

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2066 OF 2023

In the matter of:

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

And

Taruni Mohon Saha

... Petitioners

-Versus-

Government of Bangladesh represented by its Deputy Commissioner, Manikgonj and others

... Opposite parties

Mr. Ashim Kumar Mallik, Advocate

... For the petitioner.

Mr. Saifur Rahman, Deputy Attorney General with

Mr. Md. Arifur Rahman, Assistant Attorney General

Mr. Md. Mizanur Rahman, Assistant Attorney General

Mr. Md. Moshihur Rahman, Attorney General

....For the opposite parties.

Heard and Judgment on 08.05.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.02.2023 passed by the learned Additional District Judge, 2nd Court, Manikgonj allowing the appeal and thereby reversing the judgment and decree dated 06.02.2014 passed by the learned Joint District Judge, 1st Court, Manikgonj in Title Suit No.14 of 2008 should not be set aside and/or 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 for 59 decimal land appertaining to R. S. Plot No.86, R.S. Khatian No.1 corresponding to S. A. Khatian No.312 and C. S. Khatian No.235 alleging that above land belonged to Ramesh Chandra Shaha, Chandra Mohon, Tarokeshshor, Sudhangsho Bala Saha and Protima and the same was rightly recorded in S. A. Khatian No.312. Above Ramesh Chandra Saha died leaving two brothers Chandra Mohon and Tarokeshshor as heirs and above Tarokeshshor died leaving Chandra Mohon Saha as the brother and heir. Sudangsho Bala Saha and Protima Chandra Saha died leaving Chandra Mohon Shaha as heir. Thus Chandra Mohon Saha alone became owner and processor of above 59 decimal land and died leaving only son Toruni Mohon Saha who is in possession in above land. Above Taruni Mohon Saha remains busy with his business and he executed and registered a deed of power of attorney to the plaintiff on 24.10.2007. Above land has been erroneously recorded in R. S. Khatian No.1 in the name of the defendants.

Defendant Nos.1-5 contested above suit by filling a joint written statement alleging that above land went into the Kaliganga River due to erosion immediately after publication of S. A. Khatian and remained under the river during preparation of R. S. Khatian. As such above land vested in the Government pursuant to Presidential Order No.135 of 1972 and the same was correctly recorded in R. S. Khatian No.1.

At trial plaintiff examined four witnesses and defendants examined 1. Documents produced and proved by the plaintiff were marked as Exhibit Nos.1, 2 and 3 series. On the other hand documents of the defendant were marked Exhibit “ka” series.

On consideration of facts and circumstances of the case and evidence on record learned Joint District Judge, 1st Court decreed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Title Appeal No.23 of 2022 to the District Judge, Manikganj which was heard by the learned Additional District Judge, 2nd Court who allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit.

Being aggrieved by and the dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court with this civil revisional application under section 115(1) of the Code of Civil Procedure and obtained this rule.

Mr. Ashim Kumar Mallik, learned Advocate for the petitioners submits that admittedly 59 decimal land belonged to Romesh Chandra, Chandra Mohon, Tarokshshor, Sudangso Bala Saha and Protima and the same was rightly recorded in S. A, Khatian No.312. In R. S. Khatian No.1 above property was erroneously recorded in the name of the defendant Nos.1-5. It is also admitted that Tarini Mohon Saha was the son of Chandra Mohon Saha who appointed Mohammad Khalilur Rahman as his constituted attorney by an unregistered deed of power

of attorney dated 24.10.2007 and on the basis of above authorization above Khalilur Rahman as plaintiff has instituted this suit.

While giving evidence as PW1 above Khalilur Rahman have given a detailed description of the genology of above mentioned S. A. recorded tenants stating that Romesh Chandra, Tarokshshor, Sudangsho Lal Bala Saha and Protima died one after another leaving Chandra Mohon as the sole owner and processor of above 59 decimal land and above Chandra Mohon died leaving Taruni Mohon Saha as the only son and sole heir. PW1 has produced above deed of power of attorney which was marked as Exhibit No.1. He also gave consistent evidence as to his possession in 59 decimal land. PW2 Rois Uddin, PW3 Jalil Miah, PW4 Gois Uddin have given mutually corroborative evidence in support of possession of the plaintiff in above land. Moreover, DW1 Abdur Rahman has admitted possession of the plaintiff in above land.

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

On the other hand Mr. Md. Moshihur Rahman, learned Assistant Attorney General submits that at Paragraph No.1 of the plaint the plaintiff has claimed that Taroni Mohon Saha executed and registered

an irrevocable power of attorney deed on 24.10.2007 to the plaintiff for disputed 59 decimal land. But Exhibit No.1 shows that above deed of power of attorney was not a registered document. As such the plaintiff was required to prove due execution of above private document in accordance with law but the plaintiff did not make any endeavor to prove due execution of above deed of power of attorney. As such the plaintiff did not have any authority to institute and maintain this suit for Taruni Mohon Saha. In above deed of power of attorney Taruni Mohon Saha has claimed to have acquired disputed 59 decimal land on the basis of oral amicable partition not by inheritance. But in the plaint the plaintiff has provided a genology showing Taruni Mohon Saha acquired above land by inheritance which is not tenable in law. On consideration of above facts and circumstance of the case and materials on record the learned Judge of the Court of Appeal below rightly allowed the appeal, set aside the flawed judgment and decree of the trial Court and dismissed above suit which calls for no interference.

I have considered the submissions of the learned advocate for the respective parties and carefully examined all materials on record.

It is admitted that 59 decimal land was recorded in S. A. Khatian No.312 and Plot No.708 in the names of Ramesh Chandra, Chandra Mohon, Tarokeshshor, Sudhangso Bala Saha and Protima and above land was recorded in R. S. Khatian No.1 in the names of defendant Nos.1-5 but the quantity of the land was reduced to 52 decimal.

The plaintiff did not dispute that the quantity of above land was erroneously recorded in R. S. Khatian No.1. In the schedule of the plaint the plaintiff has sought declaration of title for 59 decimal land of R. S. Kahtian No.1. Since above Khatian does not comprise 59 decimal land and the plaintiff seeks a decree for 59 decimal land not 52 decimal land this suit was liable to be dismissed on this ground alone.

At paragraph No.1 of the plaint the plaintiff claimed that Taroni Mohon Saha executed and registered an irrevocal power of attorney deed to plaintiff Khalilur Rahman on 24.10.2017 for 59 decimal land. While giving evidence as PW1 above Khalilur Rahman produced above power of attorney deed which was marked as Exhibit No.1. It turns out from above document that the same was not a registered deed of power of attorney. In above power of attorney deed disputed land has been described by mentioning C. S. and S. A. Khatians and plots Numbers without mentioning the latest R. S. Khatian and R. S. plot Number.

In above power of attorney deed it has been merely stated that 59 decimal land of S. A. Khatian No.312 belonged to Romesh Chandra and others without mentioning the names of all the Maliks of above land. No genology of above Ramesh Chandra and others was provided in above deed of power of attorney nor Taruni Mohon Saha claimed title and possession in 59 decimal land as the sole heir of Chandra Mohon Saha. It has been merely stated that on the basis of amicable partition among S. A. recorded tenants plaintiff was owning and possessing of above 59 decimal land. PW1 Khalilur Rahman has provided a genology

of Ramesh Chandra, Chandra Mohon, Tarokshshor, Sudangsho Lal Saha and Protima and stated that all above S. A. recorded tenants died leaving Chandra Mohon as their sole heir and Chandra Mohon died leaving Taruni Mohon Saha as his only heir. But above claim has not been corroborated by any other evidence oral or documentary. Above Khalilur Rahman did not mention his capacity as to his give evidence as to the genology of Ramesh Chandra and their family.

As mentioned above the deed of power of attorney dated 24.10.2007 is an unregistered private document and the plaintiff was required to prove due execution of above document in accordance with law. But the plaintiff did not make any endeavor to prove due execution of above document. PW2 Rois Uddin, PW3 Jalil Miah and PW4 Gois Uddin did not say anything about the genology of Ramesh Chandra or due execution of above deed of power of attorney dated 24.10.2007.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of materials on record rightly held that the plaintiff could not prove his claim of title and possession in disputed 52 decimal land of R. S. Khatian No.1 which is based on evidence on record.

I am unable to find any illegality or irregularity in above judgment and decree of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115(1) of the

Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.