IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 23 OF 2016

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Sayed Suleman Hasan and another

--- Plaintiff- Respondent- Petitioners (Petitioner No. 2 now deceased and substituted).

-Versus-

Mushammat Nurunnessa Begum and others

---Defendant-Appellant-Opposite Parties.

Mr. Surojit Bhattacharjee with
Ms. Farhana Siraj Ronnie and
Mr. Monishankar Sarkar, Advocates

--- For the Petitioners.

Mr. Nirmalendu Deb with
Mrs. Sharmin Rubayat Islam**,** Advocates

---For the Opposite Parties.

Heard on: 14.08.2022, 24.08.2022, 01.12.2022, 04.12.2022 and 27.02.2023.
Judgment on: 28.03.2023.

At the instance of the present plaintiff-respondent-petitioners, Sayed Suleman Hasan and another {Petitioner No. 2, namely, Sayed Abu Daud being dead his legal heirs: 2(a)-2(f)}, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the

opposite party Nos. 1-3 to show cause as to why the impugned judgment and decree dated 08.11.2015 passed by the learned Joint District Judge, Additional Court, Sylhet in the Title Appeal No. 71 of 2005 by allowing the appeal and thereby reversing the judgment dated 31.03.2005 passed by the learned Senior Assistant Judge, Sadar, Sylhet in the Title Suit No. 37 of 2004 by decreeing the title suit should not be *set aside*.

The relevant and important facts for disposal of this Rule, *inter-alia*, are that the petitioners as the plaintiffs filed the Title Suit No. 37 of 2004 in the court of the learned Senior Assistant Judge, Sadar, Sylhet against the opposite parties for declaration of title, confirmation of possession, permanent injunction and for declaration of the gift deeds dated 31.03.19977 and 11.03.1977 as the illegal and collusive, therefore, not binding upon the plaintiffs. The plaint contains that Rahima Banu and Mahirunnessa Khatoon were the original owners by way of successions. Rahima died leaving behind her daughter Abirunnessa alias Amirunnessa as her legal heir and Mahirunnessa died leaving behind her sons Abdul Malique and Abdul Rouf as her legal heirs who sold the land to one Shamsul Haque by a sale deed dated 02.02.1968. The said Abirunnessa

and Shamsul Haque transferred the land measuring .075 acres of land to the plaintiff No. 1 by the sale deed being No. 1678/68 and handed over the possession and the plaintiff No. 1 constructed dwelling house thereof. The said Amirunnessa and Shamsul Haque again transferred the remaining land measuring .075 acres of land to one Abdul Rouf by the sale deed being No. 1679/60 and the said Abdul Rouf sold the land measuring .0375 acres of land out of his purchased land to one Abdur Rab by the sale deed being No. 9546/69 dated 26.06.1969. Thereafter, Abdur Rab transferred the same land to the plaintiff No. 1 by a sale deed No. 4871/73 dated 06.02.1973 and delivered the possession. The said Abdur Rouf transferred his remaining land measuring .0375 acres to Md. Manir Uddin by a sale deed dated 03.12.1985 and he transferred the same land to one Khijir Ahmed by a sale deed dated 09.08.1987. The plaintiff No. 1 transferred .0375 acres of land out of .1125 acres of land to his daughter's husband, namely, Khijir Ahmed by a sale deed dated 02.09.1987. The defendant No. 1 remained in possession of .0750 acres of land the said Khijir Ahmed transferred .0750 acres of land to the plaintiff No. 2 by the registered deed being No. 15787/99 dated 27.12.1999 and possession was handed over to

the purchaser. After purchasing the said land the record of rights was properly published. The plaintiff No. 2 is the son of the plaintiff No. 1 who have been possessing total land measuring .15 acres of land by residing thereon. The defendant No. 1, namely, Sayed Shafiqul Hasan now deceased was the full brother of the plaintiff No. 1 who used to reside at Komalgonj, Moulvibazar. After his death, his wife defendant No. 1 and sons defendant Nos. 2 and 3 have been residing upon the suit land but they did not have any right, title or interest thereof. On 25.01.2004 the plaintiffs came to know about the deeds of gift dated 11.03.1977 and 25.03.1977 which were forged and not acted upon.

