

3 SCOB [2015] HCD 1

**High Court Division
(Civil Appellate Jurisdiction)**

Mr.Sk. Md. Morshed, Advocate.
..for the appellant.

First Appeal No.464 of 2012

Mr.Zakir Hossain Bhuiyan, Advocate.
..for the respondents.

Begum Monowara
...Appellant.

Vs.

Heard on : 15.02.15,16.02.15, 18.02.15,
19.02.15.

**Engineer Kazi Tanvir Shahid and
others.**

... Respondents

Judgment on : 23.02.2015, 25.02.2015,
01.03.2015.

Present :

**Mr.Justice Nozrul Islam Chowdhury
And
Mr. Justice Amir Hossain.**

Registration Act, 1908

Section 22A:

In view of the aforesaid amendment vide Registration Act,1908 (Act No.XXV of 2004) there is hardly any scope left for anyone to raise a question of forgery of a registered document since the photographs of both the executants are pasted on every instrument and the parties shall sign and put their left impression across their photographs in the instrument. More so, it is no bodies case that the photographs available in the impugned instrument or Heba deed is not the photographs of Kazi Shahidul Islam the father of the plaintiff Nos.1-3 and 5. Under such circumstances the allegation of forgery of the document in question can safely be brushed aside. ... (Para 37)

Judgment

Nozrul Islam Chowdhury, J:

1. This appeal is directed against the judgment and decree dated November12, 2012 passed by the learned Joint District Judge, 1st Court, Faridpur in Title Suit No. 05 of 2012, at the instance of the defendant as appellant.

2. Facts in a nutshell, giving rise of this appeal are that the respondents as plaintiffs instituted Title Suit No. 05 of 2012 before the Joint District Judge,1st Court, Faridpur impleading the appellant as defendant seeking a decree that the registered Heba Bil Ewaz bearing registration No.2128 dated 29.06.2011 as described in the schedule Ka of the plaint is a forged, fraudulent ,collusive one which has been created upon undue influence and the same is not binding upon the plaintiffs; the suit was instituted by the plaintiffs stating inter alia that the land and building described in schedule Kha to the plaint originally belonged to Mr.Kazi Shahidul Islam who was a business man as well as an industrialist; said Kazi Shahidul Islam while acting as Chairman of Confident Salt Ltd. he became mentally disturbed and as he was growing older he became a mental patient and was administered treatment at different times at Mental Health Institute under its Assistant Professor

Dr. Mahadeb Chandra Mondall who having found Mr. Shahidul Islam a mental patient, he was advised to be hospitalized but said Kazi Shahidul Islam was taken to the house situated at the land described in the Kha schedule of the plaint and the plaintiffs employed three persons to take care of said Kazi Shahidul Islam who are Sherina, Younus Ali and Idris Ali for full time care of the said patient Kazi Shahidul Islam; while Kazi Shahidul Islam was living in the said house as aforesaid, breathed his last on 24.08.2011 leaving behind the plaintiff Nos. 1-3 and 5 as four sons and plaintiff No. 4 as his widow; the defendant No. 1 is not in any way successor-in interest of late Kazi Shahidul Islam although she had a visiting term in the house described in the schedule Kha to the plaint since she was a sister, therefore, she also took part in taking care of said Kazi Shahidul Islam; it was also disclosed in the plaint that the plaintiff Nos. 3 and 5 including the wife i.e. plaintiff No. 4 used to pay occasional visit to said Kazi Shahidul Islam with a view to look after the said patient; at one stage on 26.11.2011 the care taker Younus Ali disclosed to the plaintiff No. 5 that defendant No. 1 along with her husband disclosed for the first time on 20.11.2011 that they are ready to come and reside in the house described in the schedule Kha to the plaint (herein after referred to as the suit house) upon removing the care takers employed therein to which the care taker expressed their reluctance to vacate the house but at one stage the defendant No. 1 and her husband disclosed that the suit property along with the land had already been transferred in their favour by a registered deed of gift executed by Kazi Shahidul Islam, therefore, as per the said deed the defendant No. 1 is the legitimate owner of the said suit property such a claim as made by the defendant No. 1 and her husband was communicated to plaintiff No. 5 by Younus Ali whereupon a certified copy of disputed Heba deed was obtained by the plaintiff on 7-12-2011 and then the plaintiff's derived their definite knowledge about the same on 07-12-2011; it was also disclosed in the plaint that Kazi Shahidul Islam had lost his mental balance he had been suffering from mental disease of serious nature as such was not in a position to transfer a valuable property like the suit land along with building situated thereon in favour of the defendant No. 1 depriving his four sons and wife who are the legitimate claimants of the property; Kazi Shahidul Islam did not transfer the suit property in favour of defendant No. 1 by way of Heba Bil Ewaz deed rather he had been residing in the same till his death, the plaint also discloses that the plaintiffs have been in possession of the suit land and building through their three employees and for taking care of their predecessor Kazi Shahidul Islam and possession of the suit property was never handed over to defendant No. 1 pursuant to registered deed of Heba which has been created fraudulently by way of undue influence and deception, therefore, the said Heba Bil Ewaz is void and sham transaction; it was also alleged in the plaint that Kazi Shahidul Islam never used Kazi Nurul Amin with his name although as a matter of fact signature available in the Heba deed described in schedule Ka to the plaint contained the name Kazi Nurul Amin Shahidul Islam, therefore, the said deed of Heba is illegal void forged and fraudulent as such liable to be declared void. Hence, the suit for a decree declaring that the Heba nama deed bearing registration No. 2128 dated 29.06.11 as described in schedule Ka to the plaint in respect of the land and property described in schedule Kha to the plaint is illegal void forged and fraudulent as also collusive and not binding upon the plaintiff.

