

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 3777 of 2009

In the matter of:

Hares Mia alias Hares Uddin and another

Defendant-respondent-petitioners

-Versus-

Mst. Saleha Khatun and others

Plaintiff-Appellant-opposite parties

Mr. Sherder Abul Hossain, Advocate

...For the petitioners

Mr. Kawsar Ahmed, with

Mr. Md. Saleh Ahmed, Advocates

... For the opposite party Nos. 1-3

Heard on: 08.01.2026, 14.01.2026, 19.02.2026 and
25.02.2026

Judgment on: 26.02.2026

The petitioners have filed this revisional application under Section 115 of the Code of Civil Procedure (CPC) challenging the judgment and decree dated 22.06.2009 (decree signed on 28.06.2009) passed by learned Joint District Judge, Rajshahi allowing the Title Appeal No. 167 of 2004 and thereby reversing the judgment and decree dated 23.02.2004 (decree signed on 29.02.2004) passed by

learned Assistant Judge, Puthia, Rajshahi dismissing the Title Suit No. 16 of 2002.

Opposite party Nos. 1-3 as plaintiff filed the suit praying for declaration of title in respect of 34 decimals of land mentioned in the schedule of the plaint with further declaration that the settlement of the said land in favour of the defendant Nos. 3 and 4 (present petitioners) is illegal having no legal effect.

The trial Court dismissed the suit on contest. The appellate Court below allowed the suit and decreed the same. Challenging the judgment and decree of the appellate Court below, defendant Nos. 3 and 4 filed the instant civil revision and obtained the Rule.

Relevant facts are that the government was the owner of the suit land situated at Puthia, Rajshahi. The government settled the land in favour of Kepu Shah for 99 years, vide Permanent Settlement Case No. 1965/XII/67-68. However, the kabuliyat was not executed. Eventually, the settlement of land in favour of Kepu Shah was cancelled in 2000 and the land was settled in favour of defendant Nos. 3 and 4, vide Settlement Case Nos. 513/XII/2000 and 754/XII/2001 and the registered kabuliyat being No. 2742 dated 13.06.2001 was executed in favour of defendant Nos. 3 and 4. The permanent settlement of land in favour of defendant Nos. 3 and 4 and the kabuliyat dated 13.06.2001 have been challenged in the suit.

Plaintiff Nos. 1, 3 and defendant No. 4 are daughters of Kepu Shah. Plaintiff No. 2 is the son of Kepu Shah. Defendant No. 3 is the husband of defendant No. 4.

The appellate Court below categorically found that on 21.04.1995 Kepu Shah applied to the concerned authority for execution of registered kabuliyat in his favour (exhibit-5). It appears that no decision, whatsoever, was taken on the said application. The appellate Court further found that the concerned Upazilla Land Reforms and Execution Committee on 29.03.2000 cancelled the earlier settlement of land in favour of Kepu Shah without assigning any reason whatsoever. Thereafter, the land in question was settled in favour of defendant Nos. 3 and 4 and the registered kabuliyat was executed.

Both the Courts below further found that Kepu Shah got his name mutated in respect of the land on payment of rents. The trial Court dismissed the suit on the ground that the plaintiff could not prove the case by producing adequate papers. The appellate Court below allowed the appeal on the ground that the settlement of the land in favour of Kepu Shah was cancelled without giving him any opportunity of being heard and without assigning any reason whatsoever.

Mr. Kawsar Ahmed, learned Advocate appearing for the plaintiff-opposite party refers to clause 2 of “কৃষি খাসজমি ব্যবস্থাপনা ও বন্দোবস্ত নীতিমালা” published in the official gazette on 16.04.1997. Clause 2 of the said Nitimala is reproduced below:

“২.০ (ক) এই নীতিমালা জারীর তারিখ হইতে কার্যকর হইবে।

(খ) এই নীতিমালা জারীর পর হইতে ভূমিহীনদের মধ্যে কৃষি খাসজমি বন্টন সংক্রান্ত ইতিপূর্বে জারীকৃত সকল আদেশ, পরিপত্র, স্মারক, নীতিমালার কার্যকারিতা বাতিল হইয়াছে বলিয়া গণ্য হইবে।

