In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2974 of 2024

IN THE MATTER OF :
An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:
Government of peoples republic of Bangladesh represented by the Deputy Commissioner, Chuadanga

...Defendant-Appellant-Petitioner

-Versus-

Mst. Shahana Hoque and another

...Plaintiff-Respondent-Opposite Parties

Mr. Sheikh Mohammad Faizul Islam, AAG with
Ms. Mahbuba Akter Roly, AAG

.....For the Petitioner

Mr. Md. Alamgir Kabir, with
Ms. Merry Akter, Advocates

.....For the Opposite Party No.1

Judgment on: 24.09.2025

Md. Riaz Uddin Khan, J-

Rule was issued upon a revision application filed by the Government of Bangladesh represented by the Deputy Commissioner, Chuadanga calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 04.07.2013 (decree signed on 10.07.2013) passed by the District Judge, Chuadanga in Title Appeal No. 14 of 2012 dismissing the appeal and thereby affirming the judgment and decree dated 24.11.2011 (decree signed on 29.11.2011) passed by the Senior Assistant Judge, Sadar, Chuadanga in Title Suit No. 70 of 2004 decreeing the suit should not be set aside and/or such other or further order or orders

should not be passed as to this Court may deem fit and appropriate.

Brief facts for disposal of this Rule are that the opposite party no.1, Shahana Haque as plaintiff filed Title Suit No.70 of 2004 stating *inter alia* that the suit property belonged to one Abdul Gafur Joardar and two others whose names were properly been prepared and published in C.S khatian No.647 during CS operation. Subsequently during S.A operation the suit property has properly been recorded in the names of Abdul Halim @ Alim @ Abdul Hamid Joarder, the father of defendant No.1 and others in S.A khatian No.1082. While possessing the suit property Abdul Halim @ Abdul Alim @ Abdul Hamid Joarder died leaving behind only son, Mobinul Islam Joarder, the defendant No. 1 as his heir who got the suit property by inheritance. The defendant No.1 on 01-03-2004 through deed no.1192 sold the suit property to the plaintiff and delivered possession thereof. On 03.04.2004 the plaintiff went to the local tahsil office for payment of rent of the suit property but was denied by the tahsildar disclosing the RS record in the name of the government as khas land. The plaintiff claimed that the RS record is wrong and filed the instant suit for declaration of title.

The present petitioner as defendant No.2 contested the suit by filing written statement denying the material allegation brought in the plant. The succinct facts of the defendant are that the suit property is the government khas land and the government got the same as escheat which legally vested to the government. During the R.S operations the R.S Record has properly been prepared and published in the name of government

in khas khatian No.1. The plaintiff by creating forged documents has filed the instant suit just to grab the government's property which is liable to be dismissed.

The plaintiff in order to prove her case adduced 3 witnesses and produced documents which have been marked as exhibit nos.1-4. On the other hand the contesting defendant no.2 adduced one witness and produced documents in support of his case which has been marked as exhibit-Ka and Kha.

The trial Court after conclusion of trial decreed the suit in favor of the plaintiff by judgment and decree dated 24.11.2011. Against the said Judgment and decree passed by the trial Court the defendant No.2 (the present petitioner) filed title appeal No. 14 of 2012 before the District Judge, Chuaganga who after hearing the parties by the impugned Judgment and decree dated 29-01-2013 dismissed the appeal affirming the Judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with the impugned Judgment and decree dated 29-01-2013 passed by the District Judge in title appeal No. 14 of 2012 the petitioner filed the instant civil revision before this Court and obtained the rule as stated at the very outset.

Md. Sheikh Mohammad Faizul Islam, learned Assistant Attorney General (AAG) appearing for the Government submits that the impugned Judgment is not a proper Judgment of affirmence inasmuch as the learned District Judge failed to appreciate the facts and circumstances of the case and the law applicable thereto and as such committed an error of law resulting in an error in the decision occasioning failure of

Justice. He then submits that the Courts below committed illegality in not holding that the suit property is the khas land of the government. The learned AAG lastly submits that both the Courts below failed to consider that as per section 92 of the State Acquisition and Tenancy Act, 1950 the government got the suit land as escheat and the documents produced by the plaintiff are forged, created only to grab the government property which has been rightly recorder in Khas Khatian no.1 during RS operation.

Per-contra Mr. Alamgir Kabir along with Ms Merry Akter, the learned advocate appearing for the plaintiff-opposite party no.1 submits that the plaintiff has purchased the suit land from the successor of original C.S. recorded tenant whose name was also appeared in the S.A. record. Both the courts below found concurrently that the Government has miserably failed to show the basis of R.S. record and this court sitting in revision should not interfere against the concurrent findings of facts of the courts below.

