Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 3791 of 2017
Subash Chandra Dey....Petitioner
-Versus-
Shaymal Chandra Sheel and others....Opposite parties
Mr. Dr. Mahiuddin, Advocate
....For the petitioner
No one appears.
....For the opposite party Nos. 1 to 5
Heard on 13.05.2026, 17.05.2026. 18.05.2026 and 20.05.2026
**Judgment delivered on 21.05.2026**

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 5 to show cause as to why the impugned judgment and decree dated 13.09.2017 (decree signed on 18.09.2017) passed by the District Judge, Bandarban in Title Appeal No. 25 of 2015 affirming the judgment and decree dated 14.07.2015 (decree signed on 20.07.2015) passed by the Senior Assistant Judge, Bandarban in Other Suit No. 365 of 2015 (Old Other Suit No. 34 of 2011) dismissing 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 plaint case, in a nutshell, is that the petitioner, as plaintiff, filed Other Suit No. 34 of 2011 in the Court of Joint District Judge, Bandarban, impleading the opposite parties as defendants, praying for a decree for cancellation of deed Nos. 416 dated 14.08.1991 and 677 dated 24.12.1991 and Mutation Case No. 67/88-89, stating that the plaintiff Subash Chandra Dey and Jagadish Chandra Dey are full brothers. The plaintiff got settlement on 3.00 acres of land by Settlement Case No. 6/82-83 under the Chittagong Hill-Tracts Regulation, 1900 and the Rules made thereunder and accordingly Holding No. 173 was prepared in the name of plaintiff and Holding No. 243 was prepared in the name of Subash Chandra Dey and thereafter, they were enjoying the land by paying rent to the government and constructed homestead, orchard and they are also cultivating the land. The plaintiff had given a proposal to sell 3.00 acres of land of Holding No. 173 to the defendant-opposite party Nos. 1 to 5 and executed a Bainanama on 31.07.1989 and received Tk. 31,000 out of the total consideration at Tk. 64,000, and the remaining amount was required to be paid within a short time. After that, the plaintiff Subash Chandra Dey became sick and was admitted to hospital for heart surgery and went to India, and he remained there for a longtime but in the meantime, the defendant-opposite party Nos. 1 to 5 fraudulently created false deed Nos. 416 and 677 on 14.08.1991 and 24.12.1991 respectively, forging his signatures, illegally inserting 4.60 acres of land of holding No. 243 in deed No.

416 and registered the deed by false personation. After that, the plaintiff came to know about the said forged deeds in 2008 when the defendants claimed that they purchased the land by the said deeds and mutated the land in their name. Thereafter, the plaintiff made an attempt for local settlement but failed. After that, the plaintiff collected the certified copy of the deeds on 15.12.2009 and 08.09.2010 and came to know about the fake and forged deed created by the defendant-opposite parties and on 20.02.2011 filed the Other Suit No. 34 of 2011 praying for a decree of cancellation of the said deeds and further declaration that the Mutation Case No. 67/88-89 is ineffective and also prayed for cancellation of the said mutation prepared in the name of the defendant Nos. 1 to 5.

The defendant Nos. 1 to 5 entered appearance in the suit by filing written statement denying the assertions made in the plaint stating that 4.60 acres of land of holding No. 243 of Mouza Lama under Upazilla Lama, Bandarban and 1.50 acres of land of Holding No. 143 of the said Mouza was sold by the plaintiff Subash Chandra Dey by deed No. 416 and Mutation Case No. 67/88-89 to the defendant and 1.5 acres of land of Holding No. 173 of the said Mouza was sold by Jagadish Chandra Dey by deed No. 677 and Mutation Case No. 67/88-89 to the defendants and after purchasing the said land from the plaintiff, the defendants are enjoying the said land by paying rent for more than 20 years. The defendants also constructed their homestead on the land. After obtaining permission complying with due process of law, the deeds were registered and they also filed application for mutation of the said land in the name of the defendants for which, the suit is barred by estoppel and based on the application for mutation filed by the plaintiff, the Mutation Case No. 67/88-89 was allowed and after complying with all the procedure under the law the defendants purchase land.

The defendant No. 6, Deputy Commissioner, Bandarban Parbatta Zilla, filed a written statement stating that no permission was taken under Rule 34(1)(a)(i) and 34(5) of the Chittagong Hill-Tracts Regulation, 1900 and section 64(1) of the বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ for settlement of the land in favour of plaintiff for which the suit is not maintainable.

During trial, the plaintiff examined 3 P.Ws, and the defendants examined 3 D.Ws. After concluding trial, the Senior Assistant Judge, Bandarban, by judgment and decree dated 14.07.2015 dismissed the suit holding that the suit is barred by limitation and that no application has been filed by the plaintiff for expert opinion as to the alleged signature of the plaintiff appearing on the deeds and the plaintiff failed to discharge the burden of proof. Against the said judgment and decree of dismissal passed by the trial Court, the plaintiff filed Title Appeal No. 25 of 2015 in the Court of District Judge, Bandarban who after hearing the appeal by impugned judgment and decree dated 13.09.2017 dismissed the appeal affirming the judgment and decree passed by the trial Court holding that the plaintiff was aware of the mutation case and filed the suit after 20 years for which the suit is barred by limitation and no illegality was committed by the trial Court in dismissing the suit against which the plaintiff obtained the instant Rule.

Learned Advocate Mr. Dr. Mahiuddin appearing on behalf of the plaintiff-petitioner submits that the বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ is a special law and under section 64 of the said Act prior permission from the Bandarban Parbatta Zilla Parishad is required to transfer any land of the said district and without any permission from the said Parishad, the defendants created a fake and forge deed and by false personation registered the deed beyond the knowledge of the plaintiff-petitioner. He further submits that at the time of trial, the plaintiff prayed for direction upon the defendants to produce the disputed deeds and despite the order passed by the trial Court, the defendants refrained from producing the deed Nos. 416 and 677 dated 14.08.1991 and 24.12.1991 respectively. Therefore, there was no scope to file an application for sending the alleged signatures on those deeds to the handwriting expert, and the trial Court most illegally dismissed the suit holding that the plaintiff did not file any application for sending the deeds to the expert to ascertain whether the alleged deeds are forged or not. He also submits that the petitioner along with his brother Jagadish Chandra Dey executed a bainanama on 31.07.1989 in favour of the defendant Nos. 1 to 5 and received part consideration amounting to Tk. 31,000 out of total consideration of Tk. 64,000 and at the time of execution of the said Bainanama, the petitioner and his brother also signed the application for mutation, but the defendant Nos. 1 to 5, creating the forged deeds, used the application of the petitioner signed by them before registration of the alleged deeds and illegally mutated the land. Lastly he submits that under Articles 3, 4 and 5 of P.O No. 142 of 1972, an affidavit sworn in by the transferor is required at the time of registration of the deed, but no affidavit was sworn in by the petitioner at the time of registration of the alleged deed, which proved that the petitioners did not execute and register the alleged deeds. Having drawn the attention of this Court to Article 91 of the Limitation Act, 1908, learned Advocate submits that the limitation will start from the date of knowledge about the deeds and in the plaint it has been clearly stated that he came to know about the alleged deed in 2008 and thereafter, collected the certified copy of the deeds and filed the case. Therefore, the suit is not barred by limitation, but the Courts below, on misreading and non-reading of the material evidence, arrived at a wrong decision as to the execution and registration of the disputed deeds by the petitioner and committed an error of law resulting in an error in the decisions occasioning failure of justice. He prayed for making the Rule absolute by setting aside the impugned judgment and decree passed by the Courts below.

No one appears on behalf of the defendant-opposite party Nos. 1 to 5.

The issue involved in the Rule as to whether the plaintiff executed and registered the deed No. 416 dated 14.08.1991 (exhibit 3) and the deed No. 677 dated 24.12.1991 (exhibit 3Ka) and as to whether বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ and Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972 are applicable in the hill districts.

On perusal of the plaint, it reveals that the plaintiff filed the suit for cancellation of the deed No. 416 dated 14.08.1991 (exhibit 3) and deed No. 677 dated 24.12.1991 (exhibit 3Ka) under section 39 of the Specific Relief Act, 1877. The plaintiff also made a prayer for declaration that the Mutation Case No. 67/88-89 is not effective. P.W. 1, plaintiff Subash Chandra Dey, stated that beyond his knowledge, the deeds were created by forging his signature and registered by false personation, and 8 acres of land was mutated based on the said deeds, and after obtaining the certified copy, he came to know that the land was mutated based on Mutation Case No. 67/88-89. D.W. 1 Shaymal Chandra Sheel stated that 4.60 acres of land of Holding No. 243 and 1.50 acres of land of Holding No. 173 of Lama Mouza were recorded in Mutation Case No. 67/88-89 based on the deed Nos. 416 and 677. No statement is made by D.W. 1 that the plaintiff executed and registered the disputed deed No. 416 dated 14.08.1991 (exhibit 3) and deed No. 677 dated 24.12.1991 (exhibit 3Ka). Therefore, the statement made by P.W. 1 that the said two deeds were registered by false personation beyond his knowledge remains uncontroverted.

