

206/2-1884  
IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION, DHAKA.  
( CIVIL REVISIIONAL JURISDICTION)

RCG

Present  
Mr. Justice Sharif Uddin Chaklader

Op. No. 2 RL

CIVIL REVISIION NO. 1925 of 2011

In the matter of an application under Section 115(1) of the Code of Civil procedure for setting aside the ~~max~~ Jt. and decree dt. 18.1.11 and 25.1.11 passed by Joint Dist. Judge 1st Court Bagerhat in T.A.No. 81/2002 affirming those dt. 3.4.02 and 10.4.02 passed by Asstt. Judge Fakirhat Bagerhat in T.S. No. 90/1996.

And in the matter of an order of stay as ordered by this Court.

And in the matter of :-

Tapas Biswas and another ..... Petitioners.

= Versus =

1. Phirenra Nath Biswas, 2. Pulin Biswas, all sons of late Jadu Nath Biswas alias Mondal of Village Bighai, At Present of Village and P.O. Sattala, P.S. Pakirhat, District : Bagerhat and others. ... Opp. parties.  
Mr. Nashtia Sarker, Adv. ..... For the petitioner.

2.5.2011

= ORDER =

No words of the case be called for.

Let a rule be issued calling upon the opposite parties Nos. 1 to 2 to show cause as to why the judgment and decree dated 18.1.2011 passed by the learned Joint District Judge 1st Court, Bagerhat in Title Appeal No. 81 of 2002 affirming those dated 3.4.2002 passed by the learned Assistant Judge Fakirhat, Bagerhat in Title Suit No. 90 of 1996 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Noticing hearing of the rule the operation of the Judgment and decree dated 18.1.2011 passed by the learned Joint District Judge 1st Court, Bagerhat in Title Appeal No. 81 of 2002 be stayed for a period of 6(six) months from date.

The petitioners are directed to put in two sets of requisites within 72 hours one for service of notice under registered post with acknowledgement due and another as usual through office of the Court.

1) Rule is made returnable within 4(four) weeks from date.

Sharif Uddin Chaklader.

2. Opp. party No. 1-2

Take notice that a verified application a copy where of and a copy of the order of this court where on are here to annexed has been made to this court by the above named petitioner and that you are hereby called upon to show cause as directed in the said order within fourteen days from the date of service.

By Order

M. H. S. 2011  
Superintendent

AMG  
02.4.22

AMG 2011  
Assistant Registrar

Rafik.

W.M.

Wife of Haridas Biswas

of Village Bighai,

P.O. Saittala,

P.S. Fakirhat,

District Bagerhat.

--- Defendants <sup>Applicant</sup> Respondents  
Petitioners

- Versus -

1. Dhirendra Nath Biswas,

2. Pulin Biswas,

All Sons of late Jadu Nath Biswas

alias Mondal

of Village Bighai,

At present

of Village and P.O. Saittala

P.S. Fakirhat,

District Bagerhat.

--- Plaintiff Respondents  
Petitioners /

TRUE COPY  
Sheeti Sarker  
ADVOCATE

DISTRICT: BAGEHAT

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

( CIVIL REVISIONAL JURISDICTION )

CIVIL REVISION NO. 1925 OF 2011

IN THE MATTER OF :

An application under section 115(1)

of the Code of Civil Procedure;

(Against Decree)

A N D

IN THE MATTER OF :

1. Tapas Biswas,

Son of late Lalit Mohon Biswas

2. Kamika Biswas,

7. Sailendra Nath Biswas,

Son of late Jadunath Biswas

of Village Bighai,

P.O. Saitala,

P.S. Fakirhat,

District Bagerhat.

---Non-Contesting defendant  
Respondent Opposite Parties.

A N D

IN THE MATTER OF :

Judgment and decree dated 18.01.2011

(decree signed on 25.1.2011) passed

by Md. Julfikar Ali Khan, the learned

Joint District Judge, Ist. Court,

Bagerhat in Title Appeal No. 81 of

2002, affirming the judgment

and decree dated 03.04.2002( decree

signed on 10.04.2002) passed by

5. Manna Biswas(minor)

Son of late Lalit Mohon Biswas

Represented by the Guardian

mother Provati Biswas

Wife of late Lalit Mohon Biswas

4. The People's Republic of

Bangladesh ,represented by

Deputy Commissioner, Bagerhat.