The present opposite party Nos. 1-3 as the defendants contested the suit by filing a written statement contending, *inter alia*, that the suit land was originally belonged to the plaintiff No. 1 and when he was in possession he transferred the same land to his brother, the predecessor of the defendant Nos. 1-3. Sayed Shafiqul Hasan transferred the same land by the deed of gift dated 11.03.1977 and delivered the possession of the same. He also transferred the same land to his wife, defendant No. 1, Mushammat Nurunnessa Begum by another deed of gift dated

25.03.1977 and handed over the possession thereof. The defendants have been possessing the land by constructing dwelling houses thereon and the defendant No. 1 mutated her name in the mutation as Khatian being No. 1070/1978-79. Later on, due to her office job, she used to live in the area of working place but occasionally she used to live in the suit land.

After hearing the parties the learned Senior Assistant Judge, Sadar, Sylhet decreed the suit by the judgment and decree dated 31.03.2005. Being aggrieved the present defendant-opposite parties preferred the Title Appeal No. 71 of 2005 in the court of the learned District Judge, Sylhet but the appeal was transferred to the learned Joint District Judge, Additional Court, Sylhet to hear the matter and who after hearing the parties allowed the appeal, thereby, reversing the judgment and decree of the learned trial court.

This revisional application has been filed under section 115(1) of the Code of Civil Procedure by the present plaintiff-petitioners (Petitioner No. 2 now deceased and substituted) challenging the legality of the impugned judgment and decree and the Rule was issued by this court thereupon.

Mr. Surojit Bhattacharjee, the learned Advocate, appearing along with the learned Advocates, Ms. Farhana Siraj Ronnie and Mr. Monishankar Sarker on behalf of the plaintiff-petitioners, submits that the learned court of appeal below did not at all consider the oral evidence on record on the question as to the possession of the suit property and therefore apparently committed an error of law resulting in an error in the decision occasioning failure of justice in reversing the findings of the learned trial court on this point. The findings of the learned appellate court below were not based on proper reading and appreciation of the oral evidence adduced and produced by the parties. The impugned judgment of reversal in this case was neither legal nor proper.

He also submits that the learned court of appeal below ought to have found that the alleged gift deeds regarding the suit property have not been acted upon and the defendants had no possession of the suit property by alleged gift deeds and upon such findings he should have allowed the title appeal and thereby not doing so the court of appeal below committed an error of law by reversing the judgment of the learned trial court, therefore, the Rule should be made absolute.

The Rule has been opposed by the present opposite parties.

Mr. Nirmalendu Deb, the learned Advocate, appearing along with the learned Advocate, Mrs. Sharmin Rubayat Islam, on behalf of the opposite parties, submits that the learned trial court after hearing the parties committed an error of law by decreeing the suit but the learned appellate court below lawfully allowed the appeal and thereby reversed the judgment of the learned trial court on the ground that the suit was clearly barred by limitation because the impugned deeds of gift were executed and registered on 31.03.1977 by the plaintiff No. 1 himself and another registered deed dated 11.03.1977 but the plaintiffs filed the suit on 28.11.2004 in gross violation of the Article 120 of the Limitation Act, 1908 which provides the period of Limitation for 6 (six) years.

The learned Advocate further submits that the impugned deed of gift dated 31.03.1977 was a registered deed and another registered deed dated 11.03.1977 has been defined as under section 122 of the Transfer of Property Act, 1882 and no illegality was detected in both the registered deeds, therefore, the Rule is liable to be discharged.

He also submits that the learned appellate court below properly examined the documents and depositions of the PWs and DWs in order to come to a conclusion that the deeds of gift executed in the year 1977 and the same were lawfully executed but the learned trial court misreading the deeds and thereby committed an error of law, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present plaintiff-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the relevant and required documents available in the lower courts record, it appears to me that the present petitioners as the plaintiffs filed the title suit claiming title, confirmation of possession and permanent injunction and also challenging the legality of the deeds of gift executed in the year 1977 by the predecessor of the plaintiff No. 1 (now deceased). The plaintiff- petitioners claimed that they have been in possession since 1968 by way of succession and

also by way of transfer through several sale deeds and also claimed that they are in absolute possession of the suit land in total measuring .15 acres. The plaintiff No. 1 (now deceased) never executed any deed of gift in favour of his brother Sayed Shafiqul Hasan (the husband of the defendant No. 1, namely, Mushammat Nurunnessa Begum) and it was created falsely. On the other hand, the defendants contended that the plaintiff No. 1 executed a deed of gift dated 11.03.1977 in favour of his brother Sayed Shafiqul Hasan by a deed of gift dated 11.03.1977 in front of his wife (defendant No. 1), in particular, the D.W. 5 and the said Sayed Shafiqul Hasan transferred the suit land in favour of his wife on 25.03.1977 who contested the suit as the defendant No. 1.

