

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 308 of 2018

In the matter of

Md. Abdus Salam Howladar and others

... Defendants-Respondents

Petitioners

-Versus-

Nur Mohammad Howladar and others

... Decree-holder/Respondent

Opposite parties

Ms Ishrat Hasan, with

Ms Tanzila Rahman, with

Ms Ifat Hasan Shammi, with

Mr Arshadur Rahman, Advocate

.....*For the petitioners*

Mr Selim Reja Chowdhury, Advocate

...*for the opposite party 1.*

Date of Hearing: 17.6.2026, 08.07.2026,

09.07.2026 and 12.07.2026 A.D.

Date of Judgment: 16.07.2026 A.D.,

Thursday; 01 Shraban, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioners under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

“Let a Rule be issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 05.11.2017 passed by the learned Additional District Judge, First Court, Barisal in Title Appeal No. 195 of 2014 allowing the appeal and thereby reversing the judgment and decree dated 30.9.2014 passed by the learned Assistant Judge, Banaripara (In Charge) Barisal in Title Suit No. 05 of 2011 decreeing the suit in-part should not be set-aside and/or such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of Rule, this Court was also called for the records and pleased to stay the operation of the impugned judgment and decree.

The *nucleus facti* of the case is that the opposite party No.1 as plaintiff instituted the Title Suit 5 of 2011 in the Court of Learned Assistant Judge, Banaripara, Barisal against the Defendants-Petitioners for partition of the 'Ka' scheduled land of the plaintiff and for a declaration that the 'Ga' scheduled Deed executed in respect of 'Kha' Scheduled land are forged, collusive and for declaration of title and recovery of Khas possession in respect of 'Gha' scheduled land of the plaintiff. The plaintiff however contended that, the scheduled suit land of JL No. 69 of Mouza Solia Bakpur corresponding to S.A Khatian No. 410, total area of land .37 acres, out of which Elemuddin was the owner of six ana, Kazem and Joynal were the owners of two ana each and Motahar and Atahar were the owners of two ana each. Atahar died before his marriage, and his two ana shares of land were inherited by his brother Motahar; accordingly, Motahar became the owner of 4 ana shares of the land. The recorded owner, Elem Uddin, sold out his six ana shares to Motahar by a registered Deed dated 21.07.1956, and he handed over possession of the land from Plot No. 3270. Thereafter Motahar Ali gifted his six and a half decimals of land to the Plaintiff Nur Mohammad on

17.09.1975, which was mutated in his name through mutation Miscellaneous Case No. 38/77-78. Later on, Motahar Ali died leaving his two wives Ful Banu and Chandboru and 5 sons Nur Mohammad, Abdur Rob, Farid, Salam and Kalam and 5 daughters Achiya, Aleya, Rahima, Saleha and Mahinur. That in the womb of the first wife of Motahar, one son Nur Mohammad, and 4 daughters Achiya Anowara, Rahima and Saleha, were born, and in the womb of his second wife, four sons and one daughter were born, and as per the law of inheritance one wife inherited 1 decimal of land one son inherited 1.88 decimals and one daughter inherited .0094 decimals of land. Abdur Rob and Farid Howladar handed over their .0450 decimals of land to Plaintiff on 12.02.1992 and 20.07.1994 from the S.A Khatian No.410. Fulbanu inherited one decimal of land which she gifted to the Plaintiff, and by the above way the Plaintiff Nur Mohammad became owner of 13.88 decimals of land by inheritance and by purchase and through an amicable partition he has been possessing the land of .049 decimals from Plot No. 3269 and 9 decimals of land from Plot No. 3270. Three sons of Motahar Ali, the Plaintiff, Abdus Salam and Kalam and five daughters, Achiya, Aleya,

Rahima, Mahinur and Saleha and the wife, Chand Boru, inherited 11 decimals of land as heirs, which they handed over to the defendants Nos. 8 and 9 on 27.12.2010 and handed over possession of the land from Plot No. 3269. But on 29. 12. 2010, the defendant took possession of Plot No. 3269, and they demanded and disclosed that they had purchased 16 decimals of land on 29.12.2010, when the plaintiff protested. Later on, the plaintiff collected the certified copy of the Deed on 19.01.2011 and came to learn that the defendant No. 8 and 9, out of forgery, mentioned 16 decimals of land in place of 11 decimals of land in the deed. Rob Sardar was shown as vendor, but he had no land, which caused a cloud on the plaintiff's deed dated 20.07.1994. Actually in the deed dated 27.12.2010 no more land was sold except the land of 11 decimals, but in collusion with the deed writer and the defendants out of forgery, they showed sold-out land of 16 decimals and taka 130,000. The excess 5 decimals of land has been mentioned in the 'Kha' schedule. On 19.1.2011, the defendant refused to partition the suit land, and the plaintiff collected the certified copy of the deed and filed the suit; hence the case.

