

District-Naogaon.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 4216 of 2017.**

Md. Umar Ali Mollah and another.

---- Plaintiff-Respondent-Petitioners.

-Versus-

Haji Ahmed Ali.

---- Defendant-Appellant-Opposite Party.

None appears.

---- For the Plaintiff-Respondent-Petitioners.

Mr. Fakhar Uddin, Advocate with

Mr. Jobeda Begum, Advocate

Mr. Md. Asif Akther, Advocate and

Mr. Zannatul Nadia, Advocate

----For the Defendant-Appellant-Opposite Party.

Heard On: 23.02.2026, 04.03.2026.And**Judgment Delivered On: 09.03.2026.****Md. Toufiq Inam, J:**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree passed by the learned Additional District Judge, 2nd Court, Naogaon in Title Appeal No. 79 of 2015, allowing the appeal and thereby setting aside the judgment and decree of the learned Senior Assistant Judge in Title Suit No. 45 of 2010, should not be set aside and/or such other or further order passed as to this Court may seem fit and proper.

The opposite parties, as plaintiffs, instituted the aforesaid Title Suit seeking cancellation of Exchange Deed No. 7381 dated 16.07.1991. Their case, in brief, was that they were in possession of Schedule-‘Ka’ property and, by the said deed, transferred 10 decimals of land in favour of the defendant in exchange for 3 decimals of land described in Schedule-‘Kha’. It was alleged that the defendant had neither title nor possession over the Schedule-‘Kha’ land and had fraudulently misrepresented the same as his own. According to the plaintiffs, upon attempting to take possession after registration, they discovered that the land did not belong to the defendant, and as such, the exchange was never effectuated in reality.

The defendant contested the suit by filing a written statement denying all material allegations and specifically raising the plea that the suit was barred by limitation. It was contended that the exchange deed was executed and registered on 16.07.1991, that the plaintiffs were fully aware of all relevant facts immediately thereafter, and that the institution of the suit after a long lapse of time rendered the claim hopelessly barred.

The learned trial court, upon framing issues and considering the evidence on record, decreed the suit in favour of the plaintiffs, holding that the defendant had no title in respect of the Schedule-‘Kha’ land

and that the deed was liable to be set aside. Being aggrieved, the defendant preferred Title Appeal No. 79 of 2015.

The learned appellate court, on reappraisal of the entire materials on record, concurred with the finding that the defendant had no title over the Schedule-‘Kha’ land. However, it found that the suit was clearly barred by limitation. It was further observed that, despite a specific plea in the written statement, the trial court failed to frame any issue on limitation. Upon examining the plaint and the deposition of P.W.1, the appellate court found that the plaintiffs had knowledge of the alleged defect immediately after the execution and registration of the deed in 1991. As the suit was instituted after about 18 years, it was barred under Article 91 of the Limitation Act, 1908. On this ground, the appeal was allowed and the suit dismissed.

Challenging the said judgment, the plaintiffs moved this revisional application and obtained the present Rule.

It is noted with concern that none appeared to press the Rule at the time of hearing, despite earnest efforts made by the learned Assistant Attorney General to secure the attendance of the learned Advocates for the petitioner. Such indifference reflects a lack of professional diligence. However, considering the age of the matter, this Court has

proceeded to examine the case on merits in order to prevent further delay in the administration of justice.

It has been contended by the petitioner in this revisional application that the appellate court misdirected itself in law in dismissing the suit solely on the ground of limitation, although the defendant's lack of title was clearly established. It is contended that when a deed is void ab initio for want of title, the question of limitation does not strictly arise in the same manner as in case of a voidable instrument. It is further submitted that the appellate court erred in reversing a well-reasoned decree of the trial court without proper consideration of evidence.

On the other hand, Mr. Md. Fakhar Uddin the learned Advocate for the opposite party appearing with Ms. Jobeda Begum supports the impugned judgment and submits that limitation goes to the root of jurisdiction. The plaintiffs' own pleading and evidence show that they had knowledge of the alleged defect in 1991. Yet they filed the suit after about 18 years. The trial court committed material illegality in not framing and deciding an issue on limitation despite specific pleading. The appellate court rightly corrected the error.

Upon consideration of the submissions and perusal of the records, it appears that the exchange deed was executed on 16.07.1991 and, by

the plaintiffs' own showing, the defect in title was discovered by 17.09.1991 when they attempted to take possession. This fact has been clearly admitted in evidence by P.W.1.

Article 91 of the Limitation Act, 1908 prescribes a period of three years for a suit seeking cancellation of an instrument, reckoned from the date when the facts entitling the plaintiff to such relief become known. In the present case, even taking the plaintiffs' case at its highest, limitation commenced in 1991. The institution of the suit in 2010, after an unexplained delay of nearly 18 years, is manifestly beyond the statutory period.

The legal position in this regard is well settled. Limitation is not a mere procedural technicality but a substantive bar which extinguishes the remedy. Courts do not assist a litigant who, despite having knowledge of his rights, chooses to remain indolent and inactive. The maxim *vigilantibus non dormientibus jura subveniunt*—the law assists the vigilant and not those who sleep over their rights—squarely applies. A party who, with full knowledge of the alleged fraud or defect, allows a transaction to stand unchallenged for decades cannot subsequently invoke the equitable jurisdiction of the Court to unsettle it. Delay defeats equity, and stale claims are discouraged in the interest of certainty and finality in legal relations.

In the present case, the plaintiffs not only had clear knowledge of the alleged defect in 1991 but also consciously allowed the deed to remain operative for an inordinate period. Their inaction amounts to acquiescence, disentitling them from obtaining discretionary relief. The plea that the deed was void does not rescue the plaintiffs in the facts of this case, inasmuch as they themselves sought cancellation of the instrument. So long as the deed subsists on record and is capable of affecting rights, it must be challenged within the time prescribed by law.

Furthermore, the failure of the trial court to frame and decide an issue on limitation, despite a specific plea, constitutes a material irregularity in the exercise of jurisdiction. The appellate court, being the final court of fact, rightly corrected this error by examining the pleadings and evidence and arriving at a lawful conclusion.

In revisional jurisdiction under section 115 of the Code of Civil Procedure, this Court does not reappraise evidence as an appellate court. Interference is warranted only where the impugned judgment suffers from jurisdictional error, illegality, or material irregularity. The finding of the appellate court on limitation is firmly grounded in the plaintiffs' own case and does not call for interference.

In view of the foregoing discussion, no illegality or material irregularity has been found in the impugned judgment.

Accordingly, **the Rule is discharged.**

The judgment and decree passed by the learned Additional District Judge in Title Appeal No. 79 of 2015 are hereby affirmed.

There shall be no order as to costs.

The interim order of stay is hereby recalled and vacated.

Let the lower courts' records be sent down at once together with this judgment.

(Justice Md. Toufiq Inam)

Ashraf /ABO.