

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 4533 OF 2016**

**IN THE MATTER OF:**

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

(Against Decree)

-And-

**IN THE MATTER OF:**

Purnima Rani Das

--- Plaintiff-Petitioner.

-Versus-

Haripada Das and others

---Defendant-Opposite Parties.

Mrs. Bahesti Marjan, Advocate

--- For the Petitioner.

Mr. Shihab Uddin Mahmood, Advocate

---For the Opposite Party No. 1.

**Heard on: 07.03.2023, 04.04.2023 and  
07.05.2023.**

**Judgment on: 15.05.2023.**

At the instance of the present plaintiff-appellant-petitioner,  
Purnima Rani Das, this Rule was issued upon a revisional  
application filed under section 115(1) of the Code of Civil  
Procedure calling upon the opposite party Nos. 1-4 and 6 to show  
cause as to why the judgment and decree dated 24.05.2016  
passed by the learned Joint District Judge, Court No. 1, Noakhali  
in the Title Appeal No. 49 of 2015 affirming the judgment and

decree dated 29.01.2015 passed by the learned Senior Assistant Judge, Hatiya, Noakhali in the Title Suit No. 83 of 2013 dismissing the suit should not be *set aside*.

The relevant and important facts for disposal of this Rule, *inter-alia*, are that the petitioner as the plaintiff filed the Title Suit No. 83 of 2013 in the court of the learned Senior Assistant Judge, Hatiya, Noakhali praying for cancellation of a sale deed No. 2625 dated 25.05.2011 as being forged and also for declaration that the deed of gift dated 03.09.1994 as a valid deed on the basis of which the petitioner has been possessing the land for more than 12 (twelve) years. The plaint further contains that the suit land is situated at Mouza- Tomordi, P.S. Khatian No. 448, M.R.R. Khatian No. 404, Dag Nos. 101626, 10166, 10163, 10164, 10165, 10168, 10169, 10170, 10173, 16001 and 16002 total land measuring 7.96 acres and corresponding to R.S. (D.P.) Khatian No. 5049, Dag No. 26086 area of land .25 acres was originally belonged to Jamuna Sundry Das. The said Jamuna Sundry Das on her death leaving behind her legal heirs Surjo Kumar Das and Puspo Ram Das. Puspo Ram Das died leaving behind only Son Sree Sochindra Kumar Das who got .11 acres of land and he purchased .14 acres of land on 08.11.1989. Finally,

Raju Bala Das and Sochindra Kumar Das actually inherited the suit land measuring .25 acres. On 03.09.1994 Sochindra made a deed of gift in favour of his daughter Purnima Rani Das regarding the aforementioned measurement of land.

The suit was contested by the opposite parties as the defendants contending, inter alia, that the suit land originally belonged to Sachindra Kumar Das who left Bangladesh for living in India and he died in the year 1995 leaving behind his daughter Purnima Rani Das and a son Robindra Kumar Das. Purnima remained in Bangladesh but Robindra Kumar Das left Bangladesh for living in India. Purnima was not possessing the suit land but she was living with her husband, namely, Sree Krishna and others. The son of Sochindra came back Bangladesh at certain point of time and sold the suit land to the present opposite party No. 1, Haripada Das by executing and registering a sale deed No. 2625 dated 25.05.2011. The present opposite parties also contended that Sochindra did not create any deed of gift in favour of the present petitioner Purnima Rani Das which was created by her collusively.

The learned trial court heard the matter and obtained the documents and examined the depositions on behalf of the present

petitioner and the opposite parties. After hearing the parties the learned Senior Assistant Judge, Hatiya, Noakhali passed the judgment and decree dismissing the suit. Being aggrieved the present petitioner preferred the Title Appeal No. 49 of 2015 in the court of the learned District Judge, Noakhali which was heard by the learned Joint District Judge, Court No. 1, Noakhali who after hearing disallowed the appeal thereby affirming the judgment and decree passed by the learned trial court. This revisional application has been filed by the present petitioner as the plaintiff-appellant challenging the legality of the impugned judgment passed by the learned appellate court below and this Rule was issued thereupon.

Mrs. Bahesti Marjan, the learned Advocate, appearing for the plaintiff-appellant-petitioner, submits that the PW- 1 deposed in court that her father executed a deed of gift on 03.09.1994 in return of some money amounting to Tk. 23,500/- (twenty-three thousand and five hundred) by selling cows and other sources before leaving Bangladesh for India for religious purpose and she had been living on the suit land by constructing house and planting trees, therefore, a deed created by her brother Robindra Kumar Das which has been created a forged and manufactured

document but the learned trial court and the learned appellate court failed to consider the above claims of the petitioner, thus, came to a erroneous decision, thus, the judgments of both the learned courts below is liable to be interfered and the Rule should be made absolute.