On the other hand defendants 8, 9, 11 & 12 appeared contested the suit by filing written statement denying all the material allegation made in the plaint contending inter-alia that the statements made in the plaint are totally false, fabricated and concocted and the plaintiff filed the suit only for harassment, the plaintiffs has no cause to file the suit and suit is not maintainable in the present form and nature, the plaintiff is not *bona fide* and he has filed the suit out of his *mala fide* intention. The part of the real facts of the written statements, as the defendants 8, 9, 11 and 12 stated that the suit land was correctly recorded in the name of Motahar Ali and his brother Atahar Ali in S.A Khatian No.410 in. Later on, Atahar Ali died before his marriage, leaving his brother Motahar as his only heir, who inherited the same and has been possessing the same. Thereafter, Motahar Ali became owner and possessor of 13 decimals of land in S.A khatian No.410 corresponding to S.A Plot No. 3270 and 11 decimals of land of S.A plot No. 3269 and in total he became owner of 24 decimals of land by purchase and then he died leaving his two wives Ful Boru and Chand Boru who inherited one and half decimals of land and 5 sons Nur Mohammda, Abdur Rob,

Abdus salam, Abdul Kalam and Farid who inherited 28 decimals of land and 5 daughter Achiya, Aleya, rahima, Saleha and Mahinur inherited 14 decimals of land and possessed the same. Later on, Ful Baru died, leaving her one son, Nur Mohammad, and 4 daughters who inherited their mother's land. There are a total of 12 heirs of Motahar Ali, and out of them 10 heirs, namely Nur Mohammad, Abdur Rob, Md. Salam, Kalam, Chand Baru, Achiya, Aleya, Rahima, Mahenur and Saleha, due to their need for money, sold out their 16 decimals to the Defendants 8 and 9, Md. Shafiqul Islam and his wife Jhumur Akhtar by registered deed 1861 dated 27.12.2010 of mouza Solia Bakpur of S.A Khatian No.410 corresponding to Plot No. 3269, 3270, and 3271. Defendants 8 and 9, after purchasing the land, constructed a tin shed room thereon and have been possessing the same by planting trees, and in the suit land adverse right of the defendants has been created while the Plaintiff has no possession of the land and as such the suit be dismissed.

Thereafter, the learned Assistant Judge, Banaripara, Barisal, after framing the issues and completing legal

formalities, concluded the trial, and the learned trial court was pleased to pass a preliminary decree vide its judgment and decree dated 30.9.2014. Thereafter, the plaintiff, being dissatisfied with the said judgment and decree, preferred an appeal being Title Appeal No. 195 of 2014 before the learned District Judge, Barisal, who subsequently transferred the appeal to the learned Additional District Judge, 1st Court, Barisal for hearing and disposal.

Thereafter, the learned Additional District Judge, 1st Court, Barisal, after hearing the parties, was pleased to allow the appeal vide judgment and decree dated 5.11.2017 and thereby reversed the judgment and decree passed by the learned trial court. Thereafter, the contesting defendants, respondents, as petitioners, invoke this revisional jurisdiction.

Ms Ishrat Hasan, the learned Counsel appearing on behalf of the petitioners, at the outset, assailed the impugned judgments and decrees passed by both the learned Subordinate Courts, contending that the Subordinate Courts have grossly misread, misconstrued and failed to appreciate the oral as well as documentary evidence available on record

in its truest perspective. According to the learned Counsel, the Subordinate Courts arrived at their findings without properly evaluating the relevant materials and the surrounding facts and circumstances of the case, thereby committing a manifest error of law resulting in a serious miscarriage of justice.

