Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3067 of 2006

Eshak Miah being dead his heirs:
(1) Mosammoth Rehana Begum and others
..... Petitioners

-Versus-

Safia Khatoon being dead his heirs:
(2) Habibur Rahman and others
..... Opposite-Parties

Mr. Khair Ezaz Maswood, Senior Advocate
with
Mr. Abul Kalam Chowdhury, Advocate
… For the Petitioner

Mr. Mohammed Mutahar Hossain with
Mr. Jobayer Mohammad Aourangzeb,
Advocate
… For the Opposite Party No. 1

Judgment on 09.12.2025

In this revision Rule was issued calling upon the opposite party Nos. 1-10 to show cause as to why the impugned judgment and decree dated 17.07.2006 (decree signed on 23.07.2006) passed by the learned Additional District Judge, 2nd Court, Noakhali in Title Appeal No. 148 of 1989 dismissing the appeal and thereby affirming the judgment and decree dated 26.08.1989 (decree signed on 31.08.1989) passed by the learned Additional Assistant Judge, Sadar, Noakhali in Title Suit No. 297 of 1984 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.

Facts relevant for disposal of this Rule, in short, are that predecessor of present opposite party Nos. 1-8 and one Shamsul Hoque, opposite party No. 9, as plaintiffs, filed Title Suit No. 297 of 1984 in the Court of the then Munsif, (now Assistant Judge) Sadar, Noakhali against Eshak Miah, predecessor of present petitioners, as defendant No. 1 and others for recovery of khas possession of the premises mentioned in schedule to the plaint as trespasser, stating that one Suja Miah was carrying business in Chandnabhiti Nos. 17 and 18 which is west of C & B road of Maijdee town by taking lease from government. Holding No. 565 for the shop stood in his name. He sold the premises and land of Unit No. 18 to plaintiff No. 1, Moklesh Miah for Tk. 550 vide receipt dated 17.04.1964 who purchased it in the benami of his brother plaintiff No. 2, Shamsul Hoque and had been possessing the same. Defendant No. 1 was an employee of the plaintiff No. 1 who used to look after the business of the plaintiff No. 1. Holding for unit No. 18 was obtained in the name of defendant No. 1. Plaintiff rented it out to several persons at various times. Later, holding of said premises was opened in the name of plaintiff vide order dated 07.05.1972 passed by the then administrator of Noakhali Pourashava. Defendant No. 1 created an ante-dated receipt showing

purchase of said premises from Suja Miah and filed Title Suit No. 117 of 1992 for permanent injunction against present plaintiffs and obtained an order of ad-interim injunction and taking advantage of order forcibly entered into suit premises on 16.05.1972, by breaking lock in the absence of the plaintiff No.1. Said suit was dismissed on 29.06.1974. Thereafter, filed Title Appeal No. 96 of 1974 which was allowed on 14.06.1979, against which defendant in said suit filed Civil Revision No. 1128 of 1979 before the High Court Division in which rule was made absolute on 05.05.1982 restoring the judgment of dismissal passed by the trial court. Thereafter, the present plaintiff No. 1 asked the defendant No. 1 to vacate possession of the suit shop, but he failed to surrender the same, consequently, the plaintiffs filed this suit on 13.05.1984 for recovery of khas possession by evicting defendant No. 1. The plaintiffs amended the plaint and added prayer that the alleged agreement of lease between defendant No. 1(জ) and defendant No. 2, Executive Engineer, local works department dated 14.03.1999 leasing out the suit land infavour of Halima Khatun [defendant No. 1 (জ)] during pendency of appeal was illegal and also prayed for declaration that it is collusive, void and mala fide.

