

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 97 of 1997

In the matter of:

Afzal Ahmed Anwari

Plaintiff-respondent-petitioner

-Versus-

Mohammad Nurul Hoque and another

Defendant-respondent-opposite parties

None

...For the petitioner

None

... For the opposite parties

Heard and Judgment on: 24.02.2026

The plaintiff-respondent-petitioner has filed this revisional application under Section 115 of the Code of Civil Procedure challenging the judgment and decree dated 04.07.1996 passed in Other Class Appeal No. 675 of 1984 by the learned Additional District Judge, 2nd Court, Chattogram reversing the judgment and decree dated 15.09.1984 passed in Other Class Suit No. 54 of 1981 by the learned Sub-ordinate Judge, 2nd Court, Chattogram.

None appeared for the either of the parties, when the Rule was taken up for hearing.

The present petitioner as plaintiff filed the instant suit for specific performance of contract praying for a decree directing the defendant No. 1 to execute and register the kabala in respect of the land mentioned in the schedule of the plaint in favour of the plaintiff.

The trial Court dismissed the suit on contest but directed the defendant No. 1 to pay Tk. 12,000 (consideration price mentioned in the bainapatra) to the plaintiff.

The defendant No. 1 preferred the appeal which was heard and disposed of by the learned Additional District Judge, 2nd Court, Chattogram. The appellate Court below allowed the appeal on contest. Challenging the same, the plaintiff as petitioner filed the instant civil revisional application and obtained the Rule.

The appellate Court below discussed the evidence on record in detail and observed-

“From the foregoing discussions and in view of the facts and circumstances of the case, I am of the view that the defendant No. 1 appellant Nurul Huq did not execute the alleged bainapatra nor did he deliver possession of the suit property in favour of the plaintiff-respondent No. 1 on 06.04.1975 and that the alleged bainapatra is a sham and fishy document. This being the position, the plaintiff

respondent No. 1 cannot get the equitable relief of specific performance of the alleged contract. In other words, the plaintiff respondent No. 1 has failed to prove his case. Weaknesses if any of the defence case are not a ground for decreeing the suit. It is well settled that in order to succeed the plaintiff must prove his own case irrespective of the weaknesses of the defence case. Since, the plaintiff-respondent No. 1 has signally failed to prove his case, the suit is liable to be dismissed. So the impugned judgment and decree of the learned trial Judge are not valid and sustainable in law and they call for interference from this Court. In the result, the appeal is succeeds”.

The exercise of power under Section 115 of the Code of Civil Procedure is supervisory. A series of judicial decisions has settled the principles that the revisional Court can dispose of a revision on merits even when the petitioners failed to appear to press the Rule. It is no function of the revisional Court to sit in appeal over the findings of the appellate court. A revisional Court will not, except on limited grounds, interfere with findings of fact arrived at by the trial court and appellate court. It will not also decide a contested question of fact raised for the first time in revision. The revisional Court can interfere with an impugned decision which is vitiated by an error of law.

Judicial decisions have further settled the principles that appreciation of evidence is the function of the trial Court and the appellate Court. A finding of fact, whether concurrent or not, arrived by the lower appellate Court is binding upon the High Court Division

in revision, except in certain well defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case or misconception, misapplication or misapprehension of law or misinterpretation of any material document or manifest perversity. The High Court Division is in error when it reverses the findings of the appellate court without adverting to the reasons given by the appellate Court for its findings. The revisional Court cannot interfere with a finding of fact even though it may differ with the conclusion reached by the court below in the absence of legal infirmities. Legal infirmities occur if the Court below, in arriving at the finding, has misread the evidence, or misconstrued a material document, or failed to consider material evidence, or relied on inadmissible evidence, or based on no evidence, or failed to apply the correct legal principles of law in arriving at the finding of fact, the finding will not be immune from interference in revision. The revisional Court cannot embark upon re-assessment of evidence. A finding of fact is not immune from interference if it is based on surmise or conjecture, or it is arbitrary or perverse in the sense that on the materials available on record no reasonable judge can arrive at such finding.

On perusal of materials on record, it appears to me that the appellate Court below considered the evidence on record in the proper perspective of law. Accordingly, I find no error of law resulting in an

error in the judgment and decree passed by the appellate Court below occasioning failure of justice. Hence, the Rule fails.

In the result, the Rule is discharged.

Send down the L.C.R.