

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 4257 of 2001

In the matter of

Md. Abdul Majid Pondit, being dead, his
heirs Md. Iqbal Hossain and others

... Defendant-Appellant

Petitioners

-Versus-

Most. Sakena Khatun and others

... Plaintiffs-Respondents

Opposite parties

Mr Md. Ahia, Advocate

.....For the petitioners

Mr. Md. Humayun Bashar, Advocate

...For the opposite parties

Date of Hearing: 16.07.2026, 19.07.2026,

23.07.2026 and 09.08.2026 A.D.

Date of Judgment: 03.09.2026 A.D., Thursday;

১৯ ভাদ্র, ১৪৩৩ বঙ্গাব্দ।

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioners under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

"Let a Rule be issued calling upon the opposite parties No. 1-3 to show cause as to why the impugned judgment and decree of affirmance dated 25.1.2001 passed by the learned Sub-Judge, 1st Court, Bhola in Title Appeal No. 69 of 1997 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper."

The crux of the facts of the case is that the opposite parties 1-3 as plaintiffs filed the title Suit 3 of 1991, which on transfer renumbered as Title Suit 103 of 1994 before the learned Assistant Judge, Borhanuddin stating *inter-alia* that the suit land situated in District and P.S. Bhola, Mouza- Chhoto Algi of S.A Khatian No.141 of an area of 1.9049 acres and Khatian No. 144 of an area of 1.2443 acres originally belonged to Jebol Haque who transferred 6 decimals of land to the defendant 3 Younus

Ali vide Kabla deed and since then he is in possession of aforesaid Plot, defendant No.1 is a resident of Char Chandra Prashad who has get business in the town of Bhola. The said defendant No.1 is the tenant of Obidullah Mia, who is the neighbor of Jabal Haque; during the aforesaid period of neighborhood, defendant No.1 had the opportunity to be in contact with said Jabal Haque. Subsequently, defendant No. 1 and 2 purchased 3 decimals of land from the said Jabal Haque on 4.1.1983. The defendant No. 3, after obtaining information about the aforesaid sale, filed preemption miscellaneous case No. 27 of 1985 before the learned Assistant Judge, Bhola. After obtaining information about the preemption Misc. case, defendant No. 1, with a view to resisting defendant No. 3, entered into a return agreement with Jabol Hoque by obtaining a signature on blank stamp papers. Thereafter, by using those blank stamp papers, he made an exchange deed dated 5.3.85 in which it was shown that Jabol Hoque transferred 37 decimals of land from the Mouza Chhoto Algi in Khatian No.141 and 144 to the defendant No. 1, and defendant No.1 transferred 2.00 acres of land to the aforesaid Jabol Hoque from Mouza Notun Char, which was alleged to have been executed by false

personification. The said deed was registered before the Bangla Bazar Sub-Registry office, Banglabazar. In the aforesaid deed no transfer was made, and the deed was never acted upon. The said exchange deed was made without the knowledge of Jabol Haque. In the name of Jabol Haque, the said deed was executed by the 3rd parties. After the death of Jabol Haque, he was buried in his own residential plot; the plaintiffs are in possession of the suit land. The plaintiffs, on the information of the exchange deed on 1.11.89, filed the aforesaid suit for declaration of title, etc.

Thereafter, the defendant No. 1 contested the suit by filing a written statement denying the allegations made in the plaintiff's plaint. Further case of the defendant is that the suit is barred by limitation, defect of parties, barred under Section 42 of the Specific Relief Act, etc. Further case of the defendant No.1 is that Jabol Haque sold '03 decimals of land to the defendant No.1 and his brother, defendant No. 2, on 4.1.83 by registered deed, who after the purchase developed the land by earth filling and constructed his residential house; then the defendant No.3 out of jealousy, submitted preemption Miscellaneous case No. 27 of 1985 under section 24 Non agriculture tenancy act by

suppressing the material points. Jabol Haque subsequently exchanged his 37 acres of land for 2.00 acres in Mouza Natun Char Hossain; ultimately, an exchange deed was executed and registered between them on 5.3.85. Thereafter, Jabol Haque, with the consent of the defendant-petitioner, started living in the suit holding on the condition that he would remove his family and huts within a very short time. But he failed to do so, due to his sudden death. Taking advantage of his death, his heirs, as per the ill advice of others, filed the aforesaid title suit with a view to deprive the defendants of the fruits of the aforesaid exchange. The defendant, after the execution and registration of the said exchange deed, mutated their names vide mutation 85, case No. 634 / 86-86, dated 2.11.85. Jabol Haque also took a loan of Taka 13,000/- from the defendant No. 13. After his death on 14.10.88, his wife refused to return the said amount. Moreover, he filed the aforesaid suit on the ill advice of others and has no right, title, or interest in the suit land.