(গ) এই নীতিমালার জারীর পূর্বে প্রচলিত নিয়মনীতি মোতাবেক খাস কৃষি জমির যে সকল বন্দোবস্ত দেওয়া হইয়াছে, ঐ সকল বন্দোবস্ত বহাল থাকিবে। তাহাছাড়া পূর্বের নীতিমালার আওতায় যে সকল বন্দোবস্ত কেস জেলা প্রশাসক কর্তৃক ১৩-৮-৯৬ খ্রীঃ তারিখের পূর্বে চূড়ান্তভাবে অনুমোদিত হইয়াছে কিন্তু কবুলিয়ত রেজিস্ট্রি করা হয় নাই; সেই সকল কেসও বহাল থাকিবে এবং কবুলিয়ত সম্পাদন ও রেজিস্ট্রি করিয়া দিতে হইবে”।

Mr. Ahmed also refers to the amendment made in the said Nitimala which was published in the official gazette on 18.05.2000 and came into effect on 30.04.2000. By the said amendment, clause 2(গ) was substituted by the following paragraph:

২(গ) এই নীতিমালার জারীর পূর্বে প্রচলিত নিয়মনীতি মোতাবেক খাস কৃষি জমির যে সকল বন্দোবস্ত দেওয়া হইয়াছে, ঐ সকল বন্দোবস্ত বহাল থাকিবে। তাহাছাড়া পূর্বের নীতিমালার আওতায় যে সকল বন্দোবস্ত কেস জেলা প্রশাসক কর্তৃক ১৩-৮-৯৬ খ্রীঃ তারিখের পূর্বে চূড়ান্তভাবে অনুমোদিত হইয়াছে কিন্তু কবুলিয়ত রেজিস্ট্রি করা হয় নাই; সেই সকল কেসও বহাল থাকিবে এবং কবুলিয়ত সম্পাদন ও রেজিস্ট্রি করিয়া দিতে হইবে। এমন কেসসূহ বর্তমান নীতিমালা ও উহার সংশোধনী মোতাবেক নিষ্পত্তি করিতে

হইবে। তবে ১৯৭২ ইং সালের পর বিধিবহির্ভূতভাবে যদি কোন কৃষি খাসজমি বন্দোবস্ত দেওয়া হইয়া থাকে, সেই বন্দোবস্ত কেস সুনির্দিষ্ট অভিযোগ ও উহার প্রমাণাদির ভিত্তিতে থানা কমিটি, জেলা কমিটির নিকট বাতিলের জন্য সুপারিশ করিতে পারিবে এবং জেলা কমিটি উক্ত বিষয়ে চূড়ান্ত সিদ্ধান্ত গ্রহণ করিবে”।

Mr. Sherder Abul Hossain, learned Advocate appearing for the defendant-petitioners refers to a circular under Memo No. 928(22)-vii-76/71-L.S, dated 10.11.1971 issued by the Board of Revenue under the subject “Settlement of agriculture khas land, free of salami, with landless agriculturist families” and submits that since the kabuliyat was not executed in favour of Kepu Shah, his interest in the land has been extinguished. I do not find force in the argument for the reason that the circular of 1971 was subsequently superseded by the Nitimala 1997.

As per clause ২(গ) of the Nitimala as amended, the concerned authority was bound to execute the kabuliyat in favour of Kepu Shah, who, on 21.04.1995, applied to the authority for execution of the registered kabuliyat. It follows that the settlement of land in favour of Kepu Shah was cancelled illegally and the authority is bound under the Nitimala to execute the kabuliyat in favour of Kepu Shah or alternatively after his demise, in favour of his legal successors in interest. In this regard, clause 7 of the Nitimala is relevant which is reproduced below:

“৭.০ বরাদ্দকৃত কৃষি খাসজমি উত্তরাধিকার সূত্র ব্যতীত অন্য কোনভাবে কাহারো নিকট হস্তান্তর করা যাইবেনা। কেহ এইরূপ করিলে সংশ্লিষ্ট জমি সরকারের খাসজমিতে পরিণত হইবে”।

In view of the foregoing discussions, I hold that the subsequent settlement of the land in favour of defendant Nos. 3 and 4 (defendant No. 4 is one of the legal heirs of Kepu Shah) and execution of kabuliyat in their favour were done illegally. Accordingly, I uphold the judgment of the appellate Court below on this ground also.

In the result, the Rule is discharged. The suit is allowed. Defendant No. 1 Deputy Commissioner, Rajshahi, defendant No. 2 Additional Deputy Commissioner (Land), Rajshahi and defendant No. 5 Assistant Commissioner (Land), Puthia, Rajshahi are directed to execute and register the kabuliyat in favour of the legal heirs of Kepu Shah as per clause ২(গ) of the Nitimala and to cancel the registered kabuliyat deed No. 2742 dated 13.06.2001 and Permanent Settlement Case Nos. 513/XII/2000 and 754/XII/2001 in favour of the defendant Nos. 3 and 4 in accordance with law.

Send down the L.C.R.