

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 208 of 2009

IN THE MATTER OF :

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

-And-

In the Matter of:

Sachindra Nath Majumder and others

... Defendant-Petitioners

-Versus-

Asutosh Majumder @ Kundu

...Plaintiff-Opposite party

Mr. Swapan Kumar Dutta, Advocate

... For the petitioners

None

.... For the opposite party

Judgment on: 12.03.2026

Md. Riaz Uddin Khan, J-

At the instance of the successors of the defendant Rule was issued calling upon the opposite party to show cause as to why the judgment and Decree dated 20.07.2008 (decree signed on 28.07.2008) passed by the Joint District Judge, 1st Court, Barisal in Title Appeal No.132 of 2005 affirming the judgment and decree dated 17.04.2005 passed by the Assistant Judge, Agailjhara, in Title Suit No.93 of 1999 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

It is a dispute between two full brothers over a piece of land. Succinct facts for disposal

of this Rule is that the opposite party as plaintiff filed Title Suit No.93 of 1999 before the Assistant Judge, Agailjhara, Barishal for declaration of “ka” schedule sale deed No.440 dated 16.02.1988 as forged, fraudulent, void, not acted upon and binding against him contending *inter alia* that the plaintiff and the defendant are full brothers. They used to live in the land of SA Khatian No.38 from the period of their predecessor. The eldest son of the defendant Sachindra Nath Majumder mentioned in CR Case No.59 of 1998 that the plaintiff sold the “Kha” schedule land to the defendant by virtue of registered sale deed dated 16.02.1998 and thereafter having obtained certified copy of the kabala he came to know of the same in details on 23.11.1999. The plaintiff never executed or registered any sale deed in favour of the defendant nor received any consideration from the defendant who got the kabala by false personation. Defendant acquired no possession in the “kha” schedule property by virtue of the said disputed kabala which is still under his possession.

The defendant (predecessor of the present petitioners) contested the suit by filing written statement denying all the material allegations contending *inter alia* that the suit was not maintainable; barred by limitation; barred by section 42 of the Specific Relief Act. The positive case of the defendant is that 2.72½ acres of land as described in schedule ‘kha’ of the plaint belonged to plaintiff who transferred the

same to the defendant vide kabala dated 16.02.1988 and handed over possession to him. Thereafter, the defendant got the land mutated in his name and have been paying rent to the Government. Plaintiff is an Indian National as he lived there with his family for good as such the suit is not maintainable.

The trial court framed as many as four issues: whether the suit is maintainable; whether it is barred by limitation; whether the impugned kabala is forged, null and void and inoperative; whether the plaintiff is entitled to relief as prayed for. During trial the plaintiff examined 5 witnesses while the defendant examined 4 witnesses to substantiate their respective cases. The trial court after conclusion of trial decreed the suit by its judgment and decree dated 17.04.2005. On appeal by the defendant, the court of appeal below dismissed the same by the impugned judgment and decree dated 20.07.2008 affirming the trial court's judgment and decree.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 20.07.2008 the successors of the defendant filed the instant civil revision and obtained the Rule.

Mr. Swapan Kumar Dutta, the learned Advocate appearing for the petitioners submits that the Courts below upon total misconception of law and facts failed to consider that it is always natural that either the closely known person or the relatives of the parties would be the identifier and attesting witness of any deed of

transfer. But the Courts below without considering the said vital aspect of the case most illegally found fault with the defendant-appellant for making his son Shachindra Nath Mojumder as Attesting Witness and Debendra Nath Biswas, his Beai (i.e. father-in-law of a son) as the Identifier of the said sale deed dated 16.02.1988 without considering the very vital aspect of the case that the plaintiff-opposite party herein hopelessly failed to frustrate the most relevant and persuasive testimonies of the DWs-1 & 3 in their cross-examination, regarding payment of consideration money and execution and registration of the said sale deed dated 16.02.1988; so their testimonies cannot be regarded as unbelievable due to their close relationship with the defendant.