Learned Counsel further submitted that the learned Assistant Judge in his finding and observation correctly mentioned that the Plaintiff and 9 others jointly sold out 16 decimals of land to the defendants but except the Plaintiff none of other venders raised any objection about their sale Deed or gave any evidence supporting the plaintiff in respect of collusively execution and registration of the Deed and considering the facts the learned trial court wrongly decreed the suit in preliminary form, but the learned appellate court without gone through the papers and documents and without considering the evidences wrongly decided and allowed the appeal and due to his wrong decision, committed an error of law resulting in an error in the decision occasioning failure of Justice and the judgment and decree may kindly be set aside.

Learned counsel further submitted that in respect of the scheduled 'Gha' Deed, the DW1 Kalam, who is the brother of the Plaintiff, in his deposition stated that 'বিরোধীয় সম্পত্তি বর্তমান বাদীরা কেউ ভোগ দখল করে না। আমরা ১৬ শতাংশ বিক্রি করে তার টাকা আনছি। DW1 in his cross examination stated that, দলিল যখন মুসাবিদা করে আর যখন চূড়ান্ত করেছে তখন সবাই শুনেছি নুর মোহাম্মাদ, আঃ রব, ছালাম, কলাম, মা চানবন্ধু, আচিয়া, আলেয়া, রাহিমা, সালেহা, মাইনুল লেখক মহরির নাম নুর। DW2 in his deposition stated that 'দলিলের সময় ছিলাম। টাকা দেবার সময় ছিলাম। লেখক নুরু মহরী দলি লিখতে দিছে ২ পক্ষই, পুরুষ ও মহিলারা উপস্থিত ছিল। দলিলে পরিচিত আমি একা। সাক্ষী ২ জন। দাতা মোট ১০ জন। মোট ১৬ শতাংশ। In considering the above evidences of the DWs who are the vendor of the deed, the learned trial court partly decreed the suit, but the learned Court of Appeal without considering the evidences on the record allowed the appeal and come to an erroneous decision and committed an error of law resulting in an error in the decision occasioning failure of Justice and that judgment and decree may kindly be set aside.

Learned counsel further submitted that after execution and registration of the sale deed, all the vendors jointly handed over the possession of the land to the defendants-

petitioners and the defendants -petitioners taking possession of the land has been possessing the land erecting Tin shed houses thereon and the defendants- Petitioners became able to prove their possession of 16 decimals of land by adducing their witnesses and the Learned Assistant Judge, Banaripara, Barisal considering the evidences partly decreed the suit, but the appellate Court of Learned Additional District Judge, First Court, Barisal without considering the defendants-Petitioners case allowed the appeal which caused error of law resulting in an error in the decision occasioning failure of Justice.

Learned counsel further submitted that the Learned Court of Appeal did not frame a separate issue for discussion and disposing of the appeal. The Court of appeal ought to have frame separate issue for discussion on the point of suit Deed, possession of the defendants-petitioners and to discuss and decision on the other points but the learned Court of appeal did not frame issue separately for discussion and without discussing the relevant point separately passed judgment and decree allowing the appeal which caused error

of law resulting in an error in the decision occasioning failure of Justice.

Learned counsel further submitted that the learned Court of appeal did not discuss anything about the possession of the Defendants- Petitioners in the suit land and without considering the facts of actual possession of the defendants- Petitioners in the suit land passed judgment and decree allowing the appeal which is liable to be set aside.

Conversely, Mr Selim Reja Chowdhury, the learned Counsel appearing on behalf of the opposite party No.1 submitted that the learned trial court misconceived as to facts and law passed a preliminary decree without declaring the deed dated 27.12.2010 as null and void; the learned Appellate Court rightly passed the judgment and decree which cannot be interfered with by the revisional jurisdiction.

Learned counsel further submitted that the trial court failed to understand that the father of the plaintiff granted him 6.05 decimals of land and also mutated his name vide mutation case No. 38 of 1977-78 and thereby failed to

calculate the real share of the plaintiff and passed erroneous decisions which cannot be sustained in law.

Learned counsel further submitted that the plaintiff and his other brothers and sisters sold only 11 decimals of land to the petitioners, but in collusion with the deed writer they created collusive deed by inserting 16 decimals instead of 11 decimals there to and one of the vital aspect that one of the vendor namely Abdur Rob had no saleable interest who has been made the vendor of the said deed, as such the said deed was manifestly a collusive one and this vital aspect of facts have been overlook by the learned trial Court.

Learned counsel further submitted that the learned trial court wrongly calculated the shares of the successor of Mothaher Ali and the learned appellate Court rightly consider the facts of the instance case and allowed the appeal and he also contained that the contesting defendants did not prefer any appeal or even file any cross objection against the decisions of the learned trial court who gifted within the share of 13.5 decimals out of 16 decimals of land of the alleged deed.

Learned counsel for the opposite party finally referred to decisions as contained in 23 BLD (AD) 83 in respect of partition suit where all the question of title can be decided and also referred to a decisions as contained in 6 BLD (AD) 56 in respect of the power of the appellate court i.e. the court is not require to discuss all the point when affirming a finding he can only reverse he can be disagreed and he also referred to a decisions as contained in 18 BLD (AD) 121 in respect of meaning of occasioning failure of justice.

Learned counsel finally referred to a decision contained in 44 DLR (AD) 98, in respect of the revisional court's power to see whether the court of appeal committed an error of law occasioning failure of justice.

On perusal of the judgment of the learned trial Court, it is found that it was observed in the following way:

“বাদীর মৌখিক দানের স্বপক্ষে সাক্ষী হিসেবে পি ডব্লিউ ০২ তার জেরায় (পৃষ্ঠা ৩ এর শেষে) বলেন- নুর মোহাম্মদের বাবা তারে কোন জমি হেবা দেয় নাই বা সে যোগাযোগীভাবে রেকর্ড করাইছে কিনা জানিনা। পি, ডব্লিউ ০৩ যিনি ৮০ বছর বয়স্ক লোক তিনি জেরায় বলেন (পৃ-১) "হেবামুলে কোন তারিখের কবলামুলে ভোগ করে জানিনা। পুলিশের

কথা বা ফৌজদারীর কথা বলতে পারব না।" তাতে দেখা যায় বাদী তার পিতার কাছ থেকে দানমূলে যে ০৬।। শতাংশ সম্পত্তি দাবী করেন তা সুনির্দিষ্টভাবে প্রমাণ করতে পারেনি।"

The learned trial Court also observed that: "এক্ষেত্রে পি ডব্লিউ ০১ তার জবানবন্দিতে বলেন, "দলিলের খসরায় ১১ শতক লেখা ছিল। কিন্তু রেজিস্ট্রি করার শঠতামতে ১১শতকের পরিবর্তে ১৬ শতক লেখা হয়েছে। আমার বাবা বিশ্বাসে দলিল পাঠ না করিয়াই উহাতে স্বাক্ষর দেয়। কিন্তু উক্ত দলিলের ১০ জন। বাকি দাতারা কিভাবে স্বাক্ষর দিলেন এ ব্যাপারে বাদীর কোন বক্তব্য নেই। বাদীর বাবা শিক্ষিত বলে বাদী পি ডব্লিউ ০১ জেরায় (পৃ ১১) তে উল্লেখ করেন যে, আমার বাবা চাকরি করে পড়াশোনা করছে এসএস সি পর্যন্ত। "তাতে ১নং দাতা নূরমোহাম্মদ দলিল না পরে পাঠ না করে স্বাক্ষর করেছেন বলে আদালতের কাছে যথাপোষুক্ত মনে হয়নি। পি ডব্লিউ ০১ জেরায় বলেন (পৃ-৮) আমি ইশাদি পরিচিত ছিলাম না। আমা বাবা উপস্থিত ছিল। ঐ দলিল সম্পকে আমার ব্যক্তিগত জ্ঞান নেই। (০৭-০৫-১৪ এর জেরা)। ঐ দলিল রোজ অফিসে প্রিন্ট করার আগে আমা রবাবা দেখে শোনে পাঠ করে সঠিক থাকার কারনে প্রিন্ট হয় সত্য নয়।"

Learned trial court further observed that,

"কিন্তু পরবর্তীতে PW-1 জেরায় (পৃ-৯) আবার বলেন, ঐ খসড়া প্রিন্টই পরবর্তীতে স্ট্যাম্প প্রিন্ট হয় সত্য।" কিন্তু খসড়া দলিলের দাখিলের

ব্যাপারে প্রশ্ন করলে PW-1 কে জেরায় (পৃ ১০) দেখা যায়। "খসড়া দাখিল করি নাই ঐ খসড়া ভবিষ্যতে দাখিল করবেন প্রশ্নে নিরব।"

Learned trial Court after analysing evidence also found that,

"PW1 কে জেরায় (পৃ-১০) দেখা যায় খসড়া দাখিল করি নাই ঐ খসড়া ভবিষ্যতে দাখিল করবেন প্রশ্নে নিরব"। ডি ডব্লিউ ০১ তার জবানবন্দিতে (পৃ-৩) বলেন," বিরোধী সম্পত্তি বর্তমান বাদীরা কেউ ভোগ দখল করেনা। আমরা ১৬ শতাংশ বিক্রি করি তার টাকা আনছি।" ডি ডব্লিউ ০১ তার জেরায় বলেন (পৃ-১৩) দলিল যখন মুসাবিদা করে আর যখন চূড়ান্ত করছে তখন সবাই শুনছি। নুর মোহাম্মদ আঃ রব, ছালাম, মা চানবরু, আচিয়া, আলেয়া, রাহিমা, সালেহা, মাইনুল, লেখক মহরির নাম নুর। লাইসেন্স আছে। লেখতে ঘন্টা খানেক সময় লাগছে।" ডি ডব্লিউ ০২ তার জেরা (পৃ-১) বলেন, "দলিলের সময় ছিলাম। টাকা দেবায় ছিলাম। টাকা দেবার সময় ছিলাম। লেখক নুরু মহরী দলিল লিখতে দিচ্ছে ২ পক্ষই, পুরুষ ও মহিলারা উপস্থিত ছিল। দলিলে পরিচিত আমি একা, সাক্ষী ২ জন। দাতা মোট ১০জন। মোট ১৬ শতাংশ।"

On the other hand, the learned Appellate Court reversed the decision of the learned trial Court, thus observed that,

"বিজ্ঞ বিচারিক আদালত তার রায়ে বাদীপক্ষের ১৭-৯/১৯৭৫ ইং তারিখের মৌখিক দানের সমর্থনে দাতা স্বয়ং দানীয় সম্পত্তি বানারীপাড়া সহকারী কমিশনার (ভূমি) অফিসে মিউটেশন কেস নং ৩৭৮/১৯৭৭-৭৮ (II) মূলে রেকর্ড করিয়ে দেয়ার বিষয় বিশ্বাস না করে বাদীর মোকদ্দমাটি আংশিক ডিক্রি প্রদান করেছেন। অত্র আপীল আদালতে বাদী আপীল্যান্ট পক্ষ তার দাবীর সত্যতা যাচাইয়ের জন্য বানারীপাড়া সহকারী কমিশনার (ভূমি) অফিসের মিউটেশন কেস ৩৮/১৯৭৭-৭৮(II) এর নথি তলব দেওয়ার আদেশে প্রার্থনা করেছে।

Considering the foregoing observations and findings recorded by the learned Subordinate Courts, it appears that although the learned trial Court meticulously considered the examination-in-chief and cross-examination of both the P.Ws. and the D.Ws., it failed to arrive at a comprehensive and legally sustainable determination regarding the validity, nature and legal effect of the disputed registered deed dated 27.12.2010. Instead of adjudicating upon the core controversy relating to the impugned deed, the learned trial Court proceeded to decree the suit in a preliminary form by allotting a saham equivalent to 0.058 acres of land in favour of the plaintiff, notwithstanding that such determination did not strictly emanate from or correspond with the issues framed

on the basis of the pleadings of the parties. The decree, therefore, travelled beyond the ambit of the issues in controversy and consequently suffered from an apparent infirmity.

Conversely, the learned appellate Court, being the final Court of facts, was under a legal obligation to independently re-appraise the entire body of evidence and assign cogent reasons before reversing the findings of the trial Court. Unfortunately, a careful reading of the impugned appellate judgment reveals that the learned appellate Court neither undertook any meaningful discussion of the oral and documentary evidence on record nor addressed or rebutted the reasons assigned by the learned trial Court concerning the testimonies and cross-examinations of the witnesses produced by both sides. Rather, placing almost exclusive reliance upon Mutation Case No. 38/1977-78, the learned appellate Court abruptly declared the disputed deed to be fraudulent, without consideration, null, void and ineffective, and proceeded to decree the suit in its entirety without allocating any saham whatsoever amongst the co-sharers,

despite the admitted position that the suit was essentially one for partition coupled with a prayer for declaration. Such an approach unmistakably demonstrates misreading of the evidence, non-reading of material evidence, misapplication of the settled principles governing partition suits, and a complete failure to exercise judicial discretion in accordance with law.

