

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.3218 OF 2009.

Mosammat Rajia Begum

..... *Plaintiff-Petitioner.*

-VERSUS-

Fatema Begum and others

..... *Defendant-Opposite Parties.*

Mr. Md. Zafar Ali, Advocate

..... *For the Petitioner.*

Mr. Khayer Ezaz Masud, Senior Advocate with
Md. Nashiruddin, Advocate

---- For the opposite parties.

**Heard on: 27.08.2025, 30.11.2025,
08.12.2025 and 15.12.2025.**

Judgment on: 04.05.2026.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 22.04.2009 passed by the learned Special District Judge, Faridpur in Title Appeal No.83 of 2006 dismissing the appeal and affirming the Judgment and decree dated 12.04.2006 passed by the learned Senior Assistant Judge, Bhanga, Faridpur in Title Suit No.148 of 2002 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The Facts, in brief, for disposal of the Rule, are that the petitioner herein, as plaintiff, instituted Title Suit No.148 of 2002 before the Senior Assistant Judge, Bhanga, Faridpur for declaration of registered gift deed No.3306 dated 27.06.1980 is illegal, void and not binding upon him and for recovery of khas possession, contending, inter alia that the suit land originally belonged to one Mr. Harun-or-Rashid Howlader who transferred 28 decimals of land through registered Deed No. 34425 dated 15.10.1980 in favour of the plaintiff petitioner. Since then, the plaintiff has been in possession of the same by constructing a house thereon, subject to the payment of rent thereon, and has also mutated her name. The defendant took shelter in the plaintiff's house with the plaintiff's consent due to the heavy flood in 1998, but after the situation improved, the plaintiff requested that the defendant leave the house. The defendant was living in the house as a tenant. Thereafter, on 19.6.2002 the plaintiff came to know through a notice served upon her by the office of the Assistant Commissioner (Land) Bhanga, Faridpur as to the mutation in the name of the defendant in respect of the suit land; that the plaintiff asked the defendant about the mutation case and then the defendant disclosed the facts

relating to deed of gift dated 27.6.1980 as to the suit land; thereafter the plaintiff became sure about the alleged forged deed of gift No. 3306 dated 27.06.1980 through which the husband of defendant Harun-or-Rashid Hawlader transferred 14 decimals of vacant land out of 28 decimals of lands. On inquiry at the relevant sub-registrar's office, Sadarpur, Faridpur, it was found that on 27.06.1980, the alleged deed was registered, so the cause of action arose when the defendant refused to hand over possession of the suit land to the plaintiff.

The defendant contested the suit by filing a written statement denying all the material allegations made in the plaint, that the main contentions of the defendant are that the suit is not maintainable in its present form and manner, that her husband Harun-or-Rashid On 27.06.1980 by registered deed No. 3306 gifted her 14 decimals of land and handed over the possession of the suit land, and she having received the 14 decimals of land as gift from her husband erected two tinsheed, kitchen, bathroom, and setup tube-well, living thereon with her children and peacefully possessing the suit land.

To prove the case, the prosecution examined as many as five (5) witnesses and adduced evidence. On the contrary, the defendant side examined five (5) witnesses and produced material evidence.

Subsequently, the learned Senior Assistant Judge, Bhanga, Faridpur, by the Judgment and decree dated 12.04.2006 dismissed the suit.

Being aggrieved by the above Judgment and decree, the plaintiff, as appellants, preferred Title Appeal No.83 of 2006 before the learned District Judge, Faridpur.

Eventually, the learned Special District Judge, Faridpur, by the Judgment and decree dated 22.04.2009, dismissed the appeal and affirmed those passed by the trial Court.

Being aggrieved by the above Judgment and decree, the plaintiff, as petitioner, preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Md. Zafar Ali, the learned advocate appearing on behalf of the plaintiff-petitioner, submits that the husband of the defendant No.1 transferred the suit land in favor of the plaintiff-petitioner through a registered deed of sale upon taking proper consideration money and handing over

possession thereof. Mutation was done in favor of the plaintiff. The defendant took shelter on the suit land due to the flood situation in 1998 and subsequently stayed in the suit land as a tenant. But both the Courts below erred in law in not decreeing the suit after elaborately evaluating the evidence on record and in dismissing it. The same has occasioned failure of justice in the case.

