

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2645 OF 2011

In the matter of:

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

And

Dhirendra Nath Mondal being dead his heirs- Tapan Kumar Mondal and others

.... Petitioners

-Versus-

Md. Nesar Uddin Sheikh being dead his heirs- Nasiruddin Shaikh and others

.... Opposite parties

None appears

.... For the petitioners.

Mr. Chanchol Kumar Biswas with
Mr. Md. Bellal Hossen, Advocates

.... For the opposite party

No.1.

Heard and Judgment on 19.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1(a)-1(c) to show cause as to why the impugned judgment and decree dated 07.07.2009 passed by the learned Joint District Judge, First Court, Bagerhat in Title Appeal No.277 of 1992 affirming the judgment and decree dated 29.07.1992 passed by the learned Senior Assistant Judge, Rampal, Bagerhat in Title Suit No.56 of 1988 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 opposite parties as plaintiffs instituted above suit for declaration of title by adverse possession for 1.3 acres land alleging that above land belonged to Basiram Mondal who agreed to sale above land to the plaintiff for Taka 2000/- and on receipt of Taka 1,800/- he executed an unregistered bainapatra on 9 Srabon 1367 B. S. and delivered possession. But above Basiram Mondal having refused to execute and register a sale deed opposite party as plaintiff instituted Title Suit No.294 of 1973 for specific performance of above contract for sale and obtained an ex-parte decree on 17.06.1974 and for execution of above decree filed Decree Execution Case No.2 of 1975. The plaintiff is continuing his possession in above land but on 12.03.1988 defendants denied title of the plaintiffs.

Defendant Nos.1 and 2 contested above by filing a joint written statement alleging that Basiram Mondal was the owner and possessor of above land who died leaving defendant Nos.1-4 as heirs and they transferred 65 decimal land to defendant Nos.3-4 and delivered possession. Basiram Mondal never contracted to sale above land to the plaintiff nor he executed any unregistered bainapatra and delivered possession. Plaintiff filed Title Suit No.294 of 1973 on false claims and obtained an ex-parte decree by suppression of summons.

At trial plaintiffs examined three witnesses and documents of the plaintiffs were marked as Exhibit Nos.1 series. On the other hand

defendants examined four witnesses but did not produce and prove any document.

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

Being aggrieved by above judgment and decree of the trial Court defendant Nos.1 and 2 as appellants preferred Title Appeal No.277 of 1992 to the District Judge, Bagerhat which was heard by the learned Joint District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and 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.

No one appears on behalf of the petitioners when this Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

Mr. Chanchol Kumar Biswas, learned Advocate for the opposite party No.1 submits that plaintiff himself gave evidence in this suit as PW1 and in his evidence he reiterated all claims and allegations made in the plaint stating that he entered into a contract for purchase of above 1.30 acres land from Basiram Mondal for Taka 2,000/- and on receipt of Taka 1,800/- above Basiram executed an unregistered bainapatra and delivered possession. On the basis of above bainapatra plaintiff obtained ex-parte judgment and decree in Title Suit No.294 of 1973 for

specific performance of contract which was decreed and on 17.06.74 filed Execution Case for execution of above decree but the record of above Execution Case went missing and heirs of Basiram Mondal denied plaintiff's title on 12.03.1988. The plaintiff entered into possession of above 1.30 acres land on 9 Srabon 1368 B.S. and till date continuing above possession which has matured into valid title by adverse possession. The plaintiff is in possession in above land by giving barga to PW2 Pulin Behari Mondal and PW3 Joynal Sheikh and they have given consistent evidence in support of possession of the plaintiffs. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both Courts below concurrently held that the plaintiff has succeeded to prove his continuous and peaceful possession in disputed 1.30 acres land by legal evidence and accordingly the trial Court decreed the suit and the Court of Appeal below dismissed the appeal. Above concurrent findings of facts of the Courts below being based on evidence on record this Court cannot in its revisional jurisdiction cannot interfere with above concurrent findings.

In have considered the submissions of the learned Advocate for opposite party No.1 and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that Bashiram Mondal was the rightful owner and possessor of disputed 1.30 acres land and defendant Nos.1-4 are his heirs.

