

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1382 of 2015

IN THE MATTER OF :

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

-And-

In the Matter of:

Bulbul Ahmed

... Defendant-Petitioner

-Versus-

Md. Ali Hossain and others

...Plaintiff-Opposite Parties

Mr. Khair Ezaz Masud, Advocate with

Mr. Md. Humayun Bashar, Advocate

... For the petitioner

Mr. Md. Hamidur Rahman, Advocate

... For the Opposite Party No.1

Judgment on: 26.02.2026

Md. Riaz Uddin Khan, J-

At the instance of the defendant Rule was issued asking the plaintiff-opposite party No.1 to show cause as to why the judgment and decree dated 11.03.2015 (decree signed on 18.03.2015) passed by the Additional District Judge, 2nd Court, Mymensingh in Other Appeal No.175 of 2011 dismissing the appeal and thereby affirming the judgment and decree dated 27.04.2011 (decree signed on 05.05.2011) passed by the Senior Assistant Judge, Valuka, Mymensingh in Other Class Suit No.13 of 2007 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the judgment and decree dated 11.03.2015 passed by the Additional District Judge, 2nd Court, Mymensingh was stayed and parties were also directed to maintain status-quo in respect of possession and position of the suit land initially for a period of 03(three) months which was extended time to time.

Succinct facts for disposal of this Rule are that the present Opposite Party as Plaintiff instituted Other Class Suit No.13 of 2007 in the court of Senior Assistant Judge, Valuka, Mymensingh impleading the instant Petitioner as Defendant No.1 for declaration of title and recovery of Khas possession of 2 (two) decimals of land contending *inter alia* that Shamsi Ara Begum, the defendant no.3 became the owner of 91 decimals of land of CS Dag no.35/1347 (85 decimals) and Dag no.35 (6 decimals) by a deed of exchange no.5567 dated 29.06.1997. Then defendant 3 by another deed of exchange no.1632 dated 18.02.2002 transferred 10 decimals including a two story building to the plaintiff and handover possession from dag no.35/1347 though in the deed of exchange both the dag numbers were mentioned. Defendant 3 earlier transferred total 61.50 decimals land to 15 persons through 15 registered deeds and construct 3 roads using 7.50 decimals land and thus defendant transferred 79 decimals land. The plaintiff's land is butted and bounded through boundary at which north is advocate Shawkat Ali, at east advocate Shawkat Ali and Taijuddin, at south Shamsi Ara and at west advocate Khorshed Alam, Abu Sayeed and road. The plaintiff also made a boundary wall on the said 10 decimals land where he construct a half

building and renovate the old 2-story building adjacent to which he has two more buildings where his family members reside. The plaintiff is an expatriate in the USA. Plaintiff came to know from his wife at 3rd week of July, 2006 that defendant no.2 built a boundary wall encroaching 3 decimals land at the southern side and the plaintiff came to Bangladesh in October, 2006 and asked to remove the encroached boundary wall which the defendant 2 failed to do for which the plaintiff at his own volition remove the wall in January, 2007. But the defendant no.1 with the help of defendant no.2, on 05.02.2007 entering into the plaintiff's 10 decimals land from the southern side built boundary wall encroaching 2 decimals of land which is the suit land. The plaintiff lodged a GD Entry and also complaint to the police super in this regard. At that time the plaintiff came to know that the defendant no.1 purchased 4 decimals land from defendant no.2 who got 6 decimals through a deed of *Hiba-bil-ewaz* from defendant no.3 on 29.06.2002. Then the plaintiff came to know after obtaining the certified copy of the said deeds that the defendant 2 sold 4 decimals to the defendant 1 out of his 6 decimals and still there are 2 decimals between the plaintiff's land and the sold land to defendant no.1. Since the defendant no.1 on 05.02.2007 dispossessed the plaintiff from 2 decimals of suit land hence the suit.

The Defendant no.1 contested the suit and filed written statement denying all the allegations made by the Plaintiff contending *inter alia* that Shamsi Ara got 91 decimals land through deed of exchange from which she sold out 77 decimals to various persons including

10 decimals to the plaintiff and built roads on 5 decimals and remains owner of rest 9 decimals. Thereafter Salah Uddin, defendant no.2 got 6 decimals from Shamsi Ara on 29.06.2002 through a deed of *Hibab-ewaz* and mutated the same and defendant 2 sold 4 decimals from southern side to the defendant no.1 on 18.07.2006 and defendant no.2 remained in possession of 2 decimals of northern side and the land of plaintiff is adjacent to the land of Salah Uddin. There is a boundary wall of 7 feet between the land of salah uddin and the defendant no.1 and he built homestead on his purchased 4 decimals land. The defendant got possession of the land on 25.07.2006 after purchasing the same on 18.07.2006. This defendant did not dispossess the plaintiff from the suit land on 05.02.2007 hence the suit is liable to be dismissed.

The trial of the said Other Class Suit No.13 of 2007 commenced before the Court of Senior Assistant Judge and during the trial the Plaintiff examined three witnesses and the Defendant examined five witnesses to prove their respective cases. The trial court after conclusion of trial upon perusal of the records and hearing of the parties was pleased to decree the suit vide judgment and decree dated 27.04.2011.

Against the said judgment and decree dated 27.04.2011 passed by the Senior Assistant Judge, the instant Petitioner filed Other Appeal No.175 of 2011 before the District Judge, Mymensingh. The said appeal was ultimately heard by the Additional District Judge, Second Court, Mymensingh who by his impugned judgment and decree dated 11.03.2015 was pleased to dismiss the

appeal and thereby affirmed the Judgment and Decree dated 27.04.2011 passed by the Senior Assistant Judge.

Being aggrieved by and dissatisfied with the said judgment and decree dated 11.03.2015 the defendant-petitioner preferred this civil revision before this Court and obtained the Rule and interim order as stated at the very outset.

Mr. Khair Ezaz Masud, the learned advocate appearing for the defendant-petitioner referring the pleadings and depositions of the parties submits that both the courts below committed error of law in non considering the oral evidence and the pleadings case in its true perspective for which the judgment and decree passed by the courts below are liable to be set aside.

The learned advocate next submits that the instant suit has not been filed for mere recovery of possession under section 9 of the Specific Relief Act, 1877 rather it is filed under Section 8 of the Act, 1877 as the plaintiff sought for title and recovery of possession and accordingly paid *ad valorem* court fees. In such case the plaintiff-Opposite Party is required to prove his title of the 2 (two) decimals of land bearing C.S Khatian No. 380, 368 and 593 corresponding to S.A Dag No. 35/1347 and R.S dag No. 1577 but during the trial the Opposite Party has failed to prove his title of the said land. In a suit for recovery of possession the plaintiff must prove that before the alleged date of dispossession he was in possession of the suit land and was dispossessed in the alleged date of dispossession but in the present case the plaintiff failed to discharge his onus and as such, the impugned

Judgments and Decrees passed by the courts below are not tenable in the eye of law.

Mr. Masud then submits that both the courts below have not considered that the PW-1 in his deposition admitted that the Pro-Forma Opposite Party No.3 had transferred 6 decimals of land (adjacent to the land of the plaintiff-Opposite Party) to the Pro-Forma Opposite Party No.2 and subsequently, the Pro-Forma Opposite Party No.2 had sold 4 decimals of land out of his 6 decimals of land to the instant defendant-petitioner and the DW-1 in his deposition stated that the Petitioner is in the possession of 4 decimals of land since 2006 and the Petitioner has been paying all the utility bills including municipality tax, electricity bills, gas bills etc of the said land. The DW-2 (Surveyor) in his deposition categorically stated that on 25.07.2006 he had surveyed 4 decimals of land in the presence of respected persons of the local area and after the survey the possession of the said land was handed over to the Petitioner and the DW-4 and DW-5 in their depositions also stated that they were present during the survey and handover of possession of the said 4 decimals of land.

The learned advocate further submits that admittedly there are two decimals land of Salah Uddin between the lands of the plaintiff and the defendant-petitioner and as such dispossessing the plaintiff from his 2 decimals is a cock and bull story and plaintiff failed to prove his dispossession on the alleged date, i.e. 05.02.2007 rather the plaintiff admitted that the petitioner got possession of the suit land on 25.07.2006.

Mr. Masud finally submits that the suit is not maintainable as admittedly both the plaintiffs and defendants have title in the suit plot and as such are co-sharers and hence without suit for partition the instant suit for recovery of possession is not maintainable. In support of his contention the learned advocate referred an unreported case of Civil Appeal No.118 of 1983, Noab Ali Bepary and others Vs. Hachanerjaman and others of our Supreme Court, Appellate Division.

Per-contra Mr. Md. Hamidur Rahman, the learned advocate appearing for the plaintiff-opposite party No.1 submits that in a suit for recovery of khas possession, the plaintiff is to prove his possession in and dispossession from the suit land and in the present suit, the plaintiff has successfully proved his possession in and dispossession from the suit land by adducing sufficient evidence and both the Courts below correctly decided the suit in favour of the plaintiff and as such the instant Rule is liable to be discharged.

The learned advocate next submits that admittedly the predecessor-in-interest of both the parties namely Shamsi Ara Begum got 91 decimals of land on 29.06.1997 and thereafter on 18.02.2002 she transferred 10 decimals of land as described in the schedule-1 to the plaint including the suit land being 02 decimals as described in the schedule-2 to the plaint whereas said Shamsi Ara Begum transferred 06 decimals of land on 29.06.2002 to the defendant no.2 (Salah Uddin) who on 18.07.2006 sold out 04 decimals of land out of said 06 decimals of land in favor of

defendant no.1 (Bulbul Ahmed). Defendant No.1 stated in his examination-in-chief that "সালাউদ্দিন নালিশী জমিসহ ০৬ শতক জমি প্রাপ্ত হয়ে চারদিকে বাউন্ডারী ওয়াল নির্মান করে। পরে ০৬ শতক জমির দক্ষিণাংশে ০৪ শতক জমি ১৮.০৭.২০০৬ তারিখে ২৮৯৬ সাফ কবলা দলিলে বিক্রয় করে দখল দেয় আমাকে। সালাউদ্দিনের আমার নিকট ০৪ শতক জমি বিক্রয় করে উত্তর দিকে ০২ শতক জমি অবশিষ্ট থাকে। বাদীর জমি সালাউদ্দিনের জমির উত্তরে পুন: বলে ০৬ শতক জমির উত্তরে।" Defendant No.1 stated in his cross-examination that "সালাউদ্দিন এ দাগে কোন জমি দখল করে না।.....আমার ০৪ শতক জমির লাগ উত্তরে বর্তমানে দখলকার আছে আলী হোসেন নিজে" by which it is clear that the defendant No.1 dispossessed the plaintiff from the suit land with the assistance of the defendant No.2 and both the Courts below correctly decided the suit in favour of the plaintiff.

Mr. Rahman then submits that finding of facts, whether concurrent or not, arrived at by the appellate Court below is immune from interference in revision, except in certain well-defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case, misconception, misapplication or misapprehension of law and in the present suit both the Courts below meticulously assessed the evidence on record both oral and documentary and concurrently found that the plaintiff successfully proved his title and possession in and dispossession from the suit land and in revisional jurisdiction the concurrent findings of fact cannot be interfered with as there is no misreading or non-consideration of the evidences on record.

The learned advocate further submits that the defendant No.1 contested the suit contending that Salah Uddin (defendant No.2) got 06 decimals of land from the suit plot and he mutated his name in respect of the said land and thereafter he sold out 04 decimals of

land out of said 06 decimals in favour of the defendant No.1 and after purchasing the said land, the defendant No.1 also mutated his name in respect of the said land and got separate Khatian. Exhibit-Ka series and Exhibit-Ga series clearly prove that the tenancy has been split up and the parties of the instant suit have no joint interest and possession in the suit property and hence the present suit without prayer for partition is maintainable and thus there is nothing to interfere with the impugned judgment and decree.

The learned advocate then submits that the plaintiff successfully proved his title in the suit land by oral and documentary evidences and by adducing sufficient evidence, he was able to prove that he was in possession of the suit land before dispossession specifying the land by mentioning the boundary and admittedly got the title and possession long before the defendant-petitioner and both the Courts below rightly decided the suit in favour of the plaintiff.

