

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4743 OF 2004

In the matter of:

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

And

Md. Delbar Miah

... Petitioner

-Versus-

Mst. Amena Khatoon being dead his heirs- Maleka Begum and others

... Opposite parties

None appears

... For the petitioner.

Mr. Ziaur Rashid Tipu, Advocate

... For the opposite Nos.1(a)-1(g).

Heard and Judgment on 18.06.2026.

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 20.09.2004 passed by the learned Joint District Judge, 4th Court, Tangail in Other Class Appeal No.200 of 2003 allowing the appeal by reversing the judgment and decree dated 30.08.2003 passed by the learned Senior Assistant Judge, Mirzapur, Tangail in Other Suit No.03 of 1999 decreeing the suit should not be set aside and/or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for cancellation of deed of exchange dated 22.10.1997 alleging that he was the owner and possessor of 11 decimal land of 2nd schedule and defendant No.1 was the owner and possessor of 4 decimal land of schedule No.3 and they agreed to exchange above land and accordingly they executed and registered a deed of exchange on 22.10.1997. The plaintiff delivered possession of his 11 decimal land to the defendant but the defendant did not deliver possession of her 4 decimal land to the plaintiff.

Defendant No.1 contested above suit by filing a written statement alleging that while plaintiff was owning and possessing 11 decimal land of Schedule No.2 he offered to sale the same and the defendant purchased the same for Taka 4,400/- and got possession. Defendant is an old and illiterate village woman and she entrusted the plaintiff for drafting of the sale deed who drafter a deed and registered the same but now it is revealed that instead of a sale deed the plaintiff has fraudulently prepared above exchange deed. The defendant as plaintiff has filed Title Suit No.78 of 1999 for declaration of above exchange deed as a deed of sale.

At trial plaintiff examined four witnesses and the document of the plaintiff was marked as Exhibit No.1. On the other hand defendant

No.1 herself gave evidence as sole defendant witness but no document was produced and proved for the defendant.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree above defendant as appellant preferred Other Class Appeal No.200 of 2003 to the District Judge, Tangail which was heard by the learned Joint District Judge, 4th Court, Tantail who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although this Rule appeared in the list for hearing on several dates.

Mr. Ziaur Rashid Tipu, learned Advocate for the opposite party Nos.1(a)-1(g) submits that the plaintiff was the rightful owner and possessor of 11 decimal land of 2nd schedule and he sold above land to the defendant for Taka for Taka 44000/-. Since the defendant is an old

and illiterate village woman she entrusted the plaintiff to prepare, execute and register a sale deed and plaintiff fraudulently prepared above deed of exchange instead of a sale deed. In fact there was no exchange of 4 decimal land of the defendant with above 11 decimal land of the plaintiff. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the Court of Appeal below rightly allowed above appeal, set aside the erroneous judgment and decree of the trial Court and dismissed above suit which calls for no interference.

I have considered the submissions of the learned Advocate for opposite party Nos.1(a) - 1(g) and carefully examined all materials on record.

It is admitted that the plaintiff was the lawful owner of 11 decimal land of 2nd schedule and defendant is the owner of 4 decimal of the 3rd schedule and it turns out from a copy of the impugned deed of exchange dated 12.10.1997 (Exhibit No.1) that above deed has been designated, prepared executed and registered as a deed of exchange of above two pieces of land between the plaintiff and defendants. It is admitted that the defendant did not deliver possession of her 4 decimal land of 3rd schedule to the plaintiff but defendant delivered possession

of his 11 decimal land to the plaintiffs on 12.10.1997 in accordance with the terms of above deed of exchange.

In a deed of exchange of land the land of one party is the consideration for the land of the other party and if both parties to a deed of exchange do not deliver possession of their respective land a deed of exchange does not become effective and the same must fail.

It turns out from record that the defendant is an illiterate village woman and the plaintiff is an adult man. It has been alleged by the defendant that she purchased 11 decimal land for Taka 44000/- but defendant instead of preparing a sale deed fraudulently prepared above deed of exchange. Plaintiff did not deny above allegation by amendment of plaint with necessary details. There is no explanation as to why the plaintiff agreed to exchange his 11 decimal agricultural land with only 4 decimal low land of the defendant. Plaintiff delivered possession of his land on 12.10.1997 but this suit was filed on 25.01.1999 and there is no explanation as to why the plaintiff did not get possession of 4 decimal land of the defendant forthwith.

The plaintiff seeks cancellation of above deed of exchange alleging that the deed was not effective. On the other hand defendant claim that above deed of exchange was a fraudulent deed which was prepared instead of a sale deed. The plaintiff did not bring any

allegation of fraud against above deed of exchange so why he did not seek recovery of possession of above 4 decimal land.

The defendant herself gave evidence as sole defendant witness wherein she has alleged fraud in the making of above exchange deed. But the defendant did not make any endeavor to substantiate her claim that above deed was in fact an outcome of talk of sale of 11 decimal land of plaintiff. She has stated that as plaintiff she has filed Title Suit No.78 of 1999 for declaration that above exchange deed was in fact a deed of sale.

As mentioned above the plaintiff did not seek recovery of possession of 11 decimal land which he delivered to defendant No.1 and the defendant did not adduce any evidence to substantiate her claim that there was talk of sale of above 11 decimal land not exchange of above land with her 4 decimal land of the defendant.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend the pleadings and adduce further evidence.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil

Procedure, 1908 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 20.09.2004 passed by the learned Joint District Judge, 4th Court, Tangail in Other Class Appeal No.200 of 2003 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend the pleadings and adduce additional evidence.

However, there will be not order as to cost.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER