

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 1838 of 2022

Toyeb Ali and others

.....petitioners

-Versus-

Rokeya Begum and others

.....opposite parties

Mr. Mr. Sk. Eusuf Rahman, Advocate

.....for the petitioners

Mr. Mr. Muhammad Rezaul Kabir Khan, Advocate

.....for the opposite parties

**Heard on: 19.11.2025, 01.12.2025 and
02.12.2025**

Judgment on: 04.12.2025

In the instant revision Rule was issued on 20.04.2022 calling upon the opposite parties 1-9 to show cause as to why the impugned judgment and decree dated 17.11.2021 (decree signed on 23.11.2021) passed by the learned Additional District Judge, 1st Court, Kushtia in Title Appeal No. 140 of 2017 dismissing the appeal thereby affirming the judgment and decree dated 12.06.2017 passed by the learned Assistant Judge, Khoksha, Kushtia in Title Suit No. 37 of 2012 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioners as plaintiff filed Title Suit 37 of 2012 in the Court of Assistant Judge, Khoksha, Kushtia for declaration of title and recovery of possession in respect of 01 decimal of land and the suit was filed on 08.03.2012.

The case of the plaintiff is that Abdur Rahman Biswas is the owner in possession in 1 decimal of land of S.A. khatian 1129. Abdur Rahman Biswas died leaving behind seven sons and six daughters and a wife and his heirs jointly possessed the suit shop. One of the sons named Liton died issueless and another son named Gofur died leaving behind plaintiffs 8-13 who have been maintaining title and possession of the suit shop but the suit shop was wrongly recorded in R.S. khatian in the name of the predecessor of the defendant of the basis of forged and fraudulent documents. By virtue of those documents defendant took forcible possession in two shops and threatened with dispossession from the rest one shop on 25.01.2012. Plaintiffs came to learn about the wrong record by obtaining the certified copy of the record of the concerned office. The predecessor of defendant was employee of the shop of Abdur Rahman and taking such advantage he managed to prepare the R.S. record in his name by virtue of

some concocted documents about which the plaintiffs had no knowledge. Hence the suit was filed.

The opposite parties as defendant appeared and contested the suit by filing written statement denying all material allegations made in the plaint contending that Abdur Rahman Biswas was owner in possession of the suit shop and subsequently he proposed to sell the suit shop to the predecessor of defendants for which he came to an agreement on 23.04.1975 after receiving the earnest money. Then Abdur Rahman Biswas died leaving behind the heirs who took the rest amount of consideration and executed kabala deed 1425 on 19.02.1977 and delivered possession of the shop and accordingly the R.S. record 691 was correctly prepared in the name of the predecessor of defendants named Sukur Ali in R.S. plot $\frac{1665}{2738}$. Sukur Ali after his purchase have been maintaining title and possession in the suit shop since 1975 upon payment of rent and tax. In 1991 Gofur who is one of the sons of Abdur Rahman claimed portion of the suit land and to avoid future trouble Sukur Ali purchased the portion of land again by kabala 2029 dated 16.11.1991. Subsequently when Sukur Ali wanted to renovate the shop the plaintiffs made

obstruction for which these defendants in presence of the local respectable persons agreed to release possession from two shops in which plaintiffs have been maintaining possession through tenant and in the rest 01 decimal of land the heirs of Sukur Ali have been maintaining title and possession. The plaintiffs have no title and possession in the suit shop and the suit being false is liable to be dismissed.

Trial Court framed as many as five issues as to maintainability, limitation, defect of party, whether plaintiffs have got *prima facie* title and possession in the suit land, whether the plaintiffs are entitled to get the relief as prayed for.

During the course of trial plaintiffs examined as many as seven witnesses and defendants examined two witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

Trial Court upon perusal of the pleadings and hearing the parties and considering both oral and documentary evidence dismissed the suit by judgment and decree dated 12.06.2017. As against the same plaintiffs preferred Title Appeal Number 140 of 2017 before the District Judge, Kushtia which subsequently transferred to the court of Additional District

Judge, 1st Court, Kushtia who heard the appeal and was pleased to dismiss the same by judgment and decree dated 17.11.2021.

Being aggrieved by and dissatisfied with the judgment the plaintiffs have come before this Court with this revision and obtained Rule on 20.04.2022

Learned Advocate Mr. Sk. Eusuf Rahman appearing on behalf of the petitioners submits that the Courts below committed error of law resulting in an error in such decree occasioning failure of justice in dismissing the suit upon misreading and non-consideration of material evidence and the judgments passed by both the Courts below being perverse and misconceived are liable to be set aside. He then submits that the Courts below failed to consider that the property belonging to minors was alienated upon representation of their mother and beyond the knowledge of the minors and such transfers being made in violation of the law are liable to be set aside outright. He further submits that the Courts below also failed to appreciate that plaintiffs proved their previous possession and subsequent dispossession from the suit land but the Courts below upon misreading of the evidence wrongly found that the case on possession followed by

dispossession was not proved in evidence thus the Courts below committed error of law resulting in an error in such decree occasioning failure of justice. He lastly submits that the appellate Court being the last Court of fact did not pass any independent finding according to the provision laid down in Order 41 Rule 31 of the Code of Civil Procedure and the judgments passed by the Courts below cannot be sustained and finally he prays that the Rule may be made absolute.

