

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.2629 OF 2016.

Md. Shafi Uddin, being died his heirs:
Md. Shariful Islam and another
..... Plaintiff-Petitioners.

-VERSUS-

Md. Moklesur Rahman Molla and others.
..... Defendant-Opposite parties.

Mr. Md. Alamgir Mostafijur Rahman, with
Mr. Md. Ashrafuzzaman, Advocates
-----For the petitioners.

Mr. Md. Saidul Islam, Advocate
..... For the opposite parties.

Heard on 23.02.2025, 09.03.2025,
28.04.2025, 05.05.2025 and 07.05.2025.

Judgment on 20.05.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 19.05.2016 passed by the learned District Judge, Rajshahi in Title Appeal No.19 of 2015, disallowing the appeal and thereby affirming the Judgment and decree dated 27.11.2014 passed by the learned Senior Assistant Judge, Bagmara, Rajshahi in Other Class Suit No.43 of 2005 decreeing the suit should not be set aside and/or pass such other or

further order or orders as to this Court may seem fit and proper.

The facts in brief for the disposal of Rule are that the petitioners herein as plaintiffs instituted Other Class Suit No.43 of 2006 before the Assistant Judge, Bagmara, Rajshahi, for declaration of title of the scheduled land contended inter-alia that Taher Uddin Pramanik, Afaj Uddin Pramanik, Ayen Uddin Pramanik were the owners of .20 acres of land under S.A. Plot No.7031. Taher Uddin Pramanik possessed .10 acres out of .20 acres of land by an amicable partition, and his name was correctly recorded in R.S. Plot No. 7673 under R.S. Khatian No. 963. The remaining .10 acres were recorded under R.S. Plot No. 7672. Although the S.A. Plot No. 7031 has been converted into R.S. Plot Nos. 7672 and 7673, but R.S. Plot No. 7674 has been wrongly written instead of 7673, which has created no problem in the possession of the tenants. Taher Uddin Pramanik died, leaving behind defendant Nos. 2-17, and they used to possess the suit land jointly. The suit land is to some extent down than the adjacent land. As such, defendants Nos. 2-17 used to retain it by breeding fish thereon, within the knowledge of all concerned, including defendant No. 1. The defendants sold the

suit land to the plaintiffs vide sale deed No. 7494 dated 08.08.2004 and handed over possession to the plaintiff.

Therefore, the plaintiff possess the suit land by breeding fish thereon in the same manner as before. The plaintiff applied to the A.C. land office to mutate the suit land in their name, but the petition has not yet been disposed of. On December 2, 2005, defendant No. 1 suddenly disclosed to the plaintiff that he had purchased the suit land from Taher Uddin Pramanik. While the defendant was asked to produce his sale deed, he failed to do so. Taher Uddin Pramanik had never sold the suit land to Defendant No. 1 or anyone. The plaintiff searched the alleged deed of Defendant No. 1 in the concerned Sub-Registry Office, but they found no record of it there. Defendant No. 1 has no title, interest, or possession in the suit land. Defendant No. 1 has claimed title to the suit land, and as such, it has clouded the title of the plaintiff to the suit land. Hence the suit.

Defendant No. 1 contested the suit by filing a written statements denying all material allegations against him, contending, inter alia, that 0.39 acre of land, including the suit land, is situated in the Ramrama Mouza under R.S. Khatian No. 963, and Taher Pramanik was its tenant and possessor. That due to the necessity of money, Taher Pramanik sold .10 acres of

suit land of S.A Khatian under S.A. plot No.7031, and R.S Plot No.7673 to the defendant No 01 vide sale deed No.15323, dated 11.11.1969 and handed over possession in the presence of local people after measuring the suit land correctly; that in the above way the defendant No.1 is possessing the suit land by mutating it in his name under mutation case being No.659/1X-1/2000-2001 under proposed Khatian being No. 2493 and paying rent year to year till up-to-date to the Government; that the plaintiffs have brought out this suit on a false statement and to grab the suit land and cause loss to the defendant No. 1. As such this suit is liable to be dismissed.

The learned Senior Assistant Judge, Bagmara, Rajshahi, dismissed the suit by Judgment and decree dated 27. 11. 2014.

Being aggrieved by and dissatisfied with the above Judgment and decree dated 27.11.2014, the plaintiffs preferred Title Appeal No.19 of 2015 before the learned District Judge, Rajshahi. Eventually, the learned District Judge, Rajshahi, by the Judgment and decree dated 19.05.2016, dismissed the appeal and affirmed those passed by the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiffs, as petitioners, preferred this Civil Revision under section 115 (1) of the Code of Civil

Procedure before this Court and obtained the instant Rule with an order of stay.

