

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2700 OF 2022

In the matter of:

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

And

Tapan Chandra Shil

... Petitioner

-Versus-

Gopal Candra Shil and other

... Opposite parties

Mr. Sujit Chattrjee with

Mr. Syed Mohammad Javed Parvez, Advocates

... For the petitioners

None appears

.... For the opposite parties.

Heard on 05.05.2025 and 08.05.2025.

Judgment on 13.05.2025

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 29.11.2021 passed by the District Judge, Madaripur in Title Appeal No.17 of 2020 allowing the appeal and reversing the judgment and decree dated 09.03.2020 passed by the learned Senior Assistant Judge, Sadar, Madaripur in Title Suit No.82 of 2018 dismissing 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 in short are that the petitioner as plaintiff instituted above suit for declaration of title by adverse possession for 10 decimal land

appertaining to S. A. Khatian No.435 and 436 of Plot Nos.341 and 344 alleging that above land belonged to the defendant Nos.1 and 2 who entered into an agreement for sale of above land to the plaintiff for Taka 1,60,000/- and on receipt on Taka 1,50,000/- executed an unregistered baiynapatra on 11.03.1984 and delivered possession. Plaintiff erected dwelling huts in above land and was in possession of the same. The defendants obtained time for execution and registration of a sale deed on various pretexts and ultimately denied to execute and register a sale deed in the middle of December 2001. As such plaintiff's possession in above land became adverse to above owners and matured into valid title by adverse possession.

Defendant No.2 contested above suit by filling a written statement alleging that his brother defendant No.1 did not execute above bainapatra dated 11.03.1984 for disputed 10 decimal land to the plaintiffs nor he received any advance money from the plaintiff. Plaintiffs were never inducted into possession of above land pursuant to above bainapatra. Defendant No.2 is not a party to above bainapatra he did not deny to execute and register any deed in favor of the plaintiff. Plaintiff did not have any possession in the disputed land and the question of creation of title by adverse possession does not arise at all.

At trial plaintiff examined 5 witnesses and defendants examined 3. Documents of the plaintiffs were marked as Exhibit Nos.1 and 2 and those of the defendants were marked as as Exhibit No.“Ka” series.

On consideration of above facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Title Appeal No.17 of 2020 to the learned District Judge, Madaripur who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtain this Rule.

Mr. Sujit Chatterjee, learned Advocate for the petitioner submits that the plaintiffs have claimed title by adverse possession alleging that they were inducted into the possession of the disputed land pursuant to bainapatra dated 11.03.1984. Above unregistered deed was produced at trial and marked as Exhibit No.2 which shows that above documents was executed by defendant No.1 Nittyananda Chandra Shil alone. As such the plaintiff should not have impleaded defendant No.2 as a defendant in this suit. There is no claim against defendant No.2 that he contracted to sale above land or inducted the plaintiff into the

possession in disputed land. Above bainapatra being an unregistered private document was required to be proved in accordance with the provisions of the Evidence Act, 1872 but at trial the plaintiffs did not make any endeavor to prove due execution of above deed.

On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial Court rightly dismissed above suit but the learned Judge of the Court of Appeal below without reversing any material findings of the trial Court most illegally allowed the appeal, set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that 10 decimal land appertaining to Plot Nos.341 and 344 of S. A. Khatian Nos.435 and 436 belongrd to defendants No.1 and 2. Plaintiff has impleaded two brothers Nittyananda Chandra Shil and Gobindra Chandra Shil as defendants No.1 and 2 but at Paragraph No.4 it has been stated that defendants No.1 alone contracted to sale above 10 decimal land to the plaintiff and executed an bainapattra on 11.03.1984 and delivered possession. Since defendant No.2 Gobinda Chandra Shill was not a party to above bainapatra nor he delivered

possession to the plaintiff it is not understandable as to when alleged possession of the plaintiff became adverse against defendants No.2.

The plaintiff has claimed that he was inducted into possession of 10 decimal land by defendant No.1 pursuant to above deed of bainapatra dated 11.03.1984. It turns out from above bainapatra that 9 decimal land of S. A. Plot No.344 and 1 decimal land of S. A. Plot No.341 was contracted to sale by above deed of bainapatra dated 11.03.1984. The statement of the plaintiff shows that possession of above 10 decimal land was delivered to the plaintiff by defendant No.1. But it turns out from the schedule of the plaintiff that the plaintiff has sought a decree for title by adverse possession for 10 decimal land out of 88 decimal land appertaining to Plot Nos.341 and 344 of S. A. Khatian Nos.435 and 436. There is no specific mention as to the quantity of land from each S. A. Plot as has been described in the deed of bainapatra dated 11.03.1984.

It has been claimed both in the plaintiff and in the evidence of PW1 that plaintiff was inducted into possession of disputed 10 decimal land lawfully by defendant No.1 on 11.03.1984 pursuant to above deed of bainapatra. But there is no mention as to when and how above lawful possession of the plaintiff became adverse against the rightful owners defendant Nos.1 and 2.

This suit for declaration of title by adverse possession was filed on 21.03.2018 alleging that defendants No.1 and 2 refused to execute

and register a kabla deed for above land in the middle of December 2001. There is no explanation as to why defendant No.2 who was not a party to above bainapattrā would refuse to execute and register a kabla deed. Nor there is any explanation as to why after above alleged denial by the defendants to execute a sale deed the plaintiff did not bring a suit for specific performance of contract.

Acquisition of title by adverse possession is the most unlawful and rough way of acquiring title in the immovable property. As such he who claims title by adverse possession must prove by legal evidence as to his entry into the possession of the land and when above possession became adverse against the lawful owners of above land and from above date statutory period of 12 years have passed.

As mentioned above the plaintiff could not prove his lawful entry into the possession of the disputed land and further failed to prove when above possession became adverse against the lawful owners and why instead of filling a suit for enforcement of above contract they filed this suit after long delay of about 16 years.

In above view of the facts and circumstance of the case and evidence on record I hold that the learned Judge of the trial Court on correct appreciation of materials on record rightly dismissed above suit but the learned District Judge utterly failed to appreciate the legal meaning of the evidence on record and most illegally allowed the

appeal and set aside the judgment and decree of the trial Court and decreed above suit which is not tenable in law.

I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute. The impugned judgment and decree dated 29.11.2021 passed by the learned District Judge, Madaripur in Title Appeal No.17 of 2020 is set aside and the judgment and decree dated 09.03.2020 passed by the learned Senior Assistant Judge, Sadar, Madaripur in Title Suit No.82 of 2018 is restored.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER