

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

Present:

Mr. Justice Md. Shohrwardi

Civil Revision No. 1159 of 2008

IN THE MATTER OF

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

-AND-

IN THE MATTER OF:

Abdur Razzak being dead his heirs No. 1(a)

Md. Mahmud Hossain and others

...Plaintiffs-Appellants-Petitioners

-Versus-

Matiar Rahman and others

....Defendant-Respondent-Opposite Parties

Mr. Md. Lotfor Rahman, Advocate with

Mr. Sk. Sharifuddin, Advocate

....For the petitioners

Mr. Mohammad Eunos, Advocate

...For the opposite parties.

Heard on 23.04.2026, 26.04.2026 and
27.04.2026

Judgment delivered on: 30.04.2026

On an application filed by the plaintiffs-appellants-petitioners under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 3 to show cause as to why the impugned judgment and decree dated 27.04.2005 passed by the Joint District Judge, Court No. 1, Barguna in Title Appeal No. 09 of 2004 affirming those dated 08.01.2004 passed by Senior Assistant Judge, Barguna Sadar, Barguna in Title Suit No. 36 of 1998 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.

The plaint case in a nutshell is that the petitioners as plaintiffs filed Title Suit No. 36 of 1998 in the Court of Senior Assistant Judge, Barguna praying for a decree of declaration of title in the suit land described in the 'Ka' schedule of the plaint stating that the plaintiffs purchased 1.54 acres of land in the benami of defendant Nos. 1, 2 and 11

by deeds dated 31.3.1970, 13.04.1967 and 01.02.1973 and paid the consideration of the said deeds. The plaintiffs purchased $12\frac{1}{4}$ decimals of land by deed dated 01.02.1973, 45 decimals of land by deed dated 13.04.1967 (exhibit-3) and 97 decimals of land by deed dated 31.03.1970 (exhibit-4). The benamdar did not pay the consideration of the said deeds. The dag No. 5279 was not recorded in the deed dated 31.03.1970 (exhibit-4) inadvertently, and the plaintiffs requested to correct the said deed inserting dag No. 5279, but they refused to correct the said deed; consequently, the plaintiffs filed this case.

The defendant Nos. 1 and 2 filed written statements but did not contest the suit.

The defendant No. 5 contested the suit by filing written statement denying the statement made in the plaint, stating that Jagendra Majhi transferred .22 acres of land on 19.10.1997 to brother of Fazlul Haque and he also transferred .22 acres of land by deed dated 24.05.1960 in favour of Rahimjan and others. He again transferred .33 acres of land of plot No. 5328 to him on 09.04.1962. Jagendra sold .60 acres of land on 06.08.1965 to Fazlul Haque and 2.28 acres and 1.26 acres of land to one Khitish Chandra by deeds dated 08.04.1961 and 16.03.1963 respectively. Jagendra also sold .40 acre of land on 26.04.1967 to him. The said Jagendra also transferred .44 acre and .34 acre of land in favour of Enamul Haider by two registered deeds dated 23.06.1969 and 04.04.1970, and 1.42 acres of land in favour of Fazlul Haque by deed dated 28.01.1975. Jagendra Majhi transferred .43 acre of land in favour of Rezaul Karim on 15.02.1975. Subsequently, Jagendra Majhi and Gaorango Majhi sold $3.20\frac{1}{2}$ acres of land although they were the owner of 2.97 acres of land of Plot No. 5279. Total .97 acre of land of different plots excluding Plot No. 5279 were sold to the plaintiffs, and the plot No. 5279 was not correctly mentioned in the deed, as he had already sold his entire land.

The defendant Nos. 6 and 10 also contested the suit by filing written statements denying the statement made in the plaint, contending

that Abdul Gani, Osman Ali, Jagendra Majhi, Gaoranga Majhi, Borujan Bibi and Dalabor Bibi were the owners of the S.A Kathian No. 57, Dag No. 162. The heirs of Belayet Ali sold .68 acre of land on 13.04.1967 to defendant Nos. 1, 2 and 11. Since they were minors, Foiz Uddin, father of the defendant Nos. 1, 2 and 11, paid the consideration. Since the defendant Nos. 1, 2 and 11 were minors, their father Foiz Uddin transferred .26 acre of land in favour of the defendant Nos. 9 and 10 by deed dated 07.04.1970, and thereafter the defendant Nos. 9 and 10 took possession of the land.

