

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 2088 OF 2020

Md. Khokon Howladar and others
Defendants- Appellants-Petitioners

Versus

Abdur Rashid Hawladar
Plaintiff-Respondent-Opposite Party

Mr. Manjurul Alamgir, Advocate
for the defendants-appellants-petitioners

Mr. Md. Mahbubur Rahman, Advocate
for the opposite party No. 1

Judgment on: 30.11.2023

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 24.08.2020 passed by the learned Divisional Special Judge and Special District Judge, Barishal in Title Appeal No. 55 of 2016 dismissing the appeal and thereby affirming the Judgment and Decree dated 24.03.2016 passed by the learned Assistant Judge, Ujirpur, Barishal in Title Suit No. 59 of 2003 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No. 1 as plaintiff on 18.10.2016 filed Title Suit No. 142 of 2016 in the Court of the learned Assistant

Judge, Ujirpur, Barishal praying for declaration that the Kabala No. 1892 executed and registered on 28.08.1981 and the Kabala No. 1893 executed and registered on 31.08.1981 are fraudulently executed and registered by false personation and as such those kabala are not binding upon the plaintiff.

The Case of the plaintiff in short, is that the adopted father of defendant No. 1 Safizuddin Hawlader became owner in the suit land by purchase and he gifted the same on condition to the defendant No.1 who mutated his name through Mutation Case No. 539 (IX-II) of 1186-87 within the knowledge of the Safizuddin Hawlader and paid rents on the basis of that mutation khatian and obtained Dakhila and thereafter the defendant No.1 mortgaged the said land with the Bank and obtained loan from the Bank and failed to repay the loan defendant No. 1 sold the said land to the plaintiff through registered deed dated 31.08.1981 and adjust the Bank loan. Thereafter, the plaintiff mutated the suit land in his favour through Mutation Case No. 605 (IX-XI) of the year 1981-1982 and obtained separate mutation khatian and paid rents to the Government and has been possessing the suit land. In the meantime, father of the defendant No. 1 with ill motive created a cancellation deed dated 28.10.1981 registered on 01.01.1981 cancelling the deed dated 07.05.1980 registered on 12.07.1980. The land of cancellation deed dated 28.10.1981 and subject matter

of this suit is the same and that the plaintiff instituted the instant case with a prayer for declaration that the cancellation deed dated 04.01.1981 registered on 28.10.1981 is void and not binding upon the plaintiff.

The defendant Nos.2-4 contested the suit by filing a written statement stating inter alia that the adopted father of the defendant No. 1 Safizuddin Hawladar being owner of the suit land gifted the same on condition to his adopted son defendant No. 1 vide a registered deed dated 27.05.1980 and the defendant No. 1 violated the condition of the gift deed and for his misbehavior he cancelled the said deed of gift dated 27.05.1980 through a cancellation deed dated 28.10.1981 registered on 02.11.1981 and Safizuddin never surrendered possession of the suit land in favour of defendant No.1 and mutation khatian created by the defendant No. 1 collusively with the Official of Revenue Office and Safizuddin Hawlader after cancellation of gift deed sold to Aziz Hawlader .18 acre of Plot Nos. 303 and 602 from Khatian No. 344 and thereafter Abdul Aziz Hawlader gifted .18 acre land to defendant No. 2 though a Heba bil Ewaz dated 12.11.1988 being No. 311 of Ujirpur Sub Registry Office and thereafter Safizuddin gifted to defendant Nos. 2 and 3 total 1.15 acre land. The plaintiff has no right and title in the suit property.

The learned Assistant Judge, Uzirpur decreed the suit by its Judgment and Decree dated 24.03.2016 and hence the defendant as appellant preferred Appeal being Title Appeal No. 55 of 2016 before the Court of the learned District Judge, Barishal who disallowed the appeal by its Judgment and Decree dated 24.08.2020 and thus the defendant-appellant as petitioner moved this application under section 115(1) of the Code of Civil Procedure, 1908 before this Court and obtained the Rule.

Mr. Manjurul Alamgir, the learned Advocate on behalf of the defendants-appellants-petitioners, submits that the Appellate Court below as well as the Trial Court should have found that plaintiff's suit is barred by limitation. He further submits that the plaintiff disclosed the fact that the plaintiff had knowledge about the impugned deed of cancellation since 1982 but he filed the suit in 2003 a long time after beyond limitation.

Mr. Md. Mahbubur Rahman, the learned Advocate on behalf of the plaintiff-respondent-opposite party opposes the Rule and submits that Safizuddin Howlader adopted father of defendant No. 1 gifted the suit land to defendant No. 1 vide registered deed and thereafter with ill motive created a registered cancellation deed. Mr. Mahbub then submits that a registered gift deed cannot be avoided by creation of subsequent deed of cancellation. In support

of his submission he has referred a case of Jobeda Bewa and others Vs Md. Abdur Razzaque reported in 12 MLR(AD) 15.

Heard the learned Advocates for both the parties and perused the record.

From the record it appears that the father of the defendant No. 1 gifted the suit land to the defendant No. 1 who mutated his name through Mutation Case No. 539 (IX-II) of 1186 within the knowledge of his father and paid rents to the Government and thereafter mortgaged the suit land with the Bank and obtained loan and subsequently sold the same to the plaintiff who mutated his name. On the other hand the father of defendant No. 1 with ill motive created a registered cancellation deed in respect of the suit land. But the law is well settled that a registered deed of gift duly acted upon by delivery of possession of the suit land cannot be cancelled by subsequent registered deed. In fact, registered instrument cannot be avoided except by a decree of competent Civil Court.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 24.08.2020 passed by the learned Divisional Special Judge and Special District

Judge, Barishal in Title Appeal No. 55 of 2016 dismissing the appeal and thereby affirming the Judgment and Decree dated 24.03.2016 passed by the learned Assistant Judge, Ujirpur, Barishal in Title Suit No. 59 of 2003 decreeing the suit is hereby upheld.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.