

District-Noakhali.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 274 of 2015.**

Md. Ruhul Amin and others.

----- Defendant-Respondent-Petitioners.

-Versus-

Chanchal Chandra De and others.

----- Plaintiff-Appellant-Opposite Parties.

Mr. Mohammad Abdul Baset , Advocate

----- For the Defendant-Respondent-Petitioners

Mr. Md. Polash Bhuiyan, Advocate with

Mr. Mohammad Noor Hossain, Advocate

----- For the Plaintiff-Appellant-Opposite Party
Nos. 1-4.

Mr. Khair Ezaz Maswood, Advocate

----- For the Plaintiff-Appellant-Opposite Party
Nos. 8, 9 and 18.**Civil Revision No. 1450 of 2015.**

Md. Nazrul Islam and others.

----- Defendant-Respondent-Petitioners.

-Versus-

Chanchal Chandra De and others.

----- Plaintiff-Appellant-Opposite Parties.

Mr. Mostafizur Rahman Jeco , Advocate

----- For the Defendant-Respondent-Petitioners

Mr. Md. Polash Bhuiyan, Advocate with

Mr. Mohammad Noor Hossain, Advocate

----- For the Plaintiff-Appellant-Opposite Party
Nos. 1-4.

Mr. Khair Ezaz Maswood, Advocate

----- For the Plaintiff-Appellant-Opposite Party
Nos. 8, 9 and 20.**Heard On: 21.10.2025., 22.10.2025.****And****Judgment Delivered On: 29th Day of October 2025.**

Md. Toufiq Inam, J.

These two revisional applications have been directed against the judgment and decree dated 20.01.2015 (decree signed on 27.01.2015) passed by the learned Additional District Judge, 2nd Court, Noakhali, in Title Appeal No. 84 of 2012, whereby the appeal was allowed and the judgment and decree dated 24.05.2012 (decree signed on 31.05.2012) passed by the learned Joint District Judge, 1st Court, Noakhali, in Title Suit No. 83 of 2007, dismissing the suit.

The opposite parties herein, as plaintiffs, instituted Title Suit No. 83 of 2007 before the learned Joint District Judge, 1st Court, Noakhali, seeking a declaration of title in respect of the land described in the schedule to the plaint.

The case of the plaintiffs, in short, is that the suit land originally belonged to Baikuntha Kumar Dey, who mortgaged the same in favour of Ishwar Chandra Shur by a registered mortgage deed being Deed No. 1076 of 1899. Upon default in repayment, Ishwar Chandra Shur instituted Title Suit No. 147 of 1911 before the 1st Court of Munsif, Noakhali, and obtained a decree. In Execution Case No. 684 of 1914, the mortgaged land was sold by public auction, where Ishwar Chandra Shur himself became the auction purchaser and obtained a registered Bainama No. 108 of 1915.

Subsequently, the said Ishwar Chandra Shur sold 43 decimals of land, including 17 decimals of the suit land appertaining to D.S. Dag No. 18, to Durga Sundari Das by Deed No. 2775 of 1924. The plaintiffs' predecessor, Jogendra Kumar Das, acquired the suit land from Durga Sundari Das through Exchange Deed No. 8257 of 1944. After his death, the plaintiffs have been in ownership and possession of the suit land. During the M.R.R. operation, however, the suit land was wrongly recorded in the name of Saidul Hoque and others, thereby clouding the plaintiffs' title and compelling them to institute the present suit.

The defendants Nos. 9, 10 and 18–23 appeared and contested the suit by filing a joint written statement, denying all material allegations. Their case, in essence, is that the suit land originally belonged to Har Kumar Dey and Indra Kumar Dey, whose names were correctly recorded during the D.S. operation. Upon their death, their successors, including Jogendra Chandra, sold the land to Md. Saidul Hoque by Deed No. 6277 dated 27.08.1956. After his death, Saidul Hoque's heirs- his widow, four sons and four daughters- mutated the property in their names under Mutation Khatian No. 281.

