

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No.3390 OF 2010

IN THE MATTER OF:

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

IN THE MATTER OF:

Md. Fazlur Rahman

... Defendant-Appellant

Petitioner

-Versus-

Sree Soresh Chandra Rajak and others

... Plaintiff-Respondents

Opposite -Parties

Mr Md. Emdadul Hasan with

Mr Md. Hasan, Advocates

.... For the Petitioner

Mr Md. Alamgir Mustafizur Rahman, Advocate

...For the Opposite Parties

Date of hearing: 24.06.2026, 13.07.2026 and
22.07.2026 A.D.

Date of Judgment: 26.07.2026 A.D., Sunday;

[১১ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ]

JUDGMENT

Abdur Rahman, J.

This Rule was issued under section 115 of the Code of Civil Procedure, 1908, on 16.08.2010, calling upon the opposite party Nos.1–3 to show cause as to why the judgment and decree dated 25.10.2009 passed by the learned Court of Appeal, as complained of in the revisional application, should not be set aside and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay the operation of the judgment and decree dated 25.10.2009 for a period of six months. Subsequently, the said order of stay was extended from time to time and remained operative until disposal of the Rule.

The material facts giving rise to the Rule, as disclosed from the pleadings, evidence and the judgments of the Subordinate Courts, may briefly be noticed.

The plaintiffs instituted the suit for partition in respect of the suit land described in the schedule to the plaint and also prayed for cancellation of the registered partition deed being No.6541 dated 09.06.1994, contending, *inter alia*, that the said instrument did not represent a lawful and genuine partition of the ejmali property and that the plaintiffs had acquired and possessed their respective shares in the suit jote by virtue of earlier registered deeds of purchase.

The plaintiffs also contended that the suit property, together with other properties, originally belonged to Indra Nath Rajak, Chandranath Rajak and Bholanath Rajak. Chandranath Rajak subsequently died leaving behind his four sons, namely, Shurendra Chandra, Narendra Chandra, Khagendra Nath and Mahendra Nath, as his heirs. Bholanath Rajak also died leaving behind his only son, namely, Fanindra Nath Rajak, as his heir.

The plaintiffs further claim to have purchased portions of the suit land appertaining to Shabek Plot

No.1084 from the said Fanindra Nath Rajak by registered kabala deeds. It has been asserted that Fanindra Nath Rajak transferred 0.23 decimals of land on 25.06.1975 by a registered kabala in favour of Kamrul and Aminul, who subsequently transferred 0.16½ decimals therefrom on 01.02.1982 by a registered kabala. According to the plaintiffs, by virtue of the successive transfers, Plaintiff No.1 acquired and possessed 0.33 decimal of land. Plaintiff No. 3 had earlier purchased 0.16½ decimals of land. It is further stated that Aminul and Shamsul purchased 0.10 decimals of land from Fanindra Nath Rajak, son of the C.S. tenant Bholanath Rajak, and thereafter Kamrul and Aminul transferred 0.6½ decimals of land by registered kabala in favour of Plaintiff Nos. 2 and 3. Thus, according to the plaintiffs, Plaintiff Nos.2 and 3 became owners of the respective portions purchased by them and, in aggregate, the plaintiffs acquired and possessed 0.66 decimal of land in the suit jote in ejmali interest.

On the contrary, the defendant Nos.1, 20, 21 and 25 contested the suit by filing a written statement and denied

the material allegations made in the plaint. Their case, in substance, is that the suit land, along with other properties, originally belonged to Indra Nath, Chandranath and Bholanath. During their respective periods of ownership and possession, Bholanath died leaving behind his only son, Fanindra Nath, as his heir, whereas Indra Nath died leaving behind his wife, Garjia Rajakini, and daughter, Moni Rajakini. It was further contended that Indra Nath had executed a Will in favour of them in respect of his share and that the said Will was duly probated.

It was also stated that Chandranath died leaving behind his four sons, namely, Shuren, Khagen, Noren and Mahendra. Shabek Plot No.1084 was subsequently subdivided in the R.S. operation into several plots, including R.S. Plot Nos.1273, 1274, 1275 and 1277. A portion of Plot No.1275 was allegedly acquired by the Government. It was further asserted that after the death of Moni, her heirs succeeded to her property and that the contesting defendants purchased different portions of the

suit land from the heirs of the original owners by registered kabala deeds. Defendant No.1 claimed to have purchased 0.15 decimals on 09.06.1994, while 0.57 decimals of land were allegedly purchased from Madhu Sudan and others. Defendant No.25 claimed to have purchased 0.05 decimals on 13.12.1995, and Shamsunnahar allegedly purchased 0.07 decimals on 09.06.1994.

