

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

**Present:**

**Mr. Justice Md. Miftah Uddin Choudhury**

**CIVIL REVISION NO.4218 OF 2008**

In the matter of:

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

And

Vojohori Karmokar and another

... Petitioners

-Versus-

Kusumi Bala Mali being dead her legal  
heirs- Ratan Karmaker and others

... Opposite parties

Mr. Md. Zakir Hossain, with

Mr. Narayan Chandra Mondal, Advocates

... For the petitioner No.1.

Mr. M.C. Chowdhury, Advocate

... For the opposite parties.

**Heard on 05.06.2014.**

**Judgment on 18.06.2014**

This Rule arises out of the judgment and decree dated 17.11.2001, passed by the learned Joint District Judge and Judge of Additional Artha Rin Adalat No.2, Dhaka, in Title Appeal No.366 of 1998, reversing those dated 20.08.1998, passed by the learned Senior Assistant Judge, Dohar, Dhaka, in Title Suit No.204 of 1997.

The plaintiff instituted the suit impleading his full sister Kusumi Bala Mali and the Additional Deputy Commissioner (Revenue), Dhaka as defendants for declaration of his title and for evicting of his licencee from the suit land. The plaintiff claimed that, the suit land alongwith other lands belonged to his father Balai Chandra and one Kanai Chandra in whose names the S.A. record in respect of the suit land was correctly prepared. Balai Chandra died leaving behind him as his only heir and successor. The defendant No.1 Kusumi Bala Mali is his sister as daughter of Balai Chandra who was married and became inhabitant of her husband's village named Chorain which is 10/12 miles away from their village. On his oral consent the defendant No.1 Kusumi Bala Mali was allowed to construct a thatched hut in 3 decimals of the disputed plot and started to reside there as his licencee. The numbers of his family members have been increased by this time and for want of accommodation he requested his sister the defendant No.1 to vacate the suit land. Being denied, he made query and came to know that the R.S. record in respect of the suit land has been wrongly

prepared in the name of defendant No.1 Kusumi Bala Mali, and hence the suit.

The defendant No.1 Kusumi Bala Mali contested the suit by filing written statement. In her written statement she denied the material allegations and stated that the suit is barred by limitation, the suit is not maintainable in its present form, she further stated that her husband is a very poor man having no homestead and as such after her marriage her father brought them to his house and they started to reside there. Her brother, the plaintiff had not been taking care of her father. She had been taking care of her father and as such her father being satisfied by her service proposed to give  $9\frac{3}{4}$  decimals of land as gift and she accepted such proposal, accordingly her father handed over possession of the said land to her and since then she has been residing therein. Her eight daughters and one son born and brought up on the suit land and her father Balai Chandra Das himself remaining present got the R.S. record prepared in her name. She is not a licensee under the plaintiff in the suit land and as such the suit is liable to be dismissed.

After hearing, the learned Assistant Judge by judgment and decree dated 20.08.1998 decreed the suit finding that as per the Hindu Law, a daughter can not be successor of her father and a father can not gift any property to any person who is not dependant upon him. Kusumi Bala Mali has got husband who is responsible for taking her care and the alleged gift if made, is nothing but illegal. Kusumi Bala Mali does not claim any right accrued by adverse possession though she is residing in the suit land since long time, and on perusal of the Exhibit-2 it appears that in respect of the suit land a salish was held wherein it was decided that on receipt of Tk.25,000/- Kusumi Bala will vacate the suit land. The learned Assistant Judge decreed the suit with condition that the defendant will vacate the suit land on receipt of Tk.25,000/- from the plaintiff, otherwise the plaintiff will be entitled to get possession through Court.

Against the said judgment and decree the defendant No.1 Kusumi Bala Mali preferred Title Appeal No.366 of 1998, in the Court of District Judge, Dhaka and on transfer the said appeal was heard by the learned Joint District Judge and Judge

of Additional Artha Rin Adalat No.2, Dhaka, who by the impugned judgment and decree dated 17.11.2001 allowed the appeal, set aside the judgment of the Trial Court, and dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree the plaintiff as petitioner moved this Court in revision and obtained this Rule.

Mr. Md. Zakir Hossain, Advocate, appearing for the petitioner submits that the Trial Court rightly found that as per the Hindu Law no gift can be made by a father to his daughter who is not dependant upon him, and at the same time a Hindu daughter can not be successor of her father. But the Appellate Court without considering that aspect arrived into its wrong decision and set aside the judgment of the Trial Court by the impugned judgment which is not a proper judgment of reversal. As per Mr. Hossain the Appellate Court did not reverse the findings of the Trial court though set aside its judgment and decree, and as such the impugned judgment and decree is not sustainable.

In reply of his such argument Mr. M.C. Chowdhury, Advocate, appearing for the contesting

opposite party submits that the Appellate Court on proper consideration of the materials on record set aside the judgment of the Trial Court and dismissed the suit finding that the suit is barred by limitation.

Regarding the question of limitation raised by Mr. M.C. Chowdhury, Mr. Hossain replied that the question of limitation as it decided by the Appellate Court is wrong because mere wrong recording can not create any title in favour of any person. In support of his such contention Mr. Hossain cited the decisions in the cases of, Hari Kison Pandey Vs. Nageawari Debi and others reported in 8 DLR 65, Government of Bangladesh, represented by the Additional Deputy Commissioner VS. AKM Abdul Hye and others reported in 56 DLR(AD) 53, and Shahanaz Begum Vs. Md. Kutubuddin and others reported in 13 BLC(AD) 15.

I have gone through the records and perused the decisions cited above. On perusal of the record it appears that the learned Assistant Judge decreed the suit without discussing any evidence of any party, rather he decreed the suit just on the impression that the gift made orally by the father in favour of

his daughter is illegal and as per Hindu Law no person can transfer any property as gift to a person who is not dependant upon him. He passed the decree with a condition to make payment of Tk.25,000/- which apparently reveals his confusion regarding title of the parties over the suit land. The Appellate Court arrived into its decision after proper discussion of the evidences on record. The Appellate Court discussed the evidences of the PWs and DWs. As per deposition of the PWs the defendant Kusumi Bala Mali has been residing in the suit land since before independence of Bangladesh and she gave birth of her 9 children in the suit land and residing in the suit land her daughters were married. On discussion of depositions of the DWs the Appellate Court found that the plaintiff had not been taking care of his father, rather the defendant, a helpless daughter, who was taken to father's house had been taking care of him and as such being pleased with her service the father transferred the suit land to her as gift. Though the said transfer was made orally but the father himself made preparation of R.S. record in respect of the transferred land in her name. The preparation of

R.S. record in her name is admitted and it was prepared before long time and the suit was not instituted within the period of limitation. Though the defendant did not made any claim of adverse possession but it appears that admittedly she has been enjoying and possessing the suit land since more than 40 years and she claimed title over the same, and admittedly it was recorded in her name. On perusal of the record it appears that though the plaintiff claimed that the defendant has been residing in the suit land as his licencee but he hopelessly failed to prove such claim, rather it is proved that the father himself transferred the suit land to his daughter. In the facts and circumstances, I hold the view that the Appellate Court rightly found that the suit is barred by limitation and dismissed the suit.

Accordingly, this Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Court's records immediately.

*MASUD*  
*B.O.*