I have heard the learned Advocates of both the parties, perused the application, impugned judgments and decrees passed by the courts below along with the Lower Court Record including all the depositions and exhibited documents.

It appears from record that the trial court elaborately discussed all the relevant facts of the instant suit. Issue was framed whether the suit land is a government khas property or not. The plaintiff has claimed that she has got the suit land by purchase from the heir of the S.A recorded tenant. On the other hand

the defendant no.2 has claimed that the suit land being escheat government has got the same in khas under the provisions of State Acquisition and Tenancy Act. But the defendant no.2 has failed to produce any document to prove that they have followed the procedure of section 92 of the State Acquisition and Tenancy Act for taking the land as khas and even did not examine any witness in this regard. The only witness of the defendant, Atiqul Haq (DW-1) has admitted in his cross-examination that R.S রেকর্ডের ভিত্তির কাগজ দাখিল করেনি। ওয়ারিশবিহীন জমি হিসাবে প্রাপ্ত হয়েছে এ মর্মে কোন মিস কেস বা কোন কাগজ নাই। And the trial court rightly observed that mere statement in the written statement is not enough in making any property khas. That is to say the defendant no.2 has utterly failed to produce any credible paper whatsoever in order to show that the suit land assumes the character of khas property. A mere claim by the government that the certain property is a government khas property, without factual basis and legal foundation, has no value in the eye of law unless that claim is substantiated by convincing credible evidence. The burden to prove that the disputed property is khas property lies squarely on the government and it does not shift till the onus is fully discharged. On the contrary, to prove that the suit land is a private property, the plaintiff has led evidence to prove the said assertion by the oral evidences as well as by producing convincing credible documentary evidences [exhibit no.1-2(Ka)/4] and there being no contrary evidence on record the trial court held that the defendant no.2 has utterly failed to prove the suit land to be a government khas property. This finding of

the trial court is affirmed by the appellate court and I find no reason to differ with the said concurrent findings of fact by the courts below.

At this juncture it is relevant to examine section 92 of the State Acquisition and Tenancy Act, 1950 which runs as follows:

> 92. Extinguishment of Interest of Raiyats in Certain Cases – (1) The interest of a raiyat in a holding shall be extinguished–
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> (a) when he dies intestate leaving no heir entitled to inherit under the law of inheritance to which he is subject;
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> (b) when he surrenders his holding at the end of any agricultural year by giving notice in the prescribed form and in the prescribed manner and within the prescribed period to the Revenue-officer;
>
> (c) when he voluntarily abandons his residence without making any arrangement for payment of the rent as it falls due and ceases to cultivate his holding either by himself or by members of his family or by, or with the aid of, servants or labourer with the aid of partners or bargadars for a period of three successive years; or-
>
> (d) when such interest has devolved by inheritance, under the law of inheritance to which such raiyat is subject, on a person who is not a bona fide cultivator and such person has not

cultivated the land comprised in the holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or bargadars during the period of five years from the date on which such interest has so devolved on him and there is no sufficient cause why he has not so cultivated the land.

(2) When the interest of a raiyat in a holding is extinguished under sub-section (1), the Revenue-officer may enter on the holding, and the holding shall, with effect from the date on which the Revenue-officer so enters on it, vest absolutely in the Government free from all encumbrances except the encumbrances on the holding which is extinguished under clause (a) of the said sub-section, but the persons whose interests in the holdings are extinguished under clauses (b), (c) and (d) of that sub-section shall continue to be personally liable for the money secured by the encumbrances on such holdings.

(3) Before entering on a holding under sub-section (2), the Revenue-officer shall cause a notice to be published in the prescribed manner declaring his intention to so enter on the holding and specifying the reasons thereof and also inviting objections from all persons interested in holding and shall consider any objections that may be submitted

> to within the period specified in that behalf in the notice and shall record a decision.
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> (4) Any person aggrieved by an order passed by the Revenue-officer under sub-section (3) on any objection shown against the extinguishment of the interest of any raiyat in his holding under clause (d) of sub-section (1) may, instead of filing an appeal under section 147, institute a suit in the Civil Court against such order. Notwithstanding anything contained in any other law for the time being in force, such suit shall be filed within ninety days from date of the order of the Revenue-officer under sub-section(3).
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> (5) All arrears of rent in respect of a holding remaining due from a raiyat whose interest in such holding has been extinguished under sub-(1) shall be deemed to be irrecoverable.

From plain reading of the entire section as above it appears that to vest the property absolutely in the government, the Revenue—officer is to follow certain procedure by issuing public notice publishing the same in prescribed manner declaring his intention to taking over the property inviting objections from all interested persons. In the instant case the defendant even did not claim that the said procedure was followed, not to speak of producing any document in this regard. There was no such proceeding initiated by the Revenue-officer under section 92 of the State

Acquisition and Tenancy Act, 1950. Hence the government claim of the suit property as khas land has no basis.

