

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3338 OF 2015

In the matter of:

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

And

Md. Ekramul Haque

...Petitioner

-Versus-

Mst. Majeda Begum and others

....Opposite parties

Mr. Ahmed Nowshed Jamil with

Ms. Syeda Showkat Ara, Advocates

.... For the petitioner.

None appears

.... For the opposite parties.

Heard and Judgment on 06.11.2024

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 11.05.2015 passed by the learned Additional District Judge, Chapai Nawabgonj in Title Appeal No.194 of 2012 dismissing the appeal and thereby affirming the judgment and decree dated 05.08.2012 passed by the learned Joint District Judge, 1st Court, Chapai Nawabgonj in Other Class Suit No.17 of 2010 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for rectification of registered deed No.907 of 2009 executed

by the defendant in favour of the plaintiff for sale of a shop described in the schedule to the plaint.

It has been alleged that defendant was the rightful owner and possessor of above shop and he declared to sale the same and the plaintiff who was the tenant of above shop agreed to purchase the same and on receipt of consideration of Taka 3,00,000/- defendant executed and registered above deed dated 03.03.2009. But the defendant illegally and unlawfully gained over the scribe of the deed and inserted term No.7 providing that the roof of the shop shall remain in the ownership and possession of the defendant and he would be entitled to construct additional floors over above roof.

Defendant contested the suit by filing a written statement alleging that above deed was written on the basis of the agreement reached between the parties and the defendant did not insert anything in above document beyond the knowledge and consent of the plaintiff.

At trial plaintiff and defendant examined 1 witness each. The documents produced and proved by the plaintiff were marked as Exhibit No.1 and 2 but defendant did not produce and prove any document.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree plaintiff preferred Title Appeal No.194 of 2012 to the District Judge, Chapainabwabgoj which was heard by the learned Additional District Judge who 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 below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Ahmed Nowshed Jamil, learned Advocate for the petitioner submits that the plaintiff purchased disputed shop from the defendant by registered deed of sale on 03.03.2009. Since the plaintiff became the absolute owner of above shop by virtue of above purchase the question of granting title and right of the defendant on the roof of above shop does not arise at all. The defendant inserted impugned clause in the above deed providing that the defendant shall have right and ownership over the roof and he would construct additional floors on the same with the aid of the scribe beyond the knowledge of the plaintiff. A plain reading of above clause shows that the same was unusual and against the spirit of transfer of immovable property by sale. But the learned Judges of the Courts below have miserably failed to appreciate above facts and relevant law properly and most illegally dismissed the suit and the appeal respectively which is not tenable in law.

No one appears on behalf of the opposite parties when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that defendant was the rightful owner of the disputed shop and plaintiff was his monthly tenant and the defendant wanted to reconstruct above shop but he had no money for the same and he executed the impugned deed of sale deed dated 03.03.2009 with the plaintiff.

The plaintiff while giving evidence as PW1 produced and proved a certified copy of above deed of sale dated 03.03.2009 which was marked as Exhibit No.1. A plain reading of above document shows that the document was not a deed of out and out sale and there are some conditions attached to above transfer. The relevant part of above conditions are reproduced below:

“প্রকাশ থাকে যে, উক্ত দোকান ঘরটির নির্মাণ কাজ আগামীতে শুরু হবে এবং দাতা দোকান ঘরটি নিজ খরচে সম্পন্ন তৈরি করে দিবেন দোকান ঘরের উত্তর দক্ষিণ পূর্বের দিকের ওয়াল ও সামানের দরজা এবং উপরের ছাদ সম্পূর্ণভাবে গ্রহিতার অনুকূলে হেফাজত থাকিবে। এতে দাতা বা দাতার ভাবী কোন প্রকারে বাধা বিঘ্ন সৃষ্টি করিতে পারিবেন না। উল্লেখ্য থাকে যে, দাতা ছাদের উপরে ঘর তৈরী করে ব্যবহার করিবে ছাদের উপর দাতার সম্পূর্ণ অধিকার থাকে যে, এতে গ্রহিতার কোন দাবী দাওয়া থাকিবে না আরও প্রকাশ থাকে যে, বিএনীত দোকান ঘরের সামনের

দিকে অর্থাৎ পশ্চিম দিকে আট ফিট জায়গা ফাঁকা রছিল। এই জায়গা ফাঁকা রছিল। এই জায়গা শুধু মাত্র রাস্তার কাজে ব্যবহার হবে দাতা বা গ্রহিতার ভাবী কোন ওয়ারিশগণ নিজ কাজে ব্যবহার করিতে পারিবে না শুধুমাত্র রাস্তার কাজে ব্যবহার হবে। (৩ পাতা) মোঃ মোজাহার হোসেন।”

It appears that the defendant although sold above shop to the plaintiff but both parties agreed that reconstruction of above shop shall be done by the defendant not by the plaintiff who purchased the same. The plaintiff did not challenge the legality of above clause of the impugned deed.

It has been further provided that the constructed shop shall remain in the ownership of the plaintiff but the roof of the shop shall remain in the ownership of the defendant and he shall have the right to construct additional floors on above roof. If above document is considered in its entirety then it does not appear that above clause as to ownership of the roof of the shop was unusual or unreasonable.

The plaintiff is a party to above registered document and the plaintiff admits due execution and registration of the document. It is well settled that a party to a registered document can challenge any term clause of the document and give evidence against above term clause of the document only on the grounds of fraud or error. In the plaintiff or in his evidence as DW1 the plaintiff could not make out and prove a specific case of fraud or error. There is no allegation that the defendant fraudulently inserted above clause in above deed in collusion

with the scribe or witnesses nor there is any allegation that above clause was inserted erroneously.

PW1 has stated that at the time of talk of above sale there was no agreement for inclusion of above clause as to ownership of the roof. But to substantiate above claim the plaintiff did not examine any witness who was present at the time of above talk of the sale or execution of the impugned deed. As such above claim of the plaintiff remains uncorroborated and unsubstantiated.

In above view of the materials on record I hold that the learned Judges of the Courts below on correct appreciation of the materials on record rightly held that the defendant did not commit any fraud nor there was any error in the preparation, execution and registration of above deed of sale and the learned Judge of the Court of Appeal below rightly dismissed the appeal and affirmed lawful judgment of the trial Court which calls for no interference.

I am unable to find any substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Courts records immediately.