The defendants further asserted that a partition deed was executed on 09.06.1994 with the consent of the parties concerned and that the said deed was neither fraudulent nor collusive. They also alleged that the plaintiffs had no subsisting possession over the land claimed by them, as portions thereof had allegedly been acquired by the Government for construction of a road and notices in that regard had been served upon the plaintiffs. On those assertions, the defendants prayed for dismissal of the suit.

Upon consideration of the pleadings, oral and documentary evidence adduced by the parties, and the materials available on record, the learned Trial Court decreed the suit by judgment and decree dated 21.04.2005 against defendant Nos. 1, 20, 21, 22 and 25 and ex parte against the remaining defendants upon 66 decimals of plaintiffs' claimed lands.

Being aggrieved by and dissatisfied with the said judgment and decree, the contesting defendants preferred Title Appeal No.218 of 2005 before the learned District Judge, Rajshahi, claiming the total dismissal of the suit. The appeal was heard and disposed of by the learned Joint District Judge, Rajshahi, who, by judgment and decree dated 25.10.2009, partly allowed the appeal and modified the judgment and decree of the learned Trial Court.

Thereafter, the said defendant-appellant, being aggrieved by the said judgment and decree of the learned Court of appeal, has preferred the instant revisional application, and the present Rule was issued.

At the hearing of the Rule, Mr Md. Emdadul Hasan, learned Advocate appearing for the petitioner, submits that the learned Court of Appeal committed an error of law in partly allowing the appeal and modifying the judgment and decree of the learned Trial Court, rather dismissing the title suit of the plaintiffs, thereby resulting in an error of law occasioning failure of justice.

He next submits that the learned Court of Appeal misread and misconstrued the evidence, particularly the deposition of the plaintiffs' witnesses and the documentary exhibits produced in support of the plaintiffs' title and possession. It is contended that, without considering it in its proper perspective, both the Subordinate Courts reached a conclusion which was fully unjustified.

Learned Advocate further submits that the learned Court of Appeal failed to comply with the mandatory requirements of Order XLI Rule 31 of the Code of Civil Procedure while reversing and modifying the judgment of

the Trial Court. It is argued that the appellate judgment does not properly formulate the points for determination, nor does it adequately record the reasons to give a decree in favour of the plaintiffs.

Lastly, learned Advocate submits that the story as evident in the evidence of PW1, an aged and illiterate person, clearly establishes that he signed the disputed partition deed in good faith and that the contents of the deed were never read over or explained to him. He submits that the evidence of PW2 and PW3 materially corroborating the testimony of PW1 regarding the plaintiffs' possession over 66 decimals of land is not credible evidence. According to him, the learned Court of Appeal failed to appreciate this evidence in its proper legal perspective.

On the other hand, Mr Md. Alamgir Mostafizur Rahman, learned Advocate appearing for the opposite parties, supports the judgment and decree of the learned trial Court. He submits that the appellate Court, without

proper consideration of the evidence and materials on record, unjustly modified the judgment of the Trial Court and, as such, a jurisdictional error has been committed warranting interference by this Court in revision.

He further submits that the plaintiffs established their claims in respect of the suit property out of the Government-acquired portion of the land and the judgment of the learned Trial Court did not suffer from material defects. According to him, the disputed partition deed was not executed with the consent of the concerned parties and, though duly registered, therefore the plaintiffs may avoid the legal consequences flowing from the said instrument by asserting that they did not understand its contents.

I have heard the learned Advocates appearing for the respective parties and perused the revisional application, the judgments and decrees passed by the learned Subordinate Courts, the pleadings, oral and documentary evidence, and other materials available on

record. Upon such consideration, it appears that the plaintiffs, being satisfied with the judgment and decree passed by the learned Trial Court, did not prefer any appeal thereagainst. It was the contesting defendant who, being aggrieved thereby, preferred the appeal, whereupon the learned Appellate Court, upon reappraisal of the materials on record, modified the judgment and decree of the learned Trial Court by reducing the extent of land decreed in favour of the plaintiffs. The plaintiffs, thereafter, did not challenge the said appellate judgment before any higher forum. Instead, it is the contesting defendant who has invoked the revisional jurisdiction of this Court under section 115(1) of the Code of Civil Procedure, 1908.

Against this factual and procedural backdrop, the principal question that arises for determination in the present Rule is whether; in modifying the judgment and decree of the learned Trial Court, the learned Appellate Court committed any error of law resulting in an erroneous decision occasioning failure of justice,

warranting interference by this Court in exercise of its limited revisional jurisdiction under section 115 of the Code of Civil Procedure.

