

**District-Dhaka.**

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

Present:

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 4659 Of 2007.**

Abdul Hannan Sarker and others.

----- Plaintiffs-Appellants-Petitioners.

-Versus-

Saifuddin Ahmed Majumder (Harun) and others.

----- Defendants-Respondents-Opposite Parties.

Mr. Nabil Ahmed Khan, Advocate for

Mr. Probir Neogi, Senior Advocate

----- For the Plaintiffs-Appellants-Petitioners.

Mr. Abdus Sabur Khan, Advocate

-----For the Defendants-Respondents-Opposite Parties.

Heard On: 10.08.2025,11.08.2025,12.08.2025 and  
17.08.2025.

And

**Judgment Delivered On: 21<sup>st</sup> Day of August 2025.**

**Md. Toufiq Inam, J.:**

By issuance of this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and decree dated 12.07.2007 passed by the learned Additional District Judge, First Court, Dhaka in Title Appeal No. 352 of 2006, affirming the judgment and decree dated 20.07.2006 passed by the learned Joint District Judge, Third Court, Dhaka in Title Suit No. 16 of 1998 dismissing the suit, should not be set aside.

The petitioners, as plaintiffs, instituted Title Suit No. 16 of 1998 in the Court of the learned Joint District Judge, Third Court, Dhaka, seeking

cancellation of the deeds described in Schedule-1 to the plaint and recovery of khas possession of the suit property described in Schedule-2. Plaintiffs' case, in brief, is as follows:

- (a) The suit land, appertaining to C.S. Khatian No. 49 and C.S. plots described in Schedule-2 of the plaint, belonged to the plaintiffs. Out of 0.92 acre of land in suit plot No. 62, 0.65 acre of C.S. Plot No. 129, C.S. Khatian No. 49, and 0.06 acre of C.S. Plot No. 92 were acquired in L.A. Case No. 159/61–62, leaving the remainder in plaintiffs' possession. The plaintiffs alleged that defendant No. 3, Jainal Abedin, a neighbour of the brother-in-law of plaintiff No. 7, was known to procure release of acquired properties from government offices in exchange for a portion thereof. The predecessor of plaintiffs Nos. 1–7, late Haji Ibrahim Sarker, along with plaintiffs Nos. 8 and 9, entered into an arrangement with defendant No. 3 to secure allotment of rehabilitation plots in exchange for half of such allotment. Defendant No. 3, insisting on execution of a bainapatra and power of attorney in his favour, procured signatures of Haji Ibrahim Sarker and plaintiffs Nos. 2, 8, and 9 at the Gulshan Sub-Registry Office without allowing them to read the documents, representing that they related only to the acquired land.
- (b) Defendant No. 3 failed to secure release of the acquired land or to arrange rehabilitation plots. When the plaintiffs demanded

return of the documents, defendant No. 3 claimed they were deposited with the Ministry of Works. Later, in March 1988, defendant No. 3 supplied a certified copy of a power of attorney and a photocopy of a bainapatra through Mohammad Ali, upon which the plaintiffs discovered that defendant No. 3 had fraudulently created an agreement for sale dated 13.08.1987 in respect of about 43.70 acres in various mouzas, as well as a power of attorney purporting to have been executed by Haji Ibrahim Sarker and others, with intent to usurp their properties.

(c) The plaintiffs revoked the alleged power of attorney (POA) by registered deed No. 5277 dated 22.03.1988. Although executed on 22.03.1988, the deed was registered on 18.04.1988 due to procedural complications. To safeguard their interests, the plaintiffs instituted Title Suit No. 62 of 1988 (renumbered as Title Suit No. 15 of 1996) for cancellation of the power of attorney. The suit was decreed *ex parte* on 17.05.1997, declaring the power of attorney void and directing its return to the plaintiffs.

(d) Despite the revocation, defendant No. 3 illegally transferred 4.80 kathas of land to defendants Nos. 1 and 2 by registered sale deeds No. 5326 and 5327 dated 19.04.1988. In late April 1988, defendants No. 1 and 2 forcibly dispossessed plaintiff

No. 2 from the suit land. A local *salish* was held on 06.05.1988 resulted in defendant No. 3 admitting cancellation of the power of attorney and agreeing to assist in cancelling the impugned sale deeds, but no cancellation ever followed.