Mr. Rahman lastly submits that without prejudice the submissions made earlier, it is submitted that for the sake of argument, if the instant suit comes within the purview of section 9 of the Specific Relief Act, 1877, the instant civil revision brought by the defendant is not maintainable as the defendant preferred appeal against the judgment and decree passed by the trial Court thereby decreeing the suit.

I have heard the submissions advanced at the bar. I have perused the application along with the annexures. I have also gone through the Lower Court Records including the plaint, written statement, depositions and exhibited documents of both the

parties. I have carefully examined both the judgments passed by the courts below.

The first question raised at the bar is whether the instant suit is filed under section 8 or 9 of the Specific Relief Act, 1877. From the language of the plaint as well as the depositions of the plaintiff along with payment of *ad valorem* court fees by the plaintiff it is clear that the instant suit is not a suit for mere recovery of possession rather is a suit for declaration of title and recovery of possession filed under section 8 of the Specific Relief Act, 1877.

The next question raised by the learned advocate for the defendant-petitioner is whether the suit is maintainable without prayer for partition of the suit land. Admittedly both the plaintiff and defendant no.1 claimed suit land from CS Dag no.35/1347 corresponding to RS Dag no.1577 from their common vendor Shamsi Ara Begum and in that view there is no doubt that both are co-sharers in the suit land. It is long settled that possession of one co-sharer is possession of all other co-sharers in the suit holding unless a co-sharer is dispossessed openly and notoriously for more than 12 years and it is the general rule that when admittedly both plaintiff and defendant are co-sharers and dispute arise regarding possession, it is imperative for the parties to file suit for partition but it is not the case always. Suit for partition may be the best legal recourse to resolve the dispute regarding the possession amongst the co-sharers of a suit holding but that does not mean in all circumstances the suit other than the partition is to be dismissed on the ground of maintainability as there

are some exceptions. For example, if title of any co-sharer is clouded along with his possession then he must file suit for declaration of title along with partition. Again, if any co-sharer is dispossessed from his specific possession butted and bounded by specific boundary or if any one becomes a co-sharer by purchase and he purchased the same with a specific boundary and got possession without any obstacle from any admitted co-sharer and subsequently dispossessed, he does not need to file suit for partition, he can file suit either for recovery of possession only or for title with recovery of possession. In that case what the plaintiff has to prove that he was in possession of specific portion of the land butted and bounded by specific boundary and he is dispossessed, may be by any co-sharer or any other person.

The fact of cited unreported decision of Civil Appeal No.118 of 1983 was that the plaintiff instituted Title Suit No.91 of 1956 for declaration of title and recovery of Khas possession of the suit land by evicting defendants therefrom and also for mesne profits contending *inter alia* that plaintiff's predecessor took settlement (pattan) of a portion of plot no. 2705 from first party landlords and subsequently was dispossessed by the defendants. The defendants denied the allegation of possession and dispossession and their case was that the suit land was vague and they took settlement from second party landlords. However, a survey was conducted by advocate commissioner who found plot nos. 3,4,8 and 9 in his case map were covered by the plaintiffs kabuliyat while plot nos. 2,5 and 10 including circles P and N were

covered by the kabuliyats of defendants. The trial court decreed the suit which was affirmed on appeal but on revision the Supreme Court, High Court Division made the Rule absolute in part and modified the judgment stating that "the plaintiffs shall be deemed to be in constructive joint possession of the suit plot and they may take steps to institute a suit for partition and khas possession". On appeal the Supreme Court, Appellate Division to avoid multiplicity of suits sent the case on remand to the trial court allowing the plaintiffs to amend the plaint by adding the prayer for partition of the suit land. It is mentionable here that all the courts found the title and constructive possession of the plaintiffs not the exclusive possession.

In the present suit the plaintiff in the plaint claimed that he got 10 decimals land from suit plot no.35/1347 and took possession of the land which is butted and bounded through boundary at which north is advocate Shawkat Ali, at east advocate Shawkat Ali and Taijuddin, at south Shamsi Ara and at west advocate Khorshed Alam, Abu Sayeed and road. The plaintiff also made a boundary wall on the said 10 decimals land where he construct a half building and renovate the old 2-story building adjacent to which he has two more buildings where his family members reside. The plaintiff-petitioner in his pleadings specified the suit land by boundary and also showing a sketch map from which he allegedly was dispossessed. So, the fact of the case referred is quite different from the facts of the present case. In that view of the matter, in my

opinion the present suit for declaration of title along with the recovery of khas possession is maintainable.