Referring the relevant part of the examination-in-chief of the DW-1, Shachindra Nath Mojumder (who is also the attesting witness of the said sale deed dated 16.02.1988) the learned advocate submits that DW-1 deposed-

আমি ১নং বিবাদীর পুত্র। তিনি অসুস্থ। তিনি স্ট্রোক আক্রান্ত ও অচল। আমি তার পক্ষে সাক্ষ্য দেয়ার জন্য বিজ্ঞ কোর্টের অনুমতি নিয়েছি। মামলার নিষ্পত্তি আহুতি বাটারা মৌজায়। মামলার জমির খতিয়ানং ৪/৫/৩৮/৫৪/৭। তাতে রেকর্ডীয় মালিক ছিল আমার পিতা সুকুমার, আশুতোষ, ভগবতী মুজমদার ও অন্যান্যরা। হাল রেকর্ড শুদ্ধ। বিরোধী সম্পত্তি ২.৭২। একর এই জমিতে বাদী মালিক থেকে উহা ১৬/২/৮৮ ইং এর কবলা মূলে আমার পিতা ১নং বিবাদী বরাবর হস্তান্তর করে দখল বুঝিয়ে দেন। বহায় ২০,০০০/- টাকা। এই সম্পত্তি ১নং বিবাদী ভোগদখল করেন। বাদীল সঙ্গে সম্পত্তি বিক্রয়ের পূর্বে ২৪/২৫ দিন পূর্বে কথাবার্তা হয়। রামশীলে বসে কথাবার্তা হয়। উহা বাদী/বিবাদীর মামা কুসুম রঞ্জন বাজের বাড়ী। তখন ১নং বিবাদী, ১নং বাদী আমি কুমুদ রঞ্জন ১নং বাদী। বিবাদীর

মামাতো ভাইয়েরা উপস্থিত ছিল। তারাই দাম দস্তর করে দেয়। আঁগেল ঝাড়া বসে দলিল লেখা হয় এবং বাদীকে পড়ে শোনানো হয়। দলিল রেজিস্ট্রির সময় ১নং বাদী, আমি, কুমুদ রঞ্জন বাউঁ এবং দেবেন্দ্র নাথ পরিচিত ছিল। জুরান চন্দ্র উপস্থিত ছিল। দলিলের লেখক ছিল বিজয় কৃষ্ণ পান্ডে। তিনি জীবিত নেই। ইসাদি ছিলাম আমি ও জুরান চন্দ্র বিশ্বাস। দলিলের পরিচিত ছিল দেবেন্দ্র নাথ। এই সেই দলিল। এই দলিলের দাতা ১নং বাদী আশুতোষ এই তার স্বাক্ষর আমার স্বাক্ষর এটা। এটা দেবেন্দ্র নাথ এবং এটা জুরান চন্দ্রের স্বাক্ষর। ১৬/২/৮৮ ইং এর মূল কবালা (Exbt-ক) দাখিল করেছি। দলিল সম্পাদনের পূর্বে বহায়মূল্য লেনদেন হয়। আমরা জমির খাজনা দেই। বর্তমান মাঠ জরীপেও ১নং বিবাদীর নামে মামলার জমি রেকর্ড হয়েছে।। " While DW-3, Nirmal Chandra Halder who proved the signature of the identifier Debendra Nath Biswas of the said sale deed dated 16.02.1988 stated that- আমি নিশিকান্ত গাইন মাধ্যমিক বিদ্যালয় ও কলেজের অধ্যক্ষ। এই স্কুলটি আহুতি বাটার বাহাদুরপুর গ্রামে অবস্থিত। আমি বাদী বিবাদীপক্ষকে চিনি। মামলার সম্পত্তি চিনি। বাদী তার সম্পত্তি তার ভাই সুকুমার কে রেজিঃকৃত দলিলমূলে সম্পত্তি হস্তান্তর করেছে। দলিল রেজিস্ট্রির সময় আমি উপস্থিত ছিলাম না। আমার জ্যাঠাতো ভাই দেবেন্দ্র নাথ হালদার উপস্থিত ছিলেন। তিনি দলিলের পরিচিত। এই দলিলের আমার দাদা দেবেন্দ্রনাথের স্বাক্ষর এটা। তিনি বর্তমানে মৃত। সম্পত্তি বিবাদী ভোগদখল করে।"