The trial court framed as many as 5 issues, and the prosecution examined 3 witnesses, and the defendant No. 5 Motiur Rahman was examined as DW.1, defendant No.9 Abdus Satter was examined as D.W. 3, and defendant No. 11 Abdul Aziz was examined as DW. 5. After concluding trial, the trial Court by judgment and decree dated 08.01.2004 dismissed the suit holding that the plaintiffs failed to prove that the defendant Nos. 1, 2 and 11 were the benamder of the plaintiffs and that no prayer has been made for rectification of the deed and that the plaintiffs failed to prove his possession in the suit land and the cause of action of the suit.

The plaintiffs filed Title Appeal No. 9 of 2004 in the Court of District Judge, Barguna against the said judgment and decree passed by the trial court. The Joint District Judge, Court No. 1, Barguna heard the appeal and after hearing the appeal, the appellate court by impugned judgment and decree affirmed the judgment and decree passed by the trial court holding that the plaintiffs failed to prove that the defendant Nos. 1, 2 and 11 were the benamder of the plaintiffs and admittedly the defendant Nos. 9 and 10 are possessing the land and the plaintiffs had no possession in the suit land and that the father of the defendant Nos. 1, 2 and 11, Foiz Uddin, purchased the land in the name of his minor sons, defendant Nos. 1, 2 and 11, and subsequently the said Foiz Uddin sold 26 decimals of land on behalf of his minor sons defendant Nos. 1 and 2 to defendant Nos. 9 and 10 by the deed dated 13.4.1967 and the land of Dag No. 5279 was not transferred to the plaintiffs and the suit suffers

from defects of parties, against which, the plaintiffs-petitioners obtained the Rule.

Learned Advocate Mr. Lotfor Rahman appearing on behalf of the plaintiffs-petitioners submits that the plaintiffs purchased the land in Benami in the name of the defendant Nos. 1, 2 and 11 and during trial, proved the original deed dated 13.04.1967 as exhibit-2 to prove that the defendant Nos. 1, 2 and 11 are the benamder of the plaintiffs. He further submits that the Dag No. 5279 was wrongly omitted in the deed dated 01.02.1973 (exhibit-3) and the plaintiffs proved their possession in the suit land by adducing evidence and the courts below misread the material evidence of the parties and arrived at a wrong decision as to the benamder of the plaintiffs and their possession and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

Learned Advocate Mr. Mohammad Eunus appearing on behalf of the opposite party Nos. 1 to 3 (defendant Nos. 5, 9 and 10) submits that the Foiz Uddin, father of defendant Nos. 1, 2 and 11, was the labour of the plaintiffs and a illiterate man and after purchasing the land from Belayet Ali registered the deed in the name of his minor sons (defendant Nos. 1, 2 and 11) and kept the deed dated 13.04.1967 in the custody of the plaintiffs since he was a homeless labour of the plaintiffs. Subsequently, Foiz Uddin, on behalf of the defendant Nos. 1, 2 and 11, transferred 26 decimals of land by deed dated 07.04.1970 to the opposite party Nos. 2 and 3 (defendant Nos. 9 and 10). He further submits that both the courts below on consideration of the evidence of both the parties arrived a concurrent finding of fact that the plaintiffs failed to prove the benami transaction in the name of the defendant Nos. 1, 2 and 11 and his possession in the suit land, and the opposite party Nos. 2 and 3 (defendant Nos. 9 and 10) proved their possession in the suit land. The learned Advocate also relied on the decisions made in the case of Shabiha Khanam(Mrs.) vs. Jaitun Bibi and others, reported in 3 MLR(AD)15(1998), in the case of Jahangir Alam vs Shabdir Ahmed reported in 22 BLC(AD) 75, in the case of Mohammad Ibrahim vs.

Mosammat Asma Khatun, reported in 19 ALR (AD) 181 and the case of Ibrahim vs. Asma Khatun, reported in 26 BLC(AD)(2021) 281. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Lotfor Rahman who appeared along with learned Advocate Mr. Sk. Sharifuddin on behalf of the petitioners and learned Advocate Mr. Mohammad Eunos who appeared on behalf of the opposite parties, perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the courts below and the records.

The issues involved in the Rule as to whether the plaintiffs petitioners proved that the defendant Nos. 1, 2 and 11 were the benamder of the plaintiffs and as to whether the consideration of the deed dated 13.04.1967 (exhibit-2) was paid by the plaintiffs and they are possessing the suit land or not.