Thereafter, the contesting defendants purchased different portions of the suit land as follows:

- i) Defendants Nos. 9–10 purchased 5.50 decimals by Deed No. 7388/07;
- ii) Defendants Nos. 19–22 purchased 3 decimals by Deed No. 7380/07;
- iii) Defendant No. 23 purchased 3 decimals by Deed No. 7383/07;
- iv) One Hafizur Rahman purchased 5.50 decimals by Deed No. 10986/07; and
- v) Defendant No. 18, Md. Delowar Hossain, purchased 5.50 decimals by Deed No. 10946/07.

Accordingly, they claimed to have acquired valid title and possession over 17 decimals of land in D.S. Dag No. 18, and sought dismissal of the suit.

During trial, both parties adduced six witnesses each and produced documentary evidence. The plaintiffs marked Exhibits 1–9, while the defendants marked Exhibits ‘Ka’ to ‘Neo’. The learned Trial Court, upon hearing, dismissed the suit, holding that the plaintiffs had failed to prove title and possession, whereas the defendants successfully established theirs.

The Trial Court observed that the plaintiffs traced their title from Baikuntha Kumar Dey through Ishwar Chandra Shur and Durga Sundari Das, while the defendants derived title from the D.S. recorded tenants through Deed No. 6277 of 1956. Both parties produced independent title documents that did not intersect. The Court, therefore, considered possession and record-of-rights as the decisive factors.

Upon review, the Trial Court emphasized that the D.S. and M.R.R. records stood in the names of the defendants' predecessors, and that the plaintiffs had failed to produce any rent receipts or record-of-rights in their favour. It held that the plaintiffs' Exchange Deed No. 8257 of 1944 was not acted upon, and that the defendants, being bona fide purchasers for valuable consideration, had acquired valid title and possession. Accordingly, the suit was dismissed.

Aggrieved by the above decision, the plaintiffs preferred Title Appeal No. 84 of 2012 before the learned District Judge, Noakhali, which was allowed. The Appellate Court found that although both parties had produced title documents, the Trial Court erred in giving undue precedence to the question of possession without first determining whose title documents carried greater legal efficacy. The Appellate Court observed that the plaintiffs' title traced back to Baikuntha

Kumar Dey, whose property had been lawfully auctioned in execution of Decree No. 147 of 1911 and Execution Case No. 684 of 1914, followed by a registered Bainama of 1915. Such judicially derived title, the Court held, carried greater sanctity and continuity than the defendants' subsequent purchase of 1956.

The Appellate Court further noted that the defendants did not file any cross-objection disputing the plaintiffs' assertion that the decrees covered the suit land, nor could they produce any evidence to disprove the plaintiffs' chain of title. The registered deeds - Deed No. 2775 of 1924 (Ishwar Chandra Shur to Durga Sundari Das) and Deed No. 8257 of 1944 (Durga Sundari Das to Jogendra Kumar Das) - were produced and remained unchallenged, with no allegation of forgery or fabrication.

Upon scrutiny, the Appellate Court also found contradictions in the defendants' evidence on possession. D.W.2 Nurul Amin initially claimed that there was a tin-shed house belonging to the defendants, but later admitted in cross-examination that the land was a pond about 2–3 feet deep. D.W.6 Abul Basar Khondakar also admitted during cross-examination that paddy cultivation took place there. Moreover, certified khatians (Exhibit-‘Cha’) produced by the defendants

described the land as “doba” (pond), which corroborated the plaintiffs’ case.

The plaintiffs, on the other hand, consistently claimed that the land was a pond used jointly with adjoining holdings, and their documentary and oral evidence supported that assertion. The Appellate Court therefore concluded that the plaintiffs’ title chain was earlier, lawful, and continuous, and that their possession was established by credible evidence and surrounding circumstances. Accordingly, the learned Appellate Court held that the plaintiffs had proved both title and possession, and that the Trial Court had committed a serious error of law and misappreciation of evidence in dismissing the suit merely on the question of possession claimed by the defendants. The appeal was thus rightly allowed, and the suit decreed in favour of the plaintiffs.

Against the aforesaid appellate judgment and decree, the defendants separately filed these two revisional applications and obtained the present Rules, which are taken up together for hearing and disposal.

