Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

Civil Revision No. 832 of 2008
In the Matter of:
Mosammat Marium Khatun
.....Plaintiff-petitioner.
-Versus-
Abul Kashem being dead his legal heirs Iran Badsha Mamun and others
...Defendant opposite parties
Mr. Rajib Kanti Aich, Advocate
..... For the Plaintiff petitioner.
Mr. Azizur Rahman, Advocate.
.....For the opposite party No.1.
Heard on 05.02.2025, 18.02.2025 and Judgment on 18.02.2025

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 28.06.2007 passed by the learned Additional District Judge, 5th Court, Chattogram in Other Appeal No. 417 of 2005 affirming those dated 28.07.2005 passed by the learned Joint District Judge, 2nd Court, Chattogram in Other Suit No. 53 of 2004 dismissing the suit should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Material facts of the case, briefly, are that the petitioner as plaintiff filed Other Class Suit No. 53 of 2004 in the Court of the learned Joint District Judge, 2nd Court, Chattogram praying a decree declaring that the kabala No. 1434 dated 1st June, 1998 under Fatikchari Sub Registrar Office is illegal and void.

The plaintiffs' case, in short, is that the land as described in the schedule of the plaint was belonged to Mohini Mohan and others in which R.S. Khatian No. 1390 was prepared correctly in their names; that they sold the suit land to Md. Abu Taher Chowdhury, who thereafter by kabala No. 3135 dated 30. 10. 1997 sold the suit land in favour of the plaintiff; that thereafter all on a sudden the defendant on 12.03. 2004 disclosed that he purchased the suit land from the plaintiff and thereafter, the plaintiff after searching the Sub Registrar Office at Fatikchhari on 20.03.2004 found a kabala in favour of the defendant, which is in-fact a forged and collusive deed. The plaintiff did not take any loan against the suit land, the deed writer is the man of the defendant, the plaintiff did not put her signature on the deed in question, which was created by way of false personification and hence the suit.

The opposite party as defendant contested the suit by filing written statements denying all the material averments made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner. The plaintiff is the full sister of defendant and admittedly, the defendant used to live abroad for service for a long period of time and he purchased the suit land through his sister (plaintiff) but with bad intention the plaintiff did not register the land in the name of his brother (defendant). The positive case of the defendant is that the suit land was belonged to Mohini Mohan and others and R.S. Khatian No. 1390 was correctly recorded in their name; that defendant resides in foreign Country and the suit land in question was near the resident of the plaintiff, who sent the information of sale of the

suit land to her brother/defendant and thereafter, the defendant on 10.4.1997 paid Tk. 80,000/- to his sister (plaintiff) in presence of the witnesses and went aboard on 27.4.1997; that thereafter, the plaintiff, with malafide intention purchased the suit land in her name; that since the plaintiff is full sister of the defendant he always expected that the plaintiff would transfer the suit land in favour of the defendant. In this background the defendant returned to Bangladesh on 27.5.1998 and the defendant requested the plaintiff to execute kabala in favour of the defendant and accordingly the plaintiff on 01.06.1998 executed a kabala in respect of the suit land in favour of the defendant and handed over the possession of the suit land to the defendant and thereafter, the defendant mutated his name through mutation khatian No. 85 and paid rent regularly. The plaintiff filed the case on false averments and as such, the suit is liable to be dismissed.

At the trial the plaintiff side examined 2 witnesses and the defendant side examined 3 witnesses and both the parties exhibited some documents to prove their respective cases.

The trial Court after hearing the parties and on considering the evidence and materials on record by its judgment and decree dated 28.07.2005 dismissed the suit on the ground that the suit is hopelessly barred by limitation and the plaintiff without any prayer for cancelling the deed in question filed the suit, which is not tenable in law.

On appeal, being Other Appeal No. 417 of 2005 the learned Additional District Judge, 5th Court, Chattogram by the impugned judgment and decree dated 28.06.2007 (decree signed on

04.07.2007) dismissed the appeal and affirmed the judgment and decree of the trial Court dated 28.07.2005.

Aggrieved plaintiff then preferred this Revision application and obtained the present rule.

Mr. Rajib Kanti Aich, the learned Advocate appearing on behalf of the plaintiff-petitioner in the course of argument takes us through the pleadings of the parties and the evidence of PWs & DWs and then submits that the signature of the plaintiff as appeared in the deed in question is apparently distinct with other signatures of the plaintiff as appeared in other admitted documents. He further submits that the defendant having failed to examine any disinterested witness to prove that the deed in question is not forged or created although both the Courts below without considering all these vital aspects of the case mechanically believed the signature of the plaintiff as appeared on the deed in question and accordingly dismissed the suit.

Mr. Azizur Rahman, the learned Advocate appearing for the plaintiff-opposite party No.1, on the other hand, supports the judgments of 2 Courts below, which were according to him just, correct and proper.

Having heard the learned counsels for both the sides and having gone the revision application, judgments of 2 (two) Courts below, deposition of witnesses and other materials on record, the only question that calls for consideration in this Rule, whether the Courts below committed any error in dismissing the suit on 2 counts that the suit is barred by limitation and the plaintiff prayed

the deed in question is forged and void without any prayer for cancellation of the deed.