Admittedly the suit property belonged to Abdul Halim @ Abdul Alim @ Abdul Hamid Jowardar and others and in whose names the S.A khatian no. 1082 [exhibit no.2(Ka)] has been prepared and finally been published during the S.A operation who got .0011 acre of land in the suit property. The plaintiff claimed that SA recorded tenant Abdul Halim @ Abdul Alim @ Abdul Hamid Jowardar died leaving behind only son Mobinul Islam Jowardar as heir who got his father's property by inheritance. Then Mobinul Islam Jowardar transferred .0011 acre land to the plaintiff by way of kabala dated 01.03.04 being deed no. 1192 [exhibit no.4] and since then the plaintiff is in the possession. To prove the possession the plaintiff beside her has also examined PW-2, Shafiul Haque and PW-3, Abdul Mannan all of whom categorically deposed that since purchase the plaintiff is in possession by erecting a shop and doing business of fabrics. On the other hand the defendant claimed the deed to be forged in the written statement but did not take any endeavor to prove it. Mere statement in the pleadings is not enough and it is not evidence by itself unless such statement is proved by leading evidence by its maker. The person who alleges forged must prove the same- the onus does never shift. On perusal of the documents filed and the oral evidences of the witnesses of the parties the trial court found that the defendant has utterly failed to prove his claim. In this connection the trial court relied upon a decision of the Supreme Court in the case of **Lutful Karim and others Vs Shahidullah and others** reported in

3 MLR (AD) 295 wherein Appellate Division held that the onus of proof of forgery and false personation is on the person who alleges that the documents are forged and fabricated. Then the trial court rightly observed that though the defendant no.2 has taken a plea of forged deed, he has not led any evidence to discharge the onus of proof. Further the deed being a registered deed there is a presumption of correctness and genuineness attached to the deed itself that registration was done validly and legally. And the duly executed and registered deed shall be presumed to be authentic and genuine and accordingly the same carries with it a presumption of validity. Moreover, the person who alleges the presumption of correctness and genuineness of registered deed is to prove the same. In this connection the trial court relied upon the decision of **Kanti Pal and other Vs Nur Mohammad and others** reported in **55 DLR (AD) 39** wherein it is held that *a registered document carries presumption of correctness of the endorsement made therein and that one who disputes the said presumption is under the law required to dislodge the correctness of the endorsement in the registered document*. The trial court rightly observed that though the defendant no.2 has taken a plea but has not tried to dislodge the presumption of correctness and genuineness of the deed in the present suit. Hence it cannot be said that the deed is not authentic and genuine document by which plaintiff has got .0011 acre of land by purchase in the suit property and as such the R.S khatian no. 1 is erroneous. The plaintiff has been able to prove the R.S khatian no.1

to be erroneous and also been able to prove her right, title and interest to the suit land.

As regards the possession of the suit land the trial elaborately discussed the evidence on record including the depositions of the parties. PW-1 Sahana Haque has stated that the plaintiff has been possessing the suit land. PW-2 Shafiul Haque (husband of the plaintiff) has deposed that নালিশী জমিতে আমার কাপড়ের দোকান আছে। এ দোকানে আমি ব্যবসা করি। খরিদ করে দখল নিয়ে স্ত্রীর পক্ষে ব্যবসা করছি। Again PW-3 Abdul Mannan has stated in his cross-examination that বাদিনীর স্বামী বহু দিন ধরে ব্যবসা করে দখল করে। That is to say the plaintiff's witnesses have substantiated the plaintiff's possession over the suit land. On the other hand though the defendant no.2 has claimed that the government has been possessing the suit property peacefully but has neither examined any witness in this regard nor produced any paper to the court to prove his possession to the suit property. Rather DW-1 Atiqul Haque has admitted in his cross-examination that না: জমিতে কাপড়ের দোকান আছে। না: জমি লীজ দেয়া হয়নি। নালিশী জমিতে আমি নিজে কোন দখলের কাজ করেনি। From the above depositions it appears that the plaintiff is in possession of the suit land. This finding of the fact is also affirmed by the appellate court and after scrutiny of evidence on record I find no reason to take a different view.

Considering the facts and circumstances as discussed above, the documents produced, the oral evidences of the witnesses of the parties and the point of laws involved, I am of the view that the plaintiff has been able to prove her right, title, interest and possession over the suit land and the record of suit property in the R.S khatian no.1 is erroneous. The rule

issued in this revision has no merits as such it is liable to be discharged.

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

Send down the Lower Court Records at once along with a copy of this judgment.

Ziaul Karim
Bench Officer