3. The suit was instituted on 15.01.2012 and during pendency of the suit on 07.06.12 the plaintiff came up with an application for amendment of the plaint and by the said petition of amendment the plaintiffs disclosed various qualifications acquired by the plaintiff Nos. 1-3 and that plaintiff No. 4 was serving as a Doctor and after retirement she has been serving in a Clinic known "Ma O Shishu" at Chittagong, it has also been disclosed in the said amendment petition that the conjugal life of Kazi Nurul Amin with plaintiff No. 4 was a happy and peaceful one. It was also disclosed in the amendment petition that it was at the

instance of defendant No.1 along with the other brothers and sisters in connivance with the employees of Kazi Shahidul Islam he was driven to a life which was immoral and unsocial and in course of such a position in his life Kazi Shahidul Islam became absolutely imbalanced mentally; it was also disclosed in the said amendment that Kazi Shahidul Islam invested about 2.50 crores taka in the building situated in the suit land which is also indicative of his mental imbalance; the amended plaint also disclosed various types of financial help advanced by Kazi Shahidul Islam in favour of his other brothers and sisters and other descendants depriving the plaintiffs.

4. The defendant No.1 Begum Monowara entered appearance upon filing written statement denying the material allegations made in the plaint contending inter alia that the suit land and building in other words the suit property admittedly belonged to Kazi Shahidul Islam and in the final B.S khatian No.7506 the name of Kazi Shahidul Islam was wrongly printed as Kazi Nurul Amin Shahidul Islam, despite such wrong recording of the name of Kazi Shahidul Islam his title in the suit property was never clouded and the plaintiffs also instituted the instant suit admitting the said khatian since they have never challenged the said wrong recording of the name in the said khatian No. 7506. It was also disclosed in the written statement that admittedly plaintiff No.2 has been residing in the U.S.A in the plaint his name has been used by an interested quarter, plaint has been filed with false personation and the plaintiffs had/have never been in possession of the suit land and building and that Kazi Shahidul Islam was an engineer by profession who eventually became an industrialist and ultimately it is an admitted position that he was the Chairman of Confident Salt Ltd and he remained as such till his death. Besides, Kazi Shahidul Islam was the Managing Director of Confident Salat from 2002-2009 and he was also the Managing Director of Total Gas Ltd. He had also served as Managing Director of Confident Cement Ltd from 1993-96, besides, he was also connected with various social, religious and philanthropic organization spending huge amount in running all those organizations; Kazi Shahidul Islam as a matter of fact passed his time to defray lavish expenses incurred by his wife and sons at which when he expressed reluctance, he was kidnapped by the plaintiffs in collusion with each other and his mobile phone was seized from him as a result the Deputy General Manager as also Manager of the Company lodged a G.D Entry bearing No.1407 dated 27.07.09 in respect thereof. It was also disclosed in the written statement that at the connivance of Dr. Mohadeb Chandra Mondal a colleague in the profession of plaintiff No.4, the plaintiffs wanted to establish that Kazi Shahidul Islam was mentally imbalanced person. Kazi Shahidul Islam had been living with his family members that is the plaintiffs from 1.11.2004 to July 2009 at a rental house in Chittagong city despite mental torture perpetrated upon him by the plaintiffs at that stage with the advice of the well wishers he had to shift to the house at Kamarkhali residence described in schedule Kha to the plaint where the defendant No.1 along with his brother's and brother's wife and their children had been living and while living as such at his village home Kazi Shahidul Islam died in the said house on 24.08.2011; it was also disclosed in the written statement that relationship between the plaintiff No.4 and Kazi Shahidul Islam was not at all happy one and the plaintiff Nos.1-3 and 5 having sided with the plaintiff No.4, rendered the normal life of Kazi Shahidul Islam a miserable one, exercising undue influence upon him as a result Kazi Shahidul Islam was compelled to confer executive power of Confident Salt upon the plaintiff No.1 who having misused the power caused the company a huge financial loss as a result Kazi Shahidul Islam had to sell a good number of shares of his company to makeup the loss but plaintiff No.1 left for Australia with the sale proceed of the shares of the company by way of misappropriation as a result Kazi Shahidul Islam had to live in isolation of his family since 2009 upto his death inconsequence of family feud ensued among the member of the family; thereafter at the advice of his other relations Kazi Shahidul Islam had