The learned trial Court completed all legal formalities to conclude the trial. After analyzing the documents in the record

and hearing the arguments of both parties, the learned trial Court was pleased to decree the suit vide its judgment and order dated 26.05.1997 (decree drawn up thereunder and signed on 03.06.1997)

Thereafter, being aggrieved by and dissatisfied with the aforesaid judgment and decree of the learned Assistant Judge Borhanuddin, the defendant No.1, as appellant, filed a Title Appeal. No. 69 of 1997 before the learned District Judge, Bhola, who transferred it to the learned Sub-Judge, 1st Court, Bhola, and after hearing the matter, passed judgment and dismissed the appeal on 25.1.2001 without going through the records and evidence and committed errors of law as were committed by the learned trial Court.

Being aggrieved and dissatisfied with the aforesaid judgment dated 25.1.2001 and decree dated 31.1.2001 passed by the learned Sub-Judge Bhola in Title appeal No.69 of 1997 affirming the judgment and decree of the learned Assistant Judge Borhanuddin Bhola dated 26.5.97 and 3.6.97 respectively in title suit No.103 of 1994, the defendant-appellant being petitioner, invoked this revisional jurisdiction.

Mr Mohammad Ahia, learned Counsel for the petitioner, submitted that, in delivering the impugned judgments and decrees, both the Subordinate Courts erred in law by failing to consider the pleadings, evidence and materials on record. He contended that their findings were defective and their conclusions erroneous in both law and fact, and that the judgments and decrees should therefore be set aside.

Learned Counsel further submitted that the Subordinate Courts failed to frame appropriate issues and did not determine the issues they framed in light of the applicable law, the record and the evidence. This, he argued, led to an erroneous conclusion and errors of law in the judgments and decisions.

He next argued that the plaintiffs had failed to prove the allegations in the plaint, particularly the allegation of fraud in relation to the Ewaz deed. According to him, the subordinate Courts overlooked the alleged irregularities and failed to assess the testimony of the PWs and DWs in their proper perspective, thereby committing errors of law.

Learned Counsel also contended that the suit was barred by limitation and was not maintainable under section 42 of the Specific Relief Act, 1877. He submitted that the disputed deed was executed and registered by Jebal Haque on 5 March 1985, while the suit was filed by his successors after his death on 5 January 1991, without seeking cancellation of the deed. He further argued that the suit was not properly valued according to the prevailing market value and was filed in a court lacking proper jurisdiction. He said that the courts below failed to consider these matters.

He further submitted that the plaintiffs admitted in paragraph 3 of the plaint the deed's signature and execution. As the defendant had obtained possession under a valid transfer deed and had mutated his name in the revenue records, he argued that he had valid title to the suit land. In the absence of claims for a declaration of title, recovery of possession, and cancellation of the deed, the suit was barred by Section 42 of the Specific Relief Act, 1877. Learned Counsel maintained that the courts below erred in overlooking these points.

Learned Counsel also argued that the suit land was the defendant's homestead under a valid transfer deed, the validity of which the plaintiffs had failed to disprove. He submitted that the Subordinate Courts had not properly addressed the issues and referred to Order V, rule 20 of the Code of Civil Procedure. On these grounds, he contended that the impugned judgments and decrees should be set aside.

He further submitted that the plaintiffs had failed to establish any irregularity in the execution or registration of the disputed deed, including by producing expert opinion, and had not discharged their burdens under sections 101 and 103 of the Evidence Act, 1872. He argued that the Subordinate Courts therefore erred in law.

Learned Counsel finally argued that the plaintiffs bore the burden of proving fraud and could not succeed merely by relying on any weakness in the defendant's case. He also submitted that the plaintiffs had not challenged the authority of the Sub-Registrar of Bangla Bazar to register the deed, and that the District Registrar was empowered to authorize a Sub-Registrar to register documents within the relevant jurisdiction. He

contended that the failure to consider these matters had caused a serious miscarriage of justice.

In support of his submissions, learned Counsel cited 25 BLT (HCD) 564, concerning the requirement of a declaration of title in relation to a forged deed; 39 DLR (AD) 237, on the principle that a defendant's weakness does not prove the plaintiff's case; 61 DLR (HCD) 252, concerning the opinion of a handwriting expert; and 39 DLR (AD) 223, concerning the evidentiary value of registration as evidence of execution.

In reply, **Mr Md. Humayun Bashar, assisted by Ms Zubaida Gulshan Ara**, learned Counsel for the opposite parties, submitted that both subordinate Courts had considered the evidence and properly assessed the facts and applicable law. As they had delivered concurrent judgments and decrees, he argued, there was no basis for interference in revisional jurisdiction.

Learned Counsel submitted that Title Suit No. 103 of 1994 was brought by plaintiff-opposite parties Nos. 1–3 solely for a declaration that Ewaz deed No. 1190 dated 5 March 1985 was

false, concocted, forged, fraudulent and not binding upon them. The suit did not seek a declaration of title, permanent injunction or recovery of khas possession. He argued that the plaintiffs had sufficiently identified the suit land by setting out the schedule to the Ewaz deed and the description of the property; as the dispute concerned the validity of an exchange deed, he submitted, it was unnecessary to identify the property by boundaries. The suit was therefore maintainable in its present form.

Learned Counsel further submitted that the suit property lay within the jurisdiction of the Sub-Registrar's office at Bhola Sadar, whereas the exchange deed dated 5 March 1985 had been registered at the Sub-Registrar's office at Radhabollov, Police Station Daulatkhan, Bhola. That office, he argued, had no territorial jurisdiction over the scheduled land. Relying on section 28 of the Registration Act, 1908, he submitted that a document relating to immovable property must be registered under a Sub-Registrar where the whole or some part of that property is situated, and that the deed had not been validly registered.

He also submitted that the B.R.S. khatian had been prepared in the plaintiffs' names and that the PWs' testimony corroborated their case. The subordinate Courts, he said, had found that the plaintiffs held title and possession. Their concurrent findings of fact should not be disturbed unless they resulted from misreading or non-consideration of material evidence, or from an error of law or procedure affecting the merits of the case.

On limitation, learned Counsel argued that, where fraud is alleged, time runs from the date on which the fraud is discovered, rather than from the date of execution of the document. He submitted that the plaintiffs learned of the challenged deed on 1 November 1989 and instituted the suit on 5 January 1991, within the limitation period.

Learned Counsel further relied on Exhibit 3, submitting that the defendant's bargadar remained in possession of the land attributed to the defendant in the exchange deed. He argued that, even after the death of Abdul Mojid Pandit, his heirs remained in possession of the land in Mouza New Char Hossain. The exchange, he contended, had never been acted

upon, and the deed was therefore liable to be declared illegal, void and not binding upon the plaintiffs.

He also argued that the exchange deed did not specify the boundaries of the exchanged lands. Relying on Abdul Majid vs. Md. Emdadul Haque and another, reported in 71 DLR 255, he submitted that an immovable property must be sufficiently specific and identifiable by reference to its area, khatian, plot number, mouza, police station, district and boundaries. In his submission, the absence of such particulars meant that the deed conveyed no title or possession to the petitioner, and the Rule should be discharged with costs.

Learned Counsel further submitted that the petitioner had created the exchange deed to avoid pre-emption, and that this supported the contention that the deed was fictitious, false and never acted upon. He accordingly argued that the Rule should be discharged with costs.

He maintained that the subordinate Courts had discussed the testimony of the PWs and DWs and considered the documents before decreeing the suit. As there was no illegality

or error of law in their concurrent judgments and decrees, he submitted that the Rule should be discharged.

Finally, learned Counsel cited 44 DLR (HCD) 79, concerning sections 28 and 87 of the Registration Act, 1908; 17 MLR (HCD) 441, concerning the place of registration of documents relating to land; and 21 BLT (AD) 337, concerning limitation in cases involving fraudulent documents.

I have heard the learned counsels appearing for the respective parties at length, carefully perused the impugned judgments and decrees of both the Subordinate Courts, examined the pleadings, oral and documentary evidence available on the record proposition of law and considered the submissions advanced at the Bar.

On perusal of the judgment of the learned trial Court, it is found that the learned trial Court observed that within the scheduled land measuring 37 decimals, according to the deposition of DW-1 Abdul Majid, the plaintiffs have a hut/house. The defendant's side has failed to produce any credible witness to prove that the plaintiffs reside there as caretakers/licensees

under Defendant No. 1. Furthermore, to transfer municipal (Pourashava) land, permission from the Pourashava is mandatory, along with an income tax clearance certificate. From the cross-examination of DW-1, it is evident that they could not produce any proof as to whether Jebal Haq Miah obtained such a permission certificate or if it exists. Defendant No. 1 claims to have constructed a dwelling house on the scheduled 37 decimals of land, but has failed to submit any plan or holding number from the Pourashava to support this claim. DW-2 and DW-3 stated that they have no accurate knowledge regarding the exchange (Ewaj). DW-3 is the mother of Defendant No. 1; she was not present during the discussions regarding the Defendant No. 1's exchange deed (Ewaj Dalil). DW-2, Obaidullah, does not know the date of the exchange discussions, nor did he participate in them. He was unaware of the exchange before or after it took place. Consequently, the defendant's side has failed to produce any witness in court who participated in or directly witnessed the exchange discussions.

However, the learned trial Court also noticed at the time of delivering judgment that, in the registered deed dated

04/01/1983 executed between the donor Jebal Haq and the donee Defendant No. 1, the donor Jebal Haq executed and registered the deed by affixing his thumb impression, whereas a signature of Jebal Haq appears on the disputed exchange deed (Ewaj Dalil). Had Jebal Haq been literate or able to sign, he would certainly have executed the deed dated 04/01/1983 with his signature. This indicates and proves that the disputed exchange deed was not executed and registered by the plaintiffs' predecessor, Jebal Haq.

Concomitantly, on perusal of the judgment of the learned Appellate Court, it was observed that DW-6, on behalf of the defendant, could not bring any clear proof from the Sub-Registrar's office registry or volume records regarding the registration, nor is there any document in support thereof on record. The claim of possession based on bringing paddy from them after the death of the plaintiffs' predecessor Jebal Haq has been proven false. None of the 6 witnesses on the defendant's side could prove that the plaintiffs are in possession of the exchanged land in Char Hossain Mouza. There is no documentary evidence explaining why the disputed deed was

registered at a distant Sub-Registrar's office rather than the Sub-Registrar's office within 1 mile. Despite the plaintiffs claiming that the disputed deed is forged and was executed by impersonation, the defendant's side made no effort to prove its genuineness. No attempt was made, nor is there any documentary evidence showing an effort, to compare and verify the signature or thumb impression of Jebal Haq with his signature or thumb impression on other deeds or documents. The fact that the donor Jebal Haq registered the deed dated 04/01/1983 by affixing his thumb impression, yet the disputed deed contains a signature, makes the execution highly suspicious. Defendant No. 1 has entirely failed to prove that the said signature belongs to Jebal Haq. The plaintiffs remain in possession of the suit land to date, and the exchange deed (Ewajnama) dated 05.03.1985 was never acted upon. The learned lower court correctly opined that the disputed deed is fraudulent, fabricated, and forged.

From the aforementioned observations of the learned Subordinate Courts, it is evident that both the learned Courts, upon a detailed analysis of the evidence, found that the

plaintiffs have been able to establish the alleged claim as to the forged deed, and the defendant failed to prove lawful possession over the suit property and failed to substantiate the very foundation of his claim.

Moreover, the learned Appellate Court, upon independent reappraisal of the evidence, concurred with those findings and further observed that the fact that donor Jebal Haq registered one deed on 04.01.1983 by affixing his thumb impression, whereas the disputed deed bears a signature purportedly attributed to him, gives rise to serious doubt as to its due execution. Defendant No. 1 has failed to establish that the signature appearing on the disputed deed is that of Jebal Haq. The plaintiffs have remained in possession of the suit land to date, and the Ewajnama dated 05.03.1985 was never acted upon.

However, the learned Counsel for the petitioner argued that the plaintiffs had failed to establish any irregularity in the execution or registration of the disputed deed, including by producing expert opinion, and had not discharged their burdens under sections 101 and 103 of the Evidence Act, 1872. In this

context, I am of the view that both the Subordinate Courts concurred that the manner in which the deed dated 04.01.1983 was registered is a material circumstance in assessing the authenticity of the disputed deed. Jebal Haq earlier registered a deed by affixing his thumb impression, yet the disputed deed bears his signature purportedly. This inconsistency calls for a satisfactory explanation and casts serious doubt on whether Jebal Haq executed the disputed deed. Defendant No. 1 has produced no sufficient proof to establish that the disputed signature is genuine or that it belongs to Jebal Haq. That failure leaves the alleged execution unproved. Further, the plaintiffs have remained in possession of the suit land to date, and the Ewajnama dated 05.03.1985 was never acted upon. These circumstances support the plaintiffs' contention that the alleged exchange was not implemented and that the disputed deed should be treated with serious suspicion. Accordingly, there is no need for expert opinion, as the differential cause shifted the burden to the defendant.

For the reasons of necessity, I need to examine the provisions of section 28 of the Registration Act, 1908, which are reproduced as under:

“Place for registering documents relating to land-

28. (1) Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clause (a), (b), (c), (d) and (e), section 17, sub-section (2), and section 18, in so far as such documents affect immoveable property shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or [major portion] of the property to which such document relates is situate.

Provided that where the major portion of such property is not situated within one sub-district the document shall be presented for registration in the office of the Sub-Registrar within whose sub-district any portion of such property is situate.

(2) Notwithstanding anything contained in sub-section (1), -
(a) after a document is registered, no party thereto shall be entitled to question the validity of its registration on the ground that the property which purported to give jurisdiction to the Sub-Registrar to register it either did not exist or was

fictitious or insignificant or was not intended to be conveyed;
and

(b) a document the registration of which is secured by the inclusion of a non-existent, fictitious or insignificant portion or item shall not in any manner affect the rights of a person who was not a party thereto and acquired rights in the property without notice of the transaction to which such document relates.

From the plain reading of the aforesaid provisions, it is crystal clear that the place of registration of immovable property must be within the jurisdiction of the Sub-registrar where the property is situated. Thus, it is evident from Exhibit-1 that the scheduled land of the alleged deed 1190/85 dated 05.03.1985 is situated under the registral jurisdiction of Bhola Sadar Sub-registry Office, whereas the said deed was executed and registered under the jurisdiction of Radhaballav Sub-registry Office, Bangla Bazar, and the defendant failed to provide any sanction of the District Registrar, which clearly violates the provisions of section 28 of the said Act.

Learned Counsel for the petitioner relied on 25 BLT (HCD) 564, concerning the requirement of a declaration of title in relation to a forged deed; 39 DLR (AD) 237, on the principle that a defendant's weakness does not prove the plaintiff's case; 61 DLR (HCD) 252, concerning the opinion of a handwriting expert; and 39 DLR (AD) 223, concerning the evidentiary value of registration as evidence of execution. All these judgments have a tremendous effect on the legal principle of our judicial system. But the facts are quite distinguishable from the case in hand. If I look into the case of Md. Waliar Rahman Vs Md. Moen Uddin Mollah @ Md. Ainuddin Mollah and others, reported in 25 BLT (HCD) 564, where the Court was pleased to hold that,

"It appears from the plaint of the suit that though the plaintiff prayed for declaration that registered kabala no. 1228 dated 12.03.1969 is forged and not acted upon, but did not seek declaration of title in the suit property. Without establishing his title in the suit property, the plaintiff is not entitled to get any other relief. ---(17)."

From the facts of the aforesaid case, it is revealed that the plaintiff or his predecessor was not a party to the alleged deed,

and the plaintiff claimed the suit property by way of another transaction, which leads to the requirement for a declaration. But, in the instant case, the defendant admitted the plaintiff's ownership of land in the alleged exchanged deed; thereby, the party to the deed or the successors-in-interests do not require a declaration for title in the schedule property of a *void ab initio* deed, if the defendant, being the beneficiary, fails to prove otherwise.

Another case of Abani Mohan Saha Vs Assistant Custodian (S.D.O.) Vested Property, Chandpur and others, reported in 39 DLR (AD) 223, where the Apex Court was pleased to hold that,

"Any objection to the sufficiency of the proof upon this point would have been idle, the circumstances being such that the evidence of due registration is itself some evidence of execution as against the plaintiffs. [AIR 1943 (IC) 83] ---(8)"

The core facts of the aforesaid case are as follows:

The plaintiff-appellant instituted Title Suit No. 264 of 1977 in the Court of the Munsif, Chandpur, seeking a declaration that the proceedings in E.P. Case No. 255 of 1972–73 were illegal, void and collusive, together with a consequential decree

directing defendant Nos. 3–5 to deliver vacant possession of the suit property to him.

The plaintiff-appellant claimed title to the suit property by virtue of a registered deed of gift dated 26.06.1969, executed in his favour by the sons of Surendra Chandra Saha, the admitted owner of the property. Defendant No. 2, who was the father of defendant Nos. 4 and 5, had taken a lease of two rooms of the suit premises by executing a registered kabuliyat dated 10 March 1970. Subsequently, defendant No. 2, without any lawful authority, handed over possession of the said premises to defendant No. 3. Thereafter, defendant Nos. 3–5 obtained settlement of the suit property from defendant No. 1, the Assistant Custodian, who had treated the property as enemy property on the basis of a false report submitted by the Tahsildar.

From the above facts, the Court's ratio is more significantly based on the **due registration** itself being some evidence of execution. Now, the pregnant consideration is whether the alleged deed (Ext.1) in the case at hand was duly registered?

Upon perusal of Exhibit-1, it appears that the land described in the schedule to the purported Deed No. 1190/85, dated 5 March 1985, is situated within the territorial jurisdiction of the Bhola Sadar Sub-Registry Office. The deed, however, bears registration at the Radhaballav Sub-Registry Office, Bangla Bazar, whose territorial jurisdiction, according to the evidence, does not extend to the scheduled land. Even the defendant has produced no sanction or order of the District Registrar, nor any other material explaining the basis on which the deed was presented and registered at that office. These circumstances raise a substantial question as to whether the deed was presented for registration before the competent Sub-Registrar and whether its registration complied with the applicable place-of-registration requirement under section 28 of the Registration Act, 1908. Unless the defendant establishes that the registering office was competent to accept the instrument, the registration appears *prima facie* to have contravened that requirement, calling into question whether the alleged deed was duly registered.

In this context, I am of the view that the plaintiffs have proved their initial legal burden under section 102 of the Evidence Act, 1872, that the alleged deed was registered beyond the jurisdiction of the Sub-registrar. Now, the defendant has to bear the consequence of the provisions of section 103 of the Evidence Act, 1872, which places the burden of proving a particular fact upon the party who asks the Court to accept the fact as true. On sifting the documents on record, no elements are found that the defendant has been able to prove that the alleged deed was rightly executed and registered.

However, the learned Counsel for the opposite parties has referred to an important decision in support of their argument, which is reflected in the case of Joynal Abedin Vs Ali Azam Saial and others, reported in 21 BLT (AD) 337, where their Lordships were pleased to hold that,

“It is a settled principle that where no part of property to which document relates is situated within the jurisdiction of a Sub-Registrar, the Sub-Registry has no jurisdiction to register the document, and registration if executed will be fraud. In a case of fraud, the question of limitation will run from the date of

knowledge and not from the date of execution of the disputed document. ---(5)"

Upon perusal of the aforesaid decision, it is found that the facts are very much similar to the facts of the case in hand, and thereby, it is perceived that the defendant committed fraud at the time of registering the alleged deed (Ext.1). DW6 admitted that due to the unavailability of the Sadar Sub-registrar, they went to Bangla Bazar Sub-registry office, and accordingly registered the alleged deed. Moreover, it is also revealed that, in terms of exchange, he showed that he handed over 2 acres of land in favour of the predecessor of the plaintiffs; the records revealed that the said 2 acres of land were possessed by the defendant and the recent record of right has been published in the name of his heirs. So, the defendant, knowing everything and beyond Zebol Haque's knowledge, executed and registered the alleged fraudulent deed (Ext.1).