On scrutiny of the record, it appears that the deed in question executed on 01.06.1998 and the plaintiff filed the suit on 23.03.2004, who known as to transfer on 20.03.2004 and the trial Court below as first Court of fact on due consideration of the materials on record came to the conclusion that: "বিগত ২৩/৩/০৪ইং তারিখে আরজির ৩নং দফা অনুযায়ী ১২/৩/০৪ ইং ও বিবাদী কর্তৃক তর্কিত দলিলের কথা প্রকাশ করা হয় মর্মে দাবী করা হইয়াছে। তর্কিত কবলার প্রায় ৭ বছর পর বিবাদী কর্তৃক দলিল প্রকাশ করার দাবী বাস্তব সম্মত নহে। তৎসমর্থনে বাদীনি কোন সুনির্দিষ্ট কেইস আনয়ন করেন নাই এবং কোন সাক্ষ্যও উপস্থাপন করেন নাই। ফলে দৃশ্যত : ২নং বিচার্য বিষয় অনুসারে মামলার হেতু বিশ্বাসযোগ্য নহে এবং সে নিরিখে মামলাটি তামাদি দোষে বারিত হয়।"

This being purely a finding of fact based on assessment of the evidence on record that the suit is barred by limitation.

It further appears that the trial Court after a detailed discussion of the attending circumstances borne out by records held that - "তাহাছাড়া তর্কিত দলিলের দাত্রী হইতেছে বাদীনি স্বয়ং। অথচ উক্ত দলিল বাতিল প্রার্থনা পূর্বক কোন প্রতিকার প্রার্থনা করা হয়নাই। তর্কিত দলিলে বাদীনি দাত্রী হওয়ায় দলিলটি বাতিলের প্রার্থনা ব্যতীত বর্তমান ফর্মে মামলাটি আইনতঃ অচন হয়।."

Plaintiff to prove her case examined 2 witnesses namely, PW-1 and PW-2. On going through the evidence of PW-1 and PW-2 we find nothing on record to suggest that both the PWs corroborated each other on the point that the deed in question is forged, fake and the same was made by way of false personification. It is found that defendant himself was examined as DW-1, who deposed that after purchase he got possession over the suit land and he mutated his name through namjari khatian No. 210/03-04 and he proved the same as "Ext.-Ga". This witness also stated that

he paid rent to the Government and proved the rent receipt as "Ext.-Gha". DW-2 stated in his deposition that- "আমরা ৩ ভাই ২ বোন। একবোন মারা গেছে। ভাইরা হচ্ছি আমি, বিবাদী কাসেম ও কালাম। বোনের নাম মরিয়ম খাতুন। তিনি বাদী তিনি কোর্টে আছেন। আমার বোনের একটি বিক্রিত দলিল সাক্ষী আছি। মরিয়ম খাতুন উক্ত জমি আমার ভাই কাশেমের স্ত্রী রোকেয়ার কাছে বিক্রি করে ৩/৪ বৎসর আগে। উক্ত দলিলে ইহা আমার দস্তখত। দলিল নং-২৩১৩। আমি ২নং সাক্ষী। ইহা মরিয়মের দস্তখত। উহার লেখক নুরুল আফছার। আফছার মরিয়ম খাতুনের আরো দলিল লিখিয়াছে। মরিয়ম খাতুন নালিশী জমি খরিদের জন্য বিবাদীকে বলে তাহার কাছে টাকা না থাকায়। আমার ভাইকে ভাইকে জানানো হয় ৮০ হাজার টাকা দাম হইবে। তখন বিবাদী মরিয়মকে ৮০ হাজার টাকা দেয়ও পরে বিদেশ যায়। পরে বিদেশ হইতে আসিয়া দেখে মরিয়ম নিজের নামে দলিল করিযাছে। এ বিষয়ে জিজ্ঞাসা করিলে মরিয়ম জানায় গ্রহীতা না থাকিলে দলিল রেজিস্ট্রি হয়না। ফলে তার নামে দলিল করে। পরে বাদিনী বিবাদীকে নালিশী কবলা দেয়। উক্ত দলিলে আমি সাক্ষী নহি। ঐদিন খাগড়াছড়ি ছিলাম। নাঃ জমি ঐদিন ইহতে বিবাদী দখল করে। রেজিষ্ট্রির দিন সবাই রেজিষ্ট্রি অফিসে যায়।." DW-3 deed writer named, Nurul Afsar Munshi, who stated in his deposition that he is a professional deed waiter, he known both the parties, the plaintiff put her signature on the deed at sub-registry office in his presence. In cross examination the plaintiff side could not able to discover anything as to the credibility of this witness on the matter to which he testifies.

Weighing the evidence of both the parties, we find that the evidence in defendant side is credible and tenable in Law. In the facts and circumstances of the case, we find no reason to hold that the deed in question (Ext.-Kha) was forged or created instrument. Besides, on top of that in this case we find nothing on record to suggest that the plaintiff to prove the genuineness as to deed in question could not or did not file any application for expert's opinion. In a case of this nature the plaintiff ought to have filed an application for expert's opinion as to genuineness of the deed in question, even during hearing of this Revision application the

learned Advocate for the petitioner also does not raise any point as to expert opinion about the deed in question.

The impugned judgment is a judgment of affirmance. The Trial Court assigning cogent reason disbelieved the plaintiff's case. On a reading of the impugned judgment, it appears that the appellate court considered the material points and taking into consideration all the evidence and material on record concurred with the finding of the trial Court. In affirming the judgment of the trial Court, the learned Additional District Judge, 5th Court, Chattogram did not commit any illegality whatsoever. Thus, we do not find any substance in this Rule.

In the result, the Rule is discharged without any order as to costs. In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.