Admittedly, the plaintiff executed the bainanama dated 31.07.1989 (exhibit 4). The case of the plaintiff is that he received Tk. 31,000 as part consideration out of total consideration at Tk. 64,000 and at the time of execution of the bainanama, he also signed the application for mutation. P.W. 1 stated that several signatures were taken from him, but he did not go to the office for mutation. In reply to a question, P.W. 1 stated that he did not contest the mutation case. In reply to a question, D.W. 1 stated that he could not say whether at the time of execution of the bainanama, the signature of the plaintiff was taken on the application for mutation. The plaintiff signed the mutation application, and they filed the mutation case. No statement is made by D.W. 1 that after execution of the alleged deeds dated 14.08.1991 and 24.12.1991 (exhibits 3 and 3Ka), the plaintiff signed the application for mutation.

The suit land was mutated in the name of the defendant-opposite party Nos. 1 to 5 by Mutation Case No. 67/88-89 but the said two deeds (exhibits 3 and

3Ka) were registered on 14.08.1991 and 24.12.1991 respectively which clearly proved that the Mutation Case No. 67/88-89 was started before registration of the disputed deeds based on the applications signed by the plaintiff at the time of execution of the bainanama dated 31.07.1989 (exhibit 4). Therefore, I am of the view that the Mutation Case No. 67/88-89 was not initiated based on the disputed deeds (exhibits 3 and 3Ka).

On perusal of the evidence, it further reveals that the certified copy of the deed No. 416 dated 14.08.1991 and the deed No. 677 dated 24.12.1991 were proved as exhibits 3 and 3Ka respectively, and the bainanama dated 31.07.1989 was proved as exhibit 4. In the judgment and decree passed by the trial Court, it has been mentioned that the plaintiff filed an application on 14.05.2013 for directing the defendants to produce the original two disputed deeds and subsequently, by order dated 09.11.2014, the trial Court directed the defendants to submit the original deeds, but the defendants did not produce those deeds in the trial Court. Since the original deeds are laying with the defendants and the trial Court also directed them to produce the disputed deeds, they are obliged to comply with the order dated 09.11.2014 passed by the trial Court. Despite the order passed by the trial Court, the defendants did not produce the disputed deeds with an oblique motive. No purpose could be served if any application is filed by the plaintiff for expert opinion as to the alleged signature of the plaintiff on the disputed deeds. In the given facts, the Courts below ought to have drawn an adverse presumption under section 114(g) of the Evidence Act, 1872 against the defendants for non-production of the original deed No. 616 dated 14.08.1991 and 677 dated 24.12.1991 (exhibits 3 and 3Ka).

The production of the original deed Nos. 416 and 677 dated 14.08.1991 and 24.12.1991 (exhibits 3 and 3Ka) by the defendants before the trial Court are required to prove that the plaintiff executed and registered the said deeds. The admitted signatures of the plaintiff are also available with the records. If the deeds (exhibits 3 and 3Ka) were produced by the defendants, the trial Court could compare the signatures on the said deeds and the signatures of the plaintiff available on the records. In view of the above facts and circumstances of the case, I am of the view that the burden of proof shifted on the defendants to prove that the plaintiff executed and registered the deeds (exhibits 3 and 3Kha) which are laying with the defendants.

At this stage, it is relevant here to rely on a decision made in the case of Golam Mostafa (Md) vs Moqbul Ahmed Mia reported in 78 DLR (AD) 39, in which it has been held that;

> "Defendant Nos. 2-5 could not produce Joynal Abedin and Shamsul Haq, namely the persons in whose name those disputed stamps were bought, to refute the allegations put forward by the plaintiff without offering any explanation for which the Court may draw adverse presumption against the defendant Nos. 2-5 under section 114 illustration(g) of the Evidence Act, 1872."

In the case of Mussauddin Ahmed vs the State of Assam, reported in (2009) 14 SCC 541 it has been held that;

> "It is the duty of the party to lead the best evidence in its possession which could throw light on the issue in controversy and in case such a material evidence is withheld, the Court may draw adverse inference under section 114 illustration(g) of the Evidence Act, 1872 notwithstanding that the onus of proof did not lie on such party and it was not called upon to produce the said evidence."

In the case of Himjit Construction v. Tarun Sarkar reported in AIR 1985 Calcutta 200, it has been held that;

> "In our view, it has to be decided in each case on its facts to find out whether the evidence is really in the custody of the defendant and in the facts and circumstances there is a clear obligation on the part of the defendant to produce it. Where there exists such an obligation, non-production can very well justify the Court to raise an adverse inference even though such evidence had not been specifically called for by the plaintiff from the defendant."

On scrutiny of the evidence of P.W. 1 and D.W. 1, it is found that the execution of the disputed deeds (exhibit 3 and 3Ka) by the plaintiff has been denied by P.W. 1. No statement is made by D.W. 1 that the plaintiff executed and registered the disputed deeds. The evidence of P.W. 1 regarding the execution and registration of the disputed deeds by false personation beyond his knowledge remains uncontroverted by the defence. Therefore, I am of the view that the plaintiff did not execute and register the disputed deeds (exhibit 3 and 3Ka).

The next point required to address by this Court as to whether Articles 3, 4 and 5 of the Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972 (P.O No. 142 of 1972) are applicable in the hill districts.

In the case of Rangamati Food Products Ltd vs Commissioner of Customs and others reported in 10 BLC 524, the High Court Division opined that Regulation No. 1 of 1900 is a dead law and all laws which are in force in Bangladesh are equally applicable to the Hill Districts of Chittagong. Subsequently in the case of Government of Bangladesh represented by Secretary, Ministry of Finance, Bangladesh, Dhaka vs Rangamati Food Products reported in 69 DLR (AD) 432 the Appellate Division set aside the said judgment of the High Court Division, so far as it relates to the observation that Regulation 1 of 1900 is a dead law.

In Article 1(2) of the Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972 (P.O No. 142 of 1972), it has been stated that it extends to the whole of Bangladesh. Chittagong Hill Districts are part of Bangladesh. No provision is made in Regulation No. 1 of 1900 regarding the manner of registration of a document in the hill districts. Therefore, I am of the view that Regulation No. 1 of 1900 and P.O No. 142 of 1972 both are applicable in the hill districts.

In Article 3 of the P.O No. 142 of 1972, it has been stated that notwithstanding anything contained in any other law for the time being in force or in any contract or agreement, no transfer of any immovable property made after the commencement of this Order shall be deemed to be valid and legal unless the provisions of this Order have been complied with. Article 4 states that no document of transfer of immovable property shall be submitted for registration unless it is accompanied by an affidavit stating the nationality of the transferor and affirming the facts as stated in Article 4(a) to (f) of the said Order. In Article 5 of the said order, it has been states that no Registering Officer shall register any document of transfer of immovable property unless it is accompanied by the affidavit referred to in Article 4.

On perusal of the exhibits (3 and 3Ka) reveals that no affidavit in compliance of Order 4 of P.O No. 142 of 1972 was sworn in by the plaintiff at the time of registration of those deeds and the Registering Officer registered the disputed deeds violating the provisions made in Articles 4 and 5 of the P.O No. 142 of 1972 and those are not valid and legal in view of Article 3 of the said Order.

বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ is a special law and applicable in the Bandarban Hill District. In section 64 of the said Ain, it has been stated that transfer of any land under Bandarban Hill District is prohibited without permission of the Bandarban District Parishad.

In the case of Wagachara Tea Estate Ltd vs Md. Abu Taher reported in 69 DLR (AD) 381, it has been decided that;

> "Under section 64 of the Ain, the alienation of any property, whether by way of lease, acquisition or sale, has been totally restricted, which can only be done with the prior approval of the Parishads. The Parishads are authorized to collect local rates, tolls and fees on certain matters including on land, transport, cattle, entertainment etc. Any act or omission in violation of the Parishads' functions is a criminal offence. The Parishads are statutory bodies having perpetual succession and common seals."

It is found that no affidavit has been sworn in by the plaintiff at the time of registration of disputed deeds (exhibits 3 and 3Ka) pursuant to Articles 3, 4 and 5 of P.O No. 142 of 1972 and no permission was taken by the plaintiff or by the defendants pursuant to section 64(1) of the বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ for transferring the disputed land. It is also found that the alleged two deeds (exhibits 3 and 3Ka) were not executed and registered by the plaintiff, and the said deeds were registered in violation of the provisions made in section 64(1) of the said Ain. Therefore, I am of the view that the disputed deeds (exhibits 3 and 3Ka) were illegally registered.