Defendant No. 1 filed written statement and contested the suit. His case *inter alia*, was that the suit was not maintainable; barred by limitation and plaintiffs had no right, title and possession in the suit land. He denied the claim of plaintiffs stating that Suja Miah being owner of suit land and premises sold the same to defendant No. 1 for Tk. 500/- vide a money receipt dated 26.12.1963 and delivered possession to him. He opened holding No. 565(a) in his name. Defendant No. 1 has been possessing the same since his purchase and paid taxes and rates to Pourashava. The defendant reconstructed the premises and let out to several persons on several occasions. Plaintiff No. 2 was also tenant under the defendant No. 1 for sometime and when defendant asked him to surrender the same and issued notice under section 106 of the Transfer of Property Act on 08.01.1970, plaintiff No. 1 purposely filed a case before Noakhali Pourashava for mutating his name for the suit premises. Defendant No. 1 has been possessing the same. The plaintiffs tried to trespass into suit premises forcibly, consequently, the present defendant, as plaintiff, filed Title Suit No. 117 of 1972 for permanent injunction which was dismissed and then filed Title Appeal No. 96 of 1979 as stated

in the plaint and ultimately it was disposed of on 05.05.1982 in Civil Revision No. 1128 of 1979, making the rule absolute.

Intricate question of title is involved in the suit premises and the land, as such, present suit was not maintainable. Defendant was not an employee under plaintiff. Arrear rents due to the government for suit land was recovered from the defendant in Certificate Case No. 27 of 1966-67. In assessment list of government for leasing out Khas land, suit land was listed in the name of defendant as its owner and possessor. Plaintiff No. 1 filed objection against it which was rejected on 29.10.1986, and hence, defendant prayed for dismissal of the suit.

The trial court framed 07 (seven) issues for adjudication of the dispute between the parties. In course of hearing the plaintiffs examined 4 (four) witnesses as PWs, defendant No. 1 examined 05 (five) witness as DWs. Both the parties submitted documents in support of their respective claims which were duly marked as exhibits. The trial court after hearing decreed the suit vide judgment dated 26.08.1989 and decree dated 31.08.1989.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court the defendant No. 1 filed Title Appeal No. 148 of 1989 before the District Judge, Noakhali. Eventually the appeal was transferred to the court of Additional District Judge, 2nd court, Noakhali for hearing and disposal wherein the appellant and the government adduced further evidence examining witness as D.Ws. The appellate court after hearing, *vide* impugned judgment dated 17.07.2006 and decree dated 23.07.2006 dismissed the appeal and affirmed the judgment and decree of the trial court. At this juncture, the petitioner moved this Court by filing this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Khair Ezaz Maswood, learned senior Advocate with Mr. Abul Kalam Chowdhury, learned Advocate appearing for the petitioner at the very outset submit that predecessor of the opposite party i.e. original plaintiff No. 1, Moklesh Miah registered a G.D. ("Annexure-A") against original defendant No. 1 Eshak Miah i.e. predecessor of petitioners with Sudharam Police Station alleging that Eshak Miah, Ali Ahmed along with 4-5 others forming an unlawful assembly entered into suit shop on 09.02.1972. The plaintiff filed the suit on 13.05.1984 beyond twelve years

from the date of dispossession by the predecessor of petitioners, as such, the suit is hopelessly barred by limitation under Article 142 read with Section 28 of the Limitation Act. On query as to whether fact of G.D. has been stated in the written statement, in deposition and the same was filed before the trial court, he ultimately, shifted his argument giving up point of limitation. It is argued that for having a decree of recovery of possession, the plaintiff must prove his possession in the suit property before dispossession and to prove manner of dispossession by evidence, but in the present suit the plaintiff on both counts failed to prove that before the alleged dispossession he was in possession of the suit shop and utterly failed to prove that the defendant dispossessed him on any specific date, time and manner. It is submitted that a portion of the schedule shop went in the road for its expansion, resultantly, existence of the premises as stated in the plaint is no more. Moreover, the premises were shifted to the west, as such, the schedule to the plaint seems to be apparently vague and indefinite, hence, the suit is barred under Order 7 Rule (3) of the Code of Civil Procedure.

He submits that in earlier suit filed by the petitioners' predecessor for a decree of injunction, vendor of Eshak Miah named Suja Miah

deposed as P.W. Statement of Suja Miah in earlier suit was confusing, consequently, he was declared hostile and in a suit for injunction oral evidence adduced by Suja Miah bears no evidentiary value in the instant case. He submits that the present suit is not maintainable in its present form as the plaintiff could not prove dispossession and prayed for declaration of title. The trial court as well as the appellate court while decreeing the suit and dismissing the appeal failed to appreciate the fact and circumstances as stated by the plaintiff and defendant in their pleadings and also failed to appreciate the provisions of law in this regard, as such, committed illegality and error of law in the decision occasioning failure of justice. Referring Exhibits- 2 and 2(a) he submits that both the documents prove that the defendant Eshak Miah was in possession of the shop from before, as such, story of taking possession by breaking lock is untrue and manufactured for filing of the present suit. It is argued that the plaintiffs claimed the suit shop by purchase from Suja Miah on 17.04.1964, but the defendant No. 1 purchased the same on 26.12.1963 from Suja Miah. Both the courts below failed to find that the receipt of the defendant No. 1 shall get priority over the receipt of the plaintiff.

Mr. Mohammed Mutahar Hossain with Mr. Jobayer Mohammad Aourangzeb, learned Advocates appearing for the opposite parties submit that both the parties unequivocally admitted that the property in question belonged to C & B. Both the parties claimed that suit property was allotted by C & B in favour of one Suja Miah who after obtaining settlement/lease constructed and or built a shop thereon and obtained holding bearing No. 565 from local Pourashava and running a tea stall. Suit shop measuring $6\frac{3}{4} \times 16\frac{3}{4}$ hands east to west. In need of money, he sold the suit shop to the plaintiff upon receipt of Tk. 550/- by granting a receipt on 17.04.1964 and could not execute proper sale deed for want of registered document of lease in his favour from C & B. The shop was purchased by the plaintiff in the benami of his brother Shamsul Alam, plaintiff No. 2.

The plaintiff was serving in the Ansar Department, defendant No. 1 Eshak Miah, was an employee under Moklesh Miah, he used to look after all the business including payment of rents and other taxes on behalf of Moklesh Miah, consequently, the holding of the shop initially obtained in his name. At a point of time the shop constructed by Suja Miah destroyed by heavy wind and he constructed a new shop thereon and let out the

same to one Saidul Hoque who left the shop in the year 1970, then it was let out to Noakhali District Samabaya Samity. They also left the shop, consequently, it remains under lock and key. By this time a conflict was going on in between Moklesh Miah and Eshak Miah in respect of suit shop, consequently, the plaintiff filed an application before the Pourashava for changing holding in his name. Pourashava by its order dated 07.05.1972 changed holding No. 180 in the name of the plaintiff. Out of enmity Eshak Miah created an ante-dated receipt showing the same executed by Suja Miah on 26.12.1963 and on the basis of said receipt he filed Title Suit No. 117 of 1972 for a decree of permanent injunction against the present plaintiff of the suit and in that suit obtained an order of temporary injunction on 16.07.1972 and after obtaining order of injunction and absence of the plaintiff due to illness of his mother and staying at Chattogram, the defendant Eshak Miah forcefully entered into the suit shop on 16.05.1972, by breaking lock. Ultimately, suit was dismissed, then preferred Title Appeal No. 96 of 1974 which was allowed. The present plaintiffs then filed Civil Revision No. 1120 of 1979 before this Court in which rule was made absolute on 05.05.1982 and the judgment and decree of the appellate court was set aside, meaning

thereby, no decree sustained against the plaintiff of the present suit. After disposal of earlier suit filed by Eshak Miah, this suit has been filed against the defendant for recovery of possession.