Mr. Khair Ezaz Maswood, learned Senior Advocate appearing for the defendants Nos. 8, 9 and 18 and petitioners in Civil Revision No. 274 of 2015, submits that the plaintiffs utterly failed to produce any writ

of delivery of possession to establish that their predecessors-in-interest had ever obtained actual possession pursuant to the auction purchase in Execution Case No. 684 of 1914. He argues that in law, delivery of possession is a mandatory consequence of a court auction sale, and unless possession is duly delivered, the auction sale cannot be said to have been effectively acted upon. In support of his submission, he refers to the decision reported in 12 MLR (AD) 180, wherein it was held that when neither the writ of delivery of possession nor any explanation for its non-production was offered, mere production of a certified copy of the sale certificate could not establish that the ex-landlord had actually taken delivery of possession in execution of the decree.

Learned Counsel further contends that the plaintiffs cannot derive benefit from any weakness in the defendants' case; they must succeed on the strength of their own title, which must be affirmatively proved in accordance with law. In this connection, he relies on the authority reported in 6 BLC (AD) 41, where it was observed that a plaintiff seeking declaration of title must establish his own title independently and cannot rely upon the infirmities of the defendant's claim.

He next submits that the D.S., M.R.R., and B.S. records of rights stand in the names of the defendants' predecessors, and that mutation

and rent receipts have consistently been issued in their favour. Accordingly, the statutory presumption of correctness attached to such settlement records under the relevant provisions of law operates in support of the defendants' title and possession.

Relying on the case of AIR 1971 SC 1201 (V 58 C 241), Mr. Maswood argues that the doctrine of caveat emptor applies with full force to auction purchasers, who take the property subject to all defects in title of the judgment-debtor. He submits that an auction purchaser can never acquire a better title than that possessed by the judgment-debtor, and that in the absence of actual delivery of possession, no effective title passes to the auction purchaser. He further argues that the plaintiffs' predecessors never had any record-of-rights in their names, whereas the defendants' predecessors had continuous and successive entries in all settlement operations- D.S., M.R.R., and B.S.- which, by operation of law, carry presumptive evidentiary value in their favour.

Mr. Md. Mustafizur Rahman (Jeco), learned Advocate appearing for defendant Nos. 19–23 and the petitioners in Civil Revision No. 1450 of 2015, adopting the submissions advanced by Mr. Maswood, further submits that although rent receipts by themselves do not constitute documents of title, they nonetheless serve as important evidence of

possession, as recognised in 35 *DLR (AD)* 216. He also refers to 33 *DLR (HCD)* 252, wherein it was held that records-of-rights prepared by the Government operate as evidence of possession as on the date of their preparation, though they do not by themselves confer or conclusively establish title. He stresses that a registered *kabala* is a document of title carrying superior evidentiary value over settlement records, and such *kabala* remains operative and binding unless and until it is cancelled or declared void by a competent civil court on specific grounds of fraud, misrepresentation, or other legal infirmity.

Per contra, Mr. Md. Polash Bhuiyan, appearing on behalf of Mr. Mohammad Noor Hossain, learned Advocate for the plaintiffs—opposite party Nos. 1–4, submits in support of the impugned judgment and decree of the appellate court, contending that the learned appellate court rightly appreciated the evidence on record and correctly held that the plaintiffs’ title, derived through a judicial sale followed by subsequent registered conveyances, carries higher sanctity and continuity in law than the defendants’ later purchases.

Having heard the learned Advocates for both sides and perused the records, this Court finds little merit in the submissions advanced on behalf of the defendants—petitioners.

As to the alleged absence of delivery of possession:

It is true that the plaintiffs did not produce any writ of delivery of possession relating to Execution Case No. 684 of 1914. However, the absence of such a document cannot, by itself, invalidate the judicial sale or extinguish the title that lawfully vested in the auction purchaser, Ishwar Chandra Shur, upon confirmation of the sale.

It is well settled that once an auction sale is duly confirmed and a sale certificate is issued, title passes to the purchaser from the date of sale, and delivery of possession is a consequential and procedural act of the executing court. The presumption is that all official acts have been regularly performed unless proved otherwise. In the instant case, there is no evidence that the execution proceeding was ever challenged, set aside, or that the auction sale was reversed at any point. The registered Bainama No. 108 of 1915, executed in favour of the auction purchaser, further evidences completion of the transaction and continuity of title derived through court process.