At the outset, it must be borne in mind that the jurisdiction conferred by section 115 of the Code of Civil Procedure is supervisory in character and circumscribed by well-settled limitations. The revisional Court does not ordinarily exercise the powers of a Court of appeal and is not expected to undertake a fresh appraisal of the entire evidence merely because another view of the facts may reasonably be taken. Interference is justified only where the subordinate Court has exercised a jurisdiction not vested in it by law, failed to exercise a jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity, and such error has occasioned an erroneous decision resulting in failure of justice. A mere error in appreciation of evidence, without more, does not ordinarily furnish a lawful basis for interference in revision.

The distinction between appellate and revisional jurisdiction is of particular significance in the present case. An appellate Court is ordinarily entitled to reassess the evidence and arrive at its own conclusion on questions of fact. A revisional Court, on the other hand, is principally concerned with the legality, propriety and jurisdictional regularity of the decision under challenge. Therefore, unless the finding of fact recorded by the learned Appellate Court is shown to be perverse, based on no evidence, founded upon a manifest misreading or non-consideration of material evidence, or otherwise vitiated by a substantial error of law, this Court ought not to substitute its own view merely because another appreciation of the evidence is possible.

In the instant case, the plaintiffs' claim of title is principally founded upon a chain of registered kabala deeds. The documentary evidence relied upon by them includes Exhibit-3, namely, Kabala Deed No.25624 dated 25.06.1974; Kabala Deed No.3161 dated 01.02.1982; Exhibit-4, Kabala Deed No.25623 dated 25.06.1976;

Exhibit-5, Kabala Deed No.3124 dated 01.02.1982; and Exhibit-7, Kabala Deed No.25625 dated 25.06.1976. Upon examination of the said instruments, it appears that the plaintiffs acquired, through successive registered transfers, an aggregate area of 66 decimal of land appertaining to the relevant previous plot.

There is no denying that the chronology of the registered instruments bears considerable significance in determining the competing claims of the parties. The plaintiffs' alleged acquisitions preceded the purchases claimed by the contesting defendants. Their title has been traced through earlier transactions emanating from the predecessor-in-interest, whereas the defendants claim to have acquired their interests subsequently from the heirs of the original owners. The question, therefore, is not merely whether the plaintiffs possessed earlier title documents, but whether such title continued to subsist in the manner asserted by them after the subsequent transactions and, in particular, after execution of the disputed registered partition deed.

The record further discloses that the former Plot No.1084 was subsequently subdivided during the R.S. operation into several plots, including R.S. Plot Nos.1273, 1274, 1275 and 1277. Such alteration or subdivision of plot numbers in a subsequent survey does not, by itself, extinguish or diminish a title otherwise acquired under a valid registered instrument. What assumes legal significance is whether the identity of the land comprised in the earlier deeds can satisfactorily be correlated with the corresponding R.S. plots and whether the plaintiffs have established, by reliable evidence, their subsisting title and possession over the specific land claimed by them.

The learned Trial Court, upon consideration of the relevant documents and oral testimony adduced by the parties, arrived at the conclusion that the plaintiffs had succeeded in establishing their claim over the suit land. The learned Appellate Court, however, upon hearing the appeal and examining the materials on record, modified the decree to the extent indicated in its judgment. Since the present proceeding is one in revision, the crucial

question is not whether this Court might have arrived at a different conclusion upon appreciation of the evidence, but whether the conclusion reached by the learned Appellate Court suffers from such legal infirmity as would attract the revisional jurisdiction of this Court.

In this connection, the disputed partition deed, being Deed No.6541 dated 09.06.1994 and marked as Exhibit-'Ga', assumes particular importance. It is an admitted position that the plaintiffs' signatures appear on the said registered instrument. The plaintiffs, however, seek to avoid its legal effect by contending that the deed was neither read over nor explained to them and that their signatures were obtained without their understanding the true nature and contents of the document.

Such contention, however, cannot be considered in isolation. Whether a registered instrument was voluntarily and knowingly executed must be determined upon an assessment of the entire factual matrix, including the nature and character of the document, the circumstances

attending its execution, the conduct of the executants before and after execution, the evidence of the attesting and other witnesses, and the existence or otherwise of any circumstance recognized by law as sufficient to vitiate consent.

The learned Court of Appeal appears to have attached due significance to the admitted fact that the plaintiffs signed the registered partition deed. Upon consideration of the evidence, the appellate Court found that the plaintiffs had failed to satisfactorily establish that their signatures had been procured by fraud, deception or any other vitiating circumstance. On the contrary, the evidence, as appreciated by the appellate Court, indicated voluntary participation of the plaintiffs in the execution of the instrument.