Having bestowed anxious consideration upon the entire materials on record, this Court finds that the plaintiff instituted the suit seeking, *inter alia*, partition of the joint property, declaration that the disputed deed was null and void, and recovery of khas possession. During the trial, appropriate issues were framed in consonance with the pleadings of the parties. However, on scrutiny of the plaint, it is manifest that the plaintiff failed to pay ad valorem Court-fees in respect of the declaratory and consequential reliefs claimed therein. Such omission strikes at the root of the maintainability of the relief sought, yet remarkably both the Subordinate Courts overlooked this fundamental legal requirement without recording any finding whatsoever in that

regard, though have remedy under Section 149 of the Code of Civil Procedure, 1908.

The evidence further discloses that both parties unequivocally admitted the identity of the original recorded owner as well as the succession devolving upon his legal heirs. It is equally evident from the submissions advanced on behalf of the plaintiff-opposite party that his father, Mothaher Ali, had previously gifted 6.5 decimals of land to the plaintiff, and thereafter the plaintiff's name was duly mutated through Mutation Case No. 38 / 1977-78. Exhibit-'Ka' also corroborates that the names of the plaintiff and his father were duly recorded pursuant to the said mutation proceedings. Therefore, the materials on record unmistakably establish that prior to the execution and registration of the disputed deed dated 27.10.2010, the plaintiff had already acquired title to 6.5 decimals of land from his father and an additional one decimal from his mother as of gifts. A plain reading of the disputed registered deed further demonstrates that all the vendors jointly conveyed their respective interests in the property and nowhere does the deed indicate that each

vendor transferred land strictly in proportion to his or her individual inheritable share. The conveyance was thus executed collectively with respect to the property agreed to be sold.

A careful examination of the depositions and cross-examinations of the P.Ws. further reveals that the vendors admittedly received the consideration money corresponding to 16 decimals of land and were personally present at the time of execution and registration of the impugned deed. The principal allegation advanced by P.W.1 is that an earlier draft had allegedly been prepared for transfer of only 11 decimals of land, but at the time of registration the vendees, in collusion with the deed writer, dishonestly substituted the figure of 16 decimals in place of 11 decimals.

However, the testimony of P.W.1, when tested in cross-examination, substantially weakens the very foundation of the plaintiff's case. P.W.1 candidly admitted that—“আমি ইশাদি পরিচিত ছিলাম না। আমা বাবা উপস্থিত ছিল। ঐ দলিল সম্পর্কে আমার ব্যক্তিগত জ্ঞান নেই,” and further stated that, “দলিলের খসরায় ১১ শতক লেখা ছিল। কিন্তু রেজিস্ট্রি করার শঠতামতে ১১শতকের পরিবর্তে ১৬ শতক লেখা হয়েছে,” and

during cross-examination also admitted, “খসড়া দাখিল করি নাই ঐ খসড়া ভবিষ্যতে দাখিল করবেন প্রশ্নে নিরব।”, thereby rendering the allegation regarding the alleged draft deed wholly unsubstantiated. The failure to produce the purported draft deed, coupled with the silence maintained regarding its future production, irresistibly leads to the conclusion that no such draft has been proved to exist. Consequently, the allegation of fraudulent interpolation by insertion of 16 decimals in place of 11 decimals remains a mere assertion unsupported by any reliable evidence. **It is a settled proposition that allegations of fraud, collusion or manipulation of a registered instrument cannot succeed upon conjecture or suspicion but must be established by clear, cogent and convincing evidence.**

It is also an admitted position that the plaintiff himself an educated person and was one of the ten vendors who executed the impugned deed. In such circumstances, the plaintiff could not legally seek cancellation of the entire deed executed jointly by all the vendors unless he established that the deed was wholly void in law. At best, any challenge could

only extend to his own transferable interest, if legally permissible. Significantly, one of the co-vendors, who entered the witness box as D.W.1, unequivocally deposed that all the vendors were present at the time of execution and registration of the deed and categorically stated that—“বিরোধী সম্পত্তি বর্তমান বাদীরা কেউ ভোগ দখল করেনা। আমরা ১৬ শতাংশ বিক্রি করি তার টাকা আনছি।”. Such testimony clearly affirms that the vendors consciously executed the disputed deed bearing No. 1861 dated 27.10.2010 (Exhibit-2), accepted the consideration, and intended to transfer their respective saleable interests. The evidence further establishes that collectively the vendors possessed transferable interest in respect of the entire 16 decimals covered by the deed. Consequently, the learned trial Court rightly refrained from invalidating the registered conveyance and instead passed a preliminary decree by protecting the plaintiff's proprietary interest. Nevertheless, the allocation of only 5.8 decimals as the plaintiff's saham appears to have been incorrectly calculated and remains capable of rectification by this Court in exercise of its revisional jurisdiction.