to shift to the suit land and building where he breathed his last peacefully and while he was living at his village house he had also constructed a two storied building for residential purpose during his life time; the allegation of mental derailment and other disorders have been falsely attributed to Kazi Shahidul Islam by the plaintiff's only with a view to grab the land and building involved in the suit land and it is only with a view to enjoy a peaceful life Kazi Shahidul Islam had to transfer ownership and possession of the suit property in favour of his beloved sister the defendant No.1, which was done by him voluntarily keeping himself in good health and conscience and the acknowledgement was made in presence of Sheikh Abu Taleb and Shamsur Rahman two prominent persons belonging to he said locality, pursuant whereupon a registered deed of Heba Bil Ewaz was executed by Kazi Shahidul Islam in favour of defendant No.1 on 29-06-2011 by virtue of a registered deed bearing registration No.2128 followed by delivery of possession thereof and in execution and registration of the said deed no influence or practice of fraud was ever indulged upon him as alleged in the plaint; it was also disclosed in the written statement that the said act of gift and handing over possession was made by Kazi Shahidul Islam voluntarily knowing full well about the consequence thereof rather within full knowledge of the plaintiffs. After the gift was completed the defendant No.1 kept said Kazi Shahidul Islam her younger brother with her in the said house maintaining motherly affection with him till his death and the defendant No.1 has been in possession and enjoyment of the said suit land and property ever since the date of execution of the registered deed of Heba.

5. In course of trial the learned Joint District Judge framed as many as five issues of which issue No.4 being very much relevant we feel it proper to quote the same which reads as under:-

৪. আরজির খ তফসিল বর্ণিত জমি বাবদ ক তফসিল বর্ণিত হেবা দলিল অবৈধ বেআইনী, ভুয়া, তজকী, জাল, যোগসাজশী ভাবে সৃষ্ট মর্মে উহা বাদীগনের উপর বাধ্যকর কিনা এবং উহা রহিতব্য কিনা?

6. At the trial the plaintiffs adduced four witnesses in support of their case, the defendant also examined four witnesses for their defence and upon conclusion of the trial the learned Joint District Judge, 1st Court, Faridpur by his judgment dated 19.11.2012 decreed the suit being Title Suit No.05 of 2012 . The defendant having felt aggrieved by the aforesaid judgment and decree passed by the trial court brought this appeal before this court.

7. Mr.Sk. Morshed the learned Advocate appearing for the appellant submits at the very outset that Ext.3 the medical certificate is not admissible in evidence particularly for the purpose of showing Kazi Shahidul Islam was of unsound mind at the time of execution of the Heba deed Ext.1 particularly in view of the provision of Lunacy Act 1912 in as much as P.W.2 Dr. Mahadeb Chandra Mondal was not a Medical Officer as contemplated under sub-section (7) of Section 3 of the Lunacy Act 1912 (Act IV/1912) ,therefore, the decision arrived at by the trial court on the basis of Ext.3 is not sustainable as such the impugned judgment and decree on the basis whereof is liable to be set aside.

8. Mr. Sheikh Morshed also submits that the impugned judgment and decree having not been in conformity with the facts, circumstances, evidence, and materials on record the same is liable to be set aside.

9. The learned Advocate for the appellant submits further that under the facts and circumstances of the case it was incumbent upon the trial court to frame an issue as to whether Kazi Shahidul Islam the executants of the Heba Bil Ewaz in question was of unsound mind at the relevant time of execution of deed but in view of conspicuous absence of

any such issue in the suit the trial court misdirected itself in arriving at erroneous decision in the suit, therefore, the impugned judgment and decree is liable to be set aside.

10. Mr.Morshed having pointed out section 91 of the Evidence Act submits that the impugned judgment and decree is violative of the provision of section 91 of the Evidence Act which excludes admission of oral evidence as against the documentary evidence and the presumption available therein, therefore, the impugned judgment and decree is liable to be set aside.

11. Referring to the section 92 of the Evidence Act the learned Advocate for the appellant submits that a registered document of transfer has got a presumptive value of correctness thereof which unless rebutted with tangible evidence, ought to have been accepted by the trial court and a contrary view is not sustainable in law, therefore, the impugned judgment and decree is liable to be set aside.

