**Present:**

**Mr. Justice Md. Salim**

**CIVIL REVISION NO.3824 OF 2018.**

Shahjahan Howlader and another
..... Plaintiff-Petitioners.
-VERSUS-

Abdul Quader Biswas being dead his legal heirs:
Most. Rahima Khatun and others
..... Defendant-Opposite parties

Mr. Liton Ranjan Das, Advocate
.....For the petitioners

Mr. Shishir Kanti Majumder with
Mr. Md. Akbar Hossain, Advocate
..... For the Opposite Parties.

**Heard on 26.05.2025, 01.07.2025, 20.07.2025 and 10.08.2025.**

**Judgment on 18.08.2025.**

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 29.08.2018 passed by the learned Joint District Judge, 3rd Court, Patuakhali in Title Appeal No.82 of 2015 disallowing the appeal and affirming the Judgment and decree dated 26.04.2015 passed by the learned Assistant Judge, Mirzagonj, Patuakhali in Title Suit No.179 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 the Rule are that the petitioners herein as plaintiffs instituted Title Suit No.179 of 2013 before the Assistant Judge, Mirzagonj, Patuakhali, against the defendant-opposite party for cancellation of a deed, contending, inter alia, that the land measuring 52 decimals appertaining to S.A. Khatian No.511 under Mouza Dakkhin Amragachhia, District- Patuakhali belonged to Kadom Ali, who died leaving one son, Sadem Ali Biswas, and two daughters, Sorbhanu and Sonaban Bibi. Sadem Ali Biswas passed away, leaving the plaintiffs as his heirs and successors in interest. Sadem Ali Biswas was blind from birth, and the defendant took advantage of his blindness, making a Heba-bil-ewaj deed on 23.02.1961 in favour of himself and another person, instead of Sadem Ali Biswas. Sadem Ali Biswas never executed any Heba-bil-ewaj deed in favour of the defendant. The plaintiff, No. 1, had been living in Malaysia, and when he returned to Bangladesh in 2013, the defendant, on 01.06.2013, claimed the suit land by way of a Heba-bil-ewaj deed and threatened to dispossess them of the suit land. It was then that the plaintiffs learned about the Heba-bil-ewaj deed. Their father never transferred the suit land by the

alleged Heba-bil-ewaj deed, so it is created and false. After getting a certified copy of the Deed, they instituted the instant suit.

The opposite party herein, as defendants, contested the suit by filing a written statement contending, inter alia, that the suit land was owned by Khadam Ali Biswas, who died leaving one son, Sadem Ali Biswas. Sadem Ali Biswas executed a Heba-bil-ewaj deed, bearing No.332 dated 23.02.1961 in favour of the defendant after satisfying him to take care of and love, and handed over the possession of the suit land. Sadem Ali Biswas was never blind, but before he died, he had been suffering from an eye problem that prevented him from seeing at a distance. The plaintiffs have no right over the suit land, and as such, the suit is liable to be dismissed.

The learned Assistant Judge of Mirzagonj, Patuakhali, framed the necessary issues to substantiate the dispute among the parties.

Subsequently, the learned Assistant Judge of Mirzagonj, Patuakhali, by the Judgment and decree dated 26.04.2015, dismissed the suit.

Being aggrieved by the above Judgment and decree, the plaintiffs, as appellants, preferred Title Appeal No.82 of 2015 before the District Judge, Patuakhali.

Eventually, the learned Joint District Judge of the 3rd Court, Patuakhali, by the Judgment and decree dated 29.09.2018, dismissed the appeal and thereby affirmed those passed by the trial court below.

Being aggrieved by the above Judgment and decree, the plaintiffs-petitioners preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of status quo extended from time to time.

Mr. Liton Ranjan Das, the learned Counsel appearing on behalf of the petitioners, submits that both the court below misread the evidence and came to a wrong finding, and also that both the courts below threw a wrong in the plaintiff to prove the genuineness of the Hiba-bil-ewaj deed, while the onus was squarely on the defendant to prove the Hiba-bil-ewaj deed was genuin; that both the court below with miscontrue the evidence on record found that the suit was bird by law.

Mr. Shishir Kanti Majumder, learned advocate appearing on behalf of the defendant-opposite party, submits that both the Courts below concurrently held that the suit is barred by law as it was not filed within the stipulated period as per Article 91 of the First Schedule to the Limitation Act.

We have carefully considered the submissions advanced by both parties, reviewed the Judgment of the courts below, and examined the oral and documentary evidence, as well as other materials on record. It appears that the petitioners herein, as the plaintiffs, filed the instant suit for cancellation of the Heba-bil-ewas deed, which was not binding upon him, as it was signed by showing a third person instead of the vendor, Sadem Ali Biswas, because he was blind from birth. On the contrary, the defendant claimed that Sadem Ali Biswas executed a Heba-bil-ewaj deed dated February 23, 1961, in favour of the defendant, after assuring him that he would take care of and love the defendant, and handed over possession of the suit land. Sadem Ali was never blind.

In order to prove the case, the plaintiffs side examined, as many as 3(three) witnesses and exhibited the relevant documents as exhibits. On the contrary, the defendant side had to prove their case, examined 4(four) witnesses, and exhibited the relevant documents.

We have scrutinized each deposition and cross-examination of the witnesses of both parties. It is evident that, considering the above evidence on record the Court of Appeal below has concurred with the Judgment and decree of the trial court below with finding that the vendor, Sadem Ali Biswas, was not blind, that Sadem Ali

Biswas transferred the suit land by executed the alleged Heba-bil-ewaj deed, and further held that the suit was barred by limitation.

It is evident to note that P. W.1 – P. W. 3, in their examination-in-chief, tried to corroborate with their plaint's case, but all of them were discarded in their cross-examination. Besides this, having reviewed the testimonies of D. W. 1 – D. W. 4, they corroborated one another in respect of the defendant's case. Except for some minor discrepancies, no such material contradiction or omission is noticed, by dint of which these witnesses can be disbelieved.

Analyzing the case record and the evidence from the respective parties, we have reason to draw the inference that, admittedly, the plaintiff failed to prove that the vendor, Sadem Ali Biswas, was not blind; the plaintiff also failed to prove that Sadem Ali Biswas never handed over the suit land to the defendant by executing the the alleged Heba-bil-ewaj deed or failled to prove that Heba-bil-ewaj deed is a false document. Moreover, the predecessor of the plaintiff, Sadem Ali Biswas, in his lifetime transferred several lands, including the suit land, through several registered deeds which are Exhibited as Exhibit-Ga- deed No.3129 dated 01.07.61, Exhibit-Gha- deed No.1722 dated 12.04.61, Exhibit-Ja- deed No.1410 dated 07.11.59, Exhibit-Jha-

deed No.4100 dated 07.11.59, and Exhibit-Ng- deed No.342 dated 23.02.61. It is proven that from 1959 to 1961, Sadem Ali Biswas executed several deeds; however, the plaintiff did not file any suit for the cancellation of those deeds. Moreover, the plaintiff failed to prove by adducing and producing oral and documentary evidence that Sadem Ali Biswas was blined from birth. So, the plaintiff failed to prove that Sadem Ali Biswas was not blind at the time of transferring the suit land by way of Heba-bil-ewaj. Consequently, it is evident that both the court below rightly and judiciously held that Sadem Ali Biswas was not blind from birth.

Notably, Article 91 of the Limitation Act provided that the suit for cancellation of a Deed has to be filed within the period of 3(three) years from the date of knowledge.

In the instant suit, it appears from the record that the predecessor of the plaintiffs, Sadem Ali Biswas, executed the alleged Heba-bil-ewaj deed on 23.02.1961. On the contrary, the plaintiff filed the instant suit for the cancellation of the Hiba-bil-ewaj deed in 2013 AD, wherein the plaintiff claimed that he came to know about the Hiba-bil-ewaj on June 1, 2013. However, the plaintiff, as P.W.1, in his deposition, admitted that he came to know of the alleged Deed of Heba-bil-ewaj in 2001. Therefore, it appears that the plaintiff filed the instant suit after 12(twelve) years of his knowledge of the alleged Deed of Heba-bil-ewaj.

Consequently, we are of the firm view that the courts below rightly and judiciously considered the evidence on record, found that the suit was barred by limitation as per the provision so enumerated in Article 91 of the Limitation Act,1908.

Considering the above facts and circumstances, it does not appear that the courts below placed any wrong onus on the plaintiff when they dismissed the suit. Moreover, it appears that the appellate court below, after a proper scrutiny of the evidence, gave its concurrent finding with the trial court below. Therefore, we are of the firm view that the Court of Appeal below correctly and justifiably affirmed the judgment and decree of the trial Court by the impugned Judgment and decree. Thus, we find no merit in the Rule.

Resultantly, the Rule is discharged with cost.

Communicate the Judgment and send down the Lower Court Records at once.

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**(Md. Salim, J).**

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