The reliance placed on 12 MLR (AD) 180 is distinguishable on facts, as in that case the plaintiff failed to establish the very foundation of auction purchase, whereas here, the plaintiffs have traced a complete and judicially validated chain of title beginning from the decree in Title Suit No. 147 of 1911, followed by execution, auction sale, and

subsequent registered conveyances of 1924 and 1944. The defendants have not been able to dislodge this chain by producing any superior or overlapping title emanating from the same source.

Where the plaintiffs establish a continuous and judicially derived chain of title originating from a confirmed auction sale and supported by subsequent registered conveyances, such title prevails over later settlement entries or possession claimed by others. The absence of a writ of delivery of possession does not vitiate a confirmed auction sale, as delivery is a consequential act and the title passes upon confirmation. Settlement records, though presumptively correct, cannot override a lawful and superior title proved by registered deeds.

As to the presumption of correctness of record-of-rights:

The argument that the D.S., M.R.R., and B.S. records standing in the names of the defendants' predecessors confer ownership is equally untenable. It is a well-established principle that entries in the record-of-rights are not conclusive evidence of title; they merely raise a rebuttable presumption of possession at the time of preparation of such records. Once the plaintiffs have produced registered title deeds forming an unbroken sequence of ownership spanning from 1915 to the present, such statutory presumption stands rebutted by documentary evidence of superior probative value.

Moreover, the defendants themselves admitted that the suit land was described as “doba” (pond) in the khatians produced by them. This admission corroborates the plaintiffs’ consistent version that the land remained a pond jointly used with adjacent holdings and that the defendants had no actual occupation therein. Thus, even the records relied upon by the defendants support the plaintiffs’ factual case rather than contradict it.

As to the doctrine of caveat emptor and defects of title:

The reliance on AIR 1971 SC 1201 is misplaced. The doctrine of *caveat emptor* applies where the purchaser acquires property with notice of possible defects in the vendor’s title. In the present case, the auction purchaser, Ishwar Chandra Shur, derived title directly from the executing court in satisfaction of a mortgage decree. The title so conveyed is a judicially conferred title, which cannot be equated with a private purchase and is not subject to the same caveats. Once the decree and sale were confirmed and not challenged, the title of the auction purchaser became absolute and unimpeachable. The doctrine of “*nemo dat quod non habet*”- no one can convey a better title than he himself possesses- operates against the defendants’ alleged transferors.

As to the defendants' alleged continuous entries:

The Court further finds that the defendants' reliance on later settlement records does not improve their position. Even if their predecessors' names appeared in the D.S. or subsequent records, such entries at best indicate possession long after the plaintiffs' lawful acquisition of title. It is trite that settlement entries cannot extinguish a vested right acquired under a registered conveyance, nor can they operate to validate possession obtained without lawful origin.

The plaintiffs' deeds, particularly Deed No. 2775 of 1924 and Exchange Deed No. 8257 of 1944, were executed and registered decades before the defendants' purchase of 1956, and their genuineness remains unchallenged. The continuity of title through judicial sale and subsequent conveyances clearly outweighs the evidentiary presumption of later record-of-rights.

Accordingly, this Court is satisfied that the learned Appellate Court rightly held that the plaintiffs' title is earlier in origin, superior in law, and duly supported by documentary evidence, whereas the defendants' claim rests solely on settlement entries and uncorroborated possession, which are insufficient to displace a lawful title derived through court auction and registered deeds.

In view of the foregoing, this Court finds that the learned Appellate Court committed no illegality or irregularity in reversing the decision of the Trial Court. On the contrary, the findings of the Appellate Court are based on sound appreciation of evidence and proper application of law. The plaintiffs' title being established by a continuous chain of documents dating back to 1915, and the defendants' case resting on a conveyance from a person without title, the revisional challenge has no merit.

Accordingly, this Court holds that the judgment and decree of the learned Appellate Court suffer from no error of law or misappreciation of evidence warranting interference under Section 115 of the Code of Civil Procedure.

Consequently, both the Rules are discharged, and the judgment and decree of the Appellate Court are hereby affirmed.

There shall be no order as to costs.

Let a copy of this judgment, together with the lower court records, be transmitted to the Court below forthwith.

(Justice Md. Toufiq Inam)