

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.2570 of 2018

Md. Siddiquir Rahman

... Petitioner

-Versus-

Md. Shahab Ali and others

...Opposite-parties

Mr. A.B. Roy Chowdhury, Senior Advocate

...For the petitioner

Mr. Nikhil Kumar Saha, Senior Advocate

...For the opposite-parties.

Judgment on 30th July, 2025.

On an application under Section 115 (1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and decree dated 05.06.2018 passed by the learned District Judge, Chandpur in Title Appeal No.97 of 2015 allowing the same and thereby reversing the judgment and decree dated 27.08.2015 passed by the learned Senior Assistant Judge, Matlab, Chandpur in Title Suit No.23 of 2013 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.

Facts relevant for disposal of this Rule, in short, are that the opposite-party, as plaintiff, filed Title Suit No.23 of 2013 in the

Court of Senior Assistant Judge, Matlab, Chandpur against the opposite party Nos. 1-6 for declaration that the Exchange Deed No.3202 dated 03.06.2002 is illegal, void, collusive, ineffective and not binding upon the plaintiff, claiming that the suit property under C.S. Khatian No.118 originally owned and possessed by Kashi Chandra Adhikari, accordingly, C.S. Khatian No.118 stands recorded in his name. Subsequently, the said Kashi Chandra transferred the property in favour of various persons and delivered possession to them. Thus, S.A. khatian stand prepared in their names. Predecessor of the plaintiffs Jonab Ali is one of the purchasers and the plaintiffs are the heirs of Jonab Ali who inherited the suit property mentioned in schedule "Ka". On the other hand, Johar Khan was owner of S.A. Khatian No.40, Dag Nos.407, 409 and 419 measuring (.18 acre + .19 acre + .39 acre) totaling .76 acre out of which sold out .15 acre of land by Registered Deed No.4236 dated 10.06.1984 to defendant No.1, Siddiqur Rahman and handed over possession. Subsequently, three sons of Jahor Khan also sold out total .0750 acre of land under Dag Nos.407, 408 and 419 by a Registered Deed No.5939 dated

05.10.1986 to defendant No.1, Siddiquir Rahman and delivered possession to him. In the manner aforesaid the defendant No.1 acquired the schedule “Kha” property by purchase and sold out the same to Abdul Latif Prodhania by Registered Deed No.5232 dated 07.09.1999. The defendant No.1 did not disclose the same to the plaintiffs and with ill motive exchanged the said property with the plaintiffs which has been mentioned in the “Kha” schedule by Registered Exchange Deed No.3202 dated 03.06.2002 collusively. The defendant No.1 failed to deliver possession of the disputed “Kha” scheduled land to the plaintiffs. Subsequently, on 18.01.2013 the defendant No.1 refused to hand over the “Kha” schedule land to the plaintiffs, therefore, the plaintiffs compelled to file the suit challenging the exchange deed to be illegal, void, inoperative, collusive and not binding upon the plaintiffs.

The defendant No.1 appeared in suit and contested the same by filing written statement denying all statements and allegations of the plaint contending inter alia, that the defendant No.1 purchased 22.50 acres of land under “Kha” schedule by two Registered Deed Nos. 4236 and 5933 dated 11.06.1984 and 05.11.1986 respectively.

B.S. khatian prepared in the name of the defendant No.1 and possessing the same by planting various trees. The plaintiff Nos.1-4 proposed to the defendant No.1 that they are agreed to exchange their property with the property of defendant No.1 as desired by their father. Accordingly, the defendant No.1 agreed to execute exchange deed and duly registered the same exchanging properties with each other. Both the parties handed over possession of their respective land to each other. On the basis of the exchange deed the defendant No.1 got his name mutated in Khatian No.1206 and has been possessing the same by erecting huts thereon, planting various trees for more than twelve years, as such, the suit is barred by law of limitation and for want of prayer for recovery of khas possession. Hence, the suit is liable to be dismissed.

