

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

**Present:**

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No. 1392 of 2009**

Md. Mizanur Rahman

.....petitioner.

Md. Mahfuzur Rahman & others.

.....Opposite parties.

None appears.

For the petitioner.

Mr. A. J. Mohammad Ali with

Mr. Md. Golam Noor, Advocates.

For the opposite parties.

**Heard on:** The 13<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> November, 2014

**Judgment on :** The 30<sup>th</sup> November, 2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and order dated 06-11-2008 by which the learned District Judge, Chapainawabganj dismissed Title Appeal No. 152 of 2007 and thereby affirmed those dated 14-03-2007 passed by the learned Senior Assistant Judge, Sadar, Chapai Nowabganj dismissing Title Suit No. 212 of 2002 instituted by the present petitioner for declaration in respect of some land.

**Plaintiff's Case:**

The plaintiff petitioner Md. Mizanur Rahman instituted the above noted suit for declaration of his title to  $\frac{1}{3}$  (one-third) share in the Kha schedule land measuring 25.19 decimals as described in the plaint and also for a declaration that the decree passed in Title Suit No. 187 of 1995 of the Court of Assistant Judge, Nowabganj Sadar, as described in the schedule Ga to the plaint is illegal, fraudulent and not binding upon the plaintiff.

Plaintiff claims that the Ka schedule land originally belonged to Thahirun Nessa. In 1963, plaintiff's paternal grand parents (দাদা-দাদী) decided to purchase the land for Tk. 7,500/-. But they had no sufficient money. So they involved the third purchaser being the plaintiff Md.Mizanur Rahman who was then a boy of three years. Plaintiff's parents supplied 1/3 of the price being Tk. 2500 that was collected as gift for the plaintiff on the occasion of the later's circumcision (ঘটনা).

Thus the property was jointly purchased in the names of three persons being plaintiff's grand parents and plaintiff himself in equal shares by kabala dated 24-08-1963. Defendant No. 2 Majibar Rahman, being plaintiff' paternal uncle and father of defendant No.1 is the eldest son of plaintiff's grand parents and was in charge of the purchase matter and fraudulently got his own name written in the kabala as father of the plaintiff.

Plaintiff has been in possession and title of his 1/3 share. His co-purchasers being his grand parents admitted plaintiff's title and possession by way of transferring their 2/3 share to their five sons being defendant Nos. 3-5 and two other sons Md. Ali and Shamsul Huq by Heba bil Ewaz dated 21-03-1983.

On 29-08-2002 plaintiff came to know that his paternal cousin, defendant No. 1, had impleaded himself as one of the plaintiffs and obtained the disputed decree by showing his name with an alias name as Mijanur Rahman in collusion with the later's father Majbar Rahman (defendant No.3). Hence the suit.

### **Defendant's Case**

Defendant No. 1 has denied plaintiff's title and possession. He claims that he has an alias name Mijanur Rahman. He further claims that the suit property was jointly purchased in 1963 in the names of the grand parents and the defendant. However defendant's name was partly written in the kabala as Md.

Mizanur Rahman, but his father's name being Majibur Rahman was correctly written. At that time plaintiff was not even born, because plaintiff's date of birth was in 1966.

Defendant No.1 and his father and uncles jointly instituted Other Class Suit No. 187 of 1995 and obtained a lawful decree against some other persons on the basis of the disputed deed. In that suit plaintiff's father himself and his other brothers admitted defendant's name as Mahfuzur Rahman alias Mizanur Rahman and his share of possession and title.

### **Deliberation in Revision**

At the hearing of this Revision, none appears for the plaintiff (petitioner), although the matter has been appearing in the cause list with the names of the learned Advocates for both sides on consecutive days.

However, in the Revisional application, the petitioner (plaintiff) has taken the grounds that the Courts below misconceived the pleadings and the evidence on record, namely the deed of purchase dated 24-08-1963 wherein plaintiff's name is clearly written, and that the Courts below also failed to consider the evidence of the P.Ws. 2 and 3 to the effect that plaintiff's mother, on behalf of the plaintiff, paid the consideration and that plaintiff is in possession of the suit land.

Mr. Md. Golam Noor, the learned advocate for the opposite party (defendant), submits that the courts below have recorded concurrent findings with regard to the plaintiff's date of birth in 1966 on the basis of the document produced by the plaintiff himself namely S.S.C Examination Certificate and accordingly disbelieved the alleged acquisition of plaintiff's title in 1963.

Mr. Noor, the learned advocate next submits that the courts below recorded concurrent findings on the question of joint possession of the parties.

Mr. Noor, the learned advocate lastly submits that in the earlier suit being Other Class Suit No. 187 of 1995, the father of the plaintiff and other uncles have, by signing the plaint, admitted the fact that the real name of defendant No. 1 is Mahfuzur Rahman @ Mizanur Rahman and therefore present petitioner (plaintiff) Mizanur Rahman can not disown such admission made by his own father.

