

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 2194 OF 2008**

In the matter of:

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

And

Amir Hossain Miah being dead his heirs-  
Md. Shalim Hosen and others

... Petitioners

-Versus-

Most. Latifa Khatun and others

... Opposite parties

Mr. M.A. Azim Khair, with

Mr. Jamal Uddin Ahmed, with

Mr. Md. Sultanuzzaman, Advocates

... For the petitioners

Mr. Probir Noegi, with

Mr. Md. Ahia,

Mr. Tapos Bondhu Das, Advocates

... For the opposite parties

**Heard on 07.11.2022**

**Judgment on 14.11.2022.**

This Rule at the instance of the plaintiff-appellant-petitioners is directed against the judgment and decree dated 19.02.2008 passed by the learned District Judge, Chandpur, in Title Appeal No.95 of 2005, affirming the judgment and decree dated 02.08.2005, passed by the learned Additional Assistant Judge, Chandpur, in Title Suit No.13 of 1994.

Facts in short are that the predecessor of the petitioners as plaintiff instituted above suit for declaration that the judgment and decree dated 08.09.1991, passed ex-parte in Title Suit No.603 of 1984 is illegal, collusive, inoperative and not binding upon the plaintiff.

It was alleged that 2.31 acres land as described in the schedule to the plaint originally belonged to Gobinda Chandra Banarjee who died leaving behind one wife Punarbashi Banarjee and four sons namely Jogendra Banerjee, Dijendra Banarjee, Mohendra Banerjee and Omolash Banerjee and one daughter namely Monmohini. Above four sons executed a deed of power of attorney in favour of their mother Punarbashi Banarjee with right to transfer above property who entered into a contract for sale above property to the plaintiff on 07.10.1966 and delivered possession. But subsequently Punorbashi Banerjee did not execute and register a kablala deed in favour of the plaintiff. As such, the plaintiff filed Title Suit No.414 of 1978 for declaration of title by adverse possession and above suit was decreed rightly on 19.06.1990. The defendants have no right, title and possession in the disputed property. But they falsely claimed that Gobinda Chandra Banarjee transferred above property by gift to his daughter Monomohani Banerjee and she transferred above land to the defendants.

On the basis of above claim of purchase the defendants filed Title Suit No.603 of 1984 for declaration of title in above land and for setting aside above ex-parte judgment and decree passed in Title Suit No.414 of 1978. During pendency of above suit a compromise between both the parties of the suit was reached and a compromise deed was signed. It was agreed upon that the defendant shall give Taka 7,000/- (seven thousand) to the plaintiff and the suit land will be divided between the parties amicably. Due to above compromise the defendants did not take tadbir in above case but the plaintiffs secretly and by practicing fraud upon the Court obtained above ex-parte judgment and decree.

Defendant No.1 contested the suit by a filling written statement alleging that above property belonged to Gobinda Chandra Banarjee who transferred the same to his only daughter Monmohini Banerjee by gift who in her turn transferred the same to the defendant by registered kabala deed dated 09.09.1970. There was no talk of compromise of Title

Suit No.603 of 1984 between the parties nor any Acholanama was signed and executed. The defendant sensing sure defeat in the above suit knowingly abandoned the same and the suit was rightly decreed ex-parte on 08.09.1991.

At trial the plaintiffs examined four witnesses and the defendant examined two. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-3 series and those of the defendants were marked as Exhibit Nos.'Ka' series and 'Kha' series.

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 of the Trial Court plaintiff preferred Title Appeal No.95 of 2005 to the District Judge, Chandpur who on consideration of submissions of the learned Advocates for the respective parties and materials on record dismissed the appeal and affirming the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the learned District Judge appellants as petitioners moved to this Court and obtained the Rule.

Mr. M. A. Azim Khair, learned Advocate for the petitioner submits that in the plaint the plaintiff made out a specific case that the parties of above suit effected a compromise through a village Salish and Achalnama was executed and signed. It was agreed upon that the defendants will pay Taka 7,000/- (seven thousand) to the plaintiffs and a small part of the disputed property will be divided between the parties. Due to above compromise the defendants refrained from attending the Court and the plaintiff concealing above facts obtained the impugned judgment and decree by practicing fraud. DW2 Shafiullah has clearly admitted above compromise of the suit between the parties and giving of signature by the plaintiff on a stamp paper. But the learned Judges of the courts below have totally failed to appreciate above materials on record properly and failed to realize that

the impugned judgment and decree was obtained by fraud and most illegally dismissed the suit and the appeal respectively which is not tenable in law.

The learned Advocate further submits that the learned District Judge observed in the impugned judgment that the kabala deeds of the were illegal since those were not registered in the proper Sub-registry Office and above defendants had no locus standi to file Title Suit No.603 of 1983 as plaintiffs and they obtained impugned judgment and decree by practicing fraud upon the Court. But inspite of above findings the learned District Judge dismissed the appeal and upheld the unlawful judgment and decree of the Court below which is not tenable in law.

