

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 483 OF 2018**

In the matter of:

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

And

Nazmul and others

... Petitioners

-Versus-

Ehsanul Hoque Ansari and others

... Opposite parties

Mr. Abdur Razaque Khan, Senior Advocate  
with

Md. Aktaruzzaman, Advocate and

Mr. Md. Nurul Huda, Advocate

... For the petitioners

Mr. Abdul Barek Chowdhury, Advocate

... For the opposite party Nos.1 and

2.

Mr. Mohammad Ali Zinnah, Advocate

... For the opposite party No.7.

**Judgment on 21.11.2022.**

This Civil Revision at the instance of the defendant-appellants is directed against the judgment and decree dated 18.01.2018, passed by the learned Joint District Judge, Artha Rin Adalat, Jalampur, in Other Class Appeal No.05 of 2017 affirming the judgment and decree dated 06.11.2016 passed by the learned Assistant Judge, Islampur, Jamalpur, in other Class Suit No.50 of 1998 for declaration of title and recovery of possession.

Facts in short are that opposite party Nos.1-2 as plaintiffs filed above suit for declaration of title and recovery of possession for 11 decimal land alleging that above land was owned and held by Abdul Halim and Sydunnessa, parents of the plaintiffs, who transferred the

same to the plaintiffs by two registered deeds of Heba-bil-ewaz dated 30.04.1989 and 30.04.1997. The plaintiffs were in possession in the above land but the defendants forcefully dispossessed the plaintiffs on 20.04.1991.

Defendants No.1-4 contested the suit by filing a joint written statement denying all material claims and allegations made in the plaint and alleging that Abdul Hamid and Sydunnessa did not take possession of above disputed land pursuant to auction purchase. They allowed the father of the defendants to construct his dwelling house in the above land and accordingly, defendants are in peaceful and continuous possession in the above land. The defendants did not dispossess the plaintiffs forcefully from the above land.

At trial the plaintiffs and the defendant examined 4 witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit-1-5 series and those of the defendant were marked as Exhibits No. Ka-Ga.

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

Being aggrieved by above judgment and decree defendant No.1-4 as appellant preferred Other Class Appeal No.05 of 2017 to the District Judge, Jamalpur which was transferred to the Court of Joint District Judge for hearing and disposal.

On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge dismissed the appeal and affirmed the judgment and decree of the Trial Court.

Being aggrieved by above judgment and decree of the Court of appeal the appellants as petitioners moved to this Court and obtained this Rule.

The petitioners and opposite party Nos.1-2 compromised the case and on 18.10.2018 submitted a joint petition to this Court for making the Rule absolute in terms of the solenama and setting aside the judgment

and decree passed by the Courts below. It was stated that the opposite party Nos.1 and 2 have received Taka 5,00,000/- and abandoned their claim over the disputed property.

This Court made the Rule absolute in terms of the solenama on 16.10.2018.

Being aggrieved by above judgment and decree of this Court a third party, namely, Md. Anwarul Islam moved to the Appellate Division and filed Civil Petition for Leave to Appeal No.4667 of 2018 alleging that opposite party Nos.1 and 2 had transferred the disputed land to above petitioner by two registered deeds of exchange dated 21.08.2008 and 17.02.20013 and delivered possession long before above compromise. But suppressing above material facts and by practicing fraud upon this Court they submitted above compromise petition and obtained above fraudulent judgment and decree. The Appellate Division has set aside above judgment and decree of this Division and sent the case to this Bench for hearing and disposal on merit.

On the direction of the Appellate Division this Court has added above petitioner Anwarul Islam as opposite party No.7 in this Revision.

Mr. Mohammad Ali Zinnah, learned Advocate for opposite party No.7 submits that the opposite party Nos.1 and 2 who are plaintiffs of the suit transferred above 11 decimals land during pendency of the suit to this opposite party by two registered deed of exchange dated 21.08.2008 and 17.02.20013 and also delivered possession. Since the plaintiffs as respondents were contesting the appeal in the Court of appeal below this petitioner did not try to be impleaded in above proceedings as a respondent or in the High Court Division as an opposite party. Opposite parties No.1-6 suppressing above material facts and behind the back of opposite party No.7 made a compromise with the petitioners and the petitioners had abandoned their claim over the disputed land in lie of Taka 5,00,000/- (five lac). After getting possession of the property of this opposite party by above exchange the

petitioners already transferred the same to several persons by registered sale deeds. To deprive this opposite party the petitioners have fraudulently made above compromise and obtained above compromise decree by practicing fraud upon this Court.