In Rule 14 of the Rules for the Administration of the Chittagong Hill-Tracts made under the Chittagong Hill-Tracts Regulation, 1900, it has been stated that no engagement to do anything illegal, immoral, contrary to public policy or manifesting impossibility will be registered. I am of the view that the alleged two deeds (exhibits 3 and 3Ka) were also registered in violation of the provision made in Rule 14 of the said Rules.

Since the disputed deeds (exhibits 3 and 3Ka) were not executed and registered by the plaintiff, I am of the view that the defendants created the deeds (exhibits 3 and 3Ka) fraudulently, forging the signature of the plaintiff and despite the order passed by the trial Court, the defendants malafide refrained from producing those deeds in the trial Court. Fraud vitiates everything. I am of the view that the exhibits 3 and 3Ka were registered by false personation. P.W. 1 had given good explanation regarding the cause of delay and the suit has been filed within time under Article 91 of the Limitation Act, 1908 from the date of knowledge of the registration of the disputed deeds (exhibits 3 and 3Ka).

At this stage, it is relevant here to rely on a decision made in the case of Zillur Rahman vs Abdul Quiyum reported in 18 BLC (AD) 258, judgment dated 14.08.2012 in which our Apex Court has held that;

> "Fraud vitiates everything. Since the plaintiff succeeded to prove that fraud was practised upon him by the defendant in executing and registering the impugned deed, it vitiated the entire transaction and therefore, the defendant was liable to be punished by way of its cancellation as a whole."

Similar view has been adopted in the case of Hasna Banu and others vs. Keamat Ullah Malitha and others reported in 50 DLR (AD) 50 in which the Hon'ble Appellate Division opined that;

> "In the plaint it has been stated that after obtaining the certified copy of the kabala the plaintiff had definite knowledge on 19-2-77 in respect of the fraudulent and collusive kabala. The learned Single Judge of the High Court Division correctly evaluated the evidence of PW 1 Majirunnessa and held that it is not correct to hold that PW 1 knew about the sale in the year 1966. As the deed was executed and registered by a village illiterate pardanashin lady onus lies heavily upon the defendant's son and daughter-in-law to show that the deed was legally executed and registered with the free will and consent of the plaintiff having free and independent advice. Hence, the learned Single Judge was right in holding that the defendants totally failed to prove that the suit was barred by limitation. In the present case fraud having been perpetuated on the mother, the question of limitation will run from the date of knowledge and consequently the suit cannot be barred by limitation. In that view of the matter. the learned Single Judge of the High Court Division rightly set aside the finding of the lower appellate Court on the question of limitation and decreed the suit."

In the case of Asanulla Fakir vs Jogendra Nath Sarkar reported in PLD 1961 Dacca 703 this Court echoes the above view holding that;

> "It is, therefore, found from the decisions of the cases referred to above, which is consistent for a period of more than 70 years, that when a party alleges fraud and invokes the aid of section 18 of the Limitation Act, he must first establish the fraud committed by the other side, and once he has done so, it will be for the other side to prove that the party injured had the knowledge of fraud at a point of time beyond the period of limitation calculated from the time the application is filed. It has also been held that the mere knowledge of the sale will not be sufficient to put the petitioner out of Court on grounds of limitation."

In view of the above evidence, findings, observation and the proposition, I am of the view that the impugned deeds (exhibit 3 and 3Ka) were fraudulently created by forging the signature of the plaintiff by false personation and the impugned judgments and decrees passed by the Courts below suffer from misreading and non-reading of the material evidence and both the Courts below committed an error of law resulting in an error in the decision in dismissing the suit occasioning failure of justice.

It is a settled proposition, that when a deed is obtained by practicing fraud, the limitation regarding filing the suit shall start from the date of knowledge of the registration of the deed. Therefore, the findings of the Courts below that the suit is barred by limitation is hereby set aside. I am of the view that the plaintiff filed the suit in time under Article 91 of the Limitation Act, 1908 from the date of knowledge of the registration of the deed and the suit is not barred by limitation.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and decrees passed by the Courts below are hereby set aside. The suit is decreed in favour of the plaintiff on contest against the defendant-opposite party Nos. 1 to 5.

The deed Nos. 416 dated 14.08.1991 (exhibit 3) and 677 dated 24.12.1991 (exhibit 3Ka) and the Mutation Case No. 67/88-89 are hereby cancelled. The concerned office of Sub-register is directed to do the needful.

The order of stay granted earlier at the time of issuance of the Rule on 19.11.2017 is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court’s records at once.