

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha
Chief Justice
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider

CIVIL APPEAL NO.140 OF 2013.

(From the judgment and order dated 09.04.2009 passed by the High Court Division in Civil Revision No.1952 of 1993.)

Parmalundra Joydhar : Appellant.

=Versus=

Bhagirath Talukder and others : Respondents.

For the Appellant : Mr. Deb Das Somader,
Advocate, instructed by Mr.
Bivash Chandra Biswas,
Advocate-on-Record.

For the Respondent : Mr. Md. Zahirul Islam,
Advocate-on-Record.

Date of hearing and judgment : 24.01-2017

J U D G M E N T

Hasan Foez Siddique, J: This appeal is directed against the judgment and order dated 09.04.2009 passed by the High Court Division in Civil Revision No.1952 of 1993 affirming the judgment and decree dated 27.03.1993 passed by the then learned Subordinate Judge, 1st Court, Barisal in Title Appeal No.61 of 1987 reversing those dated 25.02.1987 passed by the then Munsif, Agailjahara, Barisal, in Title Suit No.15 of 1986.

The short facts, for the disposal of this appeal, are that the appellant and respondent

Nos.13-15 filed the aforesaid suit for declaration of their title in respect of the land as described in the schedule to the plaint stating, inter alia, that the suit land originally belonged to Anandi Bewa who transferred the same on 15th Bhadra, 1322 to her daughter Duly Dasi and daughter's son Nil Kanto by a registered deed of gift. Thereafter, Duly Dasi died leaving his son Nil Kanto and daughter Purna Laxmi. Nil Kanto died issueless leaving behind the plaintiff as his heir. S.A. and R.S. records of right were wrongly published in the names of defendant Nos.3-5 and 7 since, at that time, the plaintiff was minor. However, he filed Title Suit No.112 of 1984 where defendant No.3 made his appearance and filed written statement stating that Anondi Bewa transferred her entire property by a registered deed of gift on 5th Baishak, 1317 corresponding to 14.04.1910 to Bepen Sen and Nil Kanta. Thereafter, Nil Kanta and Bipen Sen transferred their shares to one Bhagirat Talukder by registered kabala deeds dated 22.08.1941 and on 06.08.1941. The erroneous preparation of S.A. and R.S. records of right clouded the plaintiff's title in the suit land. Hence, was the suit.

The defendants Nos.3,9 and 20 contested the suit contending that the suit land belonged to

Anandi Bewa who transferred the same to Bipin and Nilkanta by a deed of gift dated 14.04.1910. Nilkanta and Bibin transferred the same to Prasannya Kumer by a kabala and dated 03.08.1942. Prasannya died leaving his five sons. Nil Kanta also sold some portion of land to the defendant No.3 by a deed dated 22.06.1942 who constructed dwelling homestead therein. S.A. and R.S. records of right were rightly prepared in the names of the defendants. The suit should be dismissed.

The learned Assistant Judge decreed the suit but, in appeal, the judgment and order passed by the trial court was set aside with an observation that Anandi Bewa, predecessor of the plaintiff, during her life time transferred her property in favour of the predecessor of the defendants by virtue of deed of gift dated 04.04.1910 which was affirmed by the High Court Division in Civil Revision.

Thus, the appellant has preferred this appeal getting leave.

Mr. Deb Das Somader, learned Counsel appearing for the appellant, submits that the defendants produced the certified copy of the deed of gift No.1034 of 1910 executed and registered by Anandi Bewa on 14.04.1910 but the photo copy of certified copy of deed No.1034 of 1910 dated 18.04.1910 does

not speaks so, rather it appears that one Besambha is the vendor and Golap Kha is the vendee and the same is not a deed of gift, at all. Moreover, deed No.1034 of 1910 was executed and registered on 10.03.1910 not on 14.04.1910 as alleged by the defendant-appellant-respondents. So it is apparent that the defendant-respondents managed to get the decree of trial Court set aside by practicing fraud.

On the other hand, Mr. Zahirul Islam, learned Advocate-on-Record appearing on behalf of the respondents, in his submission, supported the judgment and order of the High Court Division.

It appears from the judgment of the appellate Court and evidence of P.Ws.1,2 and 3 that the plaintiffs admitted that the defendants have been possessing the suit land and there is a dwelling homestead of defendant No.3 in the suit land. P.W.4 in his cross-examination admitted that the defendant No.3 exavated a pond in the suit land. Accordingly, the appellate Court held that the instant suit for simple declaration without the prayer for recovery of khas possession was not maintainable.

It further appears that the defendants claimed the suit land by virtue of the deed dated 14.04.1910 and the recipients of the said deed

transferred the suit land to predecessor-in-interest of the defendants on 22.04.1941 and 06.08.1942. Mr. Somader submits that the deed dated 14.04.1910 was fictitious one. The appellant produced a photo copy of the certified copy of the deed No.1034 of 1910 dated 14.04.1910 which shows that the same was executed by one Golap Khan not by Ananda Bewa, that is, the defendants by producing a fake deed of gift asserted their right in the suit land. But plaintiff did not take any step by producing the copy on the said deed either before the trial Court or in the appellate Court to disprove the claim of the defendants that the deed produced by the defendants was fraudulent document. The plaintiff-appellant, upon producing a photo copy of the certified copy in this Division for the first time, has made an attempt to prove the defendants' deed was fraudulent. A deed is fraudulent or not is essentially a question of fact. At this stage, it is difficult for this Court to ascertain whether deed No.1034 dated 14.04.1910 (Exhibit-Ka) was fraudulent or not.

Mr. Samader prayed for remand of the case giving the plaintiff an opportunity to prove that the deed of gift produced by the defendants was fictitious one. It would not be proper to remand

the case after 30 years of its institution allowing the plaintiff to prove the deed produced by the defendants forged.

Since we have already held that the plaintiffs have admitted the possession of the defendants in the suit land and that the instant suit was not maintainable without the prayer for recovery of possession, we are of the view that the prayer for remand of Mr. Samader does not deserve any consideration.

Considering the aforesaid facts and circumstances, we do not find any merits in the appeal.

Thus, the appeal is dismissed without any order as to costs.

C.J.

J.

J.

The 24th January, 2017.

M.N.S./words- 1,120 /