On the other hand learned Advocate Mr. Muhammad Rezaul Kabir Khan appearing on behalf of the opposite parties submits that this concurrent findings being based on proper appreciation of evidence are immune from interference by this revisional Court. He submits that the Courts below committed no error of law resulting in an error in such decree occasioning failure of justice inasmuch as from reading of the plaint and evidence it appears that the suit is barred by limitation and the case on possession followed by dispossession as claimed by the plaintiffs was not proved in evidence and the Courts below correctly dismissed the suit upon proper appraisal of evidence on record which cannot be interfered with in revision. He finally prays that the Rule may 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.

This is a suit for declaration of title and recovery of possession. Plaintiffs claim that they have been dispossessed from the suit land forcibly but from reading of paragraph 4 of the plaint it appears that no definite date of possession followed by dispossession was made out by the plaintiffs. Further claim of the plaintiffs is that they also were threatened with dispossession from one of the shops on 12.12.2011. PW 1 admitted in cross-examination that they filed the suit because defendants dispossessed them on 12.12.2011 from two shops and claimed possession in the rest one shop. This statement clearly indicates that defendants had been in possession in two shops before 12.12.2011. PW 1 also stated in cross-examination that he could not say on which date defendants took possession. Therefore it is not understood on which date the cause of action actually arose.

It is the definite case of the plaintiffs that when the kabala deed dated 19.02.1977 Exhibit-Ka was executed they were minors but Exhibit-Ka shows that some of the plaintiffs are minors at that time who were represented by their mother.

Exhibit-Ka was executed and registered on 19.02.1977 and the present suit was filed on 08.03.2012. Law says that the plaintiffs have to file the suit within 12 years from the date of the execution and registration of Exhibit-Ka or within three years from their attaining majority whichever is later. If the suit for recovery of possession is not filed within such period the suit will be barred under Section 28 of the Limitation Act. The principle of law that the void documents need not be avoided applies when the real owner actually maintains his possession but when the original owner is out of possession and does not sue against the document holder within the abovementioned time his claim is barred under Section 28 of the Limitation Act. This view finds support from the case of Kashem Mollah Vs. Fazel Sheikh reported in 3 DLR 306.

It is also to be noticed that when Abdul Gofur who is one of the sons of Abdur Rahman claimed the portion of the suit shop the predecessor of the defendants purchased that portion by kabala number 2029 dated 16.11.1991 Exhibit-Kha. All those documents were filed in original and such sale by the plaintiff by Exhibit-Kha clearly shows that they at least had knowledge of transfer in favour of the defendants since 1991

and as such this suit is also barred under Article 120 read with Article 142 of the Limitation Act being not filed within 2003.

The claim of the defendants that their predecessor entered into the suit land in 1975 from the date of the agreement made with the predecessor of the plaintiffs and had been maintaining possession. Plaintiff's claim that they did neither go to the registry office for registration of Exhibit-Ka nor did they put any signature in the document but it appears from reading of Exhibit-Ka that Ayub Hossain who is one of the sons of Abdur Rahman put his signature as executant in that document which appears to be similar with his signature given in the vokalatnama. This Court is competent to compare the signatures under Section 73 of the Evidence Act and through naked eyes it is clear that those signatures of Ayub Hossain are similar. So plaintiffs cannot say they were not signatories to Exhibit-Ka and by virtue of Exhibit-Ka their right, title and interest in the suit shop was legally transferred in favour of the predecessor of the defendants. From reading of Exhibit-Kha it also appears that Abdul Gofur who was one of the sons of Abdur Rahman did not execute Exhibit-Ka for which he claimed his portion of land and defendants for avoiding future difficulty purchased that portion by kabala

number 2029 dated 16.11.1991 but Abdul Gofur also did not show any grievance within the year of 2003. Thus it appears that by virtue of Exhibits-Ka and Kha defendants acquired right, title and interest and possession in the suit land and plaintiffs sold their interest.

Plaintiff's claim that they had been dispossessed by defendants 1-3 from two shops of the suit property and defendants have been threatening with dispossession from the rest one suit shop from 12.12.2011 but plaintiffs did not make out any definite case on the date of dispossession in their plaint and also failed to prove the same in oral evidence. Even if the date of dispossession is made out in oral evidence that cannot be accepted being beyond pleading. It is significant to mention that PW 1 admitted in his cross-examination that he could not say from which date defendants are in possession in two shops. This statement clearly shows that defendants have been maintaining prior possession in the suit shop. Since plaintiffs failed to make out any definite case on possession followed by dispossession this suit for recovery of possession under Article 142 of the Limitation Act is not maintainable.

As discussed above the plaintiffs sold their title and interest by Exhibit-Ka and Kha and they also could not prove

their case on possession followed by dispossession and their suit is also barred by limitation. Therefore I find no merit in this Rule.

Accordingly, the Rule is discharged.

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

Md. Ali Reza, J: