

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 1752 of 2008

IN THE MATTER OF:

An application under section 115(1) of the Code of
Civil Procedure. (Against Decree)

And

IN THE MATTER OF:

Md. Fazlul Hoque Lavlue

---- Defendant-Respondent-Petitioner.

-versus-

Md. Rabiul Alam alias Chan Mia and others

---- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Aminul Islam, Advocate

---- For the Petitioner.

Mr. Mohammad Al- Amin, Advocate

--- For the Opposite Parties.

Heard on: 13.01.2026 and 14.01.2026

Date of Judgment: 25.01.2026.

S. M. Saiful Islam, J:

This Rule was issued upon an application under section 115(1) of The Code of Civil Procedure, 1908 calling upon the opposite party Nos. 1-5 to show cause as to why the impugned judgment and decree dated 02.01.2008 passed by the learned

Additional District Judge, Sherpur in Civil Appeal No. 87 of 2005 reversing those dated 18.08.2005 passed by the Senior Assistant Judge (In-Charge), Sherpur Sadar, Sherpur in Other Class Suit No. 286 of 2002 should not be *set aside* and/or such other further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1-5 as plaintiff instituted Other Class Suit No. 286 of 2002 in the Court of the learned Senior Assistant Judge, Sherpur Sadar, Sherpur praying for declaration of title to the suit land as described in the schedule to the plaint. The plaint case in short is that total .88 acre of land appertaining to CS Khatian No. 496 and BRS Khatian No. 388 of Narayanpur Mouja under PS Sherpur Sadar of Sherpur District belonged to Fatema Khatun. Plaintiffs purchased this land through different registered Kabalas and were possessing the same after mutating their names in the concerned Khatians. On 10.08.2002, defendant No. 1. Agrani Bank, Chawk Bazar Branch, Sherpur issued a notice to show cause upon the plaintiffs claiming that son of Fatema Khatun took a loan from that Bank mortgaging the suit land and for not repayment of that loan, a certificate case was pending in the office of defendant No. 2. Though the Plaintiffs replied satisfactorily, defendant No. 1 claimed title to the suit land and threatened to dispossess the plaintiffs through auction sale of the suit land. Hence the plaintiffs filed the suit.

Defendant Nos. 1 and 6 contested the suit by filing separate written statements. Denying the claims of the plaintiff, defendant No. 1 stated in his written statement that the Bank had

granted CC Hypothecation Loan of Taka =2,00,000/- (Two Lac) in favour of Fazlul Haque, son of Fatema Begum and as condition of that loan, Fatema Begum had executed and registered a mortgage deed in favor of the Bank respecting .84 acre of land from the suit land on 19.12.1984. That Fazlul Haque himself also executed another mortgage deed on the same date respecting .10 acre of land from the suit *Khatian*. That Fazlul Haque became a defaulter for non-payment of loan and the Bank filed a certificate case against Fazlul Haque and Fatema Khatun for Taka =5,83,963/- (Five Lac Eighty Three Thousand Nine Hundred and Sixty Three). That plaintiffs have not acquired any title or interest in the suit land as the land was mortgaged land. That the transfer deeds in favour of the plaintiffs are not binding on the defendants and those are voidable. Hence, the defendant No.1 prayed for dismissal of the suit.

Defendant No. 6 stated in his written statement that his mother Fatema Khatun owned and possessed .94 acre of land from which she transferred .10 acre of land to her younger brother Aminul Islam by a *heba bil awaj* (হেবা বিল এওয়াজ) deed. That Fatema Khatun executed a power of attorney deed in favour of her son defendant No. 6 respecting the rest .84 acre of land. That Aminul Islam transferred that .10 acre of land to defendant No. 6 on 13.12.1984 by a *heba bil awaj* (হেবা বিল এওয়াজ) deed. Thus, defendant No. 6 got total .94 acre of land. He applied to the defendant No.1 for Credit Hypothecation Loan and defendant No. 1 granted a loan of Taka =2,00,000/- (Two Lac). That Fatema Khatun and defendant No. 6 executed two mortgage deeds on 19.12.1984 in favor of the Bank respecting the suit land

as security of that loan. That defendant No. 6 is in possession of the entire .94 acre of land. That plaintiffs have no right, title, interest in the suit land. Hence, the defendant No. 6 also prayed for dismissal of the suit.

For disposal of the suit, Trial Court framed following five issues, namely;

- 1) Whether the suit is maintainable in its present form;
- 2) Whether the suit is barred by the law of limitation;
- 3) Whether the plaintiffs have title, interest and possession over the suit land;
- 4) Whether the plaintiff is entitled to the relief they claimed;
- 5) Whether the plaintiffs are entitled to any other relief;

Learned Trial Court, considering the oral and documentary evidence adduced by both the parties, decided issue Nos. 2 and 3 in favour of the plaintiffs and the other issues were decided against the plaintiffs. Learned Trial Court held that Fatema Begum mortgaged the suit land to the Bank prior to her sale to the plaintiffs. Fatema Begum did not have right to sale that mortgaged land and accordingly the plaintiffs have not acquired any right title interest in the suit land. Mentioning these reasons, the Trial Court dismissed the suit by the judgment and decree dated 18.08.2005.

Being aggrieved by that judgment and decree, the plaintiffs as appellant filed Title Appeal No. 87 of 2005 in the Court of the learned District Judge, Sherpur. That Appeal was transferred to the Court of the learned Additional District Judge, Sherpur who upon hearing of both the parties allowed the Appeal by the impugned judgment and decree dated 02/01/2008. Learned Appellate Court held that the plaintiffs purchased the

suit land from the mother of defendant No. 6 and it is proved that the plaintiffs are in possession of the suit land since 1986. Defendant No. 6 and his mother defrauded the plaintiff by selling the mortgaged land. Plaintiffs being compelled, paid the dues of the Bank and the Bank withdrew the certificate case after recovering their dues from the plaintiffs. Plaintiffs have established their right, title to the suit land and defendant no.6 does not have any right to claim the land. Accordingly, learned Appellate Court decreed the suit reversing the judgment and decree of the Trial Court. Being aggrieved from the impugned judgment and decree of the Appellate Court, the defendant No. 6 filed this revisional application and obtained the Rule.

