IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

MR. JUSTICE ABDUR RAHMAN

Civil Revision No. 3058 of 2015

In the matter of:

Jahanara Bibi and others

...Petitioners

-Versus-

Abdul Hamid and others

...Opposite Parties

Mr Md. Abdus Sabur Khan, Advocate

...For the Petitioners

Ms Umme Kulsum, Advocate

...For the Opposite Parties

Date of Hearing: 18.06.2026, 22.06.2026 and 30.06.2026. A.D.

Date of Judgment: 07.07.2026, A.D., Tuesday; 23 Ashar, 1433 B.S.

JUDGMENT

Abdur Rahman, J:

This revisional application, at the instance of the petitioner, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

> "Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 23.07.2015 passed by the learned Joint Judge, 2nd Court, Munshigonj in Title Appeal No. 108 of 2013, dismissing the appeal by affirming the judgment and decree dated 08.09.2013 passed by the learned Assistant Judge, Sreenagor, Munshigonj in Title 103 of 2010, should not be set aside and for pass such other order or further order or orders as to this Court may seem fit and proper."

Concurrently therewith, with the issuance of the Rule, this Court was also pleased to direct the parties to maintain *status quo* with respect to possession of the suit land for a period of 06 (six) months. Subsequently, the said order of *status quo* was no longer extended.

The material facts, shorn of unnecessary details, are that the petitioner, as plaintiff, instituted Title Suit No. 103 of 2010 seeking cancellation of a registered deed of sale, alleging, *inter alia*, that the lands appertaining to S.A. Khatian Nos. 801, 802, 814, 422, 420, 410, 463 and 424 originally belonged to one Goizoddin, who died intestate leaving behind his heirs, namely, Abdul Hamid, Moriom Begum, Jahanara Bibi @ Janu Bibi, Samortho Bibi, Ayon Bibi and Saburon Nesha. Subsequently, Saburon Nesha also died, leaving the aforesaid heirs as her successors. According to the plaintiff, the co-sharers amicably partitioned their ancestral properties by metes and bounds, and in the said partition the suit land exclusively fell to the share and allotment of Jahanara Bibi @ Janu Bibi.

The plaintiff further asserted that defendant No. 1, who is his full brother, subsequently informed him that he had allegedly purchased the suit land by a registered deed of sale dated 15.05.1993, being Deed No. 2531, and demanded delivery of possession thereof. Thereupon, the plaintiff obtained a certified copy of the impugned deed on 23.03.2010 and, upon examination, discovered for the first time the existence of the said conveyance. It was alleged that the deed had been fraudulently procured through false personation and impersonation of the true executant, rendering the instrument void, illegal and inoperative. On such allegations, the plaintiff instituted the suit praying for cancellation of the aforesaid deed.

The contesting defendant No. 1 entered appearance and filed a written statement denying all the material averments made in the plaint. It was contended, *inter alia*, that the suit was hopelessly barred by limitation and disclosed no cause of action. The defendant asserted that the suit land admittedly belonged to Jahanara Begum @ Janu Bibi, who, being the lawful owner thereof, voluntarily executed and registered Deed No. 2531 dated 15.05.1993 in his favour for valuable consideration and simultaneously delivered vacant possession of the property. Since the purchase, the defendant has been in continuous, peaceful and uninterrupted possession of the suit land, has cultivated the same, planted trees thereon, paid the requisite government revenue, and obtained the relevant Duplicate Carbon Receipt (D.C.R.) in support of his possession. The defendant further alleged that the plaintiff, having full knowledge of, and having acquiesced in, the execution of the deed, instituted the suit on false, frivolous, and fabricated allegations with a view to harassing him and, as such, the suit was liable to be dismissed with costs.

After completion of all requisite procedural formalities, the learned Assistant Judge, Sreenagar, Munshiganj, upon an exhaustive appraisal of the oral and documentary evidence adduced by the respective parties, dismissed Title Suit 103 of 2010 by judgment and decree dated **08.09.2013** (decree drawn up thereunder and signed on **11.09.2013**), holding that the plaintiff had utterly failed to establish that the impugned registered deed was forged, fabricated, fraudulent or otherwise liable to be cancelled under Section 39 of the Specific Relief Act, 1877.

Being dissatisfied with the aforesaid judgment and decree, the plaintiff preferred **Title Appeal 108 of 2013** before the learned District Judge, Munshiganj. The appeal was subsequently transferred to the Court of the learned Joint District Judge, 2nd Court, Munshiganj, for hearing and disposal in accordance with law. Upon hearing the learned Advocates for both sides and after independently reappraising the entire evidence on record, the learned appellate Court, by judgment and decree dated **23.07.2015** (decree drawn up thereunder and signed on **02.08.2015**), dismissed the appeal, thereby affirming the findings, conclusions and decree of the learned trial Court.

Having suffered concurrent findings of fact before both the Subordinate Courts, the plaintiff invoked the revisional jurisdiction of this Court under section 115(1) of the Code of Civil Procedure, 1908, challenging the legality and propriety of the judgments and decrees of the subordinate Courts.

At the outset, it is worth mentioning that during the pendency of the Rule, the petitioner filed an application praying for remand of the suit, with a direction to obtain the opinion of a handwriting and fingerprint expert regarding the disputed signature and thumb impression appearing on the impugned registered deed. The principal ground urged in support of the said application is that the plaintiff is an elderly lady of about seventy-five years of age, having little or no knowledge of legal proceedings, who has been residing throughout at her paternal homestead with her family members. According to the petitioner, the plaintiff never transferred the suit property in favour of the defendant and has remained in continuous possession thereof. It has further been alleged that the defendant procured the disputed deed by impersonation and fraud, concealed the existence of the deed for nearly seventeen years, and the Subordinate Courts failed to appreciate these surrounding circumstances in their proper perspective.

Mr Abdus Sabur Khan, learned Advocate for the petitioner, strenuously contended that comparison of the disputed signature and thumb impression by a handwriting and fingerprint expert constitutes relevant evidence under the Evidence Act and that, in the interest of complete justice, the suit ought to be remanded for obtaining such expert opinion. According to him, unless the authenticity of the signature and thumb impression is scientifically examined, the real controversy between the parties cannot be effectively resolved.

The learned Advocate further submitted that both the Subordinate Courts misread and misappreciated the evidence on record. It has been argued that although several witnesses, including the defendant's witnesses, admitted the plaintiff's possession over the suit property, such admissions were either ignored or inadequately considered. According to the learned Advocate, the appellate Court also failed to comply with the mandatory requirements of **Order XLI Rules 31 and 32 of the Code of Civil Procedure**, inasmuch as it did not formulate and discuss all the points arising for determination nor did it adequately evaluate the evidence of all material witnesses.

Referring to the deposition of P.W.1, wherein she stated—

"নালিশী ভূমি হতে আমার শ্বশুরালয় ১ মাইল দূরে। আমার স্বামী ঘর জামাই হিসেবে থাকে।"

The learned Advocate submitted that the evidence unmistakably establishes the plaintiff's uninterrupted possession over the suit property from the date of her marriage. Reliance was also placed upon the cross-examination of D.W.2 Md. Anes and P.W.3 Abdul Kader, who admitted that the plaintiff continued to possess the property inherited from her father. It has therefore been contended that the Subordinate Courts committed serious errors of law in overlooking these material admissions while upholding the validity of the impugned deed.

Conversely, **Ms Umme Kulsum**, the learned Advocate appearing for opposite party No.1, supported the concurrent judgments of the Subordinate Courts and submitted that both Courts, upon proper appreciation of the evidence and settled legal principles, rightly dismissed the suit. She argued that the plaintiff utterly failed to identify with certainty the land allegedly remaining in her possession, failed to produce any mutation record or rent receipts in support of her claim and equally failed to discharge the burden of proving that the registered deed had been obtained by fraud or impersonation. On the contrary, the defendant produced mutation records, D.C.R., rent receipts and other collateral evidence supporting his possession and title flowing from the registered deed.