The trial court framed 4(four) issues for determination of the dispute. In course of hearing, the plaintiffs examined 3 witnesses as P.Ws and the defendants examined 3 witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after

hearing by its judgment and decree dated 27.08.2015 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Title Appeal No.97 of 2015 before the District Judge, Chandpur who after hearing by the impugned judgment and decree dated 05.06.2018 allowed the appeal reversing the judgment and decree passed by the trial court. At this juncture, the petitioner, moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. A.B. Roy Chowdhury, learned Senior Advocate appearing for the petitioner at the very outset submits that admittedly schedule “Ka” property belonged to the plaintiffs-opposite parties and schedule “Kha” property belonged to the defendant-petitioner. For convenience of both the parties they agreed to exchange their property with each other, accordingly, property belonged to the plaintiff-opposite parties mentioned in schedule “Ka” measuring .2950 acre was given in the share of defendant-petitioner and the plaintiffs took the schedule “Kha”

property measuring .2250 acre in their share in exchange of schedule “Ka” property. Both the parties executed and registered a Deed of Exchange No.3202 dated 03.06.2002 to that effect. As claimed by the plaintiffs, after execution and registration of the exchange deed, possession of schedule “Ka” property was delivered to the defendant No.1 who after exchange got his name mutated in the khatian and present khatian also stands recorded in his name. Similarly, the petitioner-defendant delivered possession of “Kha” schedule property to the opposite parties. He submits that the plaintiff-opposite parties never questioned about title of the defendant-petitioner in the schedule “Kha” property and did not raise any claim about delivery of possession or about title of the petitioner-defendant in the exchanged property. After a long time in the year 2013 all of a sudden filed this suit claiming that when they went to take over possession of the exchanged property one Abdul Latif Prodhan created obstruction claiming that the defendant-petitioner, Siddiqur Rahman transferred the suit property to him by a Registered Deed No.5232 dated 07.09.1999 before exchange of the property. As such, the defendant-petitioner committed fraud

giving the schedule “Kha” property in the share of the plaintiffs, having no title at all. Consequently, the plaintiffs filed the instant suit for declaration that the Deed of Exchange No.3202 dated 03.06.2002 is illegal, fraudulent, collusive, ineffective and not binding upon the plaintiffs, after about 11(eleven) years, as such, the suit is barred by limitation under Article 91 of the Limitation Act.

Mr. Chowdhury submits that the suit in its present form is not maintainable in the absence of prayer for declaration of title and consequential relief in the form of recovery of possession. He finally submits that the trial court while dismissing the suit rightly held that the suit is hopelessly barred by limitation and there was no earthly reason for the plaintiffs to wait 11(eleven) years for filing the suit. But the appellate court without adverting and controverting the observations and findings of the trial court merely on the point of limitation allowed the appeal holding that limitation starts for the instant suit from the date of denying delivery of possession by the defendant and not from the date of registration of the said deed, as

such, it has committed error of law in the decision occasioning failure of justice.

Mr. Nikhil Kumar Saha, learned Senior Advocate appearing for the opposite-parties submits that there is no dispute that the schedule “Ka” property belonged to the plaintiffs and schedule “Kha” property belonged to the defendant. For convenience of both the parties they agreed to exchange their properties with each other, accordingly, both the parties executed and registered a Deed of Exchange No.3202 dated 03.06.2002 exchanging their properties. By the exchange deed the plaintiffs took the property mentioned in schedule “Kha” measuring 2250 acre and the defendant Siddiquir Rahman obtained the property mentioned in schedule “Ka” measuring 2950 acre with specification. Pursuant to deed of exchange the plaintiffs delivered possession of schedule “Ka” property measuring 2950 acre to the defendant, but the defendant could not deliver possession of schedule “Kha” property measuring 2250 acre to the plaintiffs after execution and registration of the exchange deed. When the plaintiffs went to take over possession of the exchanged property mentioned in schedule “Kha” one Abdul

Latif Prodhania claimed title in the property by purchase from defendant Siddiquir Rahman by a Registered Deed No.5232 dated 07.09.1999. The defendant by suppressing the fact of transfer of the property in favour of Abdul Latif Prodhania fraudulently executed and registered the deed of exchange giving schedule “Kha” property in the share of the plaintiffs which he earlier transferred to Abdul Latif Prodhania.