Learned Advocate, Mr. Md. Aminul Islam, appearing on behalf of the petitioner submits that the Appellate Court below without adverting to the material findings arrived at by the trial court reversed the judgment which is an error of law resulting in an error in the decision occasioning failure of justice. The impugned judgment has been passed on non consideration and mis-consideration of evidence on record. The purchase deed of the plaintiffs is void, *ab-initio* which does not create any title in favour of the plaintiff. Appellate Court committed error of law in holding the view that after redemption the plaintiff will get the suit property rather than the mortgagor. For these reasons the defendant petitioner prayed for making the Rule absolute.

On the other hand, learned Advocate, Mr. Mohammad Al-Amin, appearing on behalf of the plaintiff-respondents submits that the learned Appellate Court has rightly decreed the suit. Sale of mortgaged property was not void at the relevant time. The suit

land was redeemed according to section 91 of the Transfer of Property Act, 1882 and the plaintiffs acquired absolute right, title, interest. Moreover, according to section 60A of the Transfer of Property Act, transfer of the mortgaged land to the 3rd party is permitted. Learned Appellate Court has not committed any error of law resulting in an error in the decision occasioning failure of justice. For these reasons, learned Advocate for the plaintiff-opposite party prays for discharge of the Rule.

Heard the learned Advocates for both the parties, perused the revisional application along with the annexures, the impugned judgment and decree and the lower Court records.

It is admitted by both the parties that the suit land originally belonged to Fatema Begum who is the mother of the defendant petitioner. It is also admitted that Fatema Begum mortgaged the suit land to Bank by a registered mortgaged deed dated 19/12/1984. Plaintiff-opposite parties claim that they purchased the suit land from Fatema Begum and transferees from Fatema Begum by different registered Kabala (কবলা) deeds and they did not have knowledge of that mortgage at the time of their purchase. Those deeds have been filed by the plaintiff-opposite parties at the time of trial and have been marked as Exhibit Nos. 5-12. Defendant petitioner does not deny those deeds of the plaintiffs, but he claims that those transfer deeds are void *ab-initio* and the plaintiffs will not get any title from those deeds. It may be mentioned here that transfer of a mortgaged property is void under section 53D of the Transfer Property Act, 1882. But this section 53D of the Transfer of Property Act, 1882 was introduced by Act No. XXVI of 2004 which came into effect

from 01/07/2005. Plaintiffs purchased the land prior to this amendment and at that time such transfer was only voidable under section 53 of the Transfer of Property Act, 1882. So, the claim of the defendant petitioner that the deeds of the plaintiffs are void *ab-initio* is not acceptable. Moreover, those deeds were voidable at the option of the creditor *i.e.* Bank (Defendant No. 1). But the Bank (defendant No. 1) did not file any suit to declare those deeds void. Rather, defendant No. 1- Bank has recovered the loan amount from the plaintiff purchasers and has redeemed the suit property in favour of the plaintiffs. On behalf of Bank (defendant No. 1), Branch Manager, Md. Abdul Ali has deposed at the time of hearing of Appeal. He has stated in his deposition that the Bank has got payment of all the dues and has issued certificate in this respect which has been marked as Exhibit No. 19. In that certificate issued by Bank, it has been stated,

“এই মর্মে প্রত্যয়ন করা যাইতেছে যে, অত্র শাখার সিসি নম্বর -০৮, মেসার্স গনপদ্মী রাইস এন্ড ফ্লাওয়ার মিলস এর শিরোনামে একটি সিসি খান ছিল। যাহার বিপরীতে জমি বন্ধক ছিল। উক্ত খানটি বন্ধকীয় সম্পত্তির ক্রেতাগণের নিকট থেকে বিগত ৩০/১১/২০০৫ ইং তারিখে সম্পূর্ণভাবে পরিশোধিত হওয়ায় বন্ধককৃত নিম্ন তফশীলভুক্ত সম্পত্তি সম্পূর্ণভাবে দায়মুক্ত হইয়াছে ইহাতে ব্যাংকের কোনো দাবী নাই”

So, it appears from the evidence on record, that the plaintiffs have redeemed the suit land from mortgage. According to the provisions of section 91 of the Transfer of Property Act, 1882 plaintiffs are entitled to redeem the suit property as they have interest in the suit land as kabala purchaser. Moreover, even if the suit land had been redeemed by the mortgagor Fatema Begum, then also plaintiffs could have got title under section 43 of the Transfer of Property Act, 1882 and Fatema Begum also

would have been stopped from claiming title under that section. Thus, the claim of the defendant petitioner that the plaintiffs cannot get the property after redemption is not correct from the legal point of view.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in an error which occasioned failure of justice and when the lower Court acted illegally or with material irregularity in exercise of law or has committed error in procedure during the course of trial and such breach or error has affected the ultimate exercise of the jurisdiction of the Court. In the instant case, I do not find anything in the impugned judgment which is unlawful or is based on non- consideration or misreading of any evidence. Impugned judgment of the Appellate Court does not suffer from any legal infirmity or impropriety and it has not occasioned any miscarriage of justice. Consequently, I find no reason to interfere with the findings of the Appellate Court.

Considering the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

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

Concerned section of this Court is hereby directed to send down the lower Courts records along with this Judgment and Order to the concerned Court below immediately.