In my view, such finding cannot be characterized as perverse or wholly unsupported by the evidence. The mere allegation that a document was not read over or explained to an executant does not, in the absence of

further convincing evidence, automatically render a registered instrument void or unenforceable. A person seeking to impeach a duly registered instrument to which he or she admittedly affixed his or her signature must establish a legally recognized ground for avoiding the transaction, such as fraud, misrepresentation, coercion, undue influence, mistake of a legally relevant character, want of consent, or other circumstances recognized by law.

The burden, therefore, rested upon the plaintiffs to establish the factual foundation of the allegation by cogent and convincing evidence. A bare assertion of ignorance of the contents of a document, particularly where the execution of the document itself is admitted, cannot ordinarily discharge such burden.

In the present case, upon a careful consideration of the materials available on record, I do not find sufficient evidence demonstrating that the signatures of the plaintiffs on Exhibit-'Ga' were obtained by practising fraud

or deception upon them. Nor do I find any compelling material establishing coercion, undue influence, misrepresentation or absence of consent of such a nature as would legally vitiate the instrument. The learned Appellate Court, therefore, cannot be said to have committed an error of law merely by relying upon the admitted execution of the registered partition deed and the absence of satisfactory proof of fraud.

The submission advanced on behalf of the opposite parties with regard to the age and illiteracy of PW1 also does not, by itself, furnish a sufficient legal basis for invalidating the document. Illiteracy, advanced age or lack of formal education may undoubtedly constitute circumstances requiring the Court to scrutinise with greater care the manner in which a document was executed. But none of these circumstances, standing alone, constitutes conclusive proof of fraud, undue influence or absence of free consent. There must be evidence establishing a nexus between such circumstance and the alleged vitiating conduct.

The Court must also distinguish between a circumstance which raises a legitimate suspicion and evidence sufficient to sustain a legal finding. Suspicion, however strong, cannot substitute proof. The plaintiffs, having admittedly signed the registered partition deed, were required to establish, by legally acceptable evidence, the precise circumstance by reason of which their consent was said to have been vitiated. In my considered view, the evidence on record falls short of that standard.

I have also considered the submission founded upon Order XLI Rule 31 of the Code of Civil Procedure. It is true that the appellate Court is required to formulate the points for determination, record its decision thereon and state the reasons for its decision. The provision is intended to ensure that an appellate Court discharges its duty of independently applying its judicial mind to the questions arising in the appeal. Nevertheless, the validity of an appellate judgment cannot be determined by a mechanical or hyper-technical reading of its form. The judgment must be considered as a whole to ascertain whether the

appellate Court substantially addressed the matters requiring determination and disclosed the reasons for the conclusion reached.

In the instant case, even if the judgment of the learned Appellate Court is not couched in the most elaborate or technically meticulous form, such circumstance, by itself, does not justify interference in revision. On a meaningful reading of the judgment as a whole, it is apparent that the learned Appellate Court considered the disputed partition deed, the admitted signatures of the plaintiffs, the allegation that the deed had not been read over or explained, the evidence relating to its execution, and the competing claims of the parties. Having considered those materials, the appellate Court reached its conclusion. I am, therefore, unable to hold that any deficiency in the manner of formulation of the points for determination has occasioned failure of justice.

It is equally well established that the learned Appellate Court, being the final Court of fact, is entitled to

make its own assessment of the evidence. Once such assessment has been made upon consideration of the relevant materials and the resultant finding is reasonably supported by the evidence, the revisional Court ought not to interfere merely because another conclusion may also be possible. Revisional jurisdiction is not intended to provide a second appellate forum for reweighing evidence.

In the case at hand, no compelling circumstance has been demonstrated which would justify such interference. The learned Appellate Court did not base its conclusion upon an irrelevant consideration, nor does it appear to have ignored any decisive piece of evidence in a manner which would render its finding perverse. Rather, the conclusion concerning the disputed partition deed was reached upon consideration of the registered instrument and the evidence relating to its execution.

Another significant circumstance is that the plaintiffs themselves admittedly became parties to the disputed partition deed. Their participation in the execution of the

registered instrument is therefore not a matter of conjecture but an admitted fact. Once such execution is admitted, the party seeking to avoid the legal effect of the instrument must establish the legally recognized ground upon which such avoidance is sought. A registered instrument is not rendered ineffective merely because, at a subsequent stage, one of its executants asserts that its contents were not fully appreciated or that the transaction has become disadvantageous.