In view of the above given factual and legal aspects of this case, this court has to take a decision upon the impugned judgment as to whether he has committed any error of law by passing the said impugned judgment or not. In order to answer the above question I have carefully examined the judgments passed by both the courts below and also examined the documentary evidence and depositions as PWs and DWs.

The admitted position between the parties is that the plaintiff No. 1 and the husband of the defendant No. 1 are full brothers. The admitted position is that the plaintiff No. 1 was the original owner of the suit land since 1968. However, there are some disputes between the parties as to the title and possession of the suit land that the plaintiffs were in possession by way of succession and transferred later on but the defendant- opposite parties opposed the said claim by contending that the suit land was transferred by the said plaintiffs in the year 1977 by way of executing the deeds of gift. In this regard, the plaintiff-petitioners claimed that they started to search the deeds of gift which were executed by the plaintiff No. 1 in favour of his full brother, namely, Sayed Shafiqul Hasan, the husband of the defendant No. 1, namely, Mushammat Nurunnessa Begum in the year 1977 but the plaintiffs were not aware of the said deeds until 2004 when the suit was filed is not practicable or believable. Both the parties claimed their title and possessions but the documents adduced and produced by the parties in support of their cases the present opposite parties seem to have been in possession by constructing the dwelling houses upon the suit land.

Regarding the deeds executed on 11.03.1977 and thereafter 25.03.1977 the learned trial court erroneously found that the deeds were not correct or legal because the defendants could not prove the validity of the said deeds but the learned appellate court below examined the deeds carefully and came to a conclusion that the DW- 5, Abul Fazal Monsur Ali, deposed in court that the plaintiff No. 1 executed the said deeds of gift in front of him without any influence from anybody but PW could not rebut by adducing PW. A question may arise whether a deed of gift is executed or not in favour of another brother. In this regard, neither of the parties dealt with the matter by giving evidence as to the purpose and intention for creating the said deeds. However, the plaintiffs were under an obligation to prove their own case as to the title and as to the said deeds of gift but only challenging that those were created collusively which are not sufficient as per the legal provisions of the Evidence Act which required to prove by the plaintiffs of their claim on the balance of probability.

In the instant case, I could not find any vital evidence for disproving the evidence rather the plaintiffs challenged the deeds of gift but the plaintiffs took 27 years to challenge the deeds

which are barred by limitation but the learned courts below did not enter into this aspect of this suit.

In view of the above, I consider that the learned trial court misread the evidence and thereby came to a wrongful conclusion which has been reversed by the learned appellate court below after considering the validity of the deeds of gift.

Now, I am going to examine the findings of the learned courts below:

The learned trial court came to a wrongful conclusion in the following findings and manner:

> ...“অতএব বিবাদীপক্ষ উক্ত দান দলিল মূ-ল হস্তান্তর এবং মুসলিম আইন অনুসা-র দা-নর শর্ত সমূহ পুরণ করিয়া নালিশী সম্পত্তি দান হইয়াছে তাহা প্রমাণ করিতে চরমভাবে ব্যর্থ হইয়াছেন পক্ষান্তরে উপরোক্ত আলোচনার প্রেক্ষিতে বলা যায় যে, নালিশী সম্পত্তিতে বাদীপক্ষের স্বত্ব দখল রহিয়া-ছ।
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> ৪ নং বিচার্য বিষয় আ-লাচনা ও সিদ্ধান্তঃ- উভয় প-ক্ষর মৌখিক ও দালিলিক সাক্ষ্য এবং পারিপার্শ্বিক অবস্থা পর্যা-লাচনা করা হইল। পর্যা-লাচনা করিয়া এই সিদ্ধান্ত লওয়া যায় যে, বাদীপক্ষের মোকদ্দমা প্রমাণিত হয়। পক্ষান্ত-র বিবাদী পক্ষের মোকদ্দমা প্রমাণিত হয় না। যেহেতু বাদীপক্ষের মোকদ্দমা প্রমাণিত হয় তাই বাদীপক্ষ তাহাদের প্রার্থীত প্রতিকার পাইতে পা-র।”...