Plaintiff claims that above Bashiram Mondal entered into an agreement for sale of above land for Taka 2,000/- and on receipt of Taka 1,800/- he executed a unregistered bainapatra on 9 Srabon 1367 B.S. Plaintiffs himself gave evidence as PW1 but he did not produce above unregistered bainapatra deed nor took any initiative to prove due execution of above unregistered bainapatra dated 9 Srabon 1367 B.S. by legal evidence. No explanation has been provided in the plaint or in the evidence of PW1 as to non production of above unregistered bainapatra. The plaintiff claimed that he entered into possession of the disputed land on the basis of unregistered bainapatra and due to non-production of above bainapatra above claim remains not proved. Plaintiff could not examin any witness who was present at the time of his entry into possession.

It has been claimed by PW1 that he filed an Execution Case for execution of ex-parte decree of Title Suit No.294 of 1973 but the record of above Case went missing. There is no explanation as to why the plaintiff did not file a second Execution Case for execution of above ex-parte judgment and decree. It has been merely stated that the plaintiff was implicated in some false Criminal Cases but there is nothing on record to show that the plaintiff was behind the bar in connection of any Criminal Case for more than three years.

The a title by adverse possession is the wildest and unlawful manner of acquisition of title and such possession must start illegally and if the plaintiff claims that his entry into the disputed land was

lawful then he must mention in the plaint as to when above lawful possession became adverse against the rightful owner. The plaintiff must also prove that from above date of beginning of adverse possession he continued to possess above property peacefully and uninterruptedly for 12 years.

In the plaint as well as in his evidence as PW1 plaintiff has stated that he entered into possession of above 1.30 acres of land on the basis of consent of rightful owner Bashiram Mondal. As such alleged entry into possession of the plaintiff in above land on 9 Srabon 1367 B. S. was lawful and his endeavor to get a registered sale deed through the process of law was also lawful. There is no averment either in the plaint or in the evidence of PW1 Nesar Uddin Sheikh as to on which date his above lawful possession became adverse to the rightful owner Bashiram Mondal or his heirs. There is no date for counting the alleged adverse possession of the plaintiffs against Basiram nor there is any reason to conclude that above adverse possession of the plaintiff matured into valid title.

Now let us examine if the plaintiff has succeeded to prove his possession in the disputed land by legal evidence. In the plaint the plaintiff has merely stated that he was in possesses in above 1.3 acres land by cultivation without mentioning the mood and manner of cultivation. In cross examination PW1 stated that the disputed land is about 8-9 miles away from his house and first 8-10 years he gave borga to PW2 Pulin Behari Mondal and then 16-17 years he himself cultivated

the land and 5-6 years he gave barga to PW3 Joynal Sheikh. He could not make specific mention of the period of barga cultivation by above two borgaders Pulin Behari Mondal and Joynal Sheikh. Nor there is an explanation as to how the plaintiff could cultivate above land when his house was 8-9 miles away. Above Pulin Behari Mondal gave evidence as PW2 and he contradicted PW1 by saying that he barga cultivated above land for 8-9 years. Above witness did not say who before or after him cultivated above land. Similarly above Joynal Shiekh as PW3 stated that he barga cultivated above land only for four years and he did not mention who before or after him cultivated above land.

In cross examination PW1 stated that above Bashiram Mondal died on 10 Shrabon 1367 B.S. It is not understandable when and who delivered possession of above land to the plaintiff on the basis of above bainapatra.

On consideration above facts and circumstances of the case and evidence on record I hold that the learned Judges of Courts below committed serious illegality in holding that the plaintiff acquired title in above 1.30 acres land by adverse possession and on the basis of above unlawful and erroneous perception of facts and law the learned Joint District Judge most illegally dismissed the appeal and affirmed flawed judgment and decree of the trial Court which is not tenable in law.

In above view of the materials on record 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, the Rule is hereby made absolute. The impugned judgment and decree dated 07.07.2009 passed by the learned Joint District Judge, First Court, Bagerhat in Title Appeal No.277 of 1992 dismissing the appeal affirming the judgment and decree dated 29.07.1992 passed by the learned Senior Assistant Judge, Rampal, Bagerhat in Title Suit No.56 of 1988 is set aside and the above suit is dismissed on contest against defendant Nos.1 and 2 and ex-parte against the rest without any cost.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN

BENCH OFFICER