At the very outset, it is noted that the plaintiffs filed the suit for declaration of his title simpliciter in the suit land, although it has been asserted in the plaint that SA Dag No. 5279 was inadvertently omitted in the deed No. 2490 dated 31.3.1970 (exhibit-4), but no prayer has been made in the plaint for rectification of the said deed. Since no prayer is made in the plaint regarding the rectification of the said deed, the court is not empowered to pass any decree for rectification of the deed. I am of the view that both the courts below rightly and legally arrived at a concurrent finding of fact that the plaintiffs are not entitled to get a decree of rectification of the deed regarding S.A. Dag No. 5279.

P.W. 1 proved the original deed No. 2773 dated 13.04.1967 as Exhibit-2, executed by Waresh Ali in favour of defendant Nos. 1, 2 and 11 as to sell of 68 decimals of land. To prove a benami transaction, the plaintiffs shall prove the original deed from his custody, consideration and his possession in the suit land. Both the courts below arrived at a concurrent finding of facts that Foiz Uddin, father of the defendant Nos. 1, 2 and 11, paid the consideration of the deeds (exhibit-2) and subsequently, by deed No. 2949 dated 07.04.1970(exhibit-Ka/2) transferred 26 decimals of land to the defendant Nos. 9 and 10. In reply

to a question, on behalf of the defendant Nos. 9 and 10, D.W. 1 stated that he is not aware of the fact whether by deed dated 07.04.1970(exhibit-Ka/2), 26 decimals of land were transferred by Foiz Uddin, father of the defendant Nos. 1, 2 and 11, to defendant Nos. 9 and 10 which indicates that the plaintiffs did not deny the execution of the deed dated 07.04.1970 (exhibit-Ka/2) by Foiz Uddin in favour of the defendant Nos. 9 and 10. During cross-examination on behalf of the defendant Nos. 9 and 10, P.W. 3 affirmed that defendant Nos. 9 and 10 purchased a part of the suit land from Foiz Uddin, which disproved the plaint case that the defendant Nos. 1, 2 and 11 are the benamders of plaintiffs. Furthermore, P.W.1 did not assailed the deed dated 07.04.1970 (exhibit-Ka/2).

Defendant No. 11 is examined as D.W. 5, who is the brother of the defendant Nos. 1 and 2. D.W. 5 stated that he executed a solenama with the plaintiffs and he will get 22.1/3 decimals of land and defendant No. 2 will get 6 decimals of land and the plaintiffs will get 1.4 acres of land. In reply to a question, D.W. 5 affirmed that Foiz Uddin paid the consideration on behalf of the defendant Nos. 1, 2 and 11 and he is not aware of the fact that his father transferred 26 decimals of land on behalf of the defendant Nos. 1 and 2 to defendant Nos. 9 and 10, who are now possessing the suit land. D.W. 5 also stated that defendant Nos. 1 and 2 did not sign the solenama. Although defendant Nos. 11 is examined as D.W. 5 but in fact he deposed in favour of P.W. 1, but finally he admitted that the consideration of the disputed deed dated 13.04.1967 (exhibit-2) was paid by Foiz Uddin and defendant Nos. 9 and 10 are now possessing 26 decimals of land purchased by them from Foiz Uddin by deed dated 07.04.1970(exhibit-Ka/2). P.W. 3 also admitted that defendant Nos. 9 and 10 purchased the land from Foiezuddin and now possessing the land.

In a suit for declaration of title based on benami purchase, the plaintiff shall prove that he paid the consideration of the benami transaction, the original deed from his custody and his possession on the suit land on the basis of benami purchase. These elements of benami

transaction are cumulative. In the instant case, the plaintiffs proved the original deeds from their custody, but failed to prove that they paid the consideration of the deeds and possessing the land based on benami transaction.

In this respect, it is relevant here to rely on a decision made in the case of Ibrahim (Md), being dead, his heirs; Maseeh Ahmed vs Asma Khatun, reported in 26 BLC (AD)(2021) 281, in which, it has been held that;

“In a suit for declaration of a ‘benami’ purchase the main questions which need determination are (i) who paid the consideration money, (ii) from whose custody the title deed comes before court and who is in possession of the property in question. It appears that in this suit the plaintiff has adduced sufficient evidence, both oral and documentary, to have the answers of all these three questions in his favour”.

From the evidence discussed hereinabove, it is found that the defendant Nos. 1, 2 and 11 are not benamder of the plaintiffs and the plaintiffs had no possession on the suit land. I do not find any misreading and non-reading of the material evidence.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the LCR at once.