On the contrary, Mr. Khayer Ezaz Masud, the learned Senior Advocate appearing on behalf of the defendant-opposite party, submits that according to Section 47 of the Registration Act, a registered document shall operate from the time at which it would have commenced to operate if registration had not been required or affected, and not from the time of its registration. The documents of the respective parties evidently operate from the dates of their execution, and since the defendant's kabala is of an earlier date, it has been operating earlier; both the courts below properly evaluated the evidence and correctly held that the defendant's deed is earlier.

We have anxiously considered the submissions of the learned Counsels for both the parties, perused the impugned judgment, evidence and other materials on record.

It appears that the plaintiff petitioner to prove her case examined as many as five (5) witnesses and adduced the material evidence on record. On the contrary, the defendants side examined as many as five (5) witnesses and adduced material evidence to prove their case.

We have scrutinized each deposition, each witness's cross-examination, and the material evidence on record. It transpires that the appellate court below, while affirming the finding of the trial Court below, held that the defendant-opposite party obtained the disputed 14 decimals of land out of 28 decimals of land by registered kabala dated 27.06.1980 as a gift from her husband; on the contrary, the plaintiff purchased 28 decimals of land (including the defendant's land) by a registered deed dated 15.10.1980 from the husband of the defendant. As the defendant obtained the land earlier, the plaintiff has not acquired any title to the defendant's land.

Notably, Section 47 of the Registration Act provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. The documents of the respective parties

evidently operate from the dates of their execution, and the defendant's kabala is a prior document; it has been operating earlier.

It appears that a registered document takes effect from the date of execution, but, as regards a third party, the effective date is the date of registration. This view finds support in the decision of Gobardhan Bar Vs. Chandhar Bar, reported in A.I.R. 1941 Calcutta 78. However, in the decision of Ramaswami Pillai Vs. Ramaswami Naickar and others reported in A.I.R. 1960 Madras 396, held that a sale executed prior in point of time would prevail.

In the case of T V Kalyanasudaram Pillai v Karuppa Moappanar and others reported in A.I.R. 1927 Privy Council 42, the Privy Council quoted with approval the observation of the Chief Justice of the Madras High Court made in that case which was as follows:-

“The effect of those sections in my Judgment is that if a title is complete except for registration, no subsequent alienation or dealing with the property by the vendor or donor as the case may be, can defeat the title which on registration becomes an absolute title dating from the date of the execution of the document. (The Hon'ble Chief Justice of the

Madras High Court was considering section 123 of the Transfer of Property Act and section 47 of the Registration Act.).”

In the case of Sadei Sahu Vs. Chandramani Dei and another, reported in A.I.R. 1948 Patna 60, laid that section 47 not only operates between the parties to the deed but also affects the rights of third parties.

The learned counsel for the petitioner submitted that in a suit for specific performance of a contract, the onus lies on the person whose title has arisen subsequent to the contract to sell, and he must prove that he is a transferee for value and has paid the money in good faith, and in his contention he referred to the case of Joynab Begum and others vs Shaheb Ali Akunji and others reported in 60 D.L.R (AD)14 laid –

“It is thus quite clear that in a suit for specific performance of contract the onus lies heavily on the person whose title arises subsequent to the contract to sell and he must prove that he is a transferee for value and has paid the money in good faith and without notice of the original contract”

We are fully in agreement with the above decision of our apex court; however, each case depends on its own facts and circumstances. It appears that the facts of the instant case and the facts of the above-cited case are entirely different from each other. In the instant case, we have already noticed that the alleged vendor of the deed, Harun-or-Rashid, on 27.06.1980 by registered deed No. 3306 gifted 14 decimals of land to his wife, the defendant-opposite party and handed over the possession of the suit land, and the defendant having received the 14 decimals of land as gift from her husband erected two tinsheed, kitchen, bathroom, and setup tube-well, living thereon with her children and peacefully possessing the suit land by mutating her name and regularly pays the land tax. On the other hand, the plaintiff deed was much later by the same vendor, on 15.10.1980. So, the submission of learned counsel for the petitioner has no footing.

In view of the above facts and circumstances, it appears that both the Courts below have carefully considered the evidence on record and very judiciously found that the plaintiff failed to prove the case. Consequently, the Rule has no merit.

Resultantly, the Rule is discharged without any order as to costs.

The impugned Judgment and decree dated 22.04.2009 passed by the learned Special District Judge, Faridpur in Title Appeal No.83 of 2006 dismissing the appeal and affirming the Judgment and decree dated 12.04.2006 passed by the learned Senior Assistant Judge, Bhanga, Faridpur in Title Suit No.148 of 2002 dismissing the suit is hereby affirmed.

Communicate the Judgment and send down the Lower Court Records at once.

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(Md. Salim, J).