Mr. Md. Alamgir Mostafijur Rahman, the learned Counsel appearing on behalf of the petitioners, submits that the plaintiffs applied to the trial Court as well as before the appellate Court below to compare the signature of the defendant No.1- Taher Uddin with the deed No.15323 dated 11.11.1969 and Deed No.4797 dated 20.05.1984. However, both the Courts below, without ordering an examination of Taher Uddin's signature and thumb impression by a handwriting expert, rejected the same. Instead, both courts below examined the thumb impression and the alleged deed themselves and found a similarity between them. Therefore, it is necessary to send the case on remand for an examination of the thumb impression and signature of Taher Uddin by a handwriting expert.

Mr. Md. Saidul Islam, the learned Counsel appearing on behalf of the opposite parties, opposes the contention so made by the learned advocate for the petitioners and submits that both the courts below, having considered all the material aspects of the case as well as discussing the evidence judiciously passed the Judgment and decree and as such the Rule is liable to be discharged.

I have anxiously considered the submissions advanced by the Bar, perused the Judgment of the courts below and oral and documentary evidence on the records. It is admitted that Taher Uddin was the owner of the suit land. The plaintiffs claimed that they became the owners and possessors of the suit land by way of purchase from the heirs of Taher Uddin through registered deed No. 7414, dated 08.08, 2004. On the other hand, Defendant No. 1 claimed that he purchased the suit land from Taher Uddin by registered deed No. 15323, dated 11.11. 1969. It further appears from the record that the plaintiffs filed a petition to call for the volume book of deeds from the Sub-registrar's Office in Naogaon. However, the report sent by the Sub-registrar's Office indicates that the volume (Balam) book is not available in the registrar's office because the Sub-registrar's Office was destroyed during the Liberation War.

Furthermore, it appears that the trial Court below states that Deed No. 15323, dated November 11, 1969 (Exhibit-ka), is a 30-year-old document, and the volume book is burned. However, the genuineness of the same is being challenged. The legal presumption by virtue of the Provisions of Section 90 of the Evidence Act is rebuttable. The mere fact that a document is 30 years old does not render it immune to challenges regarding

its authenticity. Further, it appears from the impugned Judgment that the Appellate Court below relied upon the finding of the trial Court below as well as itself considered and compared the same in respect of the comparison of the signature of Taher Uddin on the alleged deed No. 15323 dated 11.11.1969 and signature on the deed No. 7414 dated 08.08.1984 and admitted deed of Taher Uddin bearing No. 4797 dated 20.05.1984 observed that the signatures of Taher Uddin on the above deeds are same-handed. Therefore, the deed dated November 11, 1969, is genuine and correct.

The Courts below also state that the defendant proved their title by furnishing documentary evidence, i.e., Khatian number, Land development tax receipt, rent receipts, etc. All the above findings of the Courts below cannot be basis, where the genuineness of deed No.15323 dated 11.11.1969 is under challenge.

It is the settled proposition of law that in respect of thumb impression, it is not at all possible to justify whether one thumb impression matches with another by the naked eye other than with the help of modern technique and enlargement of impression for which the expert is the right person who can give an opinion upon critical analyses of all marks of the impression.

This view is supported by the case of Pranay Kumar Vs. Makhlior Rahman reported in 26 BLC (AD) page 40 wherein their Lordships of the Appellate Division observed that:-

"In respect of thump impression, it is not at all possible to justify whether one thump impression matches with other by naked eye other than with the help of modern technique and enlargement of impression for which the expert is the right person who can give the opinion upon critical analyses in the cases cited above."

In the instant case, I have already noticed that the courts below themselves examined the thump impression of Taher Uddin in respect of the alleged deed No. 15323 dated 11.11.1969 and signature on the deed No. 7414 dated 08.08.1984 and admitted deed of Taher Uddin bearing No. 4797 dated 20.05.1984 came to an observation that the signatures of Taher Uddin on the above deeds are same-handed which are not tenable in the eye of law as the Courts below failed to have considered prayer for comparing the signature of Taher Uddin in the disputed deed and with other admitted deeds or proved ones by a handwriting expert to arrive at a correct finding.

In view of the above, it appears to me that the Courts below ought to have take steps for comparing the signature of Taher Uddin in the disputed deed and with other admitted deeds or proved ones by a handwriting expert to arrive at a correct finding, which is very much lacking in the present case. For the reasons stated above, the case should be remanded to the appellate Court below.

Resultantly, the Rule is made absolute without any order as to cost.

The impugned Judgment and decree dated 19.05.2016 passed by the learned District Judge, Rajshahi, in Title Appeal No.19 of 2015 is hereby set aside.

The Title Appeal No. 19 of 2015 is hereby remanded to the learned District Judge, Rajshahi, to dispose of the appeal afresh, taking steps to compare the signature of Taher Uddin in the disputed deeds with other admitted or proved ones by a handwriting expert and to proceed in accordance with the law.

Communicate the Judgment and send down the Lower Courts Record at once.

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(Md. Salim, J).

Kabir/BO