5. Bimal Biswas,

Son of late Shamcharan Biswas

6. Haripada Biswas,

Son of Annonya Biswas

of Village Bighai,

P.O. Saittala,

P.S. Fakirhat,

District Bagerhat.

by Md. Sheikh Nazmul Alam, the learned  
Assistant Judge, Fakirhat, Bagerhat  
in Title Suit No.90 of 1996 in  
decreeing the suit.

Application Valued at Taka 12,800/-

To

Mr. Justice A.B.M.Khairul Haque, the Chief Justice of  
Bangladesh and his Companion Justices of the said  
Hon'ble Court.

The humble petition of the  
petitioner above named most  
respectfully-

S H E W E T H :

1. That the present opposite parties as plaintiff  
instituted Title Suit No.90 of 1996 in the Court of  
Fakirhat Assistant Judge, Bagerhat for recovery of

of khas possession by demolishing huts and for washilat. The specific case of the plaintiffs was that the land measuring 0.97 acres appertaining to C.S.Khatian no.24 under Mouza Bighay belonged to Zageshwar Mondal alias Biswas and Jadunath Mondol alias Biswas with equal share .97 acres of land was specified in Plot No.5.61 where in plaintiffs father used to live. That Kalicharan's homestead was situated in Plot No.558 while Lalit Mohan's homestead was situated in Plot No.560. That Kilicharan being dweller of adjacent plot of the suit land conspired to grab the suit land. That Kalicharan in collusion with Survey officials later on secretly got his name written in S.A. Khatian dated ~~20/04/61~~ 5.04.61 obtained by Jadunath does not contain the demands of permissive possession

possession by Kalicharan. That Kalicharan had no right, title and possession to the suit land. That Jadunath and to live on the suit land having 2(two) huts thereon. That Kalicharan being inspired, by collusive record of right, tried to get possession through a criminal case being no.1846c/61 where in Jadunath was discharged from the allegation. That Kalicharan filed T.S. being No.405/62 alleging title to the suit land which was dismissed for default.

That Kalicharan being defeated to get possession of the suit land executed a collusive kabala in favour of Lalit Mohon and Monoranjan who also filed a criminal case under section 447 of the Penal Code against Jadunath and his sons alleging their illegal possession but became unsuccessful.

That Kalicharan, Lalit Biswas and Monoranjan also

also tried to take possession of the suit and plaintiff no.2 Pulin Biswas prayed before criminal court to retain peaceful possession which ended by a promise by themnot to disturb plaintiffs peaceful possession. That defendants predecessor executed a bond dated 12.6.84 in the criminal case not to disturb in plaintiffs possession. That plaintiffs on 02.7.94 filed an application before the Mirbahi Officer passed an Arbitration Award on 28.10.94 declaring that plaintiffs are entitled to continue their peaceful possession. That Title Suit vide order dated 18.5.95 also stated that plaintiffs were in peaceful possession and advised the defendant to civil court. That defendants on 20.5.95 took possession in the suit land forcefully and made a hut on the suit land by evicting the plaintiffs. That later on defendants made a brick

brick built house on the suit land. That the plaintiffs are also entitled to get washilat with effect from 20.05.95. Cause of action arose on 20.05.95 when the plaintiffs were illegally dispossessed from the suit. Plaintiffs prays for establishment of title and recovery of possession by evicting the defendants demolishing their huts on the suit land.

2. That the defendant no.5/6 filed a written statement in the suit but did not contest. Defendant Nos.1/5 contested the suit by filing a written statement in the suit but did not contest. Defendant nos.1/5 contested the suit by filing a written statement denying most of the allegations of plaint and contending that suit land measuring .97 acres in plot No.561 belonged to Kalicharan who used to possess the same as his homestead but he failed to

to produce relevant papers during S.A. operation  
for which survey officials remanded in S.A.Khatian  
No.29 that Kalicharan was a permissive possessor in  
the suit land. That Kalicharan had dwelling huts to the  
extent to .16 acres in suit plot no.561. That  
Jadunath Biswas being inspired by S.A.Khatian  
denied Kalicharan title to the suit land and  
Kalicharan filed Title Suit being no.405/62 for  
declaration of his title. That Kalicharan was  
evicted by Jadunath by .7 .81 acres of land by  
making huts there on. That Kalicharan continued  
possession to the extent of .16 acres of land by  
south side of the plot. That Kalicharan in order to  
restore of rest .81 acres of land filed suit being  
No.80 of 1962 before the Chairman of Union Parishad,  
Bataga and obtained a decree for restoration of  
possession. That Kalicharan instituted execution case