Mr. Abdul Barek Chowdhury, learned Advocate for the opposite party Nos.1 and 2 submits that the petitioners executed two deeds of exchange as stated by the opposite party No.7 but those documents were not acted upon. Before execution of above deeds of exchange opposite party No.7 had transferred above land to Rashida Begum, Aminul Islam, Bazlul Haque and Harunur Rashid by several registered kabla deeds dated 29.11.2004, 10.08.2005, 24.07.2008 and 31.12.2009 and delivered possession. Opposite party No.7 did not have any title and possession in the land of plot No.266 of B.S. Khatian No.164 which was given to the petitioners by above two registered deeds of exchange. In order to cancel above two registered deeds of exchange petitioners have filed Other class Suit Nos.125 of 2018 and 16 of 2019 which are pending for trial.

Mr. Abdur Razaque Khan, learned Senior Advocate appearing for the petitioners submits that the Appellate Division has sent this Civil Revision to this Bench for disposal on merit after addition of Mr. Md. Anwarul Islam, a third party, as opposite party No.7. Opposite party No.7 has a claim over the disputed 11 decimal land against the petitioners. But opposite party No.7 was not a party to the above suit or in the appeal. The claim of opposite party No.7 is not admitted by the petitioner and opposite party Nos.1-4. The petitioners have not only denied the correctness, genuinity and effectiveness of above registered deeds of exchange they have already filed two suits in the the appropriate Civil Court for cancellation of those documents. Now in the absence of any evidence on above contentious facts this Court has no way out but to remand the suit for retrial to the Trial Court so that

the opposite party No.7 may file a written statement and all parties may adduce further evidence.

Mr. Abdul Barek Chowdhury, learned Advocate for the opposite party Nos.1 and 2 and Md. Mohammad Ali Zinnah, learned Advocate for opposite party No.7 concurred with above submissions of the learned Senior Advocate Mr. Abdur Razaque Khan and submit that the ends of justice will be met if the suit is remanded to the trial Court for retrial.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined the impugned judgment and decree of the Court of appeal below and the direction issued by the Appellate Division in Civil Petition for Leave to Appeal No.4667 of 2018 and other materials on record.

It is not disputed that 11 decimals land as described in the schedule to the plaint belonged to Abdul Hamid and Sydunnessa and the plaintiffs are their two sons and now deceased defendant No.1 was their another son.

It is also not disputed that above Abdul Hamid and Sydunnessa transferred above 11 decimals land to the plaintiffs by two registered deeds of Heba-bil-ewaz dated 30.04.1989 and 30.04.1997.

Plaintiffs claimed that they were in possession in the disputed land on the basis of above two registered deeds of Heba-bil-ewaz and they have been forcefully dispossessed by the defendants on 30.04.1991. On consideration of oral and documentary evidence adduced by both parties at trial the learned Assistant Judge decreed the suit. Defendants preferred Other Class Appeal No.95 of 1998 challenging the legality of above judgment and decree of the Trial Court which was dismissed. In the High Court Division opposite party plaintiffs and the petitioners defendants made a compromise admitting the title and possession of the defendants in above 11 decimal land in lieu of receipt of Tk.5,00,000/- (five lac). Opposite party No.7 claims that during trial of

the suit the plaintiffs transferred above 11 decimals land to him by executing two registered deed of exchange dated 21.08.2008 and 17.02.2013.

Opposite party Nos.1 and 2 the plaintiffs admit the execution of above two registered deeds of exchange in favour of opposite party No.7. It is not disputed that above material facts were not disclosed in the petition for compromise submitted before this Court.

It has been alleged by the opposite party Nos.1-2 that above two deeds of exchange were never acted upon since the opposite party No.7 had no title and possession in the land he exchanged with the plaintiffs. It is crystal clear that the opposite Nos.1-2 obtained a decree on compromise from this Court by suppression of above material facts and behind the back of the opposite party Nos.7. In the absence of any pleading and evidence on the subject it is not possible to determine whether above two deeds of exchange were acted upon or not.

In above view of the materials on record I hold that the ends of justice will be met if the impugned judgment and decree passed by the Court of Appeal is set aside and the suit is remanded back to the Trial Court for retrial after giving the opposite party No.7 to file a written statement and adduce evidence and the opposite party Nos.5-6 to amend their pleadings and adduce further evidence, if any.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 18.01.2018, passed by the Joint District Judge and Artha Rin Adalat, Jalampur, in Other Class Appeal No.05 of 2017, affirming the judgment and decree dated 06.11.2016, passed by the learned Assistant Judge, Islampur, Jamalpur, in other Class Suit No.50 of 1998 is set aside. Above suit is remanded back to the Trial Court for retrial after giving the parties and opportunity to amend their respective pleadings and adduce further evidence.

However, there is no order as to cost.

Send down the lower Court's record immediately.

*Md. Masudur Rahman*  
*Bench Officer*