12. The learned Advocate for the appellant submits further that under the facts and circumstances of the case the evidence of Dr.Mahadeb Chandra Mondal ought to have been discarded by the trial court as also the medical certificate Ext.3 dated 06.11.2009 and the contrary view is not sustainable in law.

13. The learned Advocate for the appellant submits lastly that the registered document Ext.1 as produced by P.W.1 and Ext.Ka produced by the defendants namely registered Heba deed executed by Kazi Nurul Amin Shahidul Islam in favour of Begum Monowara dated 29.06.2011 carries presumption of correctness of the instrument made therein and the plaintiffs having not been able to dislodge the correctness of the instrument made thereby the learned Joint District Judge ought to have accepted the same as genuine one and a contrary view as in the impugned judgment and decree is not sustainable in law.

14. To substantiate the aforesaid submissions the learned Advocate for the appellant placed reliance in the case of Shishir Kanti Paul Vs. Noor Mohammad and others reported in 55DLR (AD) 39.

15. The learned Advocate for the appellant submits lastly that Ext.1 being a registered deed of gift under section 16 of the Registration Act (XVI/1908) in as much as it being a registered document under section 16 of the Registration Act strong presumption attached to it that the registration process were regularly and honestly carried out. The said presumption is all the more strong by now in view of the recent amendment of the Registration Act where the law requires that the photographs of the executants has to be pasted with the body of the document itself and in substantiating the submission the learned Advocate for the appellant placed reliance in the case of Abani Mohan Saha Vs. Assistant Custodian (SDO) Vested Property, Chandpur and others reported in 39 DLR (AD) 223.

16. On the other hand, Mr.Zakir Hossain Bhuiyan the learned Advocate appearing on behalf of the respondents submits that Ext.2 series and 3 clearly shows that Kazi Shahidul Islam was suffering from dementia with behavioral problem and the defendant having not been able to show anything to the contrary by cross-examining the said witnesses it ought to be accepted.

17. To substantiate the said submission the learned Advocate for the respondents placed reliance in the case of State Vs.Shiraj Ali reported in 24 DLR 69 and the case of

Gholam Yusaf Vs. The Crown reported in PLD 1953 Lahore 213.

18. The learned Advocate for the respondents submits further that the evidence of possession led by D.W.1 having been made beyond the pleadings such evidence is not admissible in evidence as per provision of Order 6 Rule 7 of the Code of Civil Procedure.

19. To substantiate his submission the learned Advocate placed reliance in the case of Nil Sena Singh Vs. Radha Mohan Singh and others reported in 58 DLR 239, Wares Khan and another Vs. Haji Sufi Fazal Ahmed and others reported in 2 BLC 376 and the case of Md. Ibrahim Vs. Md. Alauddin and others reported in 27 DLR 413.

20. The learned Advocate for the respondents submits further that not a single witness was examined to make the gift reliable, therefore, an adverse presumption as to the credibility of the said gift is warranted in the facts and circumstances of the case. The learned Advocate for the respondents place reliance in the case of Younusco K. Textile Ltd. Vs. Jamuna Knitting and Dyeing Ltd. and others reported in 12 BLC 202.

21. It is also submitted by the learned advocate for the respondents that the possession of the suit land having not been delivered to the defendant No.1 the impugned gift is liable to be declared void and incomplete within the meaning of section 152 of Molla's Muhammadan Law and in substantiating his submission the learned Advocate placed reliance in the case of Bibi Riajan Khatoon and others Vs. Sadrul Alam reported in AIR 1996 Patna 156. The learned Advocate for the respondents submits further that the defendant failed to adduce any tangible evidence showing that the deed of gift has ever been acted upon and in the absence of such evidence the gift was not complete both under Mohammadan Law and Transfer of Property Act to substantiate his such submission placed reliance in the case of Bangladesh Vs. Shirely Anny Ansari reported in 6 BLC 85.

22. Mr. Zakir Hossain Bhuiyan, the learned Advocate appearing for the respondents also assailed the very execution and the process of registration of Ext.1 and for that matter Ext. Ka deed of gift placing reliance in the case of Feroza Mojid and another Vs. Jibon Bima Corporation reported in 39 DLR (Ad) 78 and in the case of Sheikh Haji Musa Hakkani Vs. Kazi Md. Abdul Mojid reported in 7 BLC 534.

