownership or possession of the additional 08 decimals claimed. The appellate court, therefore, erred in reversing the trial court's dismissal of the suit with respect to the 08 decimals.

In the result:

1. **The Rule is made absolute in part.**
2. The judgment and decree dated 19.10.2009 (decree signed on 25.10.2009) passed by the learned District Judge, Barishal in Title Appeal No. 8 of 2009 are hereby modified to the extent that **the plaintiffs are entitled to a declaration of title and possession over 02 decimals under Plot No. 305 as per Ext.1.** However, the declaration as to title over 08 decimals, in so far as it exceeds 02 decimals, and the declaration that the Heba-

Bil-Ewaj deed dated 28.09.1994 is null, void, illegal and not binding upon the plaintiffs, are hereby set aside.

3. No order as to costs.
4. Send down the Lower Court Records along with this judgment at once.

(Justice Md. Toufiq Inam)