District-Jessore.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1408 of 2021.

Md. Yousuf Dafader.
---- Plaintiff-Appellant-Petitioner.
-Versus-
Md. Motiar Rahman being dead his heirs Jony Khatun and others.
----Defendant-Respondent-Opposite Parties.

Mr. Pankaj Kumar Kundu, Senior Advocate with
Mrs. Mukti Rani Kundu, Advocate
----For the Plaintiff- Appellant -Petitioner.

Mr. Ahmed Nawshad Jamil, Advocate with
Mr. K.M. Mamun-Or Rashid, Advocate and
Mr. Md. Jobayer Al mamun, Advocate
----For the Defendant-Respondent-Opposite Parties.

Heard On: 26.10.2025, 13.10.2025.
And
Judgment Delivered On: 18.11.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 27.05.2015 (decree drawn on 02.06.2015) passed by the learned Additional District Judge, 1st Court, Jessore in Title Appeal No. 118 of 2001dismissing the appeal and thereby affirming the judgment and decree dated 11.06.2001 (decree drawn on 18.06.2001) passed by the learned Assistant Judge (In-charge), Jessore in Title Suit No. 200 of 1990, whereby the suit was dismissed, should not be set aside.

The plaintiff instituted the suit seeking a declaration of title and recovery of possession in respect of the suit land. The relevant factual background, though not extensive, is sufficiently clear for determination of the legal issues. Following the death of Iman Ali, the predecessors of the defendants allegedly procured a kabala dated 17.07.1957 in their names and secured S.A. recording. The plaintiff asserts that upon discovering this manoeuvre he convened a local *salish* on 10.10.1957, and at that *salish*, Melai Biswas and Delbor Biswas admitted their wrongdoing and were directed to execute a proper deed. Accordingly, they executed and registered kabala No. 7868 dated 01.11.1958 in favour of the plaintiff for Tk. 1,400/-. The plaintiff claims to have thereafter obtained mutation and remained in possession. He alleges that during the subsequent survey the defendants collusively secured recording of the land in their names, and further that defendant No. 1 later procured the original deed and forcibly obtained his thumb impression on the reverse of the document to convert it into a so-called “mortgage”.

The defendants’ consistent case is that the deed of 01.11.1958 was never a sale, but a mortgage executed as security for a loan of Tk. 1,400/-, which they repaid on 02.05.1959 in the presence of witnesses. They contend that the plaintiff acknowledged receipt of repayment by affixing his thumb impression on the document and returned the deed to them. They further assert long, continuous possession.

Both sides adduced oral and documentary evidence. The trial court dismissed the suit; the appellate court affirmed. The plaintiff has thus come before this Court in revision and obtained the present Rule.

Mr. Pankaj Kumar Kundu, learned Senior Advocate assisted by Mrs. Mukti Rani Kundu, learned Advocate for the plaintiff–petitioner, submits that the central legal question concerns the proper construction of the registered deed dated 01.11.1958. Under Section 58(c) of the Transfer of Property Act, a mortgage by conditional sale must contain, within the same instrument, an express stipulation for retransfer in the event of repayment. The impugned deed contains no such clause and is unconditional. Therefore, it must operate as an outright sale and cannot, by any external evidence, be converted into a mortgage. He relies on 1984 BLD 195 and 12 DLR 840.

He also invokes Section 92 of the Evidence Act, submitting that the defendants' oral testimony attempting to contradict the written terms of the deed is barred. He further contends that once the defendants themselves assert the deed to be a mortgage, the burden lies on them to prove that assertion, yet they failed to discharge that burden.

In reply, Mr. Ahmed Nawshad Jamil, learned counsel for the opposite parties, submits that the plaintiff failed to prove either title or

possession. He highlights the plaintiff's shifting explanations- first alleging loss of the deed in the C.O. office, later an elaborate story of forcible seizure, and notes the absence of any neutral witness supporting such grave allegations. He relies on consistent entries in S.A. and R.S. records, acts of possession, and corroborating defence evidence.

He also raises a maintainability objection, arguing that a prayer for recovery of possession cannot be contingent or speculative; unless dispossession is affirmatively pleaded and proved, such relief cannot be granted. He relies upon 19 DLR 782. He submits that the plaintiff failed to prove earlier possession or the fact and manner of dispossession, and therefore the deed was never acted upon.

Having examined the record and considered the submissions, this Court finds that the first and foundational issue is the construction of the registered deed dated 01.11.1958. The law on this point is well-settled. Section 58(c) of the Transfer of Property Act requires, as a mandatory condition, that any stipulation for retransfer upon repayment must be incorporated in the same document. If the instrument contains no such clause, the transaction cannot be characterised as a mortgage by conditional sale. Section 92 of the Evidence Act reinforces this principle by prohibiting the introduction

of oral evidence that contradicts or varies the terms of a written instrument.

