Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 5934 of 2022
Md. Abul Kalam @ Mir Abul Kalam and another
.....petitioners
-Versus-
Most. Sondori Bibi and others
.....opposite parties

Mr. Selim Reja Chowdhury with
Mr. Md. Nasir Uddin, Advocates
.....for the petitioners

Mr. Syed Nafiul Islam, Advocate
.....for the opposite parties

Heard on: 29.10.2025, 03.11.2025, 02.12.2025 and 22.01.2026

Judgment on: 10.02.2026

In the instant revision Rule was issued on 27.11.2022 calling upon the opposite parties 1-6 to show cause as to why the judgment and decree dated 12.09.2022 passed by the learned Special District Judge, Barishal in Title Appeal No. 110 of 2021 allowing the appeal thereby reversing the judgment and decree dated 10.05.2010 passed by the learned Assistant Judge, Banaripara, Barishal in Title Suit No. 01 of 1993 decreeing the suit should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The opposite parties as plaintiff filed the instant Title Suit Number 01 of 1993 in the Court of Assistant Judge, Banaripara for declaration of title which was dismissed on 20.09.1993. Plaintiffs then preferred Title Appeal Number 272 of 1993 and in appeal amended the plaint for partition and the suit was sent down on remand on 22.04.1996. The suit was then decreed in preliminary form on 27.02.1997. Thereafter plaintiffs prayed for appointment of Advocate Commissioner named Amzad Hossain who filed report on 15.06.1998. None filed objection against that report. Decree was made final on 26.04.2005 pursuant to order dated 17.04.2005 and plaintiffs got possession on 29.06.2005 through Execution Case Number 03 of 2005.

The petitioners being defendants 1-2 preferred Title Appeal 75 of 1997 against the preliminary decree dated 27.02.1997 and the appeal was dismissed on 12.04.1998. Defendants then preferred Civil Revision 2278 of 1998 which was discharged on 20.07.2002. Against which they preferred Civil Petition for Leave to Appeal Number 1896 of 2002 and our Appellate Division directed the defendant to pray saham of 0.82 ½ acres of land by judgment and order dated 30.06.2003. Defendants then prayed saham which was allotted

on 15.03.2005. Defendants thereafter appointed learned Advocate Arif Hossain Apu as Commissioner who filed report on 27.06.2007. Final decree was then prepared on 10.05.2010. Defendants got delivery of possession on 10.06.2012 through Court by Execution Case 05 of 2010 which was finally disposed on 23.09.2012.

Against the final decree dated 10.05.2010 plaintiffs filed another Title Suit 82 of 2012 which was dismissed on contest on 19.02.2018. As against the same Title Appeal 31 of 2018 preferred at the instance of the plaintiffs also failed on 05.09.2021.

Now after 11 years from the date of final decree passed on 10.05.2010 plaintiffs filed the instant Title Appeal 110 of 2021 on 21.11.2021 which was allowed by the impugned judgment and decree dated 12.09.2022.

Learned Advocate Mr. Selim Reza Chowdhury along Mr. Md. Nasir Uddin appearing on behalf of the petitioners submits that the instant appeal was filed after 11 years of the decree and as such the same is barred by limitation but the appellate Court did not advert to this important aspect of the case thus committed error of law resulting in an error in such decree occasioning failure of justice. He then submits that the

instant appeal is barred by Section 11 of the Code of Civil Procedure because plaintiff earlier failed in Title Suit Number 82 of 2012 as well as in Title Appeal Number 31 of 2018 where the subject-matter and matter in issue between the parties were same. He contends that the dispute ended in Execution Case 05 of 2010 by which possession was delivered and the appellate Court failed to appreciate that dismissal of judgment and decree dated 10.05.2010 does not mean that the execution also ended thus committed error of law occasioning failure of justice. He finally submits that since there is merit in the Rule the impugned judgment and decree may be interfered with.

On the other hand learned Advocate Mr. Syed Nafiul Islam appearing on behalf of the opposite parties most emphatically submits that the appellate Court committed no error of law resulting in an error in such decree occasioning failure of justice in allowing the appeal and the appellate Court delivered the judgment with great circumspection. He submits that the appellate Court decided in favour of taking all steps which were legally required to preserve equity in accordance with the principles and provisions of the law of partition. He then contends that since the judgment of the

Court below failed to maintain the principles governing partition and allotment among the parties the judgment of the appellate Court is legally sustainable and acceptable. He points out that the impugned judgment having been passed by following the law of equity and justice any interference by the revisional Court would result in a failure of justice. He finally submits that as the Rule is devoid of merit the same is liable to be discharged.

Heard the learned Advocates for both sides and perused the materials on record and also gone through the impugned judgments passed by the Courts below.

The fact of the case reveals that the litigation between the parties commenced as far back as the year 1993. The opposite parties as plaintiff initially filed Title Suit 01 of 1993 seeking declaration of title. The said suit was dismissed on 20.09.1993. Being aggrieved plaintiffs preferred Title Appeal 272 of 1993 wherein the plaint was amended converting the relief into one for partition. The appellate Court allowed the amendment and remanded the suit by judgment and order dated 22.04.1996.

Upon remand the suit proceeded and a preliminary decree was passed on 27.02.1997 determining the share of the plaintiffs.

The present petitioners who were defendants 1-2 challenged the present decree by filing Title Appeal 75 of 1997. The appeal was dismissed on 12.04.1998. Thereafter the defendants approached this Court by filing Civil Revision 2278 of 1998 which was ultimately discharged on 20.07.2002.

Defendants then filed Civil Petition for Leave to Appeal 1896 of 2002 before the Honourable Appellate Division. By judgment dated 30.06.2003 the Appellate Division directed allotment of saham measuring 82.50 decimals of land in favour of the defendants.

The said judgment attained finality and became binding upon the parties under Article 111 of the Constitution and Section 97 of the Code of Civil Procedure.

In compliance with the direction of the Appellate Division an Advocate Commissioner was appointed. On the basis of the report of the Commissioner a final decree was passed on 10.05.2010.

The defendants thereafter initiated Execution Case 05 of 2010 and obtained delivery of possession through Court on 10.06.2012. The case was finally disposed of on 23.09.2012.

Thus the decree was not only attained finality but was fully executed and satisfied.

Despite the execution of the final decree the plaintiffs filed another Title Suit 82 of 2012 challenging the decree. The suit was dismissed on 19.02.2018.

The appeal preferred therefrom being Title Appeal 31 of 2018 was also dismissed on 05.09.2021.

However in a glaring abuse of process plaintiffs again filed Title Appeal 110 of 2021 on 21.11.2021 challenging the final decree dated 10.05.2010 after lapse of more than 11 years.

The appellate Court entertained the appeal without addressing the bar of limitation and allowed the same which has given rise to the present revision.

Section 96 of the Code of Civil Procedure confers a substantive right to prefer an appeal from every decree passed by court exercising original jurisdiction. Order 41 of the Code prescribes the procedural methods regulating the filing and hearing and disposal of such appeals.

However the exercise of appellate jurisdiction is subject to the law of limitation which is mandatory and jurisdictional.

Section 97 of the Code lays down a fundamental principle that where a party aggrieved by a preliminary decree does not appeal therefrom he shall be precluded from disputing its correctness in any appeal preferred from the final decree.

The limitation for filing an appeal from a decree is governed by the Limitation Act, 1908. Under Article 152 of the First Schedule the prescribed period for filing an appeal from a decree is 30 days from the date of the decree.

The final decree in the present case was passed on 10.05.2010. Even after excluding the date of decree and the time requisite for obtaining certified copies as contemplated under Section 12 of the Limitation Act the appeal ought to have been filed within 30 days.

The appeal was however filed on 21.11.2021 after lapse of more than 11 years.

Section 5 of the Limitation Act empowers the Court to condone the delay upon sufficient cause but no such application was shown to have been filed and entertained by

the appellate Court. In absence of such application the appellate Court had no jurisdiction to entertain the appeal.

Limitation does not merely bar the remedy but extinguishes the jurisdiction of the Court to entertain a time barred appeal.

A final decree is the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and is executable unless stayed or set aside by a competent court.

In the present case the final decree was not only passed but fully executed and possession was delivered through court. Once a decree has been executed and satisfaction recorded the rights of the parties stand crystallized.

Reopening such decree after a decade defeats the doctrine of finality with certainty and repose which are foundational to civil adjudication.

The appellate Court failed to address the bar under Article 152 of the Limitation Act. It ignored the mandatory requirement of Section 5 of the Limitation Act. It overlooked Section 97 of the Code of Civil Procedure and interfered with a decree which had long attained finality and stood executed.

Such omission amounts to a jurisdictional error and error of law resulting in an error in such decree occasioning failure of justice with material irregularity in exercise of jurisdiction warranting interference under Section 115(1) of the Code of Civil Procedure. The appeal was hopelessly barred by limitation.

In the result the Rule is made absolute.

The impugned judgment and decree dated 12.09.2022 passed in Title Appeal 110 of 2021 are set aside.

The final decree dated 10.05.2010 together with the execution proceedings and delivery of possession are affirmed.

The order of status quo passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: