

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

*And*

*Mr. Justice Md. Saiful Islam*

*First Appeal No.94 of 2019*

Md. Selim Hossain and others

... Appellants

-Versus-

Md. Mofiz Uddin Biswas died leaving behind his legal heirs- Md. Ishak Ali and others

... Respondents

None appears....For both the parties.

*Heard on 16.11.2025 and Judgment on 17.11.2025*

*S M Kuddus Zaman, J:*

This First Appeal is directed against the impugned judgment and decree dated 27.08.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia in Title Suit No.60 of 2016 decreeing the suit, the defendant appellants named above beg to present this Memorandum of Appeal on the following amongst other.

Facts in short are that the predecessor of the respondent namely Mofiz uddin Biswas as plaintiff instituted above suit for declaration that registered deed of heba No.4007 dated 27.04.2016 of Kushtia Sub-registry Office allegedly executed by the plaintiff in favor of the defendants Nos.1-4 is collusive, unfounded, fraudulent and not binding upon the plaintiffs. It was alleged that the plaintiff was the rightful owner and processor of 8.84 acres land as described in the schedule and he is in possession in the plaintiff above land. But above defendants

two sons and two grandsons of the plaintiffs by fraud and cheating upon the old and illiterate plaintiff obtained above deed of heba for above property. The plaintiff did not make any heba nor he executed and registered above deed voluntarily and delivered possession. On disclosure of the defendants about above heba deed plaintiff obtained a certified copy on 01.09.2016 and filed this suit.

Defendants No.1-4 contested above suit was filling a joint written statement alleging that the plaintiffs was the rightful owner and processor of above property and he voluntarily and willingly transferred above property to the defendants by heba and in support of above heba executed and registered above deed of heba dated 27.04.2016. The defendant did not obtain above deed by fraud or cheating.

At trial plaintiffs examined 5 witnesses and defendants examined 7. Documents of the plaintiff were marked as Exhibit Nos.1-2 series. Defendants did not produce and prove any document.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial court above defendants as appellants moved to this Court and preferred this First Appeal.

None appears for any of the parties before this Court at the time of hearing of this First Appeal. As such the First Appeal was taken up

for disposal on merit in accordance with the provisions of order 41 Rule 30(2) of the Code of Civil Procedure.

It is admitted that disputed 8.84 acres land belonged to now deceased plaintiff Mofiz Uddin Biswas who was an elderly sick and illiterate village man. Above plaintiff himself gave evidence as PW1 and reiterated all claims and allegations as set out in the plaint. He has stated that he did not make any declaration of heba of above property to the defendants Nos.1-4 nor he delivered possession of above land pursuant to above heba. He did not voluntarily execute and register above deed of heba (Exhibit No.2) but the defendants obtained above deed of heba by cheating and fraud. PW1 was extensively cross examined by the defendants but his above evidence remained unshaken, consistent and credence inspiry. PW2 Hannan, PW3 Mohammad Ali, PW4 Rashedul Islam and PW5 Ukil Uddin gave consistence evidence in support of continuous possession of the plaintiff in above property.

The heba is a mode of transfer of property as provided in the shariah law which requires declaration of heba by the donor acceptance of the same of the donies and delivery of possession pursuant to above heba.

In view of above facts and circumstances of the case and evidence of the plaintiff the onus shifted upon the defendants to prove that above Mofiz Uddin Biswas willingly and lawfully made heba of above property to the defendants.

In their written statement defendants Nos.1-4 did not make any specific mention as to where, when and in presence of whom Mofiz Uddin Biswas made declaration of above heba. Nor anything was mentioned as to the delivery of possession of above property pursuant to above heba. DW1 Salim Hossain has merely stated that his grandfather Mofiz Uddin Biswas transferred above land by gift and executed and registered above deed of gift. The defendant did not make any endeavor to prove above claims of declaration of heba and delivery of possession by legal evidence.

On consideration of facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Joint District Judge nor we find any substance in this First Appeal which is liable to be dismissed.

In the result, The First Appeal is hereby dismissed. The order of stay granted earlier by this Court is hereby vacated.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

**Md. Saiful Islam, J:**

I agree.