The documentary evidence relied upon by the plaintiffs may establish that they had acquired interests in portions of the property through earlier registered transactions. Nevertheless, the existence of such antecedent documents cannot, by itself, determine the legal effect of a subsequent registered instrument to which the plaintiffs admittedly became parties. The subsequent instrument and the circumstances attending its execution necessarily require consideration alongside the antecedent title documents.

Thus, the real controversy cannot be resolved merely by comparing the areas mentioned in the earlier kabala deeds with the extent subsequently recognized in the partition deed. The material question is whether, by executing the subsequent registered partition arrangement, the plaintiffs accepted the allotment or share recorded therein and, if so, whether they have established any legally sustainable ground for avoiding that transaction. Upon consideration of the evidence, the learned Appellate Court answered that question against the plaintiffs.

The evidence of PW2 and PW3 concerning possession may have some corroborative value in determining the factual question of possession. Nevertheless, oral evidence regarding possession cannot, by itself, nullify the legal effect of a registered instrument which the plaintiffs admittedly executed. Such evidence has to be considered in conjunction with the documentary evidence, the registered transactions and the subsequent conduct of the parties. The learned Appellate Court was,

therefore, entitled to assess the oral and documentary evidence conjointly.

I have also considered the contention that, according to the plaintiffs' earlier title documents, they were entitled to 66 decimal of land, whereas the disputed partition deed allocated or recognized a lesser extent in their favour. That discrepancy, standing alone, cannot furnish a ground for revisional interference. The Court must determine whether the subsequent arrangement was voluntarily entered into and whether the plaintiffs have established any legal ground for avoiding it. The learned Appellate Court found that the plaintiffs accepted the relevant allotment by executing the partition deed, and such finding is essentially factual in character.

Unless that finding is shown to have been arrived at by ignoring material evidence, relying upon inadmissible evidence, misreading a vital document, or applying a fundamentally erroneous legal principle, this Court, exercising jurisdiction under section 115 of the Code of

Civil Procedure, cannot substitute its own factual assessment for that of the final Court of fact.

Viewed from that perspective, the present Rule, in substance, seeks a reconsideration of the evidence with a view to obtaining a conclusion different from that reached by the learned Appellate Court. Such an exercise is beyond the ordinary province of revisional jurisdiction. The jurisdiction under section 115 is not a license to undertake a wholesale rehearing of the suit or appeal.

The decisive consideration, therefore, is whether the impugned judgment suffers from a jurisdictional defect or an error of law which has materially affected the decision and occasioned failure of justice. Upon a careful examination of the entire record, I find no such infirmity. The learned Appellate Court acted within the jurisdiction vested in it, considered the material evidence, examined the disputed registered partition deed and recorded findings which cannot be characterized as perverse or manifestly unreasonable.

It follows that the impugned judgment and decree do not suffer from any error of law apparent on the face of the record or any material irregularity in the exercise of jurisdiction warranting interference under section 115(1) of the Code of Civil Procedure, 1908.

There is, moreover, a broader principle of finality attaching to solemn registered transactions. A party who admittedly participates in and executes a registered partition arrangement cannot ordinarily be permitted, at a subsequent stage, to approbate the transaction when it appears beneficial and reprobate it when its terms become inconvenient. The maxim *nemo auditur propriam turpitudinem allegans* (no person ought to be heard alleging his own wrong) although not by itself determinative of the controversy, reflects the wider equitable principle that a litigant cannot, without establishing a legally recognized ground, accept and reject the same transaction according to the exigencies of the litigation.

Upon an overall consideration of the pleadings, evidence, documentary exhibits, findings of the learned Subordinate Courts and the submissions advanced before this Court, I am of the considered view that the plaintiffs have failed to establish any legally sufficient ground for avoiding or cancelling registered Partition Deed No.6541 dated 09.06.1994, or the defendant has been able to dismiss the suit in its entirety. The learned Court of Appeal, therefore, committed no jurisdictional error or error of law occasioning failure of justice in modifying the judgment and decree of the learned Trial Court to the extent complained of.

The findings of the learned Appellate Court are founded upon evidence and are neither perverse nor demonstrably contrary to the record. No material misreading or non-consideration of vital evidence has been shown which could bring the case within the limited parameters of section 115(1) of the Code of Civil Procedure, 1908.

For the reasons stated above, I find no merit in the Rule.

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

The order of stay and *status quo*, if any, granted earlier by this Court, stands vacated.

The records of the Subordinate Courts be sent down forthwith along with a copy of this judgment.

(Abdur Rahman, J)