23. With a view to appreciate the submissions made by the learned Advocates from both sides, we feel it proper to refer the depositions of the witnesses recorded by the trial court and in doing so we find that plaintiff No.5 Kazi Tanjib Shahid figured as P.W.1 who deposed that the suit land appertaining to B.S plot No.7662 corresponding to R.S plot No. 4749 of D.P Khatian No.35 originally belonged to his father Kazi Shahidul Islam and defendant No.1 is the full sister of his father and his father become mentally imbalanced for which treatment was administered at home and abroad and his father having shifted to his village home where he built up a luxurious house encircled by boundary walls; it was also deposed by P.W.1 that they had also engaged three persons for taking care of his father at village home and on the death of his father he along with his three brothers and their mother became the legal heirs of Kazi Shahidul Islam; this witness also disclosed that on 26.11.2011 the defendant No.1 asked the three labours engaged by them to vacate the house and claimed that she had got the house and the land gifted by her brother Kazi Shahidul Islam in her favour thereafter on 07.12.2011 they obtained a certified copy of the registered deed and came to know for the first time that his father has transferred the suit property in favour of his sister defendant No.1 i.e the aunt of P.W.1; this witness also deposed that the said Heba Bil Ewaj deed was

executed on 29.06.2011 in favour of defendant No.1 and his father did not execute or register the said deed voluntarily rather taking advantage of his mental derailment the said deed was obtained; this witness also produced the Heba Bil Ewaz deed executed in favour of defendant No.1 on 29.06.2011 by Kazi Shahidul Islam vide registered deed No.2128 marked as Ext.1. During cross-examination this witness asserted that the executant of Ext.1 is not his father and his father is not the executant of the disputed deed ; this witness also disclosed that his father was an industrialist and the signature available in the body of the deed is not the signature of his father; this witness also admitted that no proceeding was drawn before any court in connection with mental derailment of his father and no question was raised in their institutions(industries) about the same ;this witness also disclosed before the court as under :-

‘ আমার পিতা বিবাহ বহির্ভূত অনৈতিক সম্পর্কে লিপ্ত ছিল।’

24. This witness denied the suggestion that they used to avoid their father Kazi Shahidul Islam as a result he had to shift to his village home to lead a peaceful life and that this witness and his other brothers did not take care of their father till his death at his village home; this witness also denied the suggestion that it was defendant No.1 who used to take care of Kazi Shahidul Islam untill his death; this witness also denied the suggestion that defendant No.1 had been living in the disputed house ever since the gift was made by her brother Kazi Shahidul Islam till date; this witness also admitted that he participated in the Zanaza of his father and after Zanaza they returned back to Dhaka and that on the date of Zanaza the defendant No.1 and her son was also present; this witness also admitted that there was a Milad Mahfil at the disputed house which he had come to know lateron; this witness also admitted during his cross-examination that it is his father who appointed Younus, Shirin and Idris as his attendants in the disputed house; this witness also denied the suggestion that prescription of Dr. Mahadeb Chandra Mondal were created for the purpose of the suit and that Dr. Mahadeb Chandra Mondal (P.W.2) never administered treatment to Kazi Shahidul Islam.

25. P.W.2 Dr. Mahadeb Chandra Mondal figured as P.W.2 for the plaintiffs who is an Assistant Professor of National Mental Health Institute and he was there in the year 2008 – 2009; this witness produced Ext.2 series i.e five prescriptions; he also produced a certificate issued by him on 6.11.2009 marked as Ext.3; during cross-examination this witness disclosed that he administered treatment to Kazi Shahidul Islam as private patient ; this witness also admitted during cross-examination that he did not advise for hospitalization of Kazi Shahidul Islam in a mental hospital; he admitted further that at the asking of the son of the Kazi Shahidul Islam he issued the certificate (Ext.3)

26. P.W.3 is Md Younus Ali Sheikh claiming to be a neighbor of the disputed house and he was engaged as a care taker in the disputed house on monthly salary of taka 6000/00 ; this witness also disclosed as under :-

‘ কাজী শহিদুল ইসলাম অসুস্থ ছিল এবং আমি শুনেছি যে, তার কিডনি ও লিভার খারাপ এবং ডায়াবেটিস আছে এবং আর ও কিছু রোগ নাকি ছিল।’

27. This witness also testified that on 20-11-2011 defendant No.1 asked him to vacate the house claiming that her brother Kazi Shahidul Islam had gifted the house to her; this witness made self contradictory statement in his deposition as under :-

‘১নং বিবাদী থাকলেও আমি বাড়ী ছাড়ি নাই এবং ১ নং বিবাদী নালিশী বাড়ীতে আসে নাই।’

28. This witness also admitted in cross-examination that on August 24,2011 Shahidul Islam died at his own residence and at the time of his death his sons or his wife were not

present before him; this witness also admitted that monthly electric bill comes at taka 10,000/= and he does not know who pays the electric bills; this witness denied the suggestion that he was not at all a caretaker of the house.

