IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

Present:
Mr. Justice Sikder Mahmudur Razi

Company Matter No. 201 of 2020

IN THE MATTER OF:
An application under Section 43 read with section 233 of the Companies Act, 1994.
-AND-
IN THE MATTER OF:
Sonjoy Kumar Saha.
…………. Petitioner
- V E R S U S -
Sonali Biri Factory (Pvt.) Limited and others.
................Respondents

Mr. Md. Kamal Hossain, Advocate
.......For the Petitioner.

Mr. Tanoy Kumer Saha, Advocate
....For the Respondent Nos. 1-4.

Heard on: 02.11.2025 & 06.11.2025
And
Judgment on: The 11th November, 2025

The instant company matter has been filed by the petitioner namely Sonjoy Kurmar Saha, under section 43 read with section 233 of the Companies Act, 1994.

Fact of the Petitioner's Case

Facts gathered from the substantive petition and other affidavits so filed by the petitioner are that respondent no. 1-company was incorporated on 06.08.1981 as a private limited company. The business of the company is to produce tobaco, biri, leaves, cigarette papers and other materials for packing of biri and cigarettes. Mr. Sunil Kumar Saha, Mr. Chitta Ranjan Saha, Mr. Gobindo Lala Saha, Mr. Rabindra Nath Saha, Mr. Ratan Kumar Saha, Mrs. Sabitri Rani Saha, Mrs. Mitrika Rani Saha and Mrs. Milon Rani Saha were the founder shareholders of the respondent no.1-company. Subsequently, there were number of transfers and allotment of shares and lastly Mr. Sunil Kumar Saha, Mrs. Sabitri Rani Saha, Mr. Taposh Kumar Saha and Mrs. Sampa Rani Poddar remains the shareholders-directors of the respondent no. 1-company. As per Schedule- X dated 31.12.2018 total number of shares of respondent no. 1-company was 89,800 out of which Mr. Sunil Kumar Saha was holding 31160 shares and was functioning as Managing Director of the Company. On the other hand Mrs. Sabitri Rani Saha was holding 27180 shares, Mr. Taposh Kumar Saha was holding 26460 shares and Mrs. Sampa Rani Poddar was holding 5000 shares. Subsequently, fresh 25,000 shares were allotted in favour of Sunil Kumar Saha on 20.05.2019. Mr. Sunil Kumar Saha died on 08.01.2020 leaving behind 2 sons namely Sonjoy Kumar Saha i.e. the petitioner and Taposh Kumar Saha i.e. the respondent no. 2, one daughter namely Nayon Rani Saha and wife Sabitri Rani Saha i.e. respondent no. 3 as his successors. As per Hindu law, after the death of Sunil Kumar Saha the petitioner and the respondent no. 2 and 3 are entitled to the deceased’s shares and accordingly, their names are required to be included against the shares left by Sunil Kumar Saha. But unfortunately and most illegally petitioner’s name has not been entered in the register of members of the company. The respondents kept the petitioner in total darkness as to the affairs of the company and the affairs of the company are being conducted by the respondents in a manner prejudicial to the interest of the petitioner though he holds 16.307% shares of the company by dint of succession. The petitioner apprehends that the respondents are plotting to misappropriate his shares in the company. The petitioner's further contention is that as plaintiff he has filed a civil suit being Title Suit No. 114 of 2020 before the Senior Assistant Judge, Sadar Court, Kushtia for partition of the land as described therein. However, the 'will' based on which the respondents are denying the entitlement of the petitioner in the company is a fraudulent document and has been made in violation of the provisions of the Succession Act, 1925. The petitioner is entitled to have his name entered in the register of the company as well as to get protection under section 233 of the Companies Act, 1994.