The learned appellate Court, despite being the last Court of fact, completely overlooked the limited nature of the plaintiff's claim, failed to analyse the findings of the trial Court regarding the disputed deed, and granted the plaintiff the entire relief claimed by declaring the whole deed fraudulent, void and ineffective. Such sweeping relief, in the absence of proper appreciation of evidence and without addressing the legal consequences flowing from the admitted execution, registration and consideration of the deed, cannot be sustained in law.

It is true that the decisions cited by the learned Counsel for the opposite party lay down valuable principles governing declaratory and partition suits and undoubtedly serve as important precedents for proper administration of justice. Nevertheless, every judicial precedent must be applied having regard to its own factual matrix. The peculiar facts and evidence of the present case clearly distinguish it from the authorities relied upon, thereby rendering the present dispute an exception where those decisions cannot be mechanically applied.

Upon an overall consideration of the evidence, the pleadings, the applicable principles of law and the concurrent materials available on record, this Court is of the considered opinion that the judgment and decree passed by the learned trial Court did not warrant wholesale interference. The learned trial Court correctly appreciated the validity and operative character of the registered deed insofar as the vendors' saleable interest was concerned. However, the determination of the respective saham of the contesting parties was not accurately worked out and, therefore, calls for appropriate modification.

On the contrary, the learned appellate Court committed manifest illegality in completely setting aside the registered deed, declaring it fraudulent, null and ineffective, granting khas possession over the entire 16 decimals, and altogether ignoring the rights of the remaining nine vendors who neither challenged the deed nor disputed the receipt of valuable consideration. Indeed, the plaintiff admitted valid transfer of 11 out of 16 decimals of land. Such findings are plainly

contrary to the evidence on record and the settled principles governing transfer of immovable property.

In this context, I am of the firm view that **a registered deed executed voluntarily by competent vendors for valuable consideration, followed by due registration and delivery of possession, carries with it a strong presumption of legality, validity and due execution. The recitals contained therein cannot be displaced merely on bald allegations of fraud or collusion unless such allegations are established by strict, satisfactory and convincing evidence or unless the deed is shown to be void *ab initio* or rendered inoperative by an express statutory prohibition. Fraud is never to be presumed; it must be distinctly pleaded and strictly proved.**

Accordingly, upon a comprehensive evaluation of the entire evidence and the applicable legal principles, I am constrained to hold that the impugned deed No. 1861 dated 28.12.2010 is a valid and effective instrument of title, and thus, the judgment and decree passed by the learned appellate Court are legally unsustainable and liable to be set aside. The judgment and preliminary decree passed by the

learned trial Court, however, deserve to be maintained subject to modification regarding the correct quantum of saham allocable to the contesting parties.

Accordingly, the suit stands decreed in part in preliminary form on contest against defendant Nos. 8, 9, 11 and 12 and ex parte against the remaining defendants. The plaintiff shall be entitled to a saham measuring 8 decimals out of the total 24 decimals of land, inclusive of the one decimal obtained by way of oral gift from his mother. Defendant Nos. 8 and 9 shall be entitled to a saham measuring 16 decimals in accordance with the schedule of registered Deed No. 1861 dated 28.12.2010 (Exhibit-2), subject to payment of such additional Court fees, if any, as may be required by law before the learned trial Court. The parties are directed to effect an amicable partition in accordance with the aforesaid saham within 60 (sixty) days from the date of receipt of the records by the learned trial Court, failing which either party shall be at liberty to take steps for making the preliminary decree final through the process of the competent Court in accordance with law.

Accordingly, the Rule is made absolute in part with modification of the judgment and decree passed by the learned trial Court in the manner indicated above.

There shall, however, be no order as to costs.

The Office is directed to transmit the Subordinate Courts Records (SCR) forthwith, together with a copy of this judgment to the Subordinate Courts for information and necessary action.

The Court acknowledges and highly appreciates the diligent efforts, persuasive submissions, and valuable assistance rendered by the learned Counsel for both parties in facilitating the just determination of the issues involved.

(Abdur Rahman, J)