

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3686 of 2019.

In the matter of:

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

And

Md. Shahjahan and others

...Petitioners

-Versus-

Md. Zakir Hossain and others

...opposite parties

Mr. M. A. Azim Khair with

Mr. Md. Sultanuzzaman, Advocates

...For the petitioners

Mr. Mohammad Eunos, Advocate

..For the opposite party No.1 & 2.

Heard on: 25.11.2024

Judgment on: 15.12.2024.

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and decree dated 25.11.2019 passed by the learned Additional District Judge, Charfashion, Bhola in Title Appeal No.44 of 2018 allowing the appeal and thereby reversing the judgment and decree dated 12.07.2018 passed by the learned Joint District and Sessions Judge, Charfashion Chowki Adalat, Bhola in Title Suit No. 583 of 2015 63 of 2007 decreeing 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 in short are that the petitioner as plaintiff instituted above suit for declaration that registered deed of Hiba Bil Ewaz executed by Md. Salauddin Bepari in favour of defendant Nos.1 and 2 on 04.06.1990 as described in "Kha" schedule to the plaint is collusive void and not binding upon the plaintiffs alleging that above Md. Salauddin Bepari died issueless and the plaintiffs are his legitimate heirs as the sons of his brother Karim Box and plaintiffs are in possession in the disputed land of Kha schedule. The defendants created above Hiba Bil Ewaz deed by false personation and fraud and above document was never acted upon and the defendant did not get possession of above land. The defendants as plaintiffs filed Title Suit No.226 of 2005 for partition and in above suit they made mention of above Hiba Bil Ewaz deed.

The suit was contested by defendant Nos.1 and 2 by filing a joint written statement alleging alleged that above Salauddin Bepari was issueless and he lived with the defendants and defendants No.1 and 2 used to take care of him and he died in the house of the defendants. Above Salauddin being satisfied with the behavior and treatment of defendants No.1 and 2 voluntarily transferred

above land by impugned Hiba Bil Ewaz deed dated 04.06.1990 and delivered possession. Defendants are in possession in above land and the defendants as plaintiffs filed Title Suit No.226 of 2005 for partition and in above suit defendants claimed "Ka" schedule land on the basis of above Hiba Bil Ewaz deed and the plaintiffs contested above suit as defendants and the trial court decreed above suit on determination that above Hiba Bil Ewaz deed was a valid and effective document. Above judgment and decree of Title Suit ANo.226 of 2005 is binding upon the plaintiffs and above judgment operates as resjudicata against the instant suit.

At trial plaintiff examined two witnesses and the documents of the plaintiff were marked as Exhibit Nos.1-6. Defendants examined four witnesses and documents of the defendants were marked as Exhibit Nos.Ka-Gha series.

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

Being aggrieved by above judgment and decree of the trial court defendants preferred Title Appeal No.44 of 2018 to the District Judge, Bhola which was heard by the learned Additional

District Judge who allowed the appeal set aside the judgment and decree of the trial court and dismissed the suit.

Being aggrieved by above judgment and decree of the court of appeal below above respondents as petitioners moved to this court and obtained this rule.

Mr. M. A. Azim Khair Advocate for the petitioner submits that the court of appeal below found that in Title Suit No.226 of 2005 the trial court has determined that the impugned Heba Bil Ewaz deed (Exhibit No.Ga4) was a valid and effective document and on the basis of above findings granted saham of above land to the defendants. As such this suit was barred by section 11 of the Code of Civil Procedure. But in spite of above findings the learned Judge of the court of appeal below proceeded to decide the merit of the appeal and most illegally held that the respondents did not have any right, title and interest in the land of Heba Bil Ewaz deed which is not tenable in law. If this suit was barred by resjudicata by the judgment and decree of Tile Suit No.226 of 2005 then the petitioners could vindicate their grievance in the Title Appeal No.6 of 2017 but if above findings of the court

of appeal prevails the appeal of the petitioners shall become infructuous.

Mr. Mohammad Eunos learned Advocate for the opposite parties submits that in his cross examination as P.W.1 Plaintiff No.1 has stated that Salauddin had three brothers but at the time of his death his brother Hamid Box and sister Hamida Khatun were alive and they were his heirs. The father of the petitioners was Karim Box who was a brother of Salauddin but he died during life time of Salauddin. As such the petitioners did not inherit the "Ka" schedule land of Salauddin and the petitioners have no locus standi to challenge the legality of impugned registered Heba Bil Ewaz deed executed by Salauddin in favour of the opposite parties. The learned Advocate further submits that genuinity and effectiveness of impugned registered Heba Bil Ewaz deed dated 04.06.1990 was determined between parties of this proceedings in partition Suit NO.226 of 2005. In above partition suit the trial court found that above Heba Bil Ewaz deed was a lawful document which was duly acted upon and above land was allocated in the saham of the opposite parties. Since the petitioners were defendants in above

suit and contested the same this instant suit is barred by Section 11 of the Code of Civil Procedure.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that Salauddin had two brothers namely Karim Box, father of the petitioners and Hamid Box father of the opposite parties and above Salauddin had no child. It is also admitted that the opposite parties as plaintiffs instituted Title Suit No.226 of 2005 for partition and the petitioners were contesting defendant in above suit and in above partition suit opposite parties claimed title and possession on the basis of impugned Heba Bil Ewaz deed dated 04.06.1990 (Exhibit No.Ga4) and on conclusion of trial the court determined that about Heba Bil Ewaz deed was a lawful deed which was acted upon and on the basis of above determination Ka schedule land was allocated in the saham of the opposite parties.

The plaintiffs have admitted in the plaint that they came to know about the impugned Heba Bil Ewaz deed from the plaint of Title Suit No.226 of 2005 in which they were defendants.

Since admittedly the correctness and effectiveness of the impugned Heba Bil Ewaz deed dated 04.06.1990 (Exhibit No.Ga4) was an issue in Title Suit No.226 of 2005 between the petitioner and opposite parties and a competent civil court on consideration of evidence has conclusively determined above issue holding that above Heba Bil Ewaz deed was a valid and lawful document which was acted upon and on the basis of the above findings above suit of partition was decreed above judgment operates as resjudicata against the instant suit of the petitioner for declaration that above Heba Bil Ewaz deed is a collusive and void document and not binding upon the plaintiffs.

In above view of the materials on record I am unable to find any legal infirmity or illegality in the findings arrived at the learned Judge of the court of appeal below that the instance suit was barred by Section 11 of the Code of Civil Procedure.

It is admitted that the petitioners as defendants being aggrieved by and dissatisfied with the judgment and decree of Title Suit No.226 of 2005 have preferred an appeal to the District Judge, Bhola being Title Appeal No.06 of 2017 and

above appeal is pending for hearing. The petitioners and opposite parties shall raise their respective claim as to legality and effectiveness of above Hiba Bil Ewaz deed in above appeal and the court of appeal below shall determine of above appeal on merit in accordance with law.

In the result, the Rule is discharged without any order as to costs.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.