

**5 SCOB [2015] HCD 101****High Court Division**

Civil Revision No. 1923 of 2013

**Roli Chakma**

.....Plaintiff-Respondent–Petitioner.

Versus

**Kantimoy Chakma and others.**

.....Appellant –Opposite Parties

Mr. Md. Zulfiqur Matin, Advocate.

..... for the petitioner.

Ms. Promila Biswas Deputy Attorney  
General

..... for the opposite parties.

Heard on 29.07.2015 and

Judgment on 02-08-2015.

**Present:****Mr. Justice A.K.M Asaduzzaman****And****Mr. Justice Md. Iqbal Kabir****Section 64 of the *ৱিওগুৱি চিৱিট্ৰিভি মি কবি চিৱিট্ৰি আইবি, ১৯৮৯***

**In our examination it is also found that opposite party received the money, executed a bainapatra and delivered the possession of the schedule land in question and the defendants has no objection to transfer the land by register deed in favour of the plaintiff- petitioner through the Court. The law of this area does not create any bar to transfer the land to the present petitioner. Prior approval is required only for those to transfer the lands who are not inhabitant of the same hill district. Moreover, we have also found that government pleader has no authority to file the suit on behalf of the Deputy Commissioner. ... (Para 15)**

**Judgment****Md. Iqbal Kabir. J:**

1. This rule directed against the judgment and decree dated 25.04.2012 passed by the District Judge, Rangamati hill district in Civil; Appeal No.11 of 2011 reversing the judgment and decree dated 26.01.2009 passed by the Joint District Judge, Rangamati hill district in Civil Suit No.21 of 2009.

2. The facts relevant for disposal of the civil revision application are that the petitioner as plaintiff instituted the suit before the Court of Joint District Judge for registration of the deed regarding the schedule suit land through court; the plaintiff and the mother and wife of the defendants on 22.04.2008 executed a registered bainapatra to sell out the suit land by fixing or securing taka 20 lacs and received the said amount; the plaintiff erected dwelling houses and started living therein; in the meantime Jharna Chakma mother of the defendant No. 2 and wife of the defendant No. 1 had died without registered the suit land infavour of plaintiff Roli Chakam; the defendant no.1 is the husband and the defendant no. 2 is the son of the Jharna Chakma; the plaintiff on several occasions requested them to take steps for registration and they also agreed to do the same but practically they are taking tactics or plea of delay, therefore, the plaintiff filed this suit. The plaintiff is the permanent inhabitant of the Chittagong hill district; therefore, it is not necessary to deposit the court fees.

3. The defendant respondent contested the suit by filing a set of written statement stating *inter-alia* that the Jharna Chakma in order to pay the loan amount, which was taken for her treatment; received the said amount on 22.04.2008 and thereafter, executed a baninapatra. She (Jharna Chakma) also handed over the possession and position of the suit land to the petitioner plaintiff; thereafter, Jharna Chakma died living behind her husband and one son as her heirs. Due to the death of the said Jharna Chakma the said land was not transferred to the plaintiff; on the other hand the defendants were busy in various businesses therefore, they could not able to register the same in favour of the plaintiff; however, if the plaintiff got registration of the suit land through court they have no objection.

4. After hearing both the parties and considering the evidences on record, the Joint District Judge, Rangamati by his judgment and decree dated 26.01.2009 decreed the suit.

5. Being aggrieved against the said judgment and decree the opposite party No.3 that is the Deputy Commissioner, Rangamati preferred an appeal before the Court of District Judge, Rangamati being Civil Appeal No. 11 of 2011 and the appeal was heard and considering the evidence on record the learned District Judge vide his judgment and decree dated 25.04.2012 reversed the judgment and decree dated 26.01.2009 and allowed the appeal.

6. Being aggrieved against the said judgment and decree passed by the District Judge, the petitioner obtained the instant rule.

7. Mr. Md. Zulfiqur Matin, learned Advocate appearing for the petitioner submits that the court below committed error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree. He submits that since the petitioner is a tribal people and living within the territory of the same district as a result it is not required to take permission from the local authority. He also submits that the court below without considering the provision of law passed this judgment, though the law stated that now a day's to sell out or transfer the land permission is not required from the Jilla Parishad for the persons who resides in the same district. The learned lawyer further submits that the Ministry of Land issued a Notification being No. *fytg/kr-9/16/89-580* which was published in the Bangladesh Gazette on 03.08.1989 shows that permission is required for the person who is not the local inhabitant of the same hill district.

