District-Faridpur.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2962 of 2014.

Md. Abdul Halim Miah.

------ Plaintiff-Appellant-Petitioner.

-Versus-

Government of the People's Republic of Bangladesh, being represented by the Deputy Commissioner, Faridpur, Police-Station and District-Faridpur.

------ Contesting-Defendant No.5 Respondent No.5 Opposite-Party.

Mahbubur Rahman and others.

------ Defendant-Respondent-Opposite-Parties.

Mr. Syed Mizanur Rahman, Advocate.

------- For the Plaintiff-Appellant-Petitioner.

Mr. Sharif U Ahmed, Deputy-Attorney-General with
Mr. Md. Raihan Alam, Assistant-Attorney-General.

------ For the Contesting Defendant No.5 Respondent No.5 Opposite-Party.

Heard On: 02.12.2025, 07.12.2025
And
Judgment Delivered On: 09.12.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite-party No. 1 to show cause as to why the impugned judgment and decree complained of in the petition moved before this Court should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The present petitioner, as plaintiff, instituted Title Suit No. 103 of 2005 in the Court of Assistant Judge, Nagarkanda (Bhanga), Faridpur, praying for declaration of title and confirmation of possession in respect of the property described in the schedule to the plaint.

The case of the plaintiff, in short, is that the defendant No. 3 contested the suit by filing a written statement denying all material allegations made in the plaint. The case of the defendant No. 5, the Government, in substance, is that 27 decimals of land appertaining to Plot No. 936 under S.A. Khatian Nos. 314 and 309 were duly enlisted as vested and non-resident property. It was asserted that the said land originally belonged to Jagesshwar Paul, who left for India in 1965 along with his son, Gauranga Paul, and upon proper inquiry the land was enlisted as vested property and has since been in possession of the Government. It was further asserted that Gauranga Paul never entered into any lawful contract nor executed any valid bainapatra in favour of the plaintiff, and that the alleged bainapatra is a product of fraud and forgery. It was specifically denied that any possession of the suit land was ever delivered to the plaintiff. On these assertions, the Government contended that the plaintiff's suit was false and liable to be dismissed.

The trial Court, upon hearing, dismissed the suit. Being aggrieved, the present petitioner as appellant preferred Title Appeal No. 71 of 2010

before the learned District Judge, Faridpur. Upon transfer, the appeal was heard by the learned Additional District Judge, 1st Court, Faridpur, who by judgment and decree disallowed the appeal and affirmed the judgment and decree of the trial Court. Against the said concurrent decisions, the plaintiff-appellant moved this Court under its revisional jurisdiction and obtained the present Rule.

Mr. Syed Mizanur Rahman, learned Advocate for the petitioner, at the very outset submits that the suit property is not vested property and that the plaintiff has been in possession thereof for more than the statutory period of twelve years. He submits that such possession has been established by the oral evidence adduced by the plaintiff, and therefore the plaintiff has acquired title by adverse possession. He contends that the Courts below failed to properly consider the evidence on record, thereby arriving at erroneous findings which have occasioned a miscarriage of justice.

Referring to the deposition of PW1, Mr. Rahman points out that PW1 stated in his examination-in-chief: "বসতি বাড়িত্ত বসবাস কর্ব্ব ভিটায় বৃক্ষাদি রোপণ এবং চাষী জমিত্ত চাষাবাদ কর্ব্ব আমি ভোগ দখল করছি " He further stated: "যজ্ঞেশ্বর বাংলাদেশে মারা গেছেন। তার মৃত দেহ আর, এস ৯৩৬ নং দাগের পূর্ব পাশে পুকুর পাড়ে দাহ করেছে। যজ্ঞেশ্বর পালের ছেলে গৌরাঙ্গ ১৯৬৫ সালে ভারতে যাননি। গৌরাঙ্গ ১৯৮৪ সালের পর্ব্ব ভারত গেছেন। "

He submits that the burden lay upon the contesting defendant No. 5 to prove that Gauranga Chandra Paul left for India on or before 1965, and since the Government failed to produce such evidence, the Courts below erred in deciding the suit against the plaintiff. He further submits that PW1, PW2, and PW3 corroborated each other regarding execution of the bainapatra and delivery of possession, and that no effective cross-examination was conducted on those material points. According to him, such evidence stands admitted and both Courts below, by ignoring these aspects, arrived at concurrent but erroneous findings, resulting in failure of justice.

Per contra, Mr. Sharif U. Ahmed, learned Deputy Attorney-General appearing for the defendant-respondent-opposite party No. 5, the Government, submits that a suit for declaration of title and confirmation of possession based on an unregistered bainapatra is not maintainable in law. He submits that admittedly the executant of the alleged bainapatra did not receive the full consideration, and therefore such an unregistered bainapatra, without payment of full consideration, could not pass any title in favour of the plaintiff. He further submits that the defence witness DW1, Union Land Assistant Officer Md. Firoj Miah, deposed on behalf of the Government and duly identified Exhibit-Ka, the vested property list. Referring to the said exhibit, Mr. Ahmed submits that since the property was enlisted as vested property and published in the Gazette, the plaintiff cannot

claim any right thereto against the Government, particularly by invoking adverse possession.

He further submits that under section 101 of the Evidence Act, the burden lies squarely upon the plaintiff to prove his own case, and he cannot derive any advantage from alleged weaknesses in the defence. According to him, both the Courts below, upon proper consideration of the pleadings and evidence on record, rightly dismissed the suit, and therefore the Rule is liable to be discharged.

Having heard the learned Advocates for both sides and upon careful consideration of the materials on record, including the depositions of the plaintiff's and defendants' witnesses, it is evident that the plaintiff claims title to the suit property primarily on the basis of an unregistered bainapatra allegedly executed by Gauranga Paul on 23.10.1979 (Exhibit-3). The plaintiff's case is that out of the alleged total consideration of Tk. 12,000/-, a sum of Tk. 11,500/- was paid and possession was delivered. It is also the plaintiff's case that the bainapatra could not be registered as the executant Gauranga Paul had left the country for India.

However, it appears from the record that neither the executant Gauranga Paul himself nor any person closely connected to him came forward to identify the signature of the executant on the alleged

bainapatra. Although two attesting witnesses were examined, the trial Court found, upon appreciation of evidence, that their signatures appeared to have been obtained at a later point of time. Moreover, the testimonies of the plaintiff's own witnesses were found to be self-contradictory. PW1 stated that the bainapatra could not be registered due to insufficiency of stamp. PW2, in cross-examination, stated that the plaintiff did not have sufficient money to bear the registration costs. PW3, on the other hand, deposed that due to non-payment of the balance consideration of Tk. 5,000/-, the executant refused to register the bainapatra. These mutually inconsistent explanations materially undermine the credibility of the plaintiff's case regarding execution and genuineness of the alleged bainapatra.

It is well settled that where the value of the property exceeds the statutory limit, a document transferring interest in immovable property is compulsorily registrable under the Registration Act. An unregistered document, which is required by law to be registered, does not convey valid title. Therefore, the plaintiff's claim of title based on the unregistered bainapatra cannot be sustained in law.

As regards the plea of adverse possession, it is equally well settled that adverse possession must be actual, open, continuous, hostile, and to the knowledge of the true owner for the statutory period. In the present case, apart from vague oral assertions, no cogent, convincing,

or documentary evidence has been adduced by the plaintiff to establish such hostile possession against the Government. On the contrary, the evidence on record indicates that the executant left the country and the land was duly enlisted in the vested property list, and there is no reliable evidence that the plaintiff was in exclusive and hostile possession for the requisite statutory period.

Both the trial Court and the appellate Court, upon full consideration of the pleadings and evidence, concurrently found that the plaintiff failed to prove either valid title or acquisition of title by adverse possession, and accordingly dismissed the suit. It is now well settled that the revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure is a limited one.

This Court is not to act as a Court of appeal or to reassess and reappreciate evidence merely because another view is possible. Interference is warranted only where there is illegality, material irregularity, or perversity in the findings of the Courts below. Although the impugned judgments are not very elaborately reasoned, the short discussions contained therein are based on correct appreciation of facts and settled principles of law. The concurrent findings recorded by the Courts below are supported by evidence on record and do not suffer from any legal infirmity.

In view of the discussions made hereinabove, this Court finds no illegality, irregularity, or perversity in the impugned judgments and decrees warranting interference under revisional jurisdiction.

Accordingly, the Rule fails.

The Rule is therefore discharged without any order as to costs.

The office is directed to send down the lower Court's record along with a copy of this judgment at once.

(**Justice Md. Toufiq Inam)**

Sayed. B.O.