Response of the respondent nos. 1-4

Denying all the material assertions of the petitioner the respondents advanced their case by stating that Mr. Sunil Kumar Saha in his lifetime jointly with his wife i.e. the respondent no. 3 executed a registered 'will' with the Sub-Registry Office of Khulna on 22.03.2011 along with an affidavit and the contention of the 'will' was that after the demise of Sunil Kumar Saha his wife will conduct all the duties and liabilities till her lifetime and after her demise the respondent no. 2 will be the successor of all the assets he left. Now, Sunil Kumar Saha being dead his wife is holding the responsibility and liability by stepping in his position and the 'will' have to be probated after the demise of respondent no. 3 and the 'will' was executed jointly by them. The petitioner is fully conversant with the said 'will'. Therefore, the petitioner is not entitled to the deceased shares as he claimed. It was further contended that the petitioner was never at all involved and connected with the company. The instant company matter is not at all maintainable. Whether the petitioner is successor or not or whether he is entitled to any share or not is not the issue to determine in the present jurisdiction of this court. No civil court has declared the 'will' deed as null and void. Moreover, the petitioner has filed the instant company matter through his alleged attorney and the alleged power of attorney is doubtful for various reasons. With these averments the respondents prayed for dismissal of the instant company matter.

Submissions on behalf of the petitioner

Mr. Md. Kamal Hossain, learned advocate appeared on behalf of the petitioner and placed his submissions before this Court. The main line of the arguments of the petitioner are that the 'will' deed in question is a fraudulent document and execution of such a 'will' deed is against the Hindu Law of succession and violates **restriction 1** of the Schedule-III appended to the Succession Act, 1925. Relying on different paragraphs of "The Principles of Hindu Law" written by Sree Mridulkanti Rakshit, 9th Edition, 2018 the learned advocate further submitted that new line of inheritance by the 'will' cannot be created in derogation of Hindu Law and a Hindu cannot by 'will' bequeath the property which he could not have alienated by *inter vivos* and if at the moment of death, the right by survivorship is at conflict with the right by devise, then the title by survivorship being the prior title takes precedence to the exclusion of the 'by device' and a heritable estate must descend according to the personal law of the legatee. The learned advocate further submitted that the 'will' has been made without giving any schedule of property and thus the will is ineffective due to uncertainty and vagueness.

Submissions on behalf of the respondents

Mr. Tanoy Kumer Saha learned advocate appeared on behalf of the respondents. The learned advocate submitted that the instant petition, when examined through the prism of settled principles governing testamentary succession vis-à-vis corporate title, reveals an absolute absence of any prima facie entitlement on the part of the Petitioner, inasmuch as the Registered Joint 'will' executed by the parents unequivocally and unambiguously bequeaths their entire movable and immovable estate, including the business establishments and shares forming the substratum of the present *lis*, exclusively in favour of Respondent No. 2.

The learned advocate next submitted that this Court has already scrutinized the original registered volume containing the signatures and thumb impressions of the testators as well as earlier the court called the respondent no. 3 who is the joint executor of the 'will' deed and she also confirmed the ‘will’ and thus the court found no infirmity in respect of execution, intention, or testamentary capacity. The Petitioner's invocation of intestate succession constitutes a manifest misconception of law, the doctrine being inapplicable where a valid and operative ‘Will’ subsists and governs the devolution of property.

The learned advocate next submitted that by virtue of the statutory scheme embodied in Sections 63, 213, 264 and 268 of the Succession Act, 1925 the entire field relating to the proof, validity, legal character and enforceability of a Will lies within the exclusive cognizance of the competent Civil/Probate Court. The jurisdictional bar is substantive and mandatory and the legislative intent is further underscored by the embargo in Section 213 which categorically prohibits the establishment of any right as executor or legatee in any forum whatsoever unless and until probate or letters of administration have been duly obtained, thereby rendering the ‘Will’, prior to probate, a mere relevant fact bereft of dispositive legal force.

The learned advocate next submitted that the jurisdiction conferred upon this Company Court under Section 43 of the Companies Act, 1994, being corrective rather than constitutive