

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 685 OF 2012

In the matter of:

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

And

Dulal Krishno Dewari and others

... Petitioners

-Versus-

Abdul Sattar being dead his heirs-Abdul Ahad and others

... Opposite parties

Mr. Garib Newaz with

Mr. Md. Abdul Jabbar, Advocates

... For the petitioners.

Mr. Md. Shah Alam, Advocate

....For the opposite party Nos.4-13.

Heard on 11.03.2025 and Judgment on 28.04.2025.

This Rule was issued calling upon the opposite party Nos.1-13 to show cause as to why the impugned judgment and decree dated 23.11.2011 passed by the learned Joint District Judge, 2nd Court, Bagerhat in Title Appeal No.16 of 1997 and thereby affirming the judgment and decree dated 06.11.1996 passed by the learned Senior Assistant Judge (In Charge), Bagerhat in Title Suit No.30 of 1987 dismissing the suit for declaration of title confirmation of possession and permanent injunction 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 petitioners as plaintiffs instituted above suit for declaration of title and confirmation of possession for 2.64 acres land alleging that 6.68 acres land including above 2.64 belonged to Rajmohon Halder and Rozi Bewa in equal shares and the same was correctly recorded in C. S. Khatian No.94. The rent of above property fell due and the superior landlord filed Rent Suit No.600 of 1946 and obtained a decree and filed Decree Execution Case No.73 of 1947 and above property was sold in auction. Above auction was purchased by Nogendra Mukerjee on 31.03.1947 who obtained certificate of sale and got possession on 24.04.1949. There was no dwelling huts in the land of Plot No.320. Above Nagendra Mukerjee transferred disputed 2.64 acres land to Rashik Chandra Deuri predecessor of plaintiff No.1 in the 1st part of Boishak 1357 B.S. who on payment of rent obtained a registered rent receipt on 27th Chaitra 1357 BS. Rashik Lal was in possession in above land by erecting dwelling huts and plating tress but relevant S. A. Khatian was erroneously recorded in the name of the predecessor of the defendants. On the basis of above erroneous record above defendants denied title of the plaintiffs.

The suit was contested by defendant Nos.22-23 and 10-18 by filing two different written statement.

defendants Nos.22-23 alleged that above property belonged to Rajmohon Halder and Rozi Bewa and Rajmohon Halder died leaving 2 sons Joggeshshor and Bhadra. Above Bhadra and Rozi Bewa

transferred 4.64 acres land to Kashem Ali by registered deed of Kaboliyat dated 01.07.1946 and above property was rightly recorded in the name of above Kashem Ali who transferred his total land by registered kabla deeds to the defendants. There was an auction sale of above property but subsequently there was a compromise and Joggeshshor acquired 2.32 acres land by Kaboliyat dated 10.07.1950 from Nagendra Mukargy and he transferred 1.32 acres land to Nakuleshshor by a registered patta deed. Above Nakuleshshor transferred above land to Bishsheshor by registered kabla deed date 09.06.1953 and his heir and son Gopal transferred above 1.3 acres land to defendant No.3 Rabeya Khatun. Defendant Nos.2 and 3 are in possession in above 1.32 acres land by successive purchase from heirs of Nakuleshshor.

Defendant Nos.10-18 stated that Kashem Ali Sikder acquired 4.64 acres land from Rozi Bewa and others by registered deed of Kaboliyat dated 02.07.1946 and in his name relevant S. A. Khatian was correctly prepared. By successive purchase by registered kabla deeds from above Kashem Ali Shikder above defendants are in possession in above 2.64 acres land and the plaintiffs do not have any right, title, interest and possession in above land.