The suit was contested by defendants Nos. 1 and 2, who denied the allegations and contended that the suit was not maintainable and disclosed no cause of action. They asserted that Haji Md. Ibrahim Sarker and others had executed a registered power of attorney dated 13.01.1987 in favour of defendant No. 3, who validly executed agreements for sale in their favour and delivered possession before any revocation. They further claimed to have constructed houses on the land and to have been paying rent to the government.

Both parties adduced oral and documentary evidence. The plaintiffs examined five witnesses (P.Ws. 1–5) and produced Exhibits 1–18, including testimony regarding the *salish* held on 06.05.1988 in which defendant No. 3 admitted fraud. The defendants examined four witnesses (D.Ws. 1–4) and produced documents in support of the power of attorney, *bainapatras*, and sale deeds.

The trial court found that the plaintiffs had failed to prove dispossession as alleged, and held that the impugned transfers were effected prior to cancellation of the POA by decree dated 17.05.1997 in Title Suit No. 15 of 1996. The appellate court affirmed, holding

inter alia that a registered POA cannot be revoked by another registered deed without a court decree, and that the deed of revocation (Exbt-5) was inadmissible. It further found that though the plaintiffs later obtained a decree in Title Suit No. 15 of 1996, the impugned sale deeds had already been executed and registered prior to the decree and were therefore valid. The appellate court also held that the suit was barred by limitation, having been filed on 05.11.2000 (wrongly stated the date; in fact, it was filed on 26.01.1998) while dispossession was alleged to have occurred in April 1988. Aggrieved thereby, the plaintiffs-petitioners moved this Court and obtained the present Rule, which is now taken up for disposal.

Mr. Nabil Ahmed Khan, learned Advocate for the plaintiffs-petitioners, submits that since the deed of revocation (Exbt-6) was executed on 22.03.1988 (though registered on 18.04.1988), the impugned sale deeds dated 19.04.1988 were executed subsequent to such revocation. By virtue of section 47 of the Registration Act, a registered document operates from the “date of execution”, not from the date of registration; hence, the revocation took effect on 22.03.1988. He contends that both courts below committed errors of law in holding otherwise and in ignoring the pleaded and proved fraud, including the admission recorded in Exbt-11, corroborated by the evidence of PW-2, PW-4, and PW-5.

In support, he refers to the case of *RAJUK vs. Ameer*, reported in 26 BLC (AD) 219, wherein the Appellate Division held that under section 201 of the Contract Act, an agency terminates upon revocation by the principal, renunciation by the agent, or on other recognized grounds. As a general rule, an agent's authority, even if expressed to be irrevocable or granted for consideration, remains revocable, though such revocation may amount to a breach of duty between principal and agent.

On the question of limitation, Mr. Khan submits that since the plaintiffs prayed both for cancellation and recovery of khas possession, limitation must be considered with reference to both reliefs. While Article 91 of the Limitation Act prescribes three years for cancellation, Article 142 prescribes twelve years for recovery of khas possession. He argues that under section 8 of the Specific Relief Act, the right to possession flows from ownership, and since the plaintiffs proved their title, they were entitled to recovery within the twelve-year limitation period.

Finally, he stresses that as the deed of revocation (Exbt-6) was executed on 22.03.1988 (though registered on 18.04.1988), the impugned sale deeds dated 19.04.1988, having been executed subsequent to such revocation, are *ex facie* void. Referring to *Sufia Khatun vs. Faizu Nesa*, reported in 39 DLR (AD) 46, he submits that

documents which are void *ab initio* do not even require cancellation, even if the plaintiff is a party thereto.

Conversely, Mr. Abdus Sabur Khan, learned Advocate appearing for defendants Nos. 1–11, contends that the plaintiffs had full knowledge of the *bainapatras* (agreements for sale), and that the suit is barred under Article 91 of the Limitation Act. Since the sale agreements were executed on 20.09.1987 and 12.10.1987, and the sale deeds were registered on 19.04.1988, the present suit filed on 26.01.1998 is hopelessly beyond the 3-year limitation period and is devoid of merit, being founded upon misreading and misappreciation of the evidence on record.

He further submits that the plaintiffs have failed to establish possession, title, or any valid cause of action. According to him, the power of attorney executed in favour of defendant No. 3 remained valid and subsisting at all material times, and the alleged deed of revocation (of POA) was ineffective in law. Consequently, the sale deeds executed in favour of the defendants on the strength of the said POA were lawful transactions. Referring to the decision reported in 12 MLR (AD) 16 (*Jobeda Bewa and others vs. Md. Abdr Razzaque*), he contends that a registered POA cannot be unilaterally revoked by executing another registered deed of revocation; such revocation can only be effected by a competent court of law.

By referring to Sections 2, 6, and the savings clause of the Power of Attorney Act, he further argues that once a POA has been validly executed and registered, acts done in good faith pursuant to such authority remain legally binding upon the principal and third parties, until the power is revoked in the manner recognized by law. He submits that the Power of Attorney Act specifically protects transactions carried out by an attorney under the authority vested in him, and no subsequent unilateral act of the principal can invalidate those transactions retrospectively. Thus, the sales in favour of the defendants, being executed during the subsistence of the POA, are unimpeachable and binding.

Having heard the learned Advocates for the parties and upon careful perusal of the pleadings, evidence, and materials on record, including the impugned judgments, this Court proceeds to examine and decide the matters issue by issue.

#### Effect of Revocation of Power of Attorney.

It appears from the materials on record that the first issue concerns the effect of the revocation of the power of attorney. The evidence clearly shows that the principal executed a registered deed of revocation on 22.03.1988. Under section 201 of the Contract Act, it is a well-settled principle that a power of attorney, unless it is coupled with an interest, is always revocable by the principal. Upon scrutiny of the evidence, no material has been placed before this Court to suggest that any



interest was either created, transferred, or exercised in favour of the attorney prior to the revocation dated 22.03.1988.

It further appears that section 47 of the Registration Act explicitly provides that a registered instrument operates from the “date of its execution”, and not from the date of its registration. In that view of the matter, the deed of revocation executed on 22.03.1988 took effect from that very date when the executant/principal signed it. Therefore, any act performed by the attorney thereafter, including the execution of the impugned sale deeds dated 19.04.1988, must be treated as void, illegal, and wholly inoperative in the eye of law. Consequently, no title passed to the purchasers under the said sale deeds. Since the revocation on 22.03.1988 preceded the alleged sales on 19.04.1988, the purchasers cannot claim to have acquired any right or protection as bona fide purchasers in good faith.

Once a POA is revoked, any transfer made by the attorney thereafter is a nullity in law and does not confer any valid title. Again, under section 47 of the Registration Act a document takes effect from the date of its execution, not from the date of registration, and accordingly, a revocation deed executed before the impugned transaction renders such transaction void. Therefore, the POA transactions have no validity once the authority stands withdrawn.

This court is of the view that a POA, unless coupled with an interest, is always revocable under section 201 of the Contract Act. Once a deed of revocation is executed, it becomes effective from the date of its execution under section 47 of the Registration Act, irrespective of its date of registration. Any act performed by the attorney after such revocation, including execution of deeds of transfer, is void *ab initio* and inoperative, and no title can pass thereunder.

#### Distinction Between Void and Voidable Deeds.

A clear legal distinction exists between a *void* deed and a *voidable* deed. A void deed is without legal effect from the outset (*ab initio*); it creates neither rights nor obligations and requires no formal cancellation, as in the eye of law it never existed. A voidable deed, by contrast, remains valid and operative until it is duly challenged and annulled by a competent court.

In the present case, since the attorney had no transferable right under the revoked POA, no title could lawfully pass to Defendant Nos. 1 and 2 under the sale deeds executed after such revocation. The attorney's authority stood extinguished on 22.03.1988, and the sale deeds executed on 19.04.1988 were void *ab initio*. The acts of execution of the said sale deeds were null and void, and the courts below erred in law by treating such void acts as requiring judicial annulment.

Judicial pronouncements consistently reinforce this principle. Once authority under a POA is revoked, any transfer made thereafter is a nullity and conveys no title. Similarly, acts performed by an attorney without authority are void *ab initio* and cannot transfer lawful rights. A void transaction is a complete nullity, whereas a voidable transaction continues to operate unless set aside. A void deed has no legal effect from the outset and requires no judicial annulment, whereas a voidable deed remains valid until it is annulled by a competent court. Accordingly, in cases involving a revoked POA, any act done by the attorney beyond the authority is void *ab initio* and incapable of passing any title or interest.

For guidance, in matters concerning void instruments, aggrieved parties need not seek formal cancellation. A declaration that the acts are void and confer no title or interest suffices, thereby preventing unnecessary litigation and safeguarding the rights of bona fide parties.

#### Reliance on the Power of Attorney Act.

The defendants contended that Sections 2, 6, and the savings clause of the Power of Attorney Act protect transactions carried out under a POA, even after the execution of the revocation deed. This contention cannot be accepted. The protection afforded under the Power of Attorney Act extends only to bona fide acts done by the attorney while his authority lawfully subsists. It does not, and cannot, validate

acts performed after the agency has been lawfully terminated under section 201 of the Contract Act.

Once the deed of revocation was executed on 22.03.1988, the attorney's authority ceased immediately, and any subsequent transactions were nullities. To construe otherwise would undermine the express operation of section 47 of the Registration Act and permit an attorney to override the principal's express revocation, a result the law does not allow. The defendants' reliance on the Power of Attorney Act is therefore misplaced and of no legal avail.

#### Issue of Fraud.

The plaintiffs specifically alleged that the impugned deeds were procured by fraud. Exhibit-11, being a copy of a written statement filed by the principal defendant, contains an express admission of practicing fraud. The oral evidence corroborates this position:

- a) PW-2, Hazi Delowar Hossain, deposed that he knew of an agreement executed between Sheikh Zainal Abedin and Hazi Ibrahim on 06.05.1988; he was present and acted as an attesting witness.
- b) PW-3, Chan Mia Matabbar, stated that Hannan Sarkar convened a *salish*, where he was present, and the *salish* instructed Defendant No. 1 to hand over possession of the suit land to the plaintiff, but he refused.

- c) PW-4, M.A. Latif, testified that Hazi Ibrahim and Zainal Abedin executed an agreement in May 1988 regarding the suit land, of which he was a witness.
- d) PW-5, Mohammad Ali, deposed that he signed the agreement executed between Hazi Md. Ibrahim Sarkar and Zainal Abedin.

Both courts below misread or failed to appreciate the corroborated evidence concerning Exhibit-11 and did not examine its legal effect. The evidence clearly establishes that the sale deeds were collusive and fraudulent.

Fraud vitiates every solemn act; it strikes at the very root of a transaction. Exhibit-11, together with the oral testimonies of PW-2, PW-3, PW-4, and PW-5, conclusively demonstrates that the impugned deeds were executed fraudulently. Both courts below, by ignoring or misreading this material evidence, committed an error of law. Once fraud is established, no right, title, or interest can accrue to the transferees, however innocent they may claim to be. Fraud not only nullifies the transaction but also destroys the sanctity of any judicial proceedings founded upon it.

#### On Limitation.

The next issue relates to limitation. The suit, as framed, sought both (a) cancellation of the sale deeds and (b) recovery of khas possession.

Article 91 of the Limitation Act prescribes a period of three years for filing a suit for cancellation of documents, reckoned from the date of knowledge. The courts below applied this provision in isolation and held the suit barred. However, the plaintiffs also claimed recovery of khas possession. The plaint asserts dispossession in April 1988, and the suit was filed on 26.01.1998, which is well within twelve years. While the claim for cancellation of the deeds may be barred under Article 91, the relief of recovery of khas possession is clearly within time.

It is well-settled that where multiple reliefs are claimed, the longer period of limitation applies when the reliefs are interdependent. In the present case, cancellation of the deeds was merely incidental; the substantive relief sought was recovery of khas possession. As the plaintiffs filed the suit on 26.01.1998, well within twelve years of the dispossession alleged in 1988, the suit is clearly within time. The courts below committed a jurisdictional error by bifurcating the reliefs and applying Article 91 in isolation. Such an approach is legally untenable. Judicial precedent consistently holds that in cases where title and possession are claimed together, Article 142 governs.