The learned advocate then submits settle principle of law as enunciated by the apex Court of the land is that the very purpose of cross-examination is to bring out the desirable facts and impeach the credibility of the witnesses. The testimony of a witness cannot be found as unbelievable due to his close relationship with the contending parties. But, in the instant case,

the plaintiff hopelessly failed to discredit the testimonies of DWs. In support of his contention he cited the decision in the case of Md. Habibur Rahman Bhuiyan and others Vs. Mosammat Golam Begum and others as reported in 33 BLD (AD) 93. The learned advocate next submits that the findings and observations of the courts below regarding a fault on the part of the defendant-petitioner herein caused due to non-examination of the son of the late identifier Debendra Nath Biswas to prove his signature and prove the same by his cousin DW-3, Nirmal Chandra Halder cannot be sustainable in law. The Courts below most illegally found the defendant at fault for non-examination of the maternal uncle of both plaintiff and defendant named Kumud Ranjam Baroi, though the defendant in his Written Statement, clearly stated that Kumud Ranjam Baroi mediated the said transfer dated 16.02.1988 and being the full maternal uncle of both plaintiff and defendant it is natural for him (Kumud Ranjam Baroi) to abstain himself from being cited as witness in a proceedings pending between his two full nephews for the sake of his own interest. The findings and observations of the courts below regarding so-called fault on the part of the defendant due to non-use of their common relatives as attesting witness and identifier of the said transfer dated 16.02.1988 cannot be sustainable in law as unreasonable and illogical.

Mr. Dutta further submits that the courts below upon total misconception of law and facts most illegally found that non-examination of the

defendant himself in the court, in support of his case, and examination of his son Shachindra Nath Majumder, on his behalf as DW-1, without any Power of Attorney in that regard, resulted his entire case as not proved relying on the decision of a Division Bench of the High Court Division reported in 7 BLT 164 without considering the principles of law laid down by our Apex Court, in the case of Lal Miah (Hajee) Vs. Nurul Amin and others as reported in 57 DLR (AD) 64. DW-1, Shachindra Nath Majumder was very much present in every part of the said transactions that culminated in the execution and registration of the said deed of transfer dated 16.02.1988.

The learned advocate also submits that the Trial Court though found the Expert Report dated 27.01.2008 i.e. Exhibit-1 as not acceptable in law but most illegally through his so-called examination by naked eyes using magnifying glass found the LTI of the disputed sale deed marked as "Ka" and the specimen one marked as "Kha/1" are different in types. The courts below upon total misconception of law failed to consider that the very method of taking the ink impression of the fingerprint is very much important and those are taken wrongly not following the standard procedure, the expert report, relying on those faulty specimen LTI, must be termed as wrong. The courts below without considering the same in its true perspective most illegally relied on the same and erroneously found the disputed sale deed dated 16.02.1988 (Exhibit-৳) as a forged one. The courts

below did not at all consider the surrounding facts and circumstances of the case and evidences of the contending parties in their true perspective; specially the facts that the opinion of the expert was actually called for, at the cost of the defendant, on an application filed by him, and there the plaintiff did not take any step. If the disputed sale deed dated 16.02.1988 (Exhibit-~~ଫ~~) would have been a forged one the defendant must not have gone for that expert examination. But the courts below without considering the same in its true perspective arrived at an illegal conclusion.

The learned Advocate finally submits that the courts below did not at all consider the apparent discrepancies in case and evidences of the plaintiff resulting which the dismissal of the suit was inevitable, but illegally, unjustly and improperly embarked upon the case and evidences of the defendant. In doing so they also misconstrued and misinterpreted the case and evidences of the defendants without considering the settled principle of law of our Apex Court in the case of Ishaque (Md) Vs. Ekramul Haque Chowdhury as reported in 54 DLR(AD) 26 which held *"When both the parties led evidence question of onus is out of place and the matter is to be decided on the evidence led by the parties"*. As such, the courts below committed serious error of law resulting an error in the decision occasioning failure of justice.

No one appears to oppose the Rule.

I have heard the learned Advocate for the petitioners, perused the lower court records including plaint, written statement, depositions of both the parties and exhibited documents. I have also carefully examined the judgments and decrees passed by the courts below.