being no.27/65 before second Munsif Bagerhat and got possession of the suit land. Through court on 05.09.65 by demolishing huts of Jadunath from the suit.land.On the otherhand, Jadunath filed Title Suit no.591/65 against Kalicharan for restoration of possession to the extent of .16 acres of land and that in terms of prayer of Jadunath .Court allowed herein to withdrew the suit with costs for Taka 50/- .That Kalicharan vide registered kabala dated 07.06.75 transferred .095 acres of land to LalitMohon Biswas and MonoranjanAdhikari , Lalit Mohon vide kabala dated 15.10.84 transferred .47 acres of land to defendant no .5 Kanica.That Monoranjan vide kabala dated 04.10.95 transferred .47 acres of land to defendant nos.1/2.That the plaintiff were defeated to record their name during

the present I.S.operation. The defendants have taken loan from Bangladesh Krishi Bank Noapara Branch by depositing original deeds and have been dwelling on the suit land making them heritable with a lot of money. That the defendants also acquired title to the suit land by way of adverse possession for long 40 years .Defendants prays for dismissal of the suit alleging it as false and fabricated.Hence the case contesting defendants and prays for dismissal of the suit.

5. That plaintiff's adduced 5(three) witnesses and the defendants adduces 5(three) witnesses to prove their respective claims.

4. That upon improper consideration of facts,

circumstances and evidences on record, the learned Assistant Judge, Fakirhat was pleased to decreed the suit in Title Suit No. 90 of 1996 on 5.04.2002.

5. That being aggrieved by dissatisfied with the judgment and decree dated 5.04.2002, the defendant as appellant preferred Title Appeal No.81 of 2002 before the learned District Judge, Bagerhat and the same was transferred to Joint District Judge, 1st.Court, Bagerhat and heard by the learned Joint District Judge, First Court, Bagerhat and disallowed the appeal on 18.01.2011.

6. That it is humbly stated that the appellate court has committed an error of law in not holding that the plaintiff has not able to prove the possession and dispossess of the suit land as such

such the plaintiff is not entitled to get the decree assuch the judgment and decree is liable to be set aside.

7. That it is humbly stated that the appellate court has committed an error of law in not holding that the defendant got possession from the Second Munsif Court on 5.09.65 and since then they have been possessing the suit land. So the plaintiff should file for recovery of khas possession within 12 years but the plaintiff did not file this case within 12 years ~~in~~ assuch this suit is barred by limitation.

8. That it is humbly stated that the appellate court has committed an error of law in not holding that the defendants are in possession

possession before the preparation of S.A.record as such

S.A.record has prepared in the name of defendant

✓ so the plaintiff have failed to prove that S.A.  
record wrongly prepared in the name of defendant  
as such the plaintiff has failed to prove their  
case so the plaintiffs are not entitled to get  
decree so the impugned judgment and decree is liable  
to be set aside.

9. That it is humbly stated that the appellate  
court has committed an error of law in not holding  
that the predecessor of the defendant, Kalicharan  
has no right, title and interest in the suit land.

10. That it is humbly stated that the appellate  
court has failed to consider that the predecessor of  
the defendant Kalicharan prepared his name in S.A.

Khatian in collusion with the staffs of settlement Officer which has caused a failure of justice.

11. That it is humbly stated that the appellate court failed to consider the judgment and decree of Title Suit No.80 of 1962 and also failed the exedution case no.27 of 1965 of Bagerhat Second Munsif Court, as such the decree passed by the appellate court is not substatinable in law.

12. That it is humbly stated that the appellate court has committed an error of law in not holding that the findings of the criminal court is not binding upon the civil court as such the judgment and decree of the appellate court is liable to be set aside.

15. That it is humbly stated that the appellate court has committed an error of law in not holding that the plaintiff has failed to prove the date on 20.5.95 that the defendants forcibly enter into the suit land and built a homestead as such the plaintiffs are not entitled to get a decree as prayed for.

14. That it is humbly stated that the appellate court should have pressure that plaintiff must prove his case the weakness of the defendant is not ground for passing a decree in favour of the plaintiff.

15. That it is humbly stated that the appellate court has failed to consider the documents which has filed by the defendants which has

has filed by the defendants which has caused a failure of justice.