He submits that after coming to know the fact the plaintiffs demanded possession of the schedule “Kha” property from defendant, Siddiquir Rahman, but the defendant refused to give delivery of possession on 18.01.2013. He submits that cause of action for the present suit arises on the date of refusal by the defendant not from the date of execution and registration of the deed and as such, the appellate court rightly held that the suit was not barred by limitation. The trial court upon misconception of law held that since the suit has been filed after 11(eleven) years of registration of the deed of exchange the suit is barred under Article 91 of the Limitation Act.

Mr. Saha argued that when fraud committed in execution of the exchange deed and detected in the year 2013 the cause of action for filing suit arises from that date. Here title of the plaintiffs in schedule “Ka” property has not been found defective, but title of the defendant in schedule “Kha” property found defective as a portion of the property sold by him to one Abdul Latif Prodhania. Consequently, the defendant could not deliver possession of the exchanged property to the plaintiffs, as such, the deed of exchange has not been acted upon till today. The trial court wrongly held that the suit is barred by limitation and found that the defendant did not sell the exchanged property to Abdul Latif Pradhania or any other person. The appellate court while allowing the appeal and decreeing the suit by setting aside the judgment and decree of the trial court rightly held that this is a case of practicing fraud, fraud has no specific limitation. When the fraud detected limitation starts from the date of such knowledge. Accordingly, in the instant case, the appellate court found that the fraud detected by the plaintiffs, when Abdul Latif Prodhania claimed title in the property on the basis of purchase from defendant Siddiqur Rahman and when the

defendant refused to give delivery of possession of the schedule “Kha” property not from the date of registration of the deed and as such, the suit is not barred by limitation under Article 91 of the Limitation Act.

Heard the learned Advocates of both the sides, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Fact of the case need not be repeated. It is fact that the plaintiffs are owner in possession of schedule “Ka” property measuring .2950 acre and the defendant is owner of schedule “Kha” property measuring .2250 acre. Both the parties agreed to exchange their property with each other for their convenience of possession and enjoyment. Accordingly, as agreed between the parties, they executed and registered a Deed of Exchange No.3202 dated 03.06.2002. By the said deed of exchange the plaintiffs delivered possession of schedule “Ka” property to the defendant, Siddiquir Rahman. The defendant in suit claimed that he also

delivered possession of schedule “Kha” property to the plaintiffs. It is fact that the deed of exchange executed and registered in the year 2002. Present suit challenging the deed of exchange was filed on 24.02.2013 after about 11 years.

From perusal of plaint, it appears that the plaintiffs did not state a single date when they went to take over possession at whose instance and when the alleged purchaser of the property named Abdul Latif Prodhania created obstruction in taking possession of the schedule “Kha” property. Only statement made in the plaint is that the defendant by suppressing the fact of transfer of the property under schedule “Kha” to one Abdul Latif Prodhania by a Registered Deed No.5232 dated 07.09.1999, executed the deed of exchange and registered the same giving the property in the share of the plaintiffs already transferred to Abdul Latif Prodhania in the year 1999. Nothing stated in the plaint why pursuant to the deed of exchange the plaintiffs did not take over possession of “Kha” schedule property from defendant, when they delivered possession of the schedule “Ka” property to Siddiqur Rahman, what was the problem in taking possession of the said property mentioned in

schedule “Kha” at the time of execution and registration of exchange deed and then i.e. in the year 2002 who prevented or obstructed in taking possession of the schedule “Kha” property. Because of silence about non delivery of possession of the property to them and obstruction created at that time it is presumed that the plaintiffs got possession of schedule “Kha” property from the defendant in the year 2002. Resultantly, they remain silent till filing of the present suit in the year 2013. From ordinary prudence, it is not at all acceptable that the plaintiffs after exchanging their property with defendant Siddiquir Rahman will remain mum or silent without taking possession of the schedule “Kha” property for 11(eleven) years.