It appears that the courts below decreed the suit on the findings that both the Identifier and Attesting Witness of the disputed sale deed dated 16.02.1988 namely Debendra Nath Biswas (father-in-law of defendant's son) and DW-1, Shachindra Nath Biswas (defendant's son) respectively were the close relatives of the defendant which indicate collusion; the signature of the said Identifier Debendra Nath Biswas was authenticated and proved by the plaintiff's cousin DW-3, Nirmal Chandra Halder instead of plaintiff's son which is not acceptable; though the defendant, in his Written Statement, stated that their maternal uncle Kumud Ranjam Baroi mediated the said transfer dated 16.02.1988 but he was not cited as witness by the defendant which also creates doubt about the authenticity of the disputed sale deed; as the plaintiff and defendant are full brothers so the defendant could use some of their common relatives as attesting witnesses and identifier of the said transfer dated 16.02.1988 to make the transfer believable. The courts below further found that non-examination of the defendant himself in the court in support of his case and examination of his son Shachindra Nath Majumder on his behalf as DW-1 without any

Power of Attorney in that regard resulted his entire case as not proved relying on the decision of the case reported in 7 BLT 164. The trial court though found the Expert Report dated 27.01.2008 i.e. Exhibit-1 as not acceptable in law but by examination through a magnifying glass, he found the LTI of the disputed deed marked as "Ka" (by the expert) and the specimen one marked as "Kha/1" (also by the expert) are different in types but on this point the appellate court accepted the expert report and came to the same finding. On those concurrent findings both the courts below decreed the suit.

From records it appears that both plaintiff and defendant who are full brothers adduced witnesses to prove their respective cases. The plaintiff claimed that he did not transfer the suit land by executing disputed sale deed dated 16.02.1988 which is a forged one. On the other hand the defendant claimed that the plaintiff sold the suit land by executing the said deed and handed over the possession and he mutated his name and paying rent of the suit land. The defendant even prayed for opinion of thumb impression expert. Since the plaintiff denied the execution of the disputed deed the burden of proof cast upon the defendant to prove it. Because, the burden of providing a fact rests on the party who substantially assents of the affirmative issue and not upon the party who denies it; for a negative is usually incapable of proof. This principle is

based on the Latin maxim *ei incumbit probatio, qui dicit non qui negat*.

In the present case the courts below did not believe the defendant's witnesses on the findings as mentioned above. How far the reasons of the courts below are correct in law? In the case of Md. Habibur Rahman Bhuiyan and others Vs. Mosammat Golam Begum and others reported in 33 BLD (AD) 93 our apex Court observed that "*Testimony of a witness cannot be disbelieved only on the ground of relationship or closeness if the evidence otherwise found to be true and withstand the test of cross-examination.*" The Court further observed that "*The paramount object of cross-examination is firstly, to bring out desirable facts of the case modifying the examination-in-chief or establishing the cross-examiner's own case; secondly, to impeach the credit of the witness, thirdly, the extraction of the qualifying the circumstances of the testimony given by a witness and unveil all the facts known to the witness, and fourthly, to halt falsehood in its tracks and discover the truth before the Court of Law.*"

In the present case the plaintiff examined 5 PWs including himself. PW-2, Nalini Ranjan Sarker admitted that he was a defendant of Partition Suit No. 107/47 filed by present defendant. PW-4, Sudhir Majumder is the alleged share-cropper of the plaintiff who also admitted that there was a suit between him and the present defendant. So, both PWs-2 and 4 are highly interested witnesses. PW-3 claimed himself as a

co-sharer of the suit land amongst 20 co-sharers but admitted he cannot say names of those co-sharers. Once he said that no co-sharer sold any property but then said some of them sold some properties. He further admitted that he has no knowledge about sale-purchase of the properties. PW-5, has no connection with the suit property who lives one mile away from the suit property. On the other hand DW-1, Shachindra Nath Majumder (who is also the attesting witness of the disputed sale deed) deposed that on 16.02.1988 through the deed of kabala the plaintiff receiving taka 20,000/- sold the disputed 2.72% acres of land to his father, the defendant and handed over possession. The negotiation was held 24/25 days before the registration at the residence of Kumud Ranjan where both plaintiff, defendant, he, Kumud Ranjan and some cousins were present. During registration he, Kumud and Debendranath were present and Bijoy Krishna was the ascriber who is dead now. He and Juran Chandra were the attesting witnesses. He identified his signature along with the signatures of the seller Ashutosh and attesting witness Juran Chandra. While DW-3, Nirmal Chandra Halder who proved the signature of the identifier Debendra Nath Biswas of the disputed sale deed stated that he knew both the parties and suit land. He was not present during registration but his cousin Debendra Nath was the identifier of the deed who is at present dead. He identified his signature and said the defendant is in possession of the suit land. DW-4 in his examination of chief stated