Considering the above facts and propositions of law, I am of the considered view to apply the essence of "**doctrine of the fruits of the poisonous tree**", which embodies the principle that evidence derived from an unlawful act may be rendered

inadmissible where its acquisition is casually connected with the original illegality, subject to the applicable law and recognized exceptions. Moreover, the fraud destroys or vitiates everything it affects. It is also firmly settled that no person should derive a legal benefit from their own wrongful conduct (i.e. *Commodum ex injuria sua nemo habere debet*). It is manifest that the defendant's claim is founded on an illegal transaction, which cannot deprive any person of a legal remedy.

It is equally my firm conviction that **in the case of a fraudulent instrument, no declaration of title is required where the plaintiff or his predecessor is admittedly the owner of the property included in the alleged instrument, and any instrument without the evidence of due registration cannot be taken, and the said registration itself does not create any evidence of execution.**

Having independently scrutinized the record, I find that the concurrent findings recorded by Subordinate Courts and decisions are founded upon proper appreciation of the oral and documentary evidence and cannot be characterized as perverse, arbitrary or unsupported by the evidence on record.

It is a well-settled principle of law that a plaintiff seeking any kind of declaration must succeed on the strength of his own case and not on the weakness of the defense. The burden squarely rests upon the plaintiff to establish his lawful title, identity of the property and actual possession by reliable and convincing evidence. A declaratory decree cannot be granted merely because the defendants have failed to prove every aspect of their defense. In the instant case, the plaintiffs have proved their case on the balance of probabilities, and aid was not required from the defendant's weakness.

It is the settled principle of law that where the plaintiff successfully discharges the initial burden cast upon him under section 101 of the Evidence Act, 1872 by establishing, through cogent and reliable evidence, an unbroken chain of title together with lawful possession over the disputed property, the evidential burden thereafter shifts to the defendant under section 103 of the Act. In such circumstances, if the defendant sets up a rival title, denies the plaintiff's ownership or possession, or asserts any fact inconsistent with the plaintiff's case, the onus lies upon the defendant to substantiate such affirmative defense by

credible and convincing evidence. Mere denial of the plaintiff's claim, without proof of the facts specifically asserted by the defendant, is insufficient in law to displace the case established by the plaintiff. So, the important decisions referred to by the petitioner do not assist in the instant facts.

In the present case, both the Subordinate Courts concurrently found that the plaintiffs have established the genealogy pleaded in the plaint, proved inheritance, identified the suit property with certainty, and proved actual possession, and that the alleged deed was registered beyond their knowledge. Such findings are essentially findings of fact based on an appreciation of the evidence.

However, I agree to disagree with the submissions advanced by the learned Counsel for the petitioner, and the authorities relied upon by the learned Counsel for the petitioner is also distinguishable on facts. While they correctly state the principles governing the burden of proof and the legal consequences of the statutory provisions, those principles do not assist the petitioner in view of the concurrent factual findings recorded against him.

This Court, while exercising revisional jurisdiction under section 115 of the Code of Civil Procedure, does not function as a second Court of appeal. Unless the concurrent findings suffer from jurisdictional error, material illegality, perversity, misreading or non-consideration of material evidence resulting in failure of justice, interference is not warranted.

Having examined the entire record, I find no such infirmity. The findings recorded by the Subordinate Courts are based on evidence supported by reasons and do not disclose any jurisdictional error or material irregularity warranting interference under revisional jurisdiction.

I am, therefore, of the considered opinion that both the Subordinate Courts rightly decreed the suit upon proper appreciation of the evidence and correct application of the governing principles of law. The impugned judgments and decrees call for no interference by this Court. I have also failed to find any merit in the instant Rule.

As a result, the Rule is discharged.

There shall, however, be no order as to costs.

However, the judgment and decree of affirmance dated 25.1.2001 passed by the learned Sub-Judge, 1st Court, Bhola in Title Appeal No. 69 of 1997, is hereby affirmed.

Let the Subordinate Courts' Records (SCR) be transmitted to the Courts concerned forthwith together with a copy of this judgment.

Before parting with the record, this Court places on record its appreciation of the learned Counsels for both parties for their diligent and valuable assistance in the disposal of this matter.

Order accordingly.

(Abdur Rahman, J.)