

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 2809 of 2007**

The Government of Bangladesh,  
represented by the Deputy Commissioner  
(Revenue), Chittagong and others  
Defendants-Respondents-Petitioners

Versus

Mohammad Ismail and another  
Plaintiffs-Appellants-Opposite Parties

Mr. Md. Ensan Uddin Sheikh,  
Deputy Attorney General  
for the defendants-respondents-  
petitioners

Mr. Rowshan Alam Khan, Advocate  
for the plaintiffs-appellants-opposite  
parties

**Judgment on 07.12.2022**

This Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned Judgment and Decree dated 08.8.2005 passed by the learned Joint District Judge, Paribash Adalat, Chittagong in Title Appeal No. 426 of 2004 allowing the appeal and thereby reversing the Judgment and Decree dated 02.9.2004 passed by the learned Senior Assistant Judge, 5<sup>th</sup> Court, Sadar, Chittagong in Title Suit No. 316 of 2001 dismissing the suit should not be set aside and/or such other or

further order or orders passed as to this Court may seem fit and proper.

The opposite party Nos. 1 and 2 as plaintiffs instituted a suit for declaration of title being Title Suit No. 316 of 2001 against the defendants in respect of the suit land. The Case of the plaintiffs, in short, is that the land of R.S. khatian No. 1069 divided into 7(seven) plots. Out of those Khulya Mia belongs to Plot No. 3270, Ramzan Ali belongs to Plot Nos. 3271-3272, Badsha Mia belongs to Plot Nos. 3273/3276, Azizur Rahman belongs to Plot No. 3274 and Ameer Khatun belongs to Plot No. 3275. Khulya Mia died leaving behind only son namely Jafar Ahmed. Ramzan Ali died leaving two sons namely Shaleh Ahmed and Shaleh Jahur. Shaleh Ahmed and Shaleh Jahur had transferred the land of plot Nos. 3272 and 3271 to Abdul Latif by Patta No. 2927 dated 08.11.1945. Badsha Mia sold the land of Plot Nos. 3273 and 3276 to Jafar Ahmed by sale deed No. 2208 dated 18.06.1935. Azizur Rahman sold Plot No. 3274 to Jafar Ahamed by deed No. 3511 dated 12.09.1940. Jafor Ahmed went to possession in Plot No. 3275 amicably which belonged to Ameer Khatun. Thereafter Jafor Ahmed transferred the land to Abdul Latif by registered Patta deed No. 3008 dated 03.11.1949 except the land of Plot Nos. 3272 and 3271. Abdul Latif then gifted his said property to his daughter

Ayesha Khatun through deed No. 4139 dated 08.07.1953, and after death of Abdul Latif his daughter Ayesha Khatun became the sole owner of her father's property. It may be noted that Jafor Ahmed (son of Khulya Mia) is the husband of Ayesha Khatun. The land of Ammer Khatun in Plot No. 3275 was obtained by Chandra Kumar Dev through Execution Case No. 23 of 1934, afterwards Chandra Kumar and others sold the said property to Obedur Rahman by deed No. 346 dated 04.02.1942. For this reason Ayesha Khatun and Jafor Ahmed never raised any objection to the possession and title of Obedur Rahman. Ayesha Khatun sold the land of Plot No. 3276 to the plaintiffs by deed 259 dated 14.03.1991 and paid rents to the Government till 1397, the plaintiffs came to know the fact when they went to pay rents that the suit land was recorded in khas khatian No. 1 and area of land was recorded 21 Sataks instead of 27 Sataks. The suit land is in no way Government khas land. The plaintiffs filed this suit showing cause of action on 01.11.1999, 10.12.1999 and on 19.06.2001 along with on different other dates.

The petitioners Nos. 1-3 as defendants contested the suit by filing a joint written statement denying the material allegation made in the plaint contending inter alia that B.S. khatian was correctly published in the name of the Government in respect of the suit land. The deeds by which the suit land as claimed by the

plaintiffs are created, fraudulent and only to grab Government khas land, for which the plaintiffs have no right to claim the suit land. The suit plots were not recorded in the name of the Government in P.S. khatian and it was remained as omitted (chhut) plot which belonged to the Government. The suit land as stated in the schedule is vague and unspecified. The plaintiffs are not entitled to decree as prayed for through such illegal deeds and as such the suit of the plaintiffs is not maintainable.

