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

**Present:**
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 920 OF 2019**

**IN THE MATTER OF:**

An application under section 115(1) of the Code of Civil Procedure. (Against Decree.)

-And-

**IN THE MATTER OF:**

Mohsin

--- Plaintiff-Appellant-Petitioner.

-Versus-

Monsur Helal and others

---Defendant-Respondent-Opposite Parties.

Mr. Mohammad Ali zinnah, Advocate

--- For the Plaintiff-Appellant-Petitioner.

No one appears

---For the Defendant-Opposite Parties.

**Heard on: 05.12.2022 and 21.05.2023.**
**Judgment on: 21.05.2023.**

At the instance of the present plaintiff-appellant-petitioner, Mohsin, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the judgment and decree dated 24.10.2018 passed by the learned Joint District Judge, Noakhali in the Title Appeal No. 109 of 2014 affirming the judgment and decree dated 26.08.2014 passed by the learned

Assistant Judge, Chatkhil, Noakhali in the Title Suit No. 70 of 2009 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed the Title Suit No. 70 of 2009 for a declaration that the registered "Will" deed (Oshiotnama) No. 11 dated 17.08.2000 in relation to the schedule land described in the plaint as illegal and not binding upon the plaintiff. The plaint contains that the suit land belonged to one Fazlul Haque who was the father of the plaintiff. Fazlul Haque died leaving behind his legal heirs. The plaint further contains that defendant No. 1 used to look after the property of the maker of the "Will" (Oshiotnama). On 25.02.2009 defendant No. 1, namely, Monsur Helal, intended to sell some of the suit property but the present plaintiff-petitioner gave veto to sell the property when he disclosed about the said "Will" (Oshiotnama). The petitioner obtained the certified copy and he came to know that his father executed an "Oshiotnama" in favour of all his successors. However, the father of the plaintiff and defendants sold 15 decimals of land on 16.05.2004, therefore, the "Oshiotnama" was inoperative.

The defendant-opposite party No. 1-5 contested the suit by filing a written statement contending that the “Oshiotnama” was validly executed by their father and registered before the Sub-Register of the Subregistry Office, Chatkhil, Noakhali within the provision of Farazi/Shariah Ain. The present defendant-opposite parties could not prove their own case regarding the validity of the “Oshiotnama” executed by their father.

After hearing the parties the learned Assistant Judge, Chatkhil, Noakhali came to a conclusion to dismiss the suit. Being aggrieved the present plaintiff-petitioner preferred the Title Appeal No. 109 of 2014 before the learned Joint District Judge, Court No. 2, Noakhali who after hearing the parties dismissed the appeal by his judgment and decree dated 24.10.2018. Being aggrieved this revisional application has been filed under section 115(1) of the Code of Civil Procedure and the present Rule was issued thereupon.

Mr. Mohammad Ali Zinnah, the learned Advocate, appearing for the plaintiff-appellant-petitioner submits that the petitioner in good faith stating the real facts instituted the suit with a clean hand even though he did not suppress any fact of the deed of “Will” rather got justice from the court below has

instituted this suit without depriving any of the co-sharer of the suit land as mentioned in the schedule of the plaint, so, the findings of the courts below are not proper and justified rather the courts below as per section 151 of the Code of Civil Procedure as well as the prayer No. “Ga” of the plaint would be disposed of the suit and as such non-consideration of this relevant provision of law in passing the judgment and decree has committed a gross error of law resulting in an error in the decision occasioning failure of justice.

The Rule has been appearing in the daily cause list for a long period of time and the Rule has been long pending since 2019 and no one appears to oppose the Rule.

Considering the above submission of the learned Advocate appearing on behalf of the petitioner and also considering the revisional application filed by the present plaintiff-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below as well as perusing the essential documents available in the lower courts records, it appears to me that one Fazlul Haque as the owner of the suit land described in the schedule of the plaint intended to

execute “Oshiotnama” in favour of his children/grandchildren to transfer his suit land according to his desire. The present plaintiff-petitioner is a son of the said Fazlul Haque, the creator of the “Oshiotnama”. The plaintiff-petitioner filed the suit challenging the validity of the said “Oshiotnama” on the ground that his father should have given him more land than expressed in the said “Oshiotnama”. The petitioner also raised a question for filing the suit according to Farayez/Shariah Law. A creator cannot create a Oshiotnama for transfering his land more than the measurement of $\frac{2}{3}$ of the total land but in the instant case creator/Oshiotkai transferred his entire property by the said deed dated 17.08.2000. It also appears to me that the present petitioner as the plaintiff filed the Title Suit No. 70 of 2009 for declaration of Will Deed No. 11 dated 17.08.2000 created by his father for transferring his entire land in favour of his children and grandchildren by prescribing a specific measurement of land in the said “Oshiotnama”. I have carefully examined the said “Oshiotnama” as Exhibit- 2, and it appears that the said “Oshiotnama” was registered in the Sub-Registry Office, Chatkhali, Noakhali which is a certified copy. Under the provision of Islamic Personal Law regarding Oshiotnama an