The deed of 01.11.1958 contains no condition for reconveyance. Its language is unconditional; on its face it conveys absolute title. The defendants' attempt to establish, by oral evidence or alleged endorsements on the reverse of the deed, a condition not found within the body of the instrument squarely violates Section 92. The deed must therefore be treated as an out-and-out sale.Thus, on the question of title, the plaintiff succeeds: he has produced a valid, registered deed conveying title to him. The defendants, who allege that the deed is merely a mortgage, fail to prove their assertion.

Establishing title, though foundational, is not the end of the inquiry. In a suit for declaration of title coupled with recovery of possession, the plaintiff must ordinarily prove either (i) that he had possession, or (ii) that he was dispossessed by the defendants, unless the defendants are shown to be in mere occupation without lawful right. In the present case, although the plaintiff asserts possession following the deed of 01.11.1958, his evidence is notably weak. He admits having resided in another village, produces no reliable documentary proof of continuous possession, and fails to substantiate his allegations of forcible taking of the deed or specific acts of dispossession. His narrative shifts on material points, undermining his credibility. Conversely, the

defendants' evidence regarding their long-standing occupation- through acts such as cultivation, tree-felling, construction, and the support of consistent S.A./R.S. entries- presents a coherent and continuous account of possession.

Turning to maintainability, the general principle is well recognised: a plaintiff seeking recovery of possession must specifically plead and prove dispossession; a speculative or contingent prayer that possession be restored "if dispossessed" will not ordinarily sustain a decree for khas possession. Courts require clear assertions of (i) title, (ii) possession, and (iii) the fact and circumstances of dispossession. However, pleadings must be read holistically. A suit cannot be held non-maintainable merely because the prayer is framed in the alternative if the plaint, taken as a whole, discloses a substantive cause of action: such as allegations of interference, obstruction at survey attestation, or threatened dispossession. In this case, although the plaint underwent amendments and contains inelegant phrasing, it ultimately alleges specific acts of interference. Thus, the objection to maintainability fails; the real deficiency in the plaintiff's case lies not in the form of the pleadings but in the insufficiency of proof.

The controlling legal question, therefore, becomes whether a plaintiff who establishes a valid title but fails to prove earlier possession may nonetheless recover khas possession from a defendant found to be in

mere occupation without lawful authority. The law on this point is well settled: *possession follows title*. The comparative strength of the parties' titles is decisive. Where the plaintiff proves a better and lawful title, and the defendant fails to establish any independent or superior right, the plaintiff is entitled to recovery of possession notwithstanding weaknesses in his proof of prior possession. In the present case, the registered deed dated 01.11.1958 stands as a valid conveyance of title to the plaintiff. The defendants' only attempt to resist this title was by alleging that the deed was a mortgage, a contention which collapses in view of Section 58(c) of the Transfer of Property Act and Section 92 of the Evidence Act, since the deed contains no defeasance clause and its terms cannot be contradicted by oral evidence. The defendants possess no subsequent deed or instrument of title and therefore stand as mere possessors without right.

Where the plaintiff proves a valid and subsisting title under a registered deed and the defendants fail to establish any superior title or lawful basis for their occupation, the plaintiff is entitled to recovery of khas possession; failure to prove previous possession or the exact manner of dispossession is not fatal, because in such circumstances possession follows title.Once the defendants' claim collapses, their possession becomes unauthorised. In such a situation, the plaintiff, having a valid title, is entitled to khas possession even if he cannot

prove earlier possession or the precise details of dispossession. This principle has been consistently affirmed in decisions of our apex court.

Accordingly, although the plaintiff's story regarding forcible seizure and thumb impression is not accepted, and though he has not been able to prove earlier possession with the degree of certainty desirable, these deficiencies do not defeat his claim because the defendants have failed to prove any lawful title or lawful possession. The plaintiff's better title entitles him to recovery of possession.

For the foregoing reasons, the concurrent judgments and decrees of the courts below suffer from material errors of law in misconstruing the registered deed and in overlooking the principle that possession follows title where the defendant is found to be in mere possession without right. The impugned judgments cannot stand.

Accordingly, both the judgment and decree of the appellate court as well as those of the trial court are set aside.

The suit succeeds. It is decreed in the following terms:

i. The plaintiff's title to the suit land is hereby declared.

ii. The defendants, having failed to prove any lawful basis for their occupation, are held to be in unauthorised

possession; the plaintiff is therefore entitled to recovery of khas possession.

iii. The defendants shall deliver vacant possession of the suit land to the plaintiff within 60 (sixty) days from the date of receipt of this judgment; failing which, the plaintiff shall be at liberty to recover possession through Court in execution.

iv. The interim order of stay stands vacated.

There will be no order as to costs.

Let the Lower Court Records be sent down along with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.