He submits that during pendency of the appeal, heirs of Eshak Miah namely petitioner No. 8 [defendant No. 1 (জ)] in suit in connivance with the officials of C & B managed to obtain lease illegally and without knowledge of the plaintiff. Consequently, the plaintiff got his plaint amended challenging said allotment in favour of petitioner No. 8. He submits that all the witnesses corroborated each other and admitted by the defendant Eshak Miah that the suit property originally allotted to Suja Miah and in earlier suit as well as in the written statement, the defendant Eshak Miah claimed his right and title in the suit property through Suja Miah like the plaintiff, but in earlier suit as well as in this suit, Eshak Miah could not prove that he purchased the property from Suja Miah at any point of time. Rather, in earlier suit as well as in the instant suit it has been proved that he created said money receipt after filing of earlier suit showing the same executed by Suja Miah before the transfer in favour of the plaintiff.

He argued that where the defendant in his earlier suit as well as in the instant suit utterly failed to prove his title in the suit property, both the courts below rightly decreed the suit and dismissed the appeal and have not committed any illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidence both oral and documentary available in lower court records, judgment passed in earlier Title Suit No. 117 of 1972 and judgment and decree of both the courts below.

Both the parties admitted that the suit property belonged to C & B. One Suja Miah obtained lease from C & B and constructed a shop house thereon. He was carrying business therein covering Chandnabhiti Nos. 17 and 18, bearing, Municipal Holding No. 565. As claimed by the plaintiffs, said Suja Miah in need of money sold Unit No. 18 to the plaintiff No. 1, Moklesh Miah at a consideration of Tk. 550/- by a receipt dated 17.04.1964. The shop was purchased in the benami of plaintiff No. 2, Shamsul Hoque as the plaintiff No. 1 was serving in Ansar Department. The defendant No. 1 was an employee under plaintiff No. 1 who used to

look after the business and shop of the plaintiff Moklesh Miah. For convenient of management and control, holding for the suit shop initially obtained in the name of defendant No. 1. The plaintiff let out the shop to several persons on rental basis. Later on, holding of the suit shop was changed in the name of the plaintiff No. 1 vide order dated 07.05.1972 passed by the Administrator of Pourashava. Subsequently, holding stood jointly in the name of Moklesh Miah and Eshak Miah.

When Moklesh filed an application before the Pourashava praying for changing holding in the name of Moklesh exclusively, a dispute arises between them. On the prayer, Pourashava authority enquired into the matter and submitted report finding both of them jointly possessed the suit shop and now because of disputes between them the suit shop remain under lock and key. In the meantime the plaintiff No. 1 left Noakhali for Chattogram for treatment of his ailing mother and stayed there for 6 (six) months. By this time admittedly, the defendant No. 1 filed Title Suit No. 117 of 1992 praying for a decree of permanent injunction against the present plaintiff and in that suit obtained an order of ad-interim injunction against this plaintiff. After obtaining order of injunction the defendant No. 1 forcibly entered into the premises on 16.05.1972 by breaking the lock in

the absence of the present plaintiff. Admittedly, Title Suit No. 117 of 1972 dismissed which was also affirmed by this Court in Civil Revision No. 1128 of 1979.

The defendant No. 1 claimed that he purchased the suit shop from original allottee by a money receipt dated 26.12.1963 at a consideration of Tk. 500/-. It is also admitted that holding No. 565 stood in the name of Suja Miah. After purchase he has been possessing the suit shop on payment of all taxes to the Pourashava and reconstructed the premises, let out the same to several persons. Plaintiff No. 2 Shamsul Hoque was his tenant. When he was asked to vacate the premises and surrender the same by notice U/S 106 of the Transfer of Property Act, the plaintiff out of enemity filed an application to the Pourashava for recording the name of Moklesh Miah. When the matter was pending for decision before the Pourashava, the plaintiffs tried to trespass into the suit premises forcibly, consequently, the defendant No. 1, as plaintiff, filed Title Suit No. 117 of 1972 for permanent injunction against the present plaintiff as defendant and got an order of ad-interim injunction and continued in peaceful possession, but ultimately, the suit was dismissed by the trial and maintained by the High Court Division.

