

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

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 3714 of 2009**

Md. Jasim Uddin Akanda being dead his legal  
heirs: Md. Abu Raihan and others  
Defendant No. 1-Appellant- Petitioners

Versus

Most. Momtaz Begum  
Plaintiff-Respondent-Opposite Party No. 1

Md. Fazlul Haque and others  
Opposite Parties

Mr. Md. Sorforaj Meah with  
Mr. Md. Ikram Hossain, Advocates  
for the Defendant No. 1-Appellant- Petitioners

Mr. Md. Iqbal Hossain, Advocate  
for the Plaintiff-Respondent-Opposite Party  
No. 1

**Judgment on: 27.7.2022**

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 13.9.2009 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Joypurhat in Other Class Appeal No. 91 of 2007 dismissing the appeal and thereby affirming the judgment and decree dated 22.8.2007 passed by the learned Senior Assistant Judge, Kalai, Joypurhat in Other Class Suit No. 61 of 2002 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No. 1 Most. Momtaz Begum as plaintiff filed the Other Class Suit being No. 6 of 2002 in the Court of learned Senior Assistant Judge, Kalai, Joypurhat praying for declaration alleging inter-alia that the plaintiff is the owner and possessor of the suit land and the defendant No. 1 is a Bargader under her. On 23.11.2001 the plaintiff claimed the crops of the land and at that time the defendant No. 1 disclosed that he got the land by virtue of Kabala deed No. 7023 dated 08.6.1979 from the plaintiff, as such the plaintiff became astonished and in search of the deed in local Sub-registry Office obtained the certified copy of the deed and filed the suit for declaration to the effect that she did not execute and register the kabala deed in favour of the defendant No. 1 by taking consideration, the deed is forged and created by false personification and that is not in force.

The defendant Nos. 1-2 contested the suit by filling written statement. The Case of the defendants, in short, is that the plaintiff along with her uncle and husband went to the Sub-register Office on 08.6.1979 and executed and registered deed being No. 7023 in favour of the defendant No. 1 by taking consideration amount, Mohammad Ali Mondal is her maternal uncle who identified the plaintiff. The deed is legal and genuine and the defendant No. 1 did not create the deed through false personification. The defendant

No. 1 is possessing the suit land by paying rents to the Government, mortgaged the same with Bank and took loan from Bank and the said deed was lost as such he lodged G.D. entry with local police station. The plaintiff instituted the suit with false and fabricated story thus the defendant prayed to dismiss the suit with cost.

The Trial Court decreed the suit by his Judgment and Decree dated 22.8.2007 and that the defendant as appellant preferred Other Class Appeal No. 91 of 2007 before the learned District Judge, Joypurhat which was heard by the learned Joint District Judge, 1<sup>st</sup> Court, Joypurhat who dismissed the appeal by his Judgment and Decree dated 13.9.2009 and thus the defendant No. 1 as petitioner moved this Court with the application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

During pendency of the Rule the defendant No. 1 petitioner died and the heirs of the petitioner have been substituted as petitioners Nos. 1(a)-1(g).

Mr. Md. Sorforaj Meah, learned Advocate for the defendant-petitioners, submits that the plaintiff failed to prove her case by examining 3 witnesses as such the Trial Court erred in law in passing the judgment and decree in favour of plaintiff-opposite party No. 1 as such considering the legal aspects the Appellate

Court below ought to have allowed the appeal of the defendant No. 1- petitioner. He further submits that the defendant No. 1-petitioner is possessing the suit land from execution and registry of the Kabala deed and also mutated his name in the record accordingly paying rents to the Government, long after 21 years the plaintiff instituted the instant suit with falsehood, which is barred by limitation, this factual and legal aspects were not duly considered by the Courts below. He then submits that the plaintiff Most. Momtaz Begum was not examined as plaintiff witness as such the case of the plaintiff was hit by the provision of section 114(g) of The Evidence Act, the Trial Court ought to have dismissed the suit considering this evidential aspect. This legal aspect also had not been considered by the Appellate Court below. Mr. Sorforaj lastly submits that without expert opinion in the material issue of the suit is whether signature/thumb impression in the questioned deed No. 7023 dated 08.6.1979 was plaintiff or not is left undecided by the Courts below which is clear error of an important question of issue and law was not decided by the expert opinion resulting in an error in the decision occasioning failure of justice and the present suit is a fit case for remand and hence the impugned Judgment and Decree is liable to be set-aside and sent back the case on remand for ends of justice.