This Court is of the considered view that where cancellation of sale deeds and recovery of khas possession are sought together, the reliefs are legally inseparable. When a deed of transfer is cancelled only to establish the plaintiff's title, recovery of possession constitutes the

substantive relief. In such circumstances, limitation cannot be bifurcated. Once a plaintiff claims recovery of khas possession, Article 142 (twelve years from dispossession) governs, since possession cannot be restored without addressing the invalidity of the sale deed. Where cancellation and possession are intertwined, the longer limitation period governs the principal relief, and cancellation of sale deeds is merely incidental. Therefore, in a suit combining cancellation of sale deeds and recovery of khas possession, limitation is governed by Article 142, and splitting limitation periods constitutes an error of law.

#### Dispossession.

The trial court held that the plaintiffs failed to prove dispossession. However, in their written statement, Defendant Nos. 1 and 2 admitted that two *bainapatras* were executed on 20.09.1987 and 12.10.1987, and that possession of the land was delivered to them on those dates. Such admissions conclusively establish dispossession of the plaintiffs. Possession obtained under void or fraudulent deeds cannot defeat the true owners' right to recovery. These statements constitute admissions under Section 58 of the Evidence Act and supply the fact of dispossession which the trial court erroneously held to be unproved.

Even if the assertion of unproven dispossession is accepted *arguendo*, the suit filed on 26.01.1998 is within the twelve-year limitation prescribed by Article 142, reckoned from 1987, and is therefore not

barred. Possession obtained pursuant to a void or fraudulent transaction confers no legal benefit upon the wrongdoer. Accordingly, the plaintiffs, being the true owners, are entitled to recovery of khas possession, notwithstanding the defendants' pleas.

### Conclusion.

For the reasons stated, this Court finds that both the trial court and the appellate court misdirected themselves in law by:

- (1) holding that revocation of a registered power of attorney was ineffective without a decree;
- (2) failing to apply section 47 of the Registration Act to give effect to the deed of revocation from its date of execution;
- (3) not considering that any act done by the attorney after revocation is void and inoperative;
- (4) disregarding the plea and proof of fraud and the admission contained in Exhibit-11;
- (5) considering that dispossession was not proved, despite clear admissions by the defendants, and
- (6) erroneously applying limitation under Article 91 without considering Article 142 of the Limitation Act, even though the suit filed on 26.01.1998 was well within 12 years from the dispossession.

In summary, the Court finds that the registered deed of revocation executed on 22.03.1988 immediately terminated the attorney's



authority, rendering all subsequent transactions, including the sale deeds dated 19.04.1988, void *ab initio*. The impugned deeds were also procured through fraud, as evidenced by Exhibit-11 and corroborated oral testimony, which nullifies any purported title or interest. Dispossession of the plaintiffs was conclusively established through the defendants' admissions, and the claim for recovery of khas possession is within the twelve-year limitation under Article 142 of the Limitation Act. Accordingly, the plaintiffs are entitled to recovery of khas possession, and the sale deeds executed after revocation are found null and void.

**Accordingly, the Rule is made absolute.**

The impugned judgment and decree dated 12.07.2007 passed by the learned Additional District Judge, First Court, Dhaka in Title Appeal No. 352 of 2006 affirming the judgment and decree dated 20.07.2006 passed by the learned Joint District Judge, Third Court, Dhaka in Title Suit No. 16 of 1998 are set aside.

**The suit is decreed in favour of the plaintiffs.** The sale deeds dated 19.04.1988 are hereby declared void, fraudulent, and inoperative, and stand cancelled. The plaintiffs are further entitled to recovery of khas possession of the suit land. The defendants are directed to hand over possession within ninety (90) days of receipt of this judgment.

There will be no order as to costs.

Let the Lower Court Records be sent back along with a copy of this judgment for information and compliance.

**(Justice Md. Toufiq Inam)**

Ashraf/ABO.