that he was present at the house of maternal uncle of the parties Kumud Ranjan who is his paternal uncle. He was present at the registry office during registration but is not a signatory of the disputed deed and further stated that the plaintiff himself executed the deed.

It is always natural that either the closely known person or the relatives of the parties would be the identifier and attesting witness of any deed of transfer. But the Courts below found error with the defendant for making his son Shachindra Nath Majumder as Attesting Witness and Debendra Nath Biswas, Beai (i.e. father-in-law of a son) as the Identifier of the disputed sale deed dated 16.02.1988 without considering the very vital aspect of the case that the plaintiff failed to frustrate the most relevant and persuasive testimonies of the DWs-1 & 3 in their cross-examination, regarding payment of consideration money and execution and registration of the disputed sale deed dated 16.02.1988. In that view of the matter their testimonies cannot be regarded as unbelievable due to their close relationship with the defendant. The plaintiff failed to impeach the credibility of the witnesses. In spite of that, the courts below disbelieved the most convincing evidences of the DWs on some grounds not sustainable in law. For the same reason, the findings and observations of the courts below regarding a burden on the part of the defendant caused due to non-examination of the son of the late identifier Debendra Nath Biswas to

prove his signature and proved the same by his cousin DW-3, Nirmal Chandra Halder cannot be sustainable in law. Because, the plaintiff utterly failed to bring out any inconsistency in cross-examination of the DW-3. The Courts below found the defendant at fault for non-examination of the maternal uncle of both plaintiff and defendant named Kumud Ranjam Baroi, though the defendant in his Written Statement, clearly stated that Kumud Ranjam Baroi mediated the said transfer dated 16.02.1988 without considering the facts that being the full maternal uncle of both plaintiff and defendant it is natural for him (Kumud Ranjam Baroi) who is a man of about 90 years of old to abstain himself from being cited as witness in a proceedings pending between his two full nephews. The findings and observations of the courts below regarding burden on the part of the defendant due to non-utilize of their common relatives as attesting witness and identifier of the disputed deed dated 16.02.1988 (Exhibit-ক) cannot be sustainable.

In the case of Lal Miah (Hajee) Vs. Nurul Amin and others reported in 57 DLR (AD) 64, our Supreme Court, Appellate Division opined that-
“17. With all due respect to the Learned Judges, we are of the opinion that the view expressed by the Learned Judges that provision of chapter IX of the Evidence Act does not authorize the son or, in other words, somebody else on behalf of the plaintiff to give testimony in support of the plaintiff's case is 100 general in nature and in

the facts of the reported case was also not correct. As already stated hereinabove that provision of section 120 of the Evidence Act has remove the disability of the parties to the suit and the husband or wife of any party to the suit to testify in all civil proceedings and that in criminal proceedings against any person the husband or wife of such person shall be a competent witness.

18. There is nothing in the said section that in civil proceeding the parties thereto shall have to come in the witness box to establish their respective case and that testimony of a witness examined on behalf of the parties to prove their respective case would not be the testimony of the competent witness. There may be special category of case where parties to the suit are material witness or that parties to the suit alone know certain circumstances of the case or that certain matter in the suit is exclusively know to or within the knowledge of the parties to the suit and that the said fact or matter could only be explained by the parties to the suit or that the matter about which parties to the suit alone have actual knowledge or that the parties to the suit are the material witnesses as regard the particular matter and that, as such, party or parties because of the personal knowledge of the matter would have been the material witness then only it can be said that parties to the suit ought to have been in the witness box and that if some other else comes in the witness box to depose

about the fact or matter which exclusively and only is within the knowledge or entirely known to the suitors then the evidence of such witness is no evidence to substantiate the case of the parties to the suit or, in other words, the evidence of such witness does not establish or prove the case of the parties to the suit.