At trial plaintiffs examined 3 witnesses and defendants examined 6. Documents of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit No."Ka" - "Ga" series.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiffs preferred Title Appeal No.16 of 1997 to the District Judge, Bagerhat which was heard by the learned Joint District Judge, 2nd 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 petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Garib Newaz, learned Advocate for the petitioners submits that admittedly 6.68 acres land appertaining to C. S. Khatian No.94 belonged to Rajmohon Halder and Rozi Bewa in equal shares. Above property was sold in auction which was purchased by Nogendra Mukerjee on 31.03.1947 who got possession. Above judgment debtors filed a case for setting aside above auction sale which was dismissed. There was no dwelling huts in the land of Plot No.328 and Nogendra Mukerjee gave settlement of disputed 2.64 acres land to the father of plaintiff No.1 Rashik Chandra Deuri on the 1st part of Baishak 1357 B.S. Above Rashik Chandra Deuri died leaving the plaintiff as sole heir. The plaintiff was in the womb of his mother at the time of S. A. record. As such above property was not recorded in the name of plaintiff No.1 or

his father but the same was erroneously recorded in the name of the predecessor of the defendants. Defendants have in the written statement denied effectiveness and correctness of above auction sale but while giving evidence as DW1 defendant No.2 has clearly admitted above auction sale of 6.68 acres land. Defendants have also produced and proved a registered deed of Kabuliyat executed by Joggeshhar in favor of auction purchaser Nogendra Mukerjee which proves effectiveness of auction sale. Above Joggeshhar gave settlement of above land to Nokuleshhor predecessor of the defendants. Since the defendants has admitted the correctness of above auction sale the plaintiffs was not required to prove the same by legal evidence. Even if above registered deed of Kabuliyat dated 10.07.1950 executed by Joggeshhsor to Nagendranath Mukerjee (Exhibit-“Ka”) is admitted to be true even then Nagendranath had title and possession in remaining 4.63 acres land. Nagendranath gave settlement of 2.64 acres land to the father of plaintiff No.1. The learned judges of both the Courts below failed to appreciate that the auction sale of disputed joma was admitted by the defendants and the same was not required further prove by the plaintiff. As far as 4.64 acres lands of Abul Kashem Shikder is concerned the learned Advocate submits that the plaintiffs do not have any claim over above land and the plaintiffs admit lawful acquisition of above land by Abul Kashem and by successive transferr from Abul Kashem defendant No.10-18 are in possession in above land.

On the other hand Mr. Md. Shah Alam, learned Advocate for the opposite party Nos.4-13 submits that the defendants admit that disputed joma of 6.68 acres land was sold in auction and purchased by Nagendranath but above auction was not made effective and above purchaser did not get possession of the land and judgment debtors have their dwelling huts in the land of Plot No.238. There was a compromise between auction purchaser Nagendra Nath and heirs of Rajomohan Howlader namely Joggeshshar and Bhadra and above Joggeshshar executed a deed of Kabuliyot on 10.07.1950 for 2.23 acres land in favor above Nagendra Nath (Exhibit No."Ka") and continued their lawful title and possession in above land. Above Joggeshar gave settlement of above 2.32 acres land to Nakuleshshor by registered deed of Kaboliyat dated 10.07.1950 (Exhibit No."Ka-1") and defendants acquired above land by successive purchase and above land was rightly recorded in relevant S. A. Khatians. Plaintiffs do not have any right, title, interest and possession in the disputed land. On consideration of facts and circumstances of the case and evidence on record the learned Judges of both the Courts below rightly held that plaintiff's father did not acquire any property by settlement from Nagendra Nath nor the plaintiff acquired any title and possession in above land and above concurrent findings of facts being based on evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

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

It is admitted that above 6.68 acres land belonged to Rajmohon Halder and Rozi Bewa in equal shares and the same was rightly recorded in C. S. Khatian No.94 and above Rajmohon Halder died leaving two sons Joggeshshor and Bhodra.

The plaintiff alleged both in the plaint and evidence of PW1 that above 6.68 acres land was sold in auction pursuant to decree Execution Case No.73 of 1947 on 31.03.1947 and the same was purchased by Nogendra Mukerjee. At Paragraph No.1 of the plaint the plaintiff admitted that judgment debtors of above Rent Suit filed a case for setting aside above auction sale. The defendants have stated in written statement that the auction purchasers compromised with the judgment debtors and the auction purchaser did not get possession of above property. Plaintiff did not produce any document showing that judgment debtors filed a case for setting aside above auction sale which was dismissed nor the defendants have produced any document showing that there was a compromise between the judgment debtors and the auction purchasers.

At Paragraph No.2 of the plaint it has been claimed that there was no dwelling hut of above judgment debtors in the land of Plot No.238 and plaintiff No.1 while giving evidence as PW1 reiterated above claim. But it turns out from the certified copy of above C. S.

Khatian that there were dwelling huts of the judgment debtors in the land of plot No.328. Plaintiff admitted that above C. S. Khatian was correctly prepared

Defendant Nos.2 and 3 have admitted in the written statement as well as in the evidence of DW2 that above property was sold in auction but claimed that above auction purchaser did not get possession of above property nor above auction sale was made effective.

As such the plaintiff should have proved that above auction sale was in fact made effective by production of the sale certificate and certificate of delivery of possession. The plaintiffs have produced and proved a sale certificate which is completely unreadable and no certificate of delivery of possession was produced at trial. A report of the process server was produced but that report cannot be accepted as a substituted for a certificate of delivery of possession.

In the plaint the plaintiff did not admit title and possession of Abul Kashem Ali Shikder predecessor of defendant Nos.10-18 in the disputed property. But while giving evidence as PW1 plaintiff No.1 has admitted title and possession of above Kashem Ali in 4.64 acres land. Above Kahshem Ali acquired above 4.64 acres land from Bhadro, a heir of Rajmohon by registered Kabuliyat deed dated 01.07.1946 and relevant S. A. Khatian was recorded in the name of Abul Kashem on the basis of above Kabuliyat. By successive purchase by several registered kabla deeds from above Abul Kashem defendant Nos.10-18 acquired

title and possession in above 4.64 acres land. By admitting title and possession of above Abul Kashem Shikder plaintiffs have admitted that total 6.6 acres land of the disputed Khatian was not sold in auction nor by auction purchase Nagendra Nath got title and possession in above property and S. A. Khatians prepared for above 4.64 acres land was right and lawful.

In the plaint the plaintiff did not mention the means of settlement given by Nagendra Nath to his father Roshik Chandra Deuri for 2.64 decimal land. While giving evidence as PW1 plaintiff No.1 has reiterated the claim made in the plaint that at the time of S. A. record he was in the womb of his mother. As such plaintiff No.1 was not born at the time of taking settlement of above land by his father in 1357 B. S. A document was produced at trial and the same was marked as Exhibit No.1. Above document has not been designated either as a Kabuliyat or a Amoldari or a patta. The one page unregistered deed was also not proved in accordance with the provision of Evidence Act, 1872. As such no reliance can be placed on above document (Exhibit No.6). The second document produced by the plaintiffs in support of above settlement of 2.64 decimal is a registered rent receipt. Registration of a rent receipt is neither required under the law nor the same is a usual practice at all. Above document cannot be accepted as a substitute of a deed of settlement. The rent receipt was registered but the document of settlement was not registered. As mentioned above on the basis of

above unregistered deed (Exhibit No.6) or registered Dhakila subsequent khatians were not prepared.

As far as possession of the disputed land is concerned PW1 claims that he has transferred 1.74 decimal land to plaintiff No.2 during pendency of this suit. There is no description as to the manner and mode of possession of plaintiff No.1 and 2 in above 2.64 acres land. PW1 merely stated that after demise of his father he possessed disputed land as his sole heir. But PW2 Anil Krishna stated in his evidence that disputed land is now possessed by plaintiff No.2 Helal. While giving evidence as DW2 defendants No.2 has stated that Joggeshhor acquired 2.32 acres land by registered patta deed dated 10.07.1950 (Exhibit No."Ka") and gave settlement of the same to Nakuleshshor by another registered deed of Kabuliyat on the same date and by successive purchase by registered kabla deeds from above Nakulsheshor they acquired title and possession in above land and relevant S. A. Khatian was rightly recorded in the name of Nakuleshshor.

In above view of the facts and circumstance of the case and evidence on record I hold that the concurrent findings of the learned Judges of the Courts below that the plaintiff utterly failed to prove his claim that Roshik Chandra obtained settlement of 2.34 acres land from Nagendra Nath being based on evidence on record this court cannot interfere with above concurrent findings of facts.

I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Judge 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. .