Mr. Md. Iqbal Hossain, learned Advocate for the plaintiff opposite party No. 1, opposes the Rule and submits that the learned Trial Court found in his judgment that the defendant No. 1 admits in his cross-examination that he delivered the original copy of the suit deed to his engaged learned Advocate during drafting his written statement but subsequently he shifted his plea by amending the said pleadings and stated that the said deed has been lost and as such the learned Trial Court arrived at a decision that “সুতরাং সংগত কারণে প্রদর্শনী ক দলিল নং ৭০২৩ সৃজিত এবং তাহার বিশ্বাসযোগ্য বলে মনে হয় না। বিবাদীপক্ষ কৌশলগত কারণে মূল নালিশী ৭০২৩ নং কবলা রেজিষ্ট্রি দলিলটি অত্র আদালতের সামনে আনতে সাহসী হয় নাই। উপরোক্ত বাদীপক্ষ হতে নালিশী দলিলের এল,টি,আই বগুড়া সদর সাব-রেজিষ্ট্রি অফিস হইতে আদালতযোগ্য তলব দিয়াও সংগ্রহ করিতে সক্ষম হয় নাই।” He further submits that the learned Appellate Court below also found in his judgment that “পি, ডব্লিউ-৩ মমতা বেওয়া ১ নং বিবাদীর আপন শ্যালিকা। তিনি বলেছেন যে, বাদীনি দলিল করে দেন নাই এবং তিনি নিজে দলিলটি করে দেন।” .....এই মোকদ্দমায় বিবাদী পক্ষ দলিলের বিশ্বস্ততা প্রমাণে ব্যর্থ হয়েছে এবং বাদী পক্ষ প্রমাণ করতে পেরেছে যে, নালিশী দলিলটি ফলস পারসোনিফিকেশন দ্বারা সৃষ্টি করা হয়েছে। and accordingly the learned Appellate Court below dismissing the appeal by affirming the judgment. He lastly submits that the learned Courts below concurrently found in their judgment that the plaintiff-opposite party No. 1 is able to prove her case by adducing and producing the oral and documentary

evidences before the learned Courts below and the learned Courts below decreed the suit and there is no misreading and non consideration of the evidence adduced by the parties for which under revisional jurisdiction the impugned judgment and decree cannot be interfered and the Rule has no merit and is liable to be discharged for ends of justice.

Heard the learned Advocates for both the parties and perused the record.

The plaintiff claimed that the defendant No. 1 is her Bargader and on the other hand the defendant claimed that he purchased the suit land from the plaintiff vide deed No. 7023 dated 08.6.1979 but the defendant failed to prove the same. P.W. 3 Mamota Bewa who is sister-in-law of the defendant No. 1 Jashim Uddin stated “জসিম আমাকে মমতাজ সাজিয়ে টিপ সহি নেয় নাঃ দলিলো।” Upon perusing the material evidence of record both the Courts below came to the concurrent finding of facts and passed the impugned judgment and decree. The defendant-petitioner could not show any ground to interfere with the impugned judgment and decree. Considering the facts and circumstances of the case, I find no substance in this Rule.

**In the result, the Rule is discharged without any order as to costs.**

The impugned judgment and decree dated 13.9.2009 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Joypurhat in Other Class Appeal No. 91 of 2007 dismissing the appeal and thereby affirming the judgment and decree dated 22.8.2007 passed by the learned Senior Assistant Judge, Kalai, Joypurhat in Other Class Suit No. 61 of 2002 decreeing the suit is hereby upheld.

The order of status-quo granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.