19. In the background of the existence or presence of factor(s) as stated hereinbefore it has been observed in the case of Kishori Lal vs Chunni Lal reported in 36 Indian Appeals 9, Musammat Lal Kumwar vs Chiranji Lal repored in 37 Indian Appeals and Sardar Gurbakhsh Singh vs Gurdial Singh and another reported in AIR 1937 PC 230 it has been observed that facts which are specially or exclusively within the knowledge of the suitors if they did not depose in a case their case remains unestablished since any other person deposed on their behalf in respect of the said exclusively known about the matter as to which suitors had only personal knowledge about the particular matter is not the witness or a competent witness about the said matter.”

In the light of the above observations of the apex Court in the present case on the point of non-examination of the defendant himself in the court, in support of his case, and examination of his son Shachindra Nath Majumder, on his behalf as DW-1, without any Power of Attorney in that regard, resulted his entire case as not proved as observed by the courts below relying on the decision of a Division Bench of the High Court

Division reported in 7 BLT 164 without considering the principles of law laid down by our Apex Court reported in 57 DLR (AD) 64 (supra), wherein it has been clearly decided that there is nothing in section 120 of the Evidence Act, 1872 that in a Civil Proceeding the parties thereto shall have to come in the witness box to establish their respective case and that testimony of a witness examined on behalf of the parties to prove their respective case would not be the testimony of the competent witness. From the uncontroverted testimony of the DW-1, Shachindra Nath Majumder as mentioned above it is very much clear that he was very much present in every part of the said transactions that culminated in the execution and registration of the disputed deed of transfer dated 16.02.1988 having firsthand knowledge as well. As direct knowledge about the same, the DW-1, Shachindra Nath Majumder is the most competent witness as per the provisions of section 60 of the Evidence Act, 1872 but the courts below without considering the same in its true perspective arrived at a wrong conclusion.

Now, regarding the evidentiary value of the LTI expert opinion, it is well settled principle that such opinion is merely advisory in character and does not conclude the issue. The Court is not bound by the opinion of the expert, which is only one piece of evidence to be evaluated in conjunction with the entire material available on record. The expert evidence is intended to assist the Court and not to supplant

its judicial function. Be that as it may, we may look at the Book titled as B.L. Saxena's Law and Technique Relating to Identification of Handwriting, Disputed Documents, Finger Prints, Foot Prints and Detection of Forgeries, Revised By Atul Kumar Singla (Third Edition-1990) wherein it is mentioned about the equipment required, number of methods of taking impressions, procedure for taking impression, causes of unsatisfactory impression, importance of Rolled Impression and Taking Thumb Impression by using Stamp Pad. **Sometimes plain impressions can also lead to wrong interpretation of pattern type.** The writer cautioned in taking thumb impressions by using stamp pad and observed that **it is not advisable to take thumb impressions using a stamp pad because they are generally not clear as impressions taken with printers ink and roller. Sometimes these are totally or partly blurred, smudged or these are too faint for comparison.** However, if there is no alternative other than the use of stamp pad, following procedure should be observed:

1. Do not use a new stamp pad, because the pattern of cloth covering the cushion of the stamp pad may result-in like formation in the thumb impression, rendering it unfit for comparison.
2. Use black ink stamp pad as it will produce impression showing better contrast with the back ground. The commonly used violet coloured stamp pad ink on brownish or dull coloured papers or on revenue stamps,

results in impressions of poor contrast with back grounds and causes difficulties in comparison.

3. Do not allow the subject to rub his thumb on stamp pad because to and fro movements of the thumb on pad may result in filling of ink in the furrows, causing smudging in the impressions.

4. Apply uniform pressure on the thumb and do not allow the subject to exert his pressure at the time of inking as well as at the time of impressing the thumb on paper.

5. Do not use an over/under inked, dry stamp pad because the thumb impressions with over inked pad may be smudged and the same with an under inked/dry pad may be too faint for comparison.