She also submits that the present opposite party could not prove the judgment and decree of the Title Suit No. 83 of 2013 and failed to prove the genuineness of the deed in question by evidences, thus, the learned courts below ought to have considered it and without considering it committed an error resulting in an error in their findings and decisions occasioning failure of justice, therefore, both the judgments and decree of the learned courts below are liable to be *set aside*.

The Rule has been opposed by the present defendant-opposite party No. 1, Haripada Das.

Mr. Shihab Uddin Mahmud, the learned Advocate, appearing on behalf of the opposite party No. 1 submits that the present plaintiff-petitioner was under an obligation by adducing and producing the created evidence but she failed to prove her own case, therefore, the learned trial court after considering the evidence came to a lawful conclusion to dismiss the suit and the

learned appellate court below also dismissed the appeal on merit of the case and thereby affirmed the judgment and decree of the learned trial court but the learned Advocate for the petitioner obtained the Rule by misleading the court, therefore, the Rule is liable to be discharged.

The learned Advocate further submits that the plaintiff-appellant-petitioner claimed her right as the daughter of original owner Sochindra Kumar Das on the basis of the deed dated 03.09.1994 which was unregistered document, thus, the learned courts below lawfully considered that the unregistered document which is less value under the law of evidence executed by the son of the original owner of the suit land, as such, the learned courts below lawfully passed the concurrent decision and passed the judgments in favour of the defendant-opposite parties, as such, this court should not interfere upon the impugned judgment and decree passed by the learned appellate court below and the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present plaintiff-appellant-petitioner under section 115(1) of the Code of

Civil Procedure along with the annexures therein, particularly, the impugned judgment and decree passed by the learned appellate court below and also perusing the relevant and required documents available in the lower courts records, it appears to me that the present petitioner as the plaintiff filed the title suit for declaration of the sale deed No. 2625 executed by the son of the original owner in favour of the defendant-opposite party No. 1 on 25.05.2011 is created and she also claimed the right acquired on the basis of the adverse possession. The plaint further contains that the plaintiff-petitioner has been in possession pursuant to the deed of gift dated 03.09.1994 which is unregistered document exhibited as exhibit No. 3(Ka).

I have perused the deed which is written a paper describing the creating of the deed of gift in the exchanging money at Tk. 22500/- (twenty-two thousand and five hundred). Under the provision of the Transfer of Property Act, a deed of gift is defined as follows:

**“122. “gift” defined-** “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

**Acceptance when to be made-** Such acceptance must be made during the lifetime of the donor and while he is till capable of giving.

If the donee dies before acceptance, the gift is void.”

On the basis of the definition of gift a deed must be executed without any consideration. In the instant case, the said Exhibit- 3(Ka) shows that there was an exchanged money which is not valid under the provision of law.

The plaintiff-petitioner further claimed that the sale deed has been created by the son of Sochindra on 25.05.2011 which was registered under the registration law before the Registry Office of Hatiya, Noakhali. Under the Evidence Act a formal registered document has got more value then the unregistered document. In the instant case, the plaintiff-petitioner claimes that she got ownership by way of gift which has been registered and formally under the provision of law for transferring any property which was not properly signed by the creator of the deed of gift but his functionary print was identified by another person upon a simple blue paper. Therefore, the petitioner does not have acruired and created any valid right in favour of the petitioner pursuant to this unregistered document. On the other hand, the



present defendant-opposite parties claimed of entitlement upon the suit land that they have more evidential value. In a civil case the barden of prove has to be born by the parties who claims it, in other word, “he who claims must prove”. A party must prove a claim on the standart of balance of probability. In the instant case, the plaintiff-petitioner could not prove her entitlement by adducing and producing her documents and depositions in support of her own case. On the other hand, the defendant-opposite parties could produce sufficient evidence for their entitlement pursuant to the provision of law.

In view of the above discussions as well as after carefully examination of both the judgments passed by the learned courts below against the present plaintiff- petitioner, I am also considering that the learned appellate court below committed no error of law by passing concurrent decision by affirming the judgment and decree passed by the learned trial court, so, this is not a proper case for interference by his court. As such, this Rule does not require any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment dated 24.05.2016 passed by the learned Joint District Judge, Court No. 1, Noakhali in the Title Appeal No. 49 of 2015 by affirming the judgment dated 29.01.2015 passed by the learned Senior Assistant Judge, Hatiya, Noakhali in the Title Suit No. 83 of 2013 dismissing the title suit is hereby affirmed and confirmed.

The interim order was passed at the time of issuance of the Rule staying the operation of the impugned judgment dated 24.05.2016 passed by the learned Joint District Judge, Court No. 1, Noakhali affirming the judgment dated 29.01.2015 passed by the learned Senior Assistant Judge, Hatiya, Noakhali dismissing the title suit and subsequently the same was extended time to time are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.