8. He further submits that from the Memorandum of Appeal of Civil Appeal No. 11 of 2011 it appears that the government pleader filed the instant appeal on behalf of the Deputy Commissioner, Rangamati Hill District though Deputy Commissioner does not authorized him to do or government pleader did not obtain permission from the concerned authority to do the same. However, the government pleader has no authority to file appeal on behalf of the Deputy Commissioner without following the due procedure of law and as such committed error of law resulting in an error in the decision occasioning failure of justice.

9. He further submits that by this time some other land has been transferred wherein the Deputy Commissioner did not raise any objection or challenge those transfer and sometime after filing appeal they did not contest the suit, as would apparent from the document annexed here to by way of supplementary affidavit.

10. Mrs. Promila Biswas learned Deputy Attorney General appearing on behalf of the opposite party submits that permission is required from the concerned authority to transfer

the land and without permission no one can transfer the land in the hill district. In support of her submission, she drew our attention to section 64 of the *ivOrgmU cveZ'' tRjv`v`vbxq miKvi cmi I` AvBb, 1989*. She further submits that the concern authority has rightly filed this appeal to protect the tribal peoples rights and interest. In this connection she submits that Government Pleader file the appeal on behalf of the Deputy Commissioner and this kind of mistake can be cured by authorizing him.

11. Heard the learned Advocates for both the sides, perused the impugned judgment, lower Court record considered submissions made by the parties and examined the relevant provisions of law.

12. In our examination and having considered the aforesaid fact it has found that the appellate court below considering the provision of law that is section 64 of *ivOrgmU cveZ'' tRjv`v`vbxq miKvi cmi I` AvBb, 1989* allowed the appeal and set aside the trial courts judgment and decree. On perusal of the entire evidence, laws other material on record led us to presume and hold that the appellate court below failed to consider the provision which has subsequently been laid down by amending section 64 of the said Act and publishing those in the Bangladesh Gazette. From the plain reading of the law it would be apparent that only to reduce controversy and/or for the smooth function of the local people and to transfer the land subsequently those changes has came out.

13. The section 64 of the *ivOrgmU cveZ'' tRjv`v`vbxq miKvi cmi I` AvBb, 1989*, speaks as follows:  
*00[64] (1) AvciZZt ej er Ab` tKvb AvBtb hvnv`KQB`\_vKk` bv tKvb-*  
*(K) ivOrgmU cveZ'' tRjvi GjuKvaxb eph`ve`thvM` Lvm Rvgmn th tKvb RvqMv Rvg, cmi I` i`*  
*ceh`g`v` b e`wZ`i`i`K, BRviv`c`vb, eph`ve`l` ক্রয়, বিক্রয় er Ab`weafite n`Isli Kiv hvBte bv:*  
*Zte kZ`\_tK th, i`wqZ (Reserved) ebrAj` , KivBv Rj`we`y` cKf` GjuKv, teZeh`q`v` F-DcMh`*  
*GjuKv, ivoh`q` gwj Kivvaxb` wki` Kvi Lvbr I [miKv`i`i] bvtg` tiKw`RZ. Rvgi` t`q`i` GB` wearb` c`hvr`*  
*nBte`bv|00*

14. We have examined the relevant provision of law and Notification being No. *fjgt/kv-9/16/89-580* which was published in Bangladesh Gazette on 03.08.1989. The content of this Gazette show as follows:

*00fjgt/kv-9/16/89-580 N` cveZ'' PUMg` tRjv`mg`n` ivOrgmU cveZ'' tRjv`v`vbxq miKvi cmi I`*  
*AvBb, 1989, Lvmov`no` cveZ'' tRjv`v`vbxq miKvi cmi I` AvBb, 1989 ev`i`erb` cveZ'' tRjv`v`vbxq*  
*miKvi cmi I` AvBb, 1989 Abjv`qx` wZb`u` cveZ'' tRjv`v`vbxq miKvi cmi I` MVb` Kiv` nBq`v`Q` GB` AvBb*  
*wZb`u`K` Kiv`Rix` Kivi` j`i`q` miKvi` cK`v`m`b`K` cb`eb`m` I` D<sup>3</sup> cb`eb`m` w`el`q`K` w`x`v`sh`gr` er` ev`qb`K`f`*  
*GK`u` D`P` q`g`Z`v`m`u`b`e`w`e`k`l` ms`i`k` AvBb` ,` w`i` i` aviv` 64` tZ` ew`y`Z` wearb` er` ev`q`v`bi` D`i`f`i`k`` w`b`t`w`e`<sup>3</sup>*  
*Av`k` Rvix` Kiv` nBj` t*