Had there been any impediment in delivering and taking over possession of the schedule “Kha” property to the plaintiffs at the time of execution and registration of the exchange deed they should have demanded possession of the property as early as possible. But why they awaited for 11 years without possession of the exchanged property could not justify by giving any clear statement in the plaint as well adducing any evidence before the trial court. Curiously

enough, the deed of exchange exchanging the property of defendant, Siddiquir Rahman is covered by Plot Nos.407, 409 and 419 measuring .2250 acre, which Siddiquir Rahman acquired by Sale Deed No.4236 dated 11.06.1984 and Deed No.5939 dated 05.10.1986 by purchase from Johor Khan and his heirs Sekander Khan, Abdur Rahman Khan and Md. Newaz Khan along with other non-suited property under the same Khatian No.46, Plot Nos.415 and 418. The defendant, Siddiquir Rahman along with Abul Hashem and Abdul Khaleque jointly by a Registered Deed No.5232 dated 07.09.1999 transferred some properties to one Abdul Latif Prodhania.

From perusal of said deed, it appears that defendant Siddiquir Rahman was vendor No.3 in the said deed. Schedule to the said deed specifically mentioned that Siddiquir Rahman as executant No.3 transferred .750 acre land to Abdul Latif Prodhania from Plot Nos.415 and 418 under Khatian No.46 which he acquired by purchase vide Registered Deed No.5978 dated 07.09.1993. But the exchange deed shows that the property exchanged by Siddiquir Rahman was acquired by 2 separate Deed Nos.4236 dated

11.06.1984 and 5939 dated 05.10.1986. Therefore, claim of the plaintiffs that defendant, Siddiquir Rahman before execution and registration of the exchange deed in question transferred the property covered by Plot Nos.407, 409 and 419 are not true. Because of such fact, I find that Siddiquir Rahman when exchanging the property with the plaintiffs has given schedule “Kha” property covered by Plot Nos.407, 409 and 419. Hence, Siddiquir Rahman had title in the property and he never transferred any property exchanged with the plaintiffs to anybody or to Abdul Latif Prodhania, but he transferred the property under Plot Nos.415 and 418 not the schedule “Kha” to the exchange deed.

Filing of the suit after 11 years and the reason stated in the plaint as to transfer of the property by Siddiquir Rahman in favour of Abdul Latif Prodhania in the year 1999 being not correct, the trial court rightly held that the suit is barred by limitation under Article 91 of the Limitation Act as well as the reason stated in the plaint for declaring the exchange deed to be void and illegal and fraudulently obtained has no basis at all. Had the plaintiffs not delivered with the possession of schedule “Kha” property to the

deed of exchange why the plaintiffs not demanded possession just after execution and registration of the exchange deed, which established that they came with this suit after 11 years not for the reason stated in the plaint in suit, but for the reason of increasing value of the property by efflux of time. The appellate court while allowing the appeal most unfortunately did not discuss even a single witness and failed to controvert and revert the findings and observations made by the trial court in respect of plot number in exchange deed and plot number transferred by the defendant in the deed dated 07.09.1999 to Abdul Latif Prodhania and as such, committed an error of law in the decision occasioning failure of justice. Apart from this in the absence of declaration of title and recovery of possession the present suit is barred by Section 42 of the Specific Relief Act.

In view of the above, this Court finds merit in the Rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned judgment and decree passed by the appellate court is hereby *set aside* and the judgment and decree passed by the trial court is hereby restored.

The order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.