29. P.W.4 Shirin Sultana; she claims to be a house maid for last six years and she testified that Shahidul Islam used to behave normally and sometimes abnormally; during her cross-examination she admitted that she used to work at the disputed house for two years; this witness also admitted that Shahidul Islam used to go for shopping sometimes; this witness also deposed as under :-

“ আমি যে কয়দিন নালিশী বাড়ীতে থেকেছি যেই কয় দিন আমি শহিদুল ইসলাম এর খারাপ কিছু দেখি নাই ও ভালই দেখেছি.....
 ১নং বিবাদী মাঝে মাঝে বাড়ীতে আসত এবং শহিদুল ইসলামকে দেখাশুনা করত এবং তাদের ভাই বোনের মধ্যে ভাল সম্পর্ক ছিল। শহিদুল ইসলাম আমাদের সাথে কোন পাগলামী করে নাইনালিশী বাড়ীতে এখন কে থাকে বা না থাকে তা জানি না। নালিশী বাড়ীতে তার ছোট ভাইয়ের বউ থাকে। যে কয়দিন কাজ করেছি আমার বেতন শহিদুল ইসলাম দিয়েছে। ১নং বিবাদী নালিশী বাড়ীতে থাকত।”

30. Of the four witnesses adduced by the defendant Monowara Begum the defendant No.1 figured as D.W.1 who deposed that Kazi Shahidul Islam had many other properties besides the suit house and he was a proprietor of Confidence Salt, Lotus Gas and Confident Cement including many other sister concerneds who was also a philanthropist and was connected with many other religions and social organizations; his four sons and his wife used to live a lavish life but they did not take care of Shahidul Islam rather used to behave ill with him and at one stage Shahidul Islam was kidnapped by them as a result a G.D Entry was lodged by the member of staffs of his company; wife of Shahidul Islam was a Doctor therefore with the aid of Dr. Mahadeb Chandra Mondal (P.W.2) she collected a certificate showing Kazi Shahidul Islam as a mentally derailed person therefore he had to take shelter at his village home to live a peaceful life and on 24.08.2011 he breathed his last at his village home at Kamerkhali and this is because of unbearable behaviour of the plaintiffs towards Kazi Shahidul Islam he had been living separately from the year 2009 at his village home; the plaintiffs made an endeavor to show Kazi Shahidul Islam a mentally derailed person although as a matter of fact he was of sound mental health although he had some physical problems for which he had to go abroad on his own for treatment without any aid from any other and after shifting at his village home the plaintiffs did never take any step for his well being or nursing and at that stage Kazi Shahidul Islam used to call his sister D.W.1 for his nursing another brother of Kazi Shahidul Islam named Kazi Zahid Hossain his wife and children also used to take care of Kazi Shahidul Islam while he was residing at his village home; at one stage Shahidul Islam proposed to make a Heba deed in respect of suit property in her favour on 05.12.2010 in presence of her uncle, brother Murad, Taleb and Shafiur Rahman and she accepted the said offer and possession was handed over in her favour; thereafter Kazi Shahidul Islam himself got the Heba deed executed and registered on 29-06-2011 and the deed was made by him voluntarily without any influence from any quarter; she also deposed that her brother Kazi Shahidul Islam gifted saving certificate to his brother's wife amounting to taka fifty lacs and to his niece saving certificate worth of taka fifty lacs and also arranged fixed deposit in favour of the plaintiffs besides, he had property worth cores; the plaintiffs were fully aware of deed of Heba in favour of D.W.1; this witness denied the material allegations made in the plaint by the plaintiffs; this witness also produced the registered Heba deed bearing registration No.2128 dated 29-06-2011 marked as Ext.Ka; she also produced a memorandum dated 25.09.12 issued from কেন্দ্রীয় মাদকাসক্ত নিরাময় কেন্দ্র, তেজগাঁও Industrial Area, Dhaka 1208 showing that P.W.2 had been working as a medical

officer of that centre since 19.03.2003 up to 13.07.2009; this witness also produced the personal information of P.W.2 Ext.Ga series; during cross examination this witness disclosed that her in laws house situate at a distance of 30 Kilometer from the suit property; during cross-examination the plaintiffs could not dislodge her from the stand taken in the examination in chief.

31. D.W.2 Rafiqaul Alam the deed writer who computed the Heba deed dated 29-06-2011 bearing registration No.2128 and he put his signature on the same which has been marked as Ext.Ka(1) ; this witness deposed about the execution of the deed in the language as under :-

“ কাজী নুরুল আমিন শহিদুল ইসলাম সাহেবের নির্দেশে আমি দলিলটি ড্রাফট করি এবং আমি তাকে চিনতাম কমিশনে নাঃ দলিলটি রেজিস্ট্রি হয়। দাতা নিজেই দলিলটি পড়েছিল এবং দলিলের ড্রাফট ও দাতা নিজে করে দিয়েছিল এবং আমি সেভাবে সাজিয়েছি। আমার সামনেই দাতা দলিল পড়ে দেখে দলিলে স্বাক্ষর করেছিল।”

32. This witness also deposed that he himself filed the application for Commission on the very day on which date it was registered and the draft copy of the deed was prepared by the executant himself; during cross-examination the plaintiffs could not dislodge this witness from the stand he had taken during his examination in chief.