Chittagong Hill Tracts Regulation (Regulation I of 1900) *Ges` Bnvi` mst`kvab`img`r` Abjv`qx`*  
*cveZ'' tRjv`mg`n` t`W`c`v`d` Kvg`k`v`i` fvg` eph`ve`l` I` A`v`v`b`q`v`i` w`b`KU` fvg` n`Is`f`i`i` Ab`j`v`b` w`i`Z`b`|*  
*D`w`j` m`L`Z` cveZ'' tRjv`v`vbxq miKvi cmi I` AvBb`mg`r` c`e`Z`f`bi` ci` G`q`i`Y` ms`i`k` w`v`b`q` miKvi cmi I` i`*  
*ceh`g`v`b` e`Z`x`Z` tKvb` Rvq`M`v`Rvg` eph`ve`l` Ges` D<sup>3</sup> i`ac` Rvq`M`v`Rvg` tRjvi` ew`m`v` b`tnb` GB`i`ac` tKvb`*  
*e`v`v`i` w`b`KU` n`Is`li` Kiv` hvBte` bv| Zte` ms`i`w`q`Z` I` i`w`q`Z` ebrAj` , KivBv` n` GjuKv, KivBv` we`y` cKf`*  
*GjuKv, teZeh`q`v` F-DcMh` GjuKv, ivoh`q` wki` Kvi Lvbr` GjuKv, miKvi` er` Rb`-t`-e` i`v`U`iq` -t`-c`h`v`R`b`*  
*nBtZ` cv`i` GB`i`ac` tKvb` Rvq`M`v`Rvg` er` e`f`bi` t`q`i` GB` wearb` c`hvr` nBte`bv|*  
*GB` Av`k` , ms`i`k` w`v`b`q` miKvi cmi I` th` w`b` nBtZ` c`u`g` Av`b`v`m`b`K` m`f`v`q` w`g`j` Z` nBte`b, H` Z`v`i` L` nBtZ`*  
*Kiv`Rix` nBte`|00*

15. In our examination it is also found that opposite party received the money, executed a bainapatra and delivered the possession of the schedule land in question and the defendants has no objection to transfer the land by register deed in favour of the plaintiff- petitioner through the Court. The law of this area does not create any bar to transfer the land to the present petitioner. Prior approval is required only for those to transfer the lands who are not inhabitant of the same hill district. Moreover, we have also found that government pleaders has no authority to file the suit on behalf of the Deputy Commissioner.

16. From the aforementioned enunciation, it is clear to us that to protect the tribal people's right, title and interest and to control law and order situation and for the welfare of the hill people since long hill people and authority follows some rules and procedure in respect of the land, especially at the time of transfer of land in the hill districts. From the very beginning those area follows Regulation 1900, as per those regulation permission was required to transfer the land. However, *ivOrimU cveZ" tRjv ~vbxq miKvi cwil` AvBb, 1989*, also imposed restriction in respect of requirement of permission. Now people are aware about their rights, title and interests and people are entering in to the global arena and as Bangladeshi national all people are equal before the law, though for the welfare of the tribal people few specific laws and rules are governed in that area and we trust that for the welfare of the hill people or the tribal people this amendment has came into force.

17. Perusing the record and in view of the facts we find that the impugned judgment appears to have been passed arbitrarily without applying his judicial mind. However in any point of view the impugned judgment and order is not sustainable in law which is liable to be set aside, accordingly we find merit in this Rule.

18. In the result, the Rule is made absolute without any order as to cost. The judgment and decree dated 25.04.2012 passed by the District Judge Rangamati in Civil Appeal No.11 of 2011 is set aside and the judgment and decree dated 26.01.2009 passed by the Joint District Judge Rangamati in Civil Suit No.21 of 2009 is here by affirmed.

19. Send down the L.C.R along with the judgment at once.