16. That it is humbly stated that P.W.1 has said that - "মালিখী জমি নতুন ৪১১ দাগে রেকর্ড হয়েছে। নতুন জরিপে আমাদের না মে রেকর্ড হয়েছিল উওন রেকর্ডের বিরুদ্ধে বিবাদীরা জয়নাত করে ইহা সত্য। আমরা উহার বিরুদ্ধে ৩১ ধারা মতে ৪৮৮/২৯৪ ও ১২৬/১৫৮৯ আপীল করি। আপীল দুইটি খারিজ হয়ে গেছে। উহার বিরুদ্ধে কোন প্রতিকার শুর্যনা করি নাই।

P.W.2 অনন্ত কুমার বিশ্বাস - has said that দুই ভাইয়ের একটি বসত ঘর ও একটি পানাঘর ছিল। উওন ঘর সকাল ১০/১১ টাৰ সময় ভেট্টেছে। কথিত ঘর তাঁদের সময় তাপস ও মা বস নাবালক ছিল। আজ বা এন্তা কত তাঁরিখ তা বলতে পারব না।

P.W. ৩ প্রতাস হানদার - has said that আ পি ৫/৬ বৎসর আগে রাস্তায় এসে শুনি যে, দাগানাথাল হয়েছে। তাৰপৰ এসে দেখি ঘরৰ বাড়ী ভেট্টে উড়িষ্যে দিয়েছে নাঃ জমিতে তাৰ্কস বাড়ী করেছে। এসে দেখি ঘর ভেট্টে দিচ্ছে। ৫০/৬০ জন লোক ছিল। সে সময় তাপসেৱ বষ্টি ১৮/২০ বৎসর ছিল।"

From the above view of the fact that plaintiff could not prove the date of occurrence and date of dispossession .Hence the decree is liable to be set aside.

17. That it is humbly stated that after the pronont of judgment and decree dated 18.01.11.,  
*on 15-4-11*  
the opposite party has threatened <sup>that he will</sup> change the nature and character of the suit land and also transfer the suit land.If they able to do that the petitioner will suffer irreparable loss and injury so it is requested to be restrained by an order of injunction.

18. That it is humbly stated that after the pronouncement of judgment dated 18.1.2011 passed by the learned Joint District Judge,First Court,

Bagerhatin Title Appeal No.81 of 2002 your petitioner  
begs to move this revisional application on the  
following amongst other -

G R O U N D S :

I. Forthat the appellate court has committed an  
error of law in not following the mandatory  
provision of law under Order 41 rule 51 of the  
Code of Civil Procedure which has caused a failure  
of justice.

III. For that the appellate court has committed  
an error of law in not holding that the plaintiffs  
has not able to prove the possession and dispossess  
of the suit land as such the plaintiff is not  
entitled to get the decree as such the judgment  
and decree is liable to be set aside.

III. For that the appellate court has committed an error of law in not holding that the defendant got possession from the Second Munsif Court, on 5.09.65 and since then they have been possessing the suit land. So the plaintiff should file for recovery of khas possession within 12 years but then plaintiff did not file this case within 12 years as such this suit is barred by limitation.

IV. For that the appellate court has committed an error of law in not holding that the defendants are in possession before the preparation of S.A. record as such S.A. record has prepared in the name of defendant so the plaintiff have filed to prove that S.A. record wrongly prepared in the name of defendant as such the plaintiff has failed to prove their case so the plaintiffs are not entitled to get

get decree so the impugned judgment and decree is liable to be set aside.

V. For that the appellate court has committed an error of law in not holding that the predecessor of the defendant, Kalicharan has no right, title and interest in the suit land.

VI. For that the appellate court has failed to consider that the predecessor of the defendant Kalicharan prepared his name in S.A Khatian in collusion with the staffs of settlement officer which has caused a failure of justice.

VII. For that the appellate court failed to consider the judgment and decree of Title Suit

No.80 of 1962 and also failed the execution case no.27 of 1965 of Bagerhat Second Munsif Court, as such the decree passed by the appellate court is not sustainable in law.

VIII. For that the appellate court has committed an error of law in not holding that the findings of the criminal court is not binding upon the civil court as such the judgment and decree of the appellate court is liable to be set aside.

IX For that the appellate court has committed an error of law in not holding that the plaintiff has failed to prove the date on 20.5.95 that the defendants forcibly enter into the suit land and built a homestead as such the plaintiffs are not entitled to get a decree as prayed for.

X. For that the appellate court should have pressure that plaintiff must prove his case the weakness of the defendant is not ground for passing a decree in favour of the plaintiff.

