

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 3118 of 2017

Md. Hemayet Uddin petitioner

-Versus-

Md. Mosharaf Hossain (Nanu Mia) and others
..... opposite parties

Mr. Sherder Abul Hossain with
Mr. Md. Ismail Hossain, Advocates
..... for the petitioner

Mr. Muhammad Ashraf Ali with
Mr. Md. Shahadat Alam, Advocates
..... for the opposite parties

Judgment on 29.07.2024

This rule at the instance of defendant 1 was issued calling upon the plaintiff opposite parties to show cause as to why the judgment and decree of the Additional District Judge, Court No. 2, Bagerhat passed on 13.06.2017 in Title Appeal No. 64 of 2011 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Chitalmari, Bagerhat passed on 29.03.2011 in Title Suit No. 55 of 2002 decreeing the suit should not set aside and/or such other or further order or orders passed to this Court may seem fit and proper .

The plaint case, in brief, is that land measuring .05 acres of SA khatian 29 and .02 acres of SA khatian 136 of Fulmoni mouja was owned, held and possessed by Makbular Mir. He died leaving behind 4 sons and 2 daughters and consequently each of the son got .0140 acres while each daughter got .007 acres. The plaintiffs thus got .0280

acres in their share. Defendant 1 claimed the suit land on 03.05.2002 on the strength of a deed of *heba-beel-awaj* from his father dated 24.07.1990. Makbular Mir became seriously ill in 1990. He opted to gift his land to all of his sons. Accordingly all of them went to the Sub-registry office on 24.07.1990. After execution of the deed the plaintiffs put their signature on it and accordingly it was registered but subsequently on reading of the contents of the deed they came to learn that defendant 1 wrote his name as sole donee in the deed and the plaintiffs were shown to have been attesting witness there. Defendant 1 then cancelled the *ewaz* deed on the same day through another registered deed. The plaintiffs used to possess the land through defendant 1 but he claimed the suit land on 03.05.2002 disclosing that he got it through aforesaid *heba-beel-awaz*. Hence the suit for declaration that the *heba-beel-awaz* deed dated 24.07.1990 in respect of 'kha' schedule land is collusive, fraudulent, illegal and also for partition of the suit land described in the schedule to the plaint.

Defendant 1 contested the suit by filing written statement. In the written statement he denied the statements made in the plaint and further contended that the Sonali Bank Ltd opened a branch over the suit building in 1980 and defendant 1 used to serve therein. The father of the plaintiffs and defendant at his free will transferred the land to this defendant on 28.07.1990 through the *heba-beele-awaz*. Thereafter, the repaired the building situated therein and renewed the

lease agreement with the bank. The price of the land has been increased and the plaintiffs on illegal lust instituted the instant suit. At the pressure of the plaintiffs the defendant was compelled to put his signature on the cancelation deed. Since the deed of *heba-beel-awaz* was executed and registered at the free will of Makbular Mir, the instant suit would be dismissed.

Defendants 2 and 4 also contested the suit by filing written statement. In the written statement they denied the fact of the pliant and further contended that their father transferred land to defendant 1 through the *heba-beel-awaz* at his free will. The plaintiffs threatened defendant 1 and compelled him to execute and register the deed of cancelation and hence the suit would be dismissed.

Defendants 3(Ka)-3(Ja) that, the heirs of one of the daughter of Mokbular Mir also appeared in the suit and claimed *saham* to extent of .007 acres.

Defendant 6 government filed written statement. In the written statement they stated that .02 acres of land in plot 202 of SA khatian 1 belongs to the government. In SA khatian 29 there is no plot as 202. Since the claim of the plaintiffs do not attract the land of the aforesaid khatian and plot, the suit would be liable to be dismissed.

On pleadings the trial Court framed 6 issues. In the trial the plaintiffs examined 3 witnesses and produced their documents as

exhibits 1, 1 (Ka), 2, 3 and 4. On the contrary defendant 1 examined 3 witnesses and their documents were exhibits-‘Kha-Jha(1)’. Defendants 6 examined 1 witness and its documents were exhibit-‘Ka(1)-Kha(1)’. However, learned Assistant Judge decreed the suit deciding all the material issues in favour of the plaintiffs. Against which defendant 1 preferred appeal before the District Judge, Bagerhat. The Additional District Judge, Court No. 2, Bagerhat heard the said appeal on transfer and dismissed it affirming the judgment and decree passed by the trial Court. Being aggrieved by defendant 1 approached this Court with the present revision and the rule was issued.