33. D.W.3 Kazi Motiul Islam is a first cousin of the executant of the Heba deed namely, Kazi Nurul Amin Shahidul Islam who deposed that his cousin Shahidul Islam executed the Heba deed in favour of his sister Monowara Begum (D.W.1) and he knows about the same and he is also an educated person; he testified further that he is also a witness No.1 of the deed in question; he is also an identifier he also admitted the signature available in the deed marked Ext.Ka(2). He also testified possession of Monowara Begum in the suit property. During cross examination the plaintiffs could not elucidate anything to the contrary as disclosed in his examination in chief.

34. D.W.4 Abu Taleb a friend of Kazi Shahidul Islam who deposed that from 05.12.2010 the date of proposal of gift, Monowara Begum has been in possession of the suit property. During cross-examination he disclosed further that he along with Shahidul Islam were reading in the same school at Arpara and he was aged about 68/69 ; while deposing in the court this witness also disclosed in his cross-examination that in the ground floor of the building younger brother of Shahidul Islam lives in.

35. These are the deposition in substance available in the case.

36. We have heard the learned Advocates from both sides perused the materials on record including the depositions of the witnesses wherefrom it transpires that the suit as framed is one for a declaration that the Heba deed dated 29.06.2011 bearing registration No. 2128 executed by Kazi Shahidul Islam in favour of defendant No.1 is a forged, fraudulent and collusive one which is not binding upon the plaintiffs and the same is liable to be cancelled on the ground that it is forged as well it is fraudulent and collusive. Under such circumstances the first question is as to whether the deed in question is a forged one as alleged by the plaintiffs or not and in dealing with such a question we feel it proper to refer the deposition of P.W.1 in this regard. আমার পিতা স্বেচ্ছায় না দলিল টি রেজিস্ট্রি দেয় নাই তার মানসিক ভারসাম্য হীনতার সুযোগে দলিল করে নেওয়া হয়েছে. The aforesaid assertion having been made by the plaintiff No.5 who figured as P.W.1 in the suit, it is evident that the plaintiffs while standing on the dock did not stick to their plea of forgery of the document in question rather they have candidly admitted the execution yet they are maintaining the plea that the deed was executed at a stage of mental

imbalance of his father. It appears further that the plaintiffs have other reasons to resile from the stand taken earlier about the forgery of the document and that is mainly because of the reason of amendment of the Registration Act 1908 (Act No.XVI/1908) where section 22A has been inserted by the amendment Act No.XXV/2004 which came into force from July 01, 2005 and the deed in question was registered on 29.06.2011. In this connection we feel it proper to quote the newly inserted section 22A of the Registration Act which reads as follows :-

“22A.Instrument of transfer-(1) Every instrument of transfer required to be compulsorily registered under this Act shall contain the particulars necessary to convey the intention of the parties, complete descriptions of the properties to be transferred and nature of the transaction.

(2) Photographs of both the executant and the recipient shall be pasted on every instrument and the parties shall sign and put their left thumb impression across their photographs in the instrument.

(3) The government shall, within three months of coming into force of the Registration (Amendment) Act 2004 by notification in the official Gazette, prescribe a format for the purpose of this section.”

37. In view of the aforesaid amendment vide Registration Act,1908 (Act No.XXV of 2004) there is hardly any scope left for anyone to raise a question of forgery of a registered document since the photographs of both the executants are pasted on every instrument and the parties shall sign and put their left impression across their photographs in the instrument. More so, it is no bodies case that the photographs available in the impugned instrument or Heba deed is not the photographs of Kazi Shahidul Islam the father of the plaintiff Nos.1-3 and 5. Under such circumstances the allegation of forgery of the document in question can safely be brushed aside. In this connection referring to the case of Abani Mohan Saha Vs. Assistant Custodian (SDO) Vested Properties reported in 39 DLR(AD) 223 where it has been held by our Apex Court as under :-

“If the question whether the deed of gift is genuine or not the simple answer is, it being a registered document under section 16 of the Registration Act strong presumption attached to it as the Privy Council stated in 33 I.A 60. “

38. The aforesaid judgment was delivered on February 20,1986 by our Appellate Division and subsequently upon insertion of section 22A in the Registration Act by Registration (Amendment) Act, 2004 (Act No.XXV/2004) the presumption of correctness as observed above, becomes stronger then the one it was available before the aforesaid amendment, therefore, we can safely conclude that the question of forgery of Ext.Ka(by the plaintiffs) or for that matter Ext.`1 (by the defendant) does not arise at all in the instant suit.