owner of land has a legal right to transfer the land by way of gift or Shariah/Heba deed or creating a deed of “Oshiotnama” for transferring the land to his legal heirs by mentioning the specific land which would be executed after his death. In the instant case the said Fazlul Haque transferred his entire property in favour of his children/grandchildren by creating a “Oshiotnama” being Exhibit- 2.

In my view both the courts considered the case of the plaintiff-petitioner and rejected the suit by stating that the deed was inoperative. The learned trial court came to a conclusion to dismiss the suit by stating the following findings:

> …“ফলে নালিশী দলিলটি একটি বৈধ ও কার্যকরী দলিল। উক্ত প্রদর্শনী- ২ মূ-ল যদি বাদীর ফরা-য়জ মোতা-বক প্রাপ্ত অং-শর বেশি প্রদান করা হয় বাদী কেবল সে অং-শর জন্য নালিশী দলিল বাধ্যকর নয় ম-র্ম ঘোষণা চাইতে পারেন। কিন্তু বাদী অত্র মামলার আরজীর তফসীলে নালিশী দলি-লর সম্যক ভূমির উপর নালিশী দলিল বাধ্যকর নয়। অকার্যকর ঘোষণার প্রার্থনা করায় বাদীকে অত্র মামলার ফল প্রতিকার প্রদান সম্ভব নয়।”…

The learned appellate court below also came to a decision and concurrently found against the present plaintiff-petitioner on the basis of the following findings:

...“এমতাবস্থায়, তা-দর সাক্ষ্য বিশ্বাস-যাগ্য এবং নির্ভর-যাগ্য নয় ম-র্ম প্রতীয়মান হয়। অতএব বাদী আপীলকারী নালিশী ৮৭১/২ শতক ভূমি-ত তার মালিকানা-দখল প্রমাণ কর-ত ব্যর্থ হ-য়-ছ ম-র্ম প্রতীয়মান হয়। উপরোক্ত পর্যালোচনার আলোকে নালিশী ভূমিতে বাদী আপীলকারী মালিকানা-দখল প্রমাণ করতে সক্ষম হন নাই বিধায় এবং মূল মোকদ্দমা বর্তমান আকা-র ও প্রকা-র রক্ষণীয় নয় বিধায় নালিশী বিগত ১৭-০৮-২০০০ ইং তারি-খর ১১ নং অছিয়তনামা দলিল বেআইনী, অকার্যকর সাব্য-স্ত বাদী ও আরজীর তফসীল বর্ণিত ৮৭১/২ শতক ভূমি বাবদ বাধ্যকর ন-হ ম-র্ম -ঘাষণার প্রার্থনা করার মত *locus standi* বাদী আপীলকারীর নাই ম-র্ম প্রতীয়মান হয়।”...

On the basis of the above concurrent findings both the courts below found against the plaintiff-petitioner. I am of the opinion that the learned appellate court did not commit any error of law by passing the concurrent judgment and decree finding against the plaintiff-petitioner and by declaring that the “Oshiotnama” created by the maker as to proportion of the land by the “Will” Deed No. 11 dated 17.08.2000 and as per the Islamic Law the above findings of the learned courts below came to a lawful conclusion to dismiss the suit.

In view of the above, this is not a proper case for interference by this court and this Rule does not require any further consideration, as such, there is no error of law or any

illegality committed by the learned appellate court below by passing the impugned judgment and decree.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim direction passed by this court at the time of issuance of this Rule for maintaining *status quo* in respect of possession and position by the parties of 26 decimals of land out of the suit land and subsequently the same was extended till disposal of the Rule are hereby recalled and vacated.

The judgment and decree dated 24.10.2018 passed by the learned Joint District Judge, Noakhali in the Title Appeal No. 109 of 2014 affirming the judgment and decree dated 26.08.2014 passed by the learned Assistant Judge, Chatkhil, Noakhali in the Title Suit No. 70 of 2009 dismissing the suit is hereby upheld.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned court below immediately.