On the other hand Mr. Tapos Bondhu Das, learned Advocate for the opposite parties submits that the plaintiffs could not prove by legal evidence that the impugned judgment and decree was obtained by fraud. The claim of compromise meeting or execution of a compromise deed or Achalnama between the parties have not been proved by legal evidence. As far as the findings of the learned District Judge that the documents of defendant No.1 Jalal Uddin were registered in Hajigonj Sub-registry Office having no jurisdiction or above documents were unlawful and void or the defendant had no locus standi to file Title Suit No.603 of 1984 or impugned judgment and decree was obtained by fraud were statements of the case of the plaintiff and those were not findings of the learned District Judge.

On consideration of the legal evidence on record the learned Assistant Judge has rightly dismissed the suit which has been rightly affirmed by the learned District judge and this Court should not interfere with above concurrent findings of the courts below in the absence of any allegation of misreading or non consideration of any evidence on record.

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

It is admitted that the disputed property belonged to Gobinda Chandra Chatargee who died leaving behind one wife Punarbashini and four sons namely Jogendra, Dijendra, Mohendra and Omolesh and one daughter Monmohoni Devi.

It was claimed that four sons namely Jogendra, Dijendra, Mohendra and Omolesh executed a power of attorney deed in favour of their mother Punarbashini. The plaintiff could not produce any deed of power of attorney allegedly executed by above four sons namely Jogendra Banerjee, Dijendra Banarjee, Mohendra Banerjee and Omolesh Banerjee to their mother empowering her to sell above land. Since Punarbashini did not execute and register a kabala deed the plaintiffs filed above suit not for enforcement of above contract but for declaration of title by adverse possession.

I have carefully examined the plaint of above suit, but did not find any averment as to when the alleged possession of the plaintiffs became adverse against the lawful owners and when above possession matured into valid title. If the plaintiff entered into possession of the disputed land lawfully on the basis of a deed of contract for sale that possession cannot be presumed to be adverse against the true and lawful owners. But it turns out from on record that ignoring above basic precondition for acquisition of title by adverse possession the plaintiff of above suit got a judgment and decree ex-parte.

As mentioned above challenging above judgment and decree and for declaration of title the defendant filed Title Suit No.603 of 1983 and obtained the impugned judgment and decree.

It was stated in the plaint that the plaintiff was defendant No.1 in above suit and he entered appearance in the above suit. So, there is no question of non service of the process of the Court upon the defendant. It has been alleged that a compromise was affected between the parties

of above suit in presence of local Union Parishad Chairman and other villagers and an Acholnama was signed. Plaintiff No.2 as PW1 and gave a detailed description about above compromise of the suit between the parties. PW2 Sheikh Md. Abdur Rouf who is the scribe of above Acholnama gave evidence in Court and produced a photocopy of above Acholnama which was marked as Exhibit No.2.

In this regard the defendant has stated in the written statement that no such salish was held and there was no compromise between the parties of above suit. But DW2 Md. Shafiullah Munshi has admitted in his examination in chief that there was a compromise meeting between the parties for above suit and signature of the defendant was obtained on a stamp paper.

It is crystal clear from above materials on record that the parties of above suit compromised the same through a village salish which was attended by the Chairman of local Union Parshad and other 20/25 village elders.

The learned Advocate for the opposite party submits that the alleged compromise was held in 1986 but the impugned judgment and decrees was passed in 1991. During above long period time the petitioner did not take any step for implementation of the alleged compromise.

Above submissions of the learned Advocate for the opposite party is beyond pleadings. It is not the case of opposite party that a compromise was made by the parties regarding above suit but the same was subsequently abandoned or not implemented.

It turns out from the impugned judgment of the Court of Appeal below that the learned District Judge held that the kabala deeds of the opposite party were registered in the Sub-registry Office having no jurisdiction and those deeds were void and ineffective documents and the opposite party had no locus standi to file Title Suit No.603 of 1984.

But despite above findings the learned Judge dismissed the appeal and affirmed the impugned judgment and decree.

The learned District Judge further held that the disputed property belongs to Jogendra Banerjee, Dijendra Banarjee, Mohendra Banerjee and Omolesh Banerjee and taking advantage of their absence in the locality both the parties have created documents and filed false cases to grab the disputed property.

As mentioned above important factual and legal questions are involved in this case but above questions were not settled by a competent court on merit on consideration of legal evidence which could be adduced by both the parties.

On consideration of above materials on record I am of the view that the opposite party obtained impugned judgment and decree by suppression of above facts of compromise of the suit between the parties and beyond the knowledge of the petitioners.

In above view of the materials on record I find substance in this Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 19.02.2008 passed by the learned District Judge, Chandpur, in Title Appeal No.95 of 2005 dismissed the appeal and affirming the judgment and decree dated 02.08.2005 passed by the learned Additional Assistant Judge, Chandpur, in Title Suit No.13 of 1994 is set aside and above suit is remanded back to the trial court for retrial after giving both the parties opportunity to amend pleadings and adduce further evidence, if any.

However, there is no order as to cost.

Send down the lower Court's record immediately.