Now, in the case in hand, how far the plaintiff proved his title and possession in and dispossession from the suit land. In the written statement the defendant-petitioner admitted that the plaintiff got title over 10 decimals of land from their common vendor Shamsi Ara Begum and it is also admitted position that the title deed of the plaintiff is earlier than the title deed of the defendants. Since the title of 10 decimals land of the plaintiff is not denied by the defendant, there is no need to discuss the evidence on this point and it can safely be said that the plaintiff's title in the suit plot is proved.

In a suit for recovery of possession the plaintiff is to prove his possession in and dispossession from the suit land. In the present suit it is admitted position that common vendor of both the parties namely Shamsi Ara Begum got 91 decimals of land on 29.06.1997 and thereafter on 18.02.2002 she transferred 10 decimals of land including the suit land being 02 decimals to the plaintiff whereas said Shamsi Ara Begum transferred 06 decimals of land on 29.06.2002 to the defendant no.2, Salah Uddin who on 18.07.2006 sold out 04 decimals of land out of said 06 decimals of land in favor of defendant no.1, Bulbul Ahmed. The plaintiff's specific case is that while he was in possession of his land bounded by boundary wall, the defendant no.1 with the assistance of defendant no.2, on 05.02.2007 entering into the plaintiff's 10 decimals land from the southern side built boundary wall encroaching 2 decimals of land which is the suit land.

At that time the plaintiff came to know that the defendant no.1 purchased 4 decimals land from defendant no.2 who got 6 decimals through a deed of *Hiba-bil-ewaz* from defendant no.3 on 29.06.2002. Then the plaintiff came to know after obtaining the certified copy of the said deeds that the defendant no.2 sold 4 decimals to the defendant no.1 out of his 6 decimals and still there are 2 decimals between the plaintiff's land and the sold land to defendant no.1. Since the defendant no.1 on 05.02.2007 dispossessed the plaintiff from 2 decimals of suit land hence the suit. In his deposition the plaintiff as PW-1 stated that Shamsi Ara on 18.02.2002 transferred 10 decimals land to him which is described in schedule-1 of the plaint is butted and bounded through boundary at which north is advocate Shawkat Ali, at east advocate Shawkat Ali and Taijuddin, at south Shamsi Ara and at west advocate Khorshed, Abu Sayeed and road. There was some vacant area at the southern side. Defendant no.1 with the assistance of defendant no.2 on 05.02.2007 erected a boundary wall encroaching 2 decimals of the plaintiff's land. The statement of PW-1 regarding possession and dispossession is well supported by the PWs-2 and 3. On the other hand Defendant No.1 though stated in his examination-in-chief that Salah Uddin erected boundary wall of his 6 decimals land from which he sold 4 decimals to him and rest 2 decimals from northern side remains to Salah Uddin but in his cross-examination stated that Salah Uddin does not possesses any land in the suit plot. The plaintiff is in possession adjacent to his 4 decimals land. The plaintiff's position is

unequivocal while the defendant's position is contradictory and confusing.

It appears from the judgment of the appellate court below as well as the trial court that after threadbare discussion of the evidence on record both the courts below came to the conclusion that the plaintiff successfully proved that he was in possession of the suit land before 05.02.2007 and was dispossessed by the defendants on 05.02.2007. The appellate court is the final court of facts and its findings on facts should not be interfered with in revision except in certain well-defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case, misconception, misapplication or misapprehension of law and in the present suit since both the Courts below after threadbare discussion assessing the evidence on record both oral and documentary concurrently found that the plaintiff successfully proved his possession in the suit land and subsequent dispossession from the suit land, sitting in revision the concurrent findings of fact should not be interfered with as there is no misreading or non-consideration of the evidences on record. There are some discrepancies in the deposition of the plaintiff but it does not affect the merit of the case and as such I am not inclined to interfere with the judgments of the courts below.

In the facts and circumstances of the case and the position of law as discussed above I am constrained to hold that the Rule has no merit for which it is liable to be discharged.

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

Send down the Lower Courts Record along with a copy of this judgment at once.