She further contended that the plaintiff cannot seek cancellation of a registered instrument merely by alleging fraud, without first establishing her subsisting title and legal interest in the suit property. She relied upon the decisions reported in **61 DLR (AD) 116**, **53 DLR (AD) 110**, **7 BLT (AD) 7**, and **46 DLR (HCD) 57**, and submitted that these authorities conclusively establish that remand cannot be ordered merely to enable a litigant to fill up lacunae left in the evidence and that concurrent findings of fact should not ordinarily be disturbed in revisional jurisdiction unless they suffer from patent illegality or jurisdictional error.

I have carefully considered the submissions of the learned Advocates, scrutinized the impugned judgments, examined the oral and documentary evidence on record, the applications filed by the parties, and the authorities cited at the Bar.

It is not disputed that the present litigation is one instituted under **Section 39 of the Specific Relief Act, 1877**, seeking cancellation of a registered instrument.

On perusal of the judgment of the learned trial court, it is found that the learned court made an observation in the following way:

> "নালিশী ২৫৩১ নং সাফকবলা দলিলটি জাল, বানোয়াটি ও বাতিল মর্মে প্রমাণ করিবার জন্য বাদীপক্ষে PW-1, PW-2 এবং PW-2 মৌখিক সাক্ষ্য প্রদান করেন। PW-1 জবানবন্দিতে বলেন যে, তিনি কখনো নালিশী সম্পত্তি ১নং বিবাদীর নিকট বিক্রয় করেন নাই; তিনি কখনো সাব-রেজিস্ট্রি অফিসে যান নাই এবং তিনি কখনো টিপসহি দেন নাই; নালিশী ভূমিতে তাহার ঘর-দরজা আছে। PW-2 তাহার জবানবন্দিতে বলেন, তাহার স্ত্রী কখনো নালিশী ভূমি কাহারো নিকট হাস্তান্তর করেন নাই; নালিশী সম্পত্তিতে বাদীর ঘর আছে। PW-3 জবানবন্দিতে বলেন, জাহানারা তাহার সম্পত্তি কখনো হস্তান্তর করে নাই; নালিশী ভূমি জাহানারা ভোগদখল করে। Learned Trial Court also observed that" অত্র মোকদ্দমায় DW-1 ও DW-4 এর জবানবন্দি ও জেরা এবং প্রদর্শনীঃ ক-ঘ পর্যালোচনায় অত্র আদালতের নিকট প্রতীয়মান হয় যে, নালিশী ২৫৩১ নং সাফকবলা দলিলটি যথাযথভাবে সম্পাদন ও রেজিস্ট্রি হইয়াছে এবং উক্ত দলিল মূলে ১নং বিবাদীর বরারব নালিশী সম্পত্তির দখল হস্তান্তরিত হইয়াছে। বাদীপক্ষ তর্কিত ২৫৩১ নং দলিলটিকে জাল, বানোয়াটি ও বাতিল মর্মে দাবী করিলেও দাবীর সমর্থনে কোন দালিলিক বা বিশ্বাযোগ্য সাক্ষ্য উপস্থাপন করিতে সক্ষম হয় নাই। ফলে বাদীপক্ষের অত্র দাবীটি প্রামাণিত হয় নাই। সাক্ষ্য আইনের বিধান মোতাবেক বাদীপক্ষকেই

বাদীপক্ষের মোকদ্দমা প্রমাণ করিতে হইবে। কিন্তু বাদীপক্ষ দালিলিক ও মৌখিক সাক্ষ্য দ্বারা প্রমাণ করিতে পারে নাই যে, বিগত ১৫/০৫/১৯৯৩ খ্রিঃ তারিখে রেজিস্ট্রিকৃত ২৫৩১ নং সাফকবলা দলিলটি জাল, বানোয়াটি ও বাতিল। অন্যদিকে বিবাদীপক্ষ প্রমাণ করিতে সক্ষম হইয়াছে যে, তর্কিত সাফকবলা দলিলটি যথাযথভাবে সম্পাদন ও রেজিষ্ট্রি করা হইয়াছে।"

A careful reading of the observations as contained in the judgment of the learned trial Court, which demonstrates that the Court meticulously discussed the evidence of P.Ws. 1, 2, and 3, who asserted that the plaintiff never executed the disputed deed and remained in possession of the suit property. The learned trial Judge thereafter evaluated the evidence of D.Ws.1 and 4 together with the documentary exhibits and ultimately concluded that the impugned deed had been duly executed and registered in accordance with law.