It is admitted by the defendant No. 1 that the suit property originally allotted to one Suja Miah from whom both the parties claiming purchases. It is admitted fact that the plaintiff Moklesh Miah filed application before the Pourashava for changing the holding in his name and there was an enquiry report [exhibit Nos. 2 and 2(a))]. The defendant Eshak Miah strongly asserted that in the enquiry, the Inquiry Officer found him in possession and submitted report to that effect. I have gone through the report exhibit-2(a). It appears that the report clearly stated that both the parties were in joint possession and joint holding. Since a dispute arises between them the shop in question remain under lock and key pending decision of Pourashava, meaning thereby, the parties were not in possession of the suit shop. Inquiry Officer also recommended for changing the holding of the shop in the name of Moklesh Miah.

It is a fact that the defendant No. 1 filed Title Suit No. 117 of 1972 against the present plaintiff for a decree of permanent injunction in which he got an order of ad-interim injunction. The present plaintiff claimed that during his absence due to his mother's illness the defendant No. 1 forcibly entered into the shop by breaking lock. It has become incumbent upon the defendant No. 1 how and when he took possession of the shop.

Obviously, in the absence of any evidence to that effect, it can be presumed that he took possession of the same at any point of time during pendency of the proceeding before Pourashava regarding change of holding or after filing of Title Suit No. 117 of 1972, and obtaining an order of ad-interim injunction.

Now, it is to be seen, under what authority the defendant No. 1 was claiming the shop in question. It is definitely on the basis of alleged purchase by a receipt dated 26.12.1963 from Suja Miah. In earlier Title Suit No. 117 of 1972 filed by the defendant, as plaintiff, it has been proved that the receipt dated 26.12.1963 (Exhibit-A) has been created by the defendant No.1 and is ante-dated one. Moreover, on the face of Exhibits-1 and A, it can be easily understood that writing of Exhibit-A is fresh one than Exhibit-1. Curiously enough, in that suit the defendant No.1 cited his vendor Suja Miah as witness who stated that he never sold the shop to Eshak Miah but it was sold to Moklesh Miah, resultantly, declared the witness hostile (Exhibit-5). Therefore, only basis of his claim lost its credibility and the defendant No. 1 had no other basis to stand or claim any right in respect of suit shop. In the said suit he ultimately failed. Therefore, he had no right to retain his illegal possession, but to surrender

the same to the plaintiff. Being refused to do so, the plaintiffs filed this suit for his eviction.

The plaintiffs examined 4 (four) witnesses in support of their case. All the P.Ws. corroborated each other saying that the plaintiff No. 1 has purchased the possession from Suja Miah on 17.04.1964. Defendant No. 1 was his employee. The suit shop was under lock and key, the defendant forcibly took possession by breaking lock. The plaintiffs filed this suit for possession by evicting the defendant No.1. Defendant No. 1 himself deposed in suit, but could not substantiate his claim by any evidence.

It is strongly argued that the plaintiff acquired no title in the suit land by a money receipt, as such, without title, suit for recovery of possession is not maintainable in law. From perusal of plaint and prayers thereto, it appears that the plaintiffs did not pray for declaration of title in the suit land. They prayed for eviction of the defendant No. 1 claiming a possessory right by money receipt dated 17.04.1964 (Exhibit-1) as admitted by Suja Miah, the original allottee. It is true that the land was allotted to Suja Miah by C & B who never denied the fact and cancelled the allotment of Suja Miah. Both the parties are claiming the suit shop by purchase from Suja Miah. Claim of the defendant No. 1 did not sustain as

he failed to prove his purchase. Since by evidence, it has been proved and established that Moklesh Miah purchased the possessory right of the suit shop from Suja Miah he is entitled to possession of the same by evicting a trespasser from the suit land/shop, as such, question of title of the plaintiff is not the matter to be decided or adjudicated in the instant suit.