The learned Senior Assistant Judge, 5<sup>th</sup> Court, Sadar, Chattogram dismissed the suit by his judgment and decree dated 02.9.2004 against which the plaintiffs as appellant preferred appeal being Title Appeal No. 426 of 2004 before the Court of learned District Judge, Chattogram which was transferred to the Court of learned Joint District Judge, Paribash Adalat, Chittagram who allowed the appeal and thereby reversing judgment and decree dated 02.9.2004 passed by the learned Senior Assistant Judge, 5<sup>th</sup> Court, Sadar, Chattogram and hence, the defendants-respondents as petitioners moved this application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Md. Ensan Uddin Sheikh, the learned Deputy Attorney General for the defendants-respondents-petitioners, submits that

the Appellate Court below committed an error of law in not considering that the suit land is the Government Khas land.

Mr. Rowshan Alam Khan, the learned Advocate for the plaintiffs-appellants-opposite parties, submits that the learned Senior Assistant Judge, 5<sup>th</sup> Court, Sadar, Chattagram did not find any iota of evidence for preparation of B.S. record in the name of the government-defendants-petitioners. On the other hand, the government-defendants-petitioners did not challenge the above findings of the Trial Court by preferring any appeal or cross-appeal and till now the government-defendants-petitioners failed to show any reliable documents in favour of their title and possession except only B.S. khatian. He further submits that the plaintiffs filed the suit for declaration of title claiming 27 decimals of land of R.S. Plot No. 3276 appertaining to R.S. khatian No. 1059 against which P.S. khatian was prepared. But P.S. Plot No. 8236 inserted in the P.S. map which has been afterwards recorded in B.S. khatian No. 1. B.S. plot No. 2468 and also wrongly recorded 21 decimals of land instead of 27 decimals of land.

R.S. khatian No. 1069, Plot Nos. 3270, 3271, 3272, 3273, 3274, 3275, 3276 was owned and possessed by:-

	<u>Plot No.</u>	<u>area of land</u>
Khulya Mia-	3270	23 decimals

Ramzan Ali-	3271	19	"
	3272	17	"
Badsha Mia-	3273	19	"
		27	"
Azizur Rahman-	3274	12	"
Amir Khatun-	3275	14	"

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Total area-                      1.31 acres

Ramzan Ali died leaving two sons namely Shaleh Ahmed and Shaleh Zahur.

Shaleh Ahmed himself and on behalf of his minor brother Shaleh Zahur executed a registered Patta Deed being No. 2927 dated 08.11.1945 to Abdul Latif in connection with R.S. Plot Nos. 3271 and 3272 area of land (19 + 17) = 36 decimals (Exhibit No. 2).

Badsha Mia sold [19 + 27 (suit land) = 46 decimals of land to Zafar Ahmed (son of Khulya Mia) through registered kabala deed No. 2208 dated 18.06.1935, (Exhibit No. 17).

Azizur Rahman sold 12 decimals of land to Zafar Ahmed (son of Khulya Mia) through registered kabala deed No. 3511 dated 12.09.1940 (Exhibit No. 15).

Chandra Kumar and others obtained the land of 14 decimals from Ameer Khatun through Decree Execution Case No. 23 of 1934, (Exhibit Nos. 3/3Ka), thereafter the above Chandra Kumar



Ayesha Khatun sold 27 decimals of land from R.S. Plot No. 3276 (suit land) R.S. khatian No. 1059 (Exhibit- 1), through registered kabala deed No. 259 dated 14.03.1991 (Exhibit- 14) to the plaintiffs.

After purchased the suit land the plaintiffs-opposite parties paid rents to the Government till 1397 (Exhibit- 4) and he lastly submits that the above civil revisional application filed by the government-petitioner is liable to be discharged.

Heard the learned Advocates for both the parties and perused the record.

The government defendants completely failed to clarify how the individual property of R.S. Plot No. 3276 under R.S. Khatian No. 1069 was recorded in the name of the defendants-government-petitioners and the petitioners also failed to adduce any reliable documents in support of the B.S. record in the name of the Government. On the other hand, the plaintiffs-opposite parties have been able to prove their case by adducing evidences.

Considering the facts and circumstances of the case I find no substance in the Rule, rather I find substance in the submissions of the learned Advocate for the plaintiff-opposite parties.

**In the result, the Rule is discharged without any order as to costs.**



The impugned Judgment and Decree dated 08.8.2005 passed by the learned Joint District Judge, Paribash Adalat, Chittagong in Title Appeal No. 426 of 2004 allowing the appeal and thereby reversing the Judgment and Decree dated 02.9.2004 passed by the learned Senior Assistant Judge, 5<sup>th</sup> Court, Sadar, Chittagong in Title Suit No. 316 of 2001 dismissing the suit is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.