The learned trial Court further specifically observed:

"...বাদীপক্ষ তর্কিত ২৫৩১ নং দলিলটিকে জাল, বানোয়াটি ও বাতিল মর্মে দাবী করিলেও দাবীর সমর্থনে কোন দালিলিক বা বিশ্বাসযোগ্য সাক্ষ্য উপস্থাপন করিতে সক্ষম হয় নাই..."

Thereafter, the learned trial Court relied upon the principles laid down in **39 DLR (AD) 223**, wherein it was held that registration carries a statutory presumption that the official acts connected therewith were regularly and honestly performed, and that registration itself constitutes evidence of execution. Reliance was also placed upon **55 DLR (AD) 39**, wherein the Appellate Division held that endorsements made by the Registering Officer enjoy a presumption of correctness and that the burden lies upon the person challenging the document to rebut such presumption by cogent and convincing evidence.

However, the appellate Court independently reassessed the evidence and found that the defendant had produced mutation records, D.C.R., and rent receipts, which, though not documents of title, constitute relevant collateral evidence of possession. The appellate Court also correctly observed that a registered deed cannot be invalidated merely upon uncorroborated oral assertions unless the statutory presumption attached to such document is successfully displaced.

However, on perusal of the evidence advanced by the DW4 Abdur Razzak (60), who deposed before the trial Court as under:

"আমি দলিলের স্বাক্ষী। আমি ইসাদী সাক্ষী এবং নিংবং করেছি। দলিল নং ২৫৩১, সাফকবলা দলিলের দাতা জাহানারা ওরফে জানুবিবি গ্রহিতা হামেদ পিতা গৈজুদ্দিন। আমি ঐ দলিল লেনদেন ৮০০০/ এর সময় উপস্হিত ছিলাম। হামেদ জানুবিবিকে ৮০০০/দেয়। দলিলে জাহানারা ওরফে আনুবিবির নিং বং আমি নিজে। সবগুলো টিপসহি আমি নিয়েছি। ১২টা টিপসহি নিংবং আমি দিয়েছি। সাবরেজিস্ট্রি অফিসে রেজিস্ট্রি হয়। সাবরেজিস্ট্রার সময়ে থামবুক টিপসহি দেয়। ইসাদী কারী হিসাবে আমি স্বাক্ষর করেছি দলিল লেখককে চিনি। তার স্বাক্ষর চিনি। এটা সঠিক দলিল।"

Particular emphasis has been laid by the opposite party 1 upon the testimony of D.W.4. A close examination of his deposition reveals that he was not merely a formal witness. Rather, he unequivocally stated that he was present at the time of execution of the deed, witnessed payment of consideration, identified the executant before the Sub-Registrar and himself obtained the thumb impressions of the executant. Significantly, this material testimony remained substantially unimpeached in cross-examination.

Equally significant is the fact that the plaintiff did not specifically plead in the plaint that the thumb impression appearing on the impugned deed was not her's, nor did she seek any expert examination either before the trial Court or before the appellate Court. It is a settled principle of civil jurisprudence that evidence cannot travel beyond pleadings. In **46 DLR (HCD) 57 (Shamsul Haque vs. Sarafat Ali)**, it has been authoritatively held that a party is not entitled to adduce evidence on facts which have not been pleaded. This salutary principle squarely applies to the facts of the present case.

Likewise, the contention that the matter should now be remanded for obtaining expert opinion is wholly misconceived. The petitioner remained silent throughout the trial and appellate proceedings and never availed herself of the opportunity to seek such examination at the appropriate stage, even after the depositions of the DW4. Having suffered concurrent findings against her, she cannot now invoke the revisional jurisdiction merely to fill up deficiencies in her own case.