XI. For that the appellate court has failed to consider the documents which has filed by the defendants which has filed by the defendants which has caused a failure of justice.

XII. For that P.W.1 has said that - " নানিশী জৰি নতুন ৪১০ মাগে রেকর্ড হয়েছে । নতুন জরিপে আমাদের বাবে রেকর্ড হয়েছিল উওঁ রেকর্ডের বিরুদ্ধে বিবা দীর্ঘ জয়নাত করে ইহাসত্য । আবেদ্ধা উহা র বিরুদ্ধে ৩১ ধাৰা মতে ৪৮৮/২৯৪ ও ৯২৬/১৫৮ আপীল কৰিব। আপীল দুইটি খারিজ হয়ে গেছে । উহার বিরুদ্ধে কোন প্রতিকার প্রাৰ্থনা কৰিব নাই ।

• P.W. 2 অবনু কুমাৰ বিশ্বাস - has said that " দুই তাইয়ের একটি বসত ঘৰ ও একটি পাঞ্জা ঘৰ ছিল । উওঁ ঘৰু সকাল ১০/১১ টাৰ সময় তেমেছে । কথিত ঘৰ তাঙ্গাৰ সময় তাপস ও মানস নাৰাজক ছিল । আজ বাঁচা কৰ তাৰিখ তা বলতে পারব না ।"

P.W. 5

প্রতাপ হান্দাৱ - has said that

মাঝি ৫/৬ বৎসৱ আগে রাস্তায় এসে শুনি যে, গোলমাল হয়েছে।

তাৰপৰ এসে দেখি ঘৰৰাড়ী তেন্তে উড়িয়ে দিয়েছে বাবু জমিতে তাপস  
বাড়ী কৱেছে। এসে দেখি ঘৰতেন্তে দিচ্ছে। ৫০/৬০ জন লোক ছিল।

সে সময় তাপসেৱ বয়স ১৮/২০ বৎসৱ ছিল।"

From the above view of the fact that plaintiff could  
not prove the date of occurrence and date of  
dispossession. Hence the decree is liable to be  
set aside.

ALII. For that the appellate court has failed  
to consider in misreading, misconstruing, misappraising  
mis-interpretating and non consideration of evidence  
on record and thereby erroneously decreed the suit.

Wherefore, it is most humbly

Prayed that your Lordships

would graciously be pleased to

to call for the records and issue  
rule calling upon the opposite party  
Nos.1 to 2 to show cause as to why  
the judgment and decree dated  
18.01.2011 (decree signed on  
25.1.2011) passed by the learned  
Court, Bagerhat in  
Joint District Judge, First ~~Appeal~~ Title  
Appeal No. 81 of 2002 affirming the judgment  
and decree dated 05.4.2002 (decree  
signed on 10.04.2002) passed by  
the learned Assistant Judge,  
Fakirhat, Bagerhat in T.S. No. 90/96  
in decreeing the suit, should not  
be set aside, on perusal the  
records, cause shown if any after  
hearing the parties or of their learned  
Advocates make the rule absolute  
and/or pass such other or further

order or orders as your Lordships  
may seem fit and proper.

A. H. D.

During the pendency of the Rule  
your Lordships would pleased to stayed  
the operation of the judgment and  
decree dated 18.01.2011 passed by  
the learned Joint District Judge,  
~~Court, Baghpat in Title~~  
First Appeal No.81/2002 may kindly  
be stayed.

And for this act of kindness your petitioner as in  
duty bound shall ever pray.

A. F. F. I. D. A. V. I. T.

I, Uttam Kumar Sarker, Son of Khagendra Nath Sarker  
of Village- Halderchakk, Police Station Paikgacha,  
District Kaulna, aged about 51 years, by faith Hindu,  
by occupation business, by nationality Bangladeshi  
do hereby solemnly affirm and say as follows :

1. That I am the ~~judbirkar~~ of the above case and am acquainted with the facts and circumstances of the above case.
2. That the statements made above are true to my knowledge.

Prepared in my Office

Sarathi Sarker  
Advocate Advocate

Sd/- Uttara Kumar Sarker  
Deponent

The deponent is known to me  
and identified by me.

solemnly affirmed before  
me on this the 21st. day  
of April, 2011

Sarathi Sarker  
Advocate Advocate

Commissioner of Affidavits,  
Supreme Court of Bangladesh,  
High Court Division, Dhaka.