Mr. A.J. Mohammad Ali, the learned advocate also appears for the opposite party (defendant) and submits that the suit is not maintainable, because declaration to 1/3 share of the Ka schedule land is unspecific and that the second relief in respect of the decree passed in Other Class Suit No. 187 of 1995 is only a consequential relief and therefore none of the relieves can be awarded.

### **Findings and decision in Revision**

On perusal of the materials on record I find that the fundamental dispute between the parties is with regard to the exact name of the plaintiff and defendant No. 1. This dispute arose because, in the admitted purchase document of 1963, one of the three purchasers is shown as “মিজানুর রহমান, পিতা- মজিবুর রহমান”.

Plaintiff (মিজানুর রহমান) claims that his father’s name being Aatur Rahman was wrongly written as মজিবুর রহমান. On the contrary, defendant No. 1 Mahfuzur Rahman claims that he has got an alias name Mizanur Rahman and that his father’s name Mojibur Rahman has been correctly written in the purchase document.

With regard to the difference in the names, it appears that no other family member appeared in the court room to depose except Mohammad Ali, as P.W. 2. He is the paternal uncle both the plaintiff and defendant No. 1. He stated in examination in Chief that “মাহফুজুর রহমান এর ডাক নাম বেঞ্জু”. He further stated বাদী নালিশী জমিতে বসবাস করে। মিজানুর রহমানের নাম মাহফুজুর রহমান নহে বা মাহফুজুর রহমানের নাম মিজানুর রহমান নহে”.

I find nothing on record that he is an interested witness. He is the most relevant and dependable witness. His testimony with regard to the disputed name is corroborated by defendant No.1 himself deposing as D.W.1 who in cross-examination stated that “আমার সমস্ত শিক্ষাগত সনদ ব্যবসায়ী লাইসেন্স, বিবাহের কাবিননামায় মাহফুজুর রহমান লেখা আছে”. Exhibit-Ka being the true of the kabinama of defendant No.1 also shows that his name is recorded as “মাহফুজুর রহমান (বেঞ্জু)”।

It further appears that the defendant did not produce any other evidence with regard to his alias name. However the plaint of the Other Class Suit No. 187 of 1995 (Exhibit-1) produced by the plaintiff shows that the present defendant No. 1 is plaintiff No.1 of that suit with the name Mahfuzur Rahman @ Mizanur Rahman. This document further shows that the other plaintiffs were his father and paternal uncles including present plaintiff’s father Ataur Rahman. However P.W.2 Mohammad Ali was not a party to that suit.

It is revealed from that plaint (Exhibit-1) that the said suit was in respect of correction of the record of right, wherein the names of some other persons were included showing higher quantum of land than they were entitled to. The suit was decreed experte (Exhibit-1(kha)). It is evident that the issue raised in that suit was not the correctness of the name of the present different No.1 and that of the present plaintiff, as raised in this suit. However the latter was not a party to that suit.

So the plaint or decree passed in that suit does not help resolve the dispute about the truth of the alias name as claimed by the present defendant No. 1. However the plaint of that suit at best raises a presumption that plaintiff's father and his other brothers, not being Mohammad Ali, by way of signing that plaint indirectly admitted the alias name of Mahfuzur Rahman. But that admission does not bind the present plaintiff Mizanur Rahman, as he was not a party to that suit. Nor does it bind the common uncle Mohammad Ali (P.W.2) who denied the alias name of defendant No.1 as Mizanur Rahman.

It follows that somehow a mistake occurred in writing the name of the third purchaser as “মিজানুর রহমান পিতা মজিবুর রহমান” in the joint kabala of 1963.

But the reality with regard to joint possession is reflected in the statements of plaintiff himself as P.W.1 who stated that defendant is partly in possession of the property in the northern side. P.W.3 also stated that “১নং বিবাদীসহ সকলে এজমালীতে বসবাস করে”.

With regard to title of the plaintiff, both the Courts below concurrently recorded the finding that his title is not proved, because of the fact that his date of birth is recorded in his S.S.C certificate (Exhibit-2) as in 1966 and therefore he had no existence in 1963. This finding of the Courts below is well reasoned and based on legal evidence. I agree with this finding.

With regard to possession the Courts below found that the suit land is jointly possessed by plaintiff and defendant No.1. So plaintiff's exclusive possession is not proved. I agree with this finding also.

I agree with Mr. A. J. Mohammad Ali that the second relief with regard to legality of the decree in the previous suit and its effect on establishment of plaintiff's right is dependant on

proof of his title, and that since plaintiff failed to prove his title he has no standing to challenge the decree obtained in Other Class Suit No. 187 of 1995.

However I must observe that the issue as to whether defendant No. 1 Mahfuzur Rahman has an alias name as Mizanur Rahman was not an issue in that suit and this aspect was not decided in the said suit. In the present suit, defendant No.1 failed to prove that his alias name is Mizanur Rahman, rather his alias name is found to be  $\text{ঐঞ্জ}$ . Of course this findings does not by itself enable the plaintiff to get any relief.

In view of the above I hold that the Rule has no merit.

In the result, the Rule is discharged. No order as to costs.

Send down the L.C. record with the copy of this judgment and order to the said court.

Habib/B.