The principle governing remand has been authoritatively settled by the Appellate Division in **53 DLR (AD) 110 (Abdus Sobhan vs. Anwar Rahim)**, wherein it was unequivocally held that an order of remand cannot be passed for the purpose of enabling a party to fill up lacunae in the evidence which such party failed to produce before the Subordinate Courts. The same principle was reaffirmed in **7 BLT (AD) 7 (Md. Nazir Hossain Khan vs. Md. Mujal Mollah)**, wherein their Lordships observed that where the Subordinate Courts have concurrently found that the plaintiff failed to discharge the burden of proving fraud, remanding the suit merely to afford another opportunity to prove the case amounts to total non-application of judicial mind.

These pronouncements of the Appellate Division constitute binding precedents under the doctrine of **stare decisis**, and this Court is duty-bound to follow the ratio laid down therein. Judicial discipline demands consistency, certainty and predictability in the administration of justice. Unless a binding precedent is distinguishable on facts or has been overruled by a larger Bench, it must be faithfully applied. The facts of the present case fall squarely within the principles enunciated in the aforesaid authorities.

Furthermore, the Appellate Division in **61 DLR (AD) 116 (Ratna Chandra Dey vs. Jinnator)** has categorically held that a plaintiff is not entitled to obtain a declaration that a registered kabala is false or fraudulent without first establishing his or her own title to the suit property. This principle equally governs a suit for cancellation under Section 39 of the Specific Relief Act. Mere allegations of fraud or impersonation, unsupported by convincing evidence, are insufficient to invalidate a solemn registered instrument.

Section 39 of the Specific Relief Act, 1877, undoubtedly empowers the Court to cancel a written instrument where the plaintiff establishes that the instrument is void or voidable and its continued existence is likely to cause serious injury. However, the exercise of such jurisdiction is equitable and discretionary.

A plaintiff seeking cancellation must establish not only a subsisting legal right in the property but also prove, by reliable and convincing evidence, the circumstances rendering the instrument void or voidable, such as fraud, impersonation, misrepresentation, coercion, undue influence or want of authority. Delay in challenging the instrument, the parties' conduct, surrounding circumstances, and the overall equities of the case are all relevant considerations in exercising such discretion.

In the instant case, the impugned deed remained unquestioned for nearly seventeen years. During this prolonged period, the plaintiff neither initiated any proceeding challenging the deed nor sought scientific examination of the disputed signature or thumb impression. Such unexplained inaction substantially weakens the credibility of the allegations subsequently advanced before the Court.

Having independently examined the evidence and the concurrent findings recorded by the Subordinate Courts, I find no perversity, misreading of evidence, non-consideration of material evidence, jurisdictional defect or error of law warranting interference in the exercise of revisional jurisdiction under section 115(1) of the Code of Civil Procedure. The petitioner has failed to rebut the statutory presumption attached to the registered deed, failed to establish the ingredients necessary for cancellation under Section 39 of the Specific Relief Act, and has equally failed to make out any legal ground justifying remand to obtain an expert opinion at this belated stage.

Considering the aforementioned facts and proposition of law emerging from the present case, I may, therefore, constrained to hold: ***Where a plaintiff seeks cancellation of a registered instrument under Section 39 of the Specific Relief Act, 1877, the burden lies squarely upon the plaintiff to establish his or her subsisting title and to rebut, by cogent, reliable and convincing evidence, the statutory presumption attached to the registered document. A litigant who has failed to seek expert examination or adduce necessary evidence before the trial Court or the appellate Court cannot, after concurrent adverse findings, invoke the revisional jurisdiction merely to secure a remand for filling up evidentiary lacunae. Consistent with the binding precedents of the Appellate Division, remand cannot be granted where sufficient evidence already exists on record, and the sole object is to afford a fresh opportunity to improve an otherwise deficient case, if the judgment was not delivered***

by a Court not competent to deliver it, or was obtained by fraud or collusion.

In view of the foregoing discussions, the evidence on record, the applicable statutory provisions and the binding precedents of the Appellate Division, I find no legal infirmity in the concurrent judgments and decrees passed by the Subordinate Courts. The Rule, therefore, fails.

Accordingly, the Rule is discharged without any order as to costs.

The interim order, if any, stands vacated.

Let the records of the Subordinate Courts be transmitted forthwith along with a copy of this judgment.

[Abdur Rahman, J]