Regarding the bases of finger prints comparison the writer further opined that it is the law of nature that it does not reproduce any two things exactly alike, same is the case with finger prints i.e. no two finger prints from different finger (may be of the same person or two different persons), can be exactly alike, though they may have some similarities in the class characteristics such as pattern type or arrangement of ridges. It is also an established fact that the pattern and the ridge details on the bulbs of fingers remain same from womb to grave. If the available area of the impression provides sufficient number of ridges for the determination of the pattern type, then the first step in the

comparison of two finger prints (including thumb impression) is to determine and compare their main and sub-pattern types. If the impression tally in their main and sub-pattern type, they are further compared in their minute ridge details. If the impressions do not tally in their main pattern type or sub-pattern type or in both, then the impressions can be declared as non-identical and there is no need to go for further comparison of ridge details. If the impressions do not have sufficient ridges to determine the main or sub-pattern type, then they can be compared on the basis of ridge characteristics.

In the instant case, from the LTI expert report dated 27.08.2001 i.e. Exhibit-1 it is found that the expert marked the left thumb impression of the disputed sale deed dated 16.02.1988 as "क" and the specimen impressions of the plaintiff's ten fingers as "ख/१" to "ख/१०"; and from the said left thumb impression "क" it is truly a rolled impression and obtained by using special type of ink specially used for that purpose not by using the generally used stamp pad but all the specimen impressions of the plaintiff's ten fingers marked as "ख/१" to "ख/१०" are not only the plain impression but also smudged and unsatisfactory in nature and obtained not following the standard procedure prescribed in that regard by using generally used stamp pad. In that view of the fact, it can safely be said that the report of the LTI expert i.e. Exhibit-1 stating the dissimilarity between the LTL (left thumb impression) of the disputed sale

deed dated 16.02.1988 (Exhibit-ক) and the specimen LTI (left thumb impression) marked as "ক" and "খ/১" respectively by the said Expert, relying on those smudged and unsatisfactory left thumb impression cannot be relied upon. Trial Court though found the Expert Report dated 27.01.2008 i.e. Exhibit-1 as not acceptable in law but through his examination by naked eyes using magnifying glass found the LTI of the disputed sale deed marked as "Ka"(by the expert) and the specimen one marked as "Kha/1"(also by expert) are different in types. The courts below upon total misconception of law failed to consider that the very method of taking the ink impression of the fingerprint is very much important and those are taken wrongly not following the standard procedure, the expert report, relying on those faulty specimen LTI, must be held not acceptable. But the courts below without considering the same in its true perspective most illegally relied on the same and erroneously found the disputed sale deed dated 16.02.1988 (Exhibit-ক) as a forged one. Moreover, the courts below did not at all consider the surrounding facts and circumstances of the case, that surely would have helped them to consider the case and evidences of the contending parties in their true perspective; specially the facts that the opinion of the expert was actually called for by order dated 08.11.2000, at the cost of the defendant, on an application filed by him, and there the plaintiff was a defiant. If the disputed sale deed dated 16.02.1988 (Exhibit-ক) would have

been a forged one the defendant must not have gone for that expert examination. But the courts below without considering the same in its true perspective arrived at a wrong conclusion.

The evidence on record clearly suggests that the plaintiff has failed to prove that he did not execute the disputed deed or it is forged. On the other hand the defendant has proved the disputed deed before the court by examining the relevant witnesses. DW-1, son of the defendant was related in the disputed transfer from the very beginning, starting from the negotiation to the finally execution and registration of the deed hence DW-1 was very much competent to depose before the court on behalf of the defendant.

Ordinarily this Court sitting in revisional jurisdiction does not interfere with the concurrent findings of the facts by the courts below but the in the present case both the courts below on misconception of law and facts by misreading and non consideration of evidence on record passed the impugned judgments and decrees which called for interference by this Court for the reasons as viewed in the perspective of the foregoing discourse and considering all pros and cons of the instant case and on taking note of catena of decisions by the highest Court of the land.

In the facts and circumstances as discussed above the irresistible conclusion is that since the plaintiff failed to prove his case while the defendant successfully discharged his

burden of proof through legal evidence, the plaintiff's suit was liable to be dismissed and as such the judgments and decrees passed by the courts below are liable to be set aside.

In the result, the Rule is made **absolute**. The impugned judgments and decrees passed by the courts below are hereby set aside and the suit is dismissed.

Send down the Lower Courts Record along with a copy of this judgment at once.