

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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1144 OF 2016

In the matter of:

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

And

Md. Azmat Ali

.... Petitioner

-Versus-

Most. Hosna Banu and others

.... Opposite parties

Mr. M. Ataul Gani, learned Advocate

....For the petitioners.

Mr. Shah Newaz, Advocate

... For the opposite party No.1.

Heard and Judgment on 30.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and decree dated 28.01.2015 passed by the learned Special Judge, Tangail, in Other Appeal No.09 of 2010 and affirming the judgment and decree dated 27.09.2009 passed by the learned Assistant Judge, Modhupur, Tangail in Other Class Suit No.32 of 2007 dismissing 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.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that the registered Heba-bil-ewaz deed No.106

dated 27.07.1983 executed by defendant No.5 to defendant Nos.1-4 transferring 18 decimal land is collusive, fraudulent, not acted upon and not binding upon the plaintiff.

It was alleged that defendant No.5 was the owner and possessor of 22 decimal land of plot No.756 and he transferred 20 decimal land to the plaintiff by registered kabala deed dated 11.10.1983 and delivered possession and above land has been recorded in the relevant B. S. khatian in the name of the plaintiff. In March 2007 the plaintiff came to know for the first time that before transferring above land to the plaintiff above defendant transferred 18 decimal land from above plot to his 4 (four) daughters defendant No.1-4 by registered deed of Heba-bil-ewaz on 27.07.1983. Above transfer of land between the father and daughters was fraudulent and collusive and above hiba was not acted upon.

Defendant No.2-5 contested the suit by filling a joint written statement alleging that defendant No.5 transferred 4 decimal land of plot No.756 to the plaintiff by registered kabala deed dated 11.10.1983 but above plaintiff by collusion and conspiracy altered the quantity of land to 20 decimal. Defendant No.5 transferred 18 decimal land to his 4 daughters defendant No.1-4 by a Heba-bil-ewaz deed and the plaintiff did not get possession of 20 decimal land.

At trial plaintiff examined 4 witnesses and documents of the plaintiff were marked as Exhibit Nos.1-8. On the other hand defendants examined 3 witnesses and documents of the defendants were marked exhibit Nos. Ka - Gha.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Other Appeal No.09 of 2010 to the District Judge, Tangail which was heard by the learned Special District Judge who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this petition under Section 115 of the Code of Civil Procedure and obtained this Rule.

Mr. M. Ataul Gani, learned Advocate for the petitioner submits that admittedly defendant No.5 was the lawful owner and possessor of 22 decimal land and he transferred 20 decimal land to the plaintiff by registered kabala deed dated 11.10.1983 but before execution and registration of above kabala deed defendant No.5 fraudulently transferred 18 decimal land to his 4 daughters defendant No.1-4 by registered deed of Heba-bil-ewaz on 27.07.1983. On the basis of above

deed the plaintiff got possession and muted his name and subsequent record of right was prepared in his name. As far as registration of above deed of Heba-bil-ewaz is concerned the Sadar Sub-registry Office of Tangail had no legal jurisdiction over the disputed land which was situated in Madhurpur. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of appeal below should have allowed the appeal, set aside the flawed judgment and decree of the trial court and decreed the suit. The learned Advocate lastly submits that there are some deficiencies in the plaint and some important documents were not produced at trail and the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

On the other hand Mr. Shah Newaz, learned Advocate for opposite party No.3 submits that admittedly the deed of Heba-bil-ewaz was executed and registered more than two months before the execution and registration of the kabala deed of the plaintiff. Defendant Nos.1-4 got possession of 18 decimal land pursuant to above gift deed and the plaintiff got title and possession only in four decimal land. On consideration of facts and circumstances of the case and evidence on record the learned Special District Judge rightly dismissed the appeal

and affirmed the lawful judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocate for the respective parties and carefully examined all materials on records including the pleadings, judgments of the Courts below and evidence.

It is admitted that 22 decimal land of plot No.756 belonged to defendant No.5 and he transferred 20 decimal land to the plaintiff by registered kabala deed dated 11.10.1983 (Exhibit No.5) but before above transfer plaintiff No.5 transferred 18 decimal land to his 4 daughters defendant No.1-4 by registered deed of Heba-bil-Awaz dated 27.07.1983 (Exhibit No. 8 and Kha).

Defendant No.5 entered appearance and contested the suit by filling a written statement jointly with his daughters and gave evidence as DW1 and both in written statement and evidence as DW1 defendant No.5 stated that he transferred 4 decimal land to the plaintiff by above kabala deed since he had subsisting interest only in 4 decimal land but the plaintiff fraudulently altered above quantity of land of above deed of sale (Exhibit No.5) to 20 decimal.

It turns out from above kabala deed (Exhibit No.5) that 20 decimal land was sold for Taka 4,000/-. Learned Advocate for the opposite party submits that above consideration money clearly shows that the plaintiff purchased only 4 decimal land not 20 decimal.

Learned Advocate for the petitioner submits that in 1983 price of above land was very low and by Taka 4,000/- plaintiff purchased 20 decimal land. It turns out from the plaint and evidence of PW1 that the plaintiff did not mention the price of above 20 decimal land he purchased by the impugned kabala deed. In view of above materials on record above consideration money for 20 decimal land appears to be unusually low.

The plaintiff has filed this suit for declaration that above registered deed of Heba-bil-ewaz was of defendant Nos.1-4 was fraudulent and not binding upon the plaintiff. Above Heba-bil-ewaz deed was earlier at point of time from the registered kabala deed of the plaintiff and above deed of Heba-bil-ewaz has clouded and disputed the title of the plaintiff and to challenge the legality and propriety of an earlier deed of Heba-bil-ewaz the plaintiff should have firmly established his title in the disputed land by seeking a decree for declaration of title.

It turns out from the judgment of both the Courts below that the learned Judges placed reliance on the village shalish or mediation and the award or decision made in above shalish. It was alleged by the defendants that in above shalish the plaintiff accepted 4 decimal land and admitted defendant title in 18 decimal and executed a solenama. But the defendants did not produce and prove above shalishnama or award at trial.

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

In above view of the materials on record I find substance in this petition under Section 115 of the Code of Civil Procedure and the rule issued in this connection deserves to be made absolute.

In the result the Rule is absolute. The impugned judgment and decree dated 28.01.2015 passed by the learned Special Judge, Tangail, in Other Appeal No.09 of 2010 affirming the judgment and decree dated 27.09.2009 passed by the learned Assistant Judge, Modhupur, Tangail in Other Class Suit No.32 of 2007 dismissing the suit is set aside and above suit is remanded to the trial Court for re-trial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

However, there will be no order as to cost.

Send down the lower Court's records immediately.