

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.799 OF 2016**

In the matter of:

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

And

Rokshana

.... Petitioner

-Versus-

Shahed Ali Bepari and others

.... Opposite parties

None appears

.... For the petitioner.

Mr. Moniruzzaman, with

Mr. Khorshed Alam, Advocates

.... For the opposite party Nos.1-6.

**Heard and Judgment on 18.07.2023.**

On an application under Section 115(1) of the Code of Criminal 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 29.11.2015 passed by the learned Additional District Judge, Madaripur in allowing the Title Appeal No.71 of 2015 and thereby those dated 30.06.2015 passed by the learned Assistant Judge, Kalkini, Madaripur in dismissing the Title Suit No.81 of 2011.

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration of title for 20 decimal land appertaining to

S.A. Khatian No.42, Plot No.589 alleging that above land belonged to Raham Ali who transferred the same to the predecessor of the plaintiffs namely Ansar Uddin by registered kabala deed No.6025 dated 11.11.1959 and delivered possession. But B.R.S. Khatain of the disputed land has been erroneously prepared in the name of Raham Ali the predecessor of defendant Nos.1-5. Plaintiffs are possessing above disputed land by growing Mehogoni, rande, bamboo and other trees and in part by growing paddy and jute. On 08.07.2011 defendants on the basis of above erroneous record claimed title in the disputed land. Defendant Nos.1-5 contested the suit by filing a joint written statement alleging that their father did not transfer disputed land to Ansar Uddin by registered kabala deed dated 11.11.1959 and above kabala deed is a forged document which was never acted upon. After demise of Raham Ali defendant Nos.1-5 are in possession in above land as his heirs and above land was rightly recorded in B.R.S. Khatian in the name of Raham Ali.

Defendant No.12 was added in this suit on 27.08.2014 who stated that she has purchased above disputed land by registered kabala deed dated 11.08.2011 from defendant Nos.1-5 and got possession.

At trial plaintiffs and defendant No.12 examined 3 witnesses each. Documents produced and proved by the plaintiffs were marked as

Exhibit No.1-4 and those of defendant No.12 were marked as Exhibit No.'K'-'Ga'.

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

Being aggrieved by above judgment and decree plaintiffs preferred Title Appeal No.71 of 2015 to the District Judge, Madaripur which was heard by the learned Additional District Judge who allowed the appeal and set aside the judgment and decree of the Trial Court and decreed the suit.

Being aggrieved by above judgment and decree of the Court of appeal below respondent No.12 as petitioner moved to this Court and obtained the Rule.

No one appears on behalf of the petitioner when the Civil Revision was taken up for hearing although the Civil Revision appeared in the list for hearing today.

Mr. Md. Moniruzzaman, learned Advocate for the opposite party Nos.1-6 submits that during trial the plaintiffs produced and proved original kabala deed No.1159 executed by predecessor of defendant Nos.1-5 Rohom Ali and the same was marked as Exhibit-4. Above registered document is more than 30 years old and the plaintiffs are in possession in the disputed 20 decimals land on the basis of above

document. Plaintiffs possession has been proved by consistence evidence of 3 competent witnesses examined by the plaintiffs at trial. On the other hand defendant Nos.1-5 did not contest the suit and defendant No.12 obtained registered kabala deed from defendant Nos.1-5 on 11.08.2011 which was never acted upon and defendant No.12 did not get possession of the dispute land.

On consideration of above evidence on record the learned Additional District Judge has rightly allowed the appeal, set aside the judgment and decree of the Trial Court and decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that disputed 20 decimals land originally belonged to Raham Ali who died leaving defendant Nos.1-5 as his heirs. It is also admitted that in the B.R.S. Khatian above disputed land was recorded in the name of Raham Ali.

Plaintiffs claim that Raham Ali transferred above 20 decimals land to the predecessor Ansar Uddin by registered kabala deed dated 11.11.1959 and they are in possession of the disputed land by plantation of Mehogoni, Rande trees, Bambo and other trees and in part by growing crops. Plaintiff No.3 while giving evidence as PW1 reiterated

above claims as set out in the plaint and stated that his father got possession of the disputed land from Raham Ali on the basis of registered kabala deed dated 11.11.1959. After demise of their father they are in possession in the disputed land. The witness produced originally above mentioned kabala deed dated 11.11.1959 executed by Raham Ali in original and the same was marked as Exhibit No.4.

Defendant Nos.1-5 has claimed that above document was not acted upon nor Raham Ali received any consideration for above kabala deed and the same was not acted upon. But despite filing a joint written statement defendant Nos.1-5 opted not to contest the suit.

In their written statement which was filed on 06.02.2013 defendant Nos.1-5 did not mention that they have transferred the suit land to the defendant No.12 by registered kabala deed on 11.08.2011. On 10.03.2014 defendant No.12 was added as defendant in this case and she contested the suit by filing a written statement. Defendant No.12 did not give evidence in this case but on her behalf her husband gave evidence as DW1. In her written statement defendant No.12 did not mention the nature of the disputed 20 decimals land and her manner of possession. But in his evidence as DW1 the husband of defendant No.12 claimed that they were possessing the disputed land by planting trees and by way of cultivation. Above evidence of DW1 supports the claim

of nature of the land plaintiffs as set out in the plaint and the manner of possession of the plaintiff in the disputed land. Registered kabala deed dated 11.11.1959 (Exhibit No.4) is a registered document of more than 30 years of old. So, after production of above original document by the plaintiff in Court the onus shifted upon the defendants to prove that above document was forged or without consideration and not acted upon. But the defendants did not produce any evidence oral or documentary in support of their above claims about Exhibit No.4. As such the learned Additional District Judge has on correct analysis of materials on record has rightly held that Exhibit No.4 is a valid document which was acted upon.

Defendant Nos.1-5 did not contest the suit but defendant No.3 gave evidence as DW2 in this suit and stated in his examination in chief that after purchasing from them defendant No.12 is possessing the disputed land. He did not say anything about the nature of the disputed land or their possession in the same before alleged sale to the defendant No.12 or possession of their father after execution and registration of impugned kabala deed dated 11.11.1959 to Ansar Uddin (Exhibit No.4).

In view of the above evidence on record I hold that the learned Additional District Judge on correct appreciation of materials on record

has rightly allowed the appeal and set aside the flawed judgment and decree of the Trial Court and decreed above suit which calls for no interference

As such, this Civil Revision is devoid of any substance and this Rule issued in this connection is liable to be discharged.

In result, the Rule is discharged.

However, there is no order as to costs.

Send down the lower Court's record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*