In the judgments passed in the earlier suit and in the judgments of the trial court and appellate court of the present suit, both the courts concurrently observed that the plaintiff could able to prove their case, as such, concurrent findings cannot be ignored and disturbed in revisional jurisdiction unless there is misreading of evidence, non-consideration of documents and misconstruction of law. The alleged G.D. (Annexure-A) is found to be subsequent invention and creation of the defendant, not stated in the written statement before the trial court even before the appellate court and did not utter a single word when deposing before the trial court and could not produce the same at the time of hearing of the suit. As per law, the document not pleaded in the written statement, in the evidence and not taken into consideration by both the courts below, at this stage, there is no scope for considering said document, moreover, it is not GD, but an information seems to have been written on a plain paper.

The suit shop was under lock and key as claimed by the plaintiff and supported by the report of Pourashava [Exhibit-2(a)]. It is also found that an application (Exhibit-2) filed by Moklesh Miah before Pourashava on which an inquiry was held by one B. Rahman on 24.10.1970, thereafter by Shahabuddin on 07.05.1972. From both the enquiry reports it appears that the holding was in the name of Suja Miah which was sold to one Mr. Mohammad Ullah and Moklesh Miah. Nowhere, it is claimed and disclosed by the defendant Eshak Miah that he purchased the suit shop from Suja Miah on 26.12.1963. Had Eshak Miah purchased the suit shop from Suja Miah on 26.12.1963 he would have submitted the money receipt before the Pourashava and the fact of purchase would have been reflected in the enquiry report where purchase of Moklesh Miah clearly stated, meaning thereby, story of purchase by Eshak Miah has been concocted and the so called money receipt has been created for filing Title Suit No. 117 of 1972. Subsequently, Moklesh Miah mutated the holding in the name of Eshak Miah for his convenient of looking after the shop and payment of taxes. Both the exhibits-2 and 2(a) clearly disclosed that the holding of disputed shop was recorded in the name of two persons, plaintiff and defendant and claimed both of them in possession and

recommended for creating holding in the name of Moklesh Miah. Because of dispute and differences between them suit shop remains under lock and key as reflected in the report of Pourashava and these documents are not under challenge.

Admittedly, the petitioners' predecessor filed Title Suit No. 117 of 1972 against Moklesh Miah which was dismissed by the trial court holding that the plaintiff could not prove his title and exclusive possession and that judgment was maintained by this Court in Civil Revision No. 1128 of 1979. Eshak Miah did not dispute the fact of filing suit and ultimate dismissal of the same finding no prima facie case in his favour and possession. From the document filed by the defendant it is admitted that the holding at the first instance obtained in the name of Eshak Miah as admitted by the plaintiff too. Subsequently, Moklesh Miah changed the holding No. 180 in his name and when the dispute arises between the parties regarding ownership of the shop and joint holding, the plaintiff by filing an application prayed for changing the holding in his name. Pursuant to the prayer there has been a proceeding before the Pourashava authority, enquiry was held and finally the inquiry report disclosed that disputed shop was found locked up.

The question now has come when and how the defendant Eshak Miah entered into possession of the suit shop. The plaintiff by adducing four witnesses proved that the defendant Eshak Miah took possession of the shop on 16.05.1972 breaking lock under the garb of an order of injunction obtained in Other Class Suit No. 117 of 1972 in the absence of the plaintiff, when he was away from Noakhali due to his mother's illness and staying at Chattogram. Witnesses cited by defendant could not prove that Eshak Miah was in possession and the shop in question was not locked up. P.Ws. corroborated each other supporting evidence of P.W1, nothing has come contrary to the statement made in the plaint as well as adduced by the plaintiff both oral and documentary. The appellate court while dismissing the appeal rightly held that the plaintiff by evidence could able to prove that the shop was under lock and key and during his absence the defendant after obtaining order of injunction forcibly entered into the possession breaking lock. Both the courts below appreciated the evidence adduced by Suja Miah in earlier Title Suit No. 117 of 1972, Government witness, Nazrul Islam adduced before the appellate court and held that admitted original allottee of both the sides Suja Miah himself stated that he had sold the premises to defendant No. 1