39. The next question remains to be assessed as to whether the aforesaid document is a fraudulent and collusive one and in dealing with such a question we find that the plea taken by the plaintiffs that their predecessor Kazi Shahidul Islam was a mentally derailed person and taking advantage of such derailment the defendant No.1 brought the said deed executed in her favour. It is a settled principle of law by now that the plaintiffs have to prove their own case and the weakness of the defendant, if any, does not go in favour of the plaintiff in a suit therefore the plaintiff with a view to prove the mental derailment of their predecessor Kazi Shahidul Islam they had to bank upon solely on the evidence of P.W.2 and the certificate issued by the said witness Dr.Mahadeb Chandra Mondal which has been marked as Ext.3. On a close scrutiny of the evidence of P.W.2 we find that Dr.Mahadeb Chandra Mondal P.W.2 had no authority whatsoever to issue a certificate of mental derailment of Kazi Shahidul

Islam the predecessor of the plaintiffs particularly in view of the provision of Lunacy Act 1912 where section 18 of the said Act provides that every medical certificate under this Act (Lunacy Act) shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed and the term medical officer has been defined under sub-section (7) of Section 3 of the said Act which reads as under :-

(7)'' medical officer'' means a gazetted medical officer in the service of the (Republic), and includes a medical practitioner declared by general or special order of the Government to be a medical officer for the purpose of this Act.''

40. From the provision of law as disclosed above, it is evident that P.W.2 was not qualified to be treated as a medical officer as contemplated under the Lunacy Act, 1912 as such he was not at all competent to issue a certificate as per Ext.3, therefore, Ext.3 under no stretch of imagination can form the basis of a finding that Kazi Shahidul Islam was a mentally derailed person at the relevant time. Besides, being the position of the law as aforesaid on a close scrutiny of Ext.3 a certificate dated 06.11.2009 issued by P.W.2 Dr. Mahdeb Chandra Mondal, we find that in the said certificate two words such as "behavioral problem" had been inserted subsequently after issuance of the said certificate which is apparent from the body of the said Ext.3 clearly indicating that the said two words have been inserted beyond the margin of the said certificate and the said two words had been inserted with a motive to show the aggravated mental position of Kazi Shahidul Islam who was then aged about 62 years. The aforesaid Act i.e subsequent insertion of two words in the certificate is a pointer in the affirmative to the claim of the defendant that P.W.2 Dr. Mahadeb Chandra Mondal being the colleague (in the same profession) of plaintiff No.4 who is also a doctor by profession and that Ext.3 has been collusively created for the purpose of this suit, therefore, the claim of the defendant as aforesaid cannot be altogether brushed aside and the said Ext.3 can not form any basis of a correct finding in the instant suit as to the state of mind of Kazi Shahidul Islam at the relevant time, therefore, the allegations of the plaintiffs against the deed in question namely Ext.Ka or for that matter Ext.1 appears to be unfounded on any of the two grounds taken in the plaint, therefore, brushed aside.

41. On a scrutiny of the materials on record we have also noticed that the plaintiffs having taken recourse to an amendment of plaint, did not hesitate to impute bad moral character to their dead predecessor namely father of plaintiff No.1-3 and 5 and husband of plaintiff No.4 and this was done only with a view to grab the property already transferred by their predecessor in favour of defendant No.1 vide Ext. KA and for that matter Ext.1. On a close scrutiny of Ext. Ka or 1 we have seen the photographs of Kazi Nurul Amin Shahidul Islam pasted on the body of the instrument as per the newly inserted section 22A of the Registration Act wherefrom it is also evident that the gentleman appears to be of sound health with strong physic who put both the LTI and signature touching the pasted photograph. Therefore, in our considered opinion, we find that the document Ext.KA or 1 is a genuine instrument of transfer. On a close scrutiny of the depositions of D.W.2 Rafiqul Alam deed writer who computed Ext.KA /1 who emphatically asserted that he drafted the document at the order of Kazi Shahidul Islam and he used to know him and draft of the deed was prepared by the executants and as per the said draft D.W.2 computed the deed who having gone through the deed put his signature over the same in his presence. We have also noticed that the assertion made as above, could not be assailed by the plaintiffs during his cross-examination ,therefore, we are of the considered opinion further that the instrument Ext.KA/1 was executed by Kazi Nurul Amin Shahidul Islam voluntarily as such we find substance in this appeal.

42. In view of the factual aspect of the case stated above and in view of the amendment of

the Registration Act in the year 2004 and having gone through the decisions cited by the learned Advocate for the Respondents Mr.Zakir Hossain Bhuiyan, we find that the facts involved in those cited cases are clearly and distinctly discernible as such not applicable in this appeal.

43. In view of what has been stated above, we find substance in the appeal, therefore, the same is allowed without any order as to costs and the impugned judgment and decree dated November 12, 2012 passed in Title Suit No. 05 of 2012 by the learned Joint District Judge, 1st Court, Faridpur is hereby set aside and in consequence Title Suit No.05 of 2012 stands dismissed.