Mr. Sherdar Abul Hossain, learned Advocate for the petitioner takes me through the judgments of the Courts below and other materials on record and submits that both the Courts below misread exhibit-3, i.e., the declaration made by the petitioner registered in the Sub-registry office and decreed the suit holding that through the deed defendant 1 extinguished his right in the suit land. Mr. Hossain takes me through the contents of the deed and submits that through that deed the earlier deed executed by Makbular Mir in favor of him transferring the land measuring .07 acres by a *heba-beel-awaz* has not been cancelled. Through it the plaintiffs can only get their share of profit from the suit land with building but they cannot get the share in the land as prayed for. They are not entitled to get partition of the suit

land. Mr. Hossain further submits that if this document exhibit-3 stands in that case the only 4 sons of late Makbular Mir can get the suit land and other 2 daughters would be deprived of. Both the Courts below misread the document exhibit-3 and thereby committed error of law resulting an error in such decision occasioning failure of justice in decreeing the suit for partition and declaration as prayed for. The rule, therefore, would be made absolute.

On the contrary, Mr. Mohammad Ashraf Ali, learned Advocate for opposite parties 1-11 submits that the Courts below on assessing the evidence of both the parties both oral and documentary concurrently found that through exhibit-3 defendant 1 extinguished his claim over the suit land covered by *heba-beel-awaz* exhibit-2. The findings of the Courts below are based on evidence on record. Through exhibit-3 all power has been given to the plaintiffs including right of transfer of the property. There is nothing in the record to interfere with the concurrent findings of the Courts below. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record particularly exhibits- 2 and 3.

It is admitted fact that .07 acres of land with building as described in the schedule to plaint originally belonged to Makbular Mir, father of the plaintiffs and defendants. Both the parties admits the execution and registration of the *heba-beel-awaz* exhibit-2 by

Makbular Mir registered on 28.07.1990. The plaintiffs claimed that defendant 1 fraudulently inserted his name only as donee and the plaintiffs were shown as attesting witness there. They further claimed that on that very day they found the contents of the deed and detected the fraud committed by defendant 1. They told him to execute a deed of declaration giving up his right over the suit land and he did it as has been found in exhibit-3. The defendant petitioner claimed that the *heba-beel-awaz* was executed by his father at his free will and the property was handed over to him but on the pressure of the plaintiffs he executed and registered the deed of declaration exhibit-3. On going through the oral evidence of the parties and contents of the declaration deed made by defendant 1 on the same day, I find that every right in the enjoyment of the suit property including transfer has been given to all the sons of late Makbular Mir. The contents of the deed exhibit-3 is as under:

“তাহাতে আমি এই মর্মে ঘোষণা করিতেছি যে, আমি অদ্য আমার পিতার প্রদত্ত ২৪.০৭.১৯৯০ তারিখের ১৯৫৩ নং হেবা দলিলে চিতলমারী বাজারস্থ নিম্ন তপসিলে বর্ণিত দাগ নং স্থিত ইমারতসহ যে সম্পত্তি হেবা সূত্রে প্রাপ্ত হইয়াছি তাহাতে নিম্নলিখিত সর্ভানুযায়ী ঘোষণাপত্র লিখিয়া দিয়া স্বীকার ও অঙ্গীকার করিতেছি যে, উক্ত সম্পত্তির অধিকারী সমভাবে আমার ভ্রাতা ১) আমজাদ হোসেন মীর ২) শাহাদাত হোসেন মীর ৩) শাহজান মীর পিং মোঃ মকবুলার রহমান মীর উক্ত ভ্রাতৃগণ ভোগ দখলের অধিকারী হইবেন ও উক্ত সম্পত্তি হইতে উপস্থিত লভ্যাংশের সমঅধিকারী হইয়া সুষ্ঠুভাবে ভোগদখল করিবেন। তত্ত্বাবধান আমিই করিব। যদি ভবিষ্যতে কেহ দায়গ্রস্থ হইয়া

হস্তান্তর করিবার ইচ্ছা প্রকাশ করেন তাহা হইলে আমি বা উক্ত ভ্রাতৃত্রয়ের মধ্যে যিনি সক্ষম হইবেন তাহার নিকট হস্তান্তর করিবেন। ইহার ব্যতিক্রম হইলে উক্ত সম্পত্তির দাবী এই ঘোষণা পত্রানুসারে বাতিল বা বরবাদ হইয়া যাইবে।”

On going the through contents of the deed of declaration exhibit-3, I find that the plaintiffs have been able to prove their case that defendant 1 fraudulently managed to execute and register the *heba-beel-awaz* (exhibit-2) through his father and subsequently executed and registered deed of declaration (exhibit-3) through which he gave up all his rights over the suit land and shifted it to his brothers which they are entitled. Both the Courts below correctly assessed oral evidence of the parties as well as the contents of the deed of declaration exhibit-3 and came to the conclusion that the plaintiffs are co-sharers in the suit land and they are entitled to get their share in the landed property. The submission of Mr. Hossain, learned Advocate for the petitioner thus bears no substance. I find no misreading and non consideration of the evidence and other materials on record for which the decision passed by the Courts below could have been otherwise.

Therefore, this rule bears no merit. Accordingly, it is discharged. However, there will be no order as to costs. The order of stay stands vacated.

Communicate this judgment and send down the lower Court records.

Rajib