However, the learned appellate court below carefully examined the documents and reversed the judgment of the learned trial court which reads as follows:

...“তাছাড়া বিবাদীপ-ক্ষ ১১.০৩.১৯৭৭ ইং তারি-খ সম্পাদিত ৮০৪১ নং দলিলের দাতার সনাক্তকারী এ. এফ. মনছর উদ্দিনকে ডি. ডব্লিউ. ৫ হি-স-ব উপস্থাপন ক-র-ছন। তিনি ৮০৪১ নং দলি-লর দাতা-ক চি-নন এবং উক্ত দলিলে দাতার সনাক্তকারী ছিলেন হিসেবে তার স্বাক্ষর সনাক্ত করেছেন। এই দুজন সাক্ষী-ক বাদীপ-ক্ষ জেরা ক-র কোন বৈপরীত্য বের কর-ত পা-রন নি। ১১.০৩.১৯৭৭ ইং তাং সম্পাদিত ৮০৪১ নং দানপত্র দলিল (প্রঃ ক) হিসেবে চিহ্নিত হয়েছে। ঐ দলিল পর্যা-লাচনায় দেখা যা-চ্ছ দলি-লর প্রথম পৃষ্ঠার পিছ-ন এবং শে-ষর পৃষ্ঠায় দাতার সনাক্তকারী হিসেবে নাম- এ. এফ. মনছর উদ্দিন, পিতার নাম- মোঃ আনিস মিয়া, গ্রাম-আম্বরখানা, থানা- সদর, জেলা- সি-লট ঠিকানা উ-ল্লখ আ-ছ। ফলে, বিজ্ঞ নিম্ন আদালত দলিলে সনাক্তকারীর ঠিকানা নেই মর্মে যে সিদ্ধান্ত গ্রুহণ ক-র-ছন তা সঠিক নয়। তাছাড়া বিবাদীপ-ক্ষ দাখিলকৃত দলিল পর্যা-লাচনায় দেখা যা-চ্ছ, তারা ৪ ফর্দ খাজনার রশিদ (প্রঃ খ সিরিজ) এবং ৯০১৪ নং দলি-লর জমি নি-য় ১ নং বিবাদীর নামীয় নামজারী খতিয়ান নং ১০৬ (প্রঃ ঘ) দাখিল ক-র-ছন। তাছাড়া, বিবাদীপ-ক্ষ ডি. ডব্লিউ. ২ ও ৩ ব-লন বিবাদীগণ ১৯৮৩ সাল পর্যন্ত ৮০৪১ ও ৯০১৪ নং দলি-লর জমি-ত স্থিত ঘ-র ছিল এবং বর্তমা-ন আসা যাওয়া ক-র ম-র্ম সাক্ষ্য প্রদান ক-র-ছ। বাদীপক্ষ ৮০৪১ ও ৯০১৪ দলিলমূলে বিবাদীগণ তপসীলভুক্ত জমি দখ-ল পান নি ম-র্ম যে দাবী ক-র-ছন বিবাদীপক্ষ তা-দর দখল প্রমাণ ক-র বাদীপ-ক্ষর দাবী খন্ডন কর-ত পে-র-ছন ম-র্ম প্রতীয়মান হয়।”...

After considering the above conflicting judgments and decree, I am of the opinion that the learned trial court committed

an error of law by decreeing the suit on the basis of the possession of the suit land. However, the possession has been disputed by the present opposite parties. The learned appellate court below passed the impugned judgment and decree without committing any error of law, as such, I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below, thus, this Rule does not need to any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The judgment dated 08.11.2015 passed by the learned Joint District Judge, Additional Court, Sylhet in the Title Appeal No. 71 of 2005 by allowing the appeal and thereby reversing the judgment dated 31.03.2005 passed by the learned Senior Assistant Judge, Sadar, Sylhet in the Title Suit No. 37 of 2004 by decreeing the title suit is hereby upheld.

The interim order of direction was passed at the time of issuance of the Rule to maintain the *status quo* by the parties in respect of the possession and position of the suit land and subsequently the same was extended from time to time and

lastly, it was extended till disposal of the Rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.