i.e. Moklesh Miah not to Eshak Miah. Where the defendant Eshak Miah claims his right and title in the suit shop by virtue of purchase from Suja Miah who deposed in the earlier suit stating that he sold the suit shop to Moklesh Miah, I find no reason or any evidence favouring Eshak Miah to stand on his own statement. Being failed in his all attempt after his death his wife in connivance with C & B officials managed to obtain a license in her name vide Exhibit-'দ' during pendency of appeal before the appellate court, giving a complete go bye to earlier stand. Moreover, license create no right or title in favour of licencec.

The petitioners' lawyer submits that the lease of Suja Miah was year to year which creates no right, title in his favour to transfer to the plaintiff, but no such document has been filed in court to prove the same nor C & B has claimed that Suja Miah had no title in the suit land, rather admitted that Suja Miah was original allottee. Learned lawyer for the petitioners failed to understand that his client Eshak Miah also claiming his title by purchase from original allottee Suja Miah. Had Suja Miah no right to transfer the property how he can claim the same by purchase from Suja Miah? This argument is absolutely a contradictory argument and self destroying and prejudicial to the interest of his client, moreover, fate of

the defendant's title has already been settled in earlier suit, as such, there is no scope left for him to agitate the matter of purchase of the suit shop from Suja Miah.

In the judgment of earlier Civil Revision No. 1128 of 1979 (Exhibit-4) it has been held that;

> *"There is no dispute that the suit premises belonged to Suja Miah. Plaintiff claims to have purchased it from Suja Miah by receipt (Exhibit-1) dated 26.12.1963. Suja Miah was examined as P.W.1. He has stated in his examination-in-chief that he did not sell the suit premises to the plaintiff. On the other hand, he stated in examination-in-chief that he transferred the suit premises to defendant No.1. Thereafter, he was declared hostile. In cross-examination he said that plaintiff has been in possession of the suit premises and thereafter said he cannot say who has been in possession of the suit premises. The evidence of P.Ws. 7 to 9 appear to be contradictory. Plaintiff filed Exhibits-3(a) and C which show that the name of defendant No.1 has been mutated in respect of disputed premises on 11.05.1972. Whereas as Exhibit-B shows that on 25.06.1973 order was passed to stay the operation of mutation case. Plaintiff filed Exhibit-4 to show that he has been granted licence in respect of the suit premises on 04.10.1972. The trial court held that suit premises has not been mentioned in Exhibit-4. The disputed premises is admittedly in possession of P.W. 5 Shahidul Hoque (Shamsul Hoque) who is name lender of the plaintiff. No rent receipt has been produced to show that plaintiff realized rent from P.W. 5 defendant, on the other hand produced Exhibit-A receipt dated 17.04.1964 showing purchase of disputed premises. Both sides adduced evidence with regard to title and possession. With regard to title it has been mentioned above that Suja Miah himself stated that he had sold the premises to*

> *defendant No.1, with regard to possession the defendants admit that plaintiff has been in possession of the suit premises after obtaining the injunction. The Advocate Commissioner admittedly had been to the locality after the injunction order and found possession with plaintiff. There is no clear finding by the lower appellate court that plaintiff has been in possession of the suit land from the time of institution of the suit and he continued to possess the premises thereafter."*

In view of the above, I find no merit in the rule as well as in the submissions of the leaned Advocate for the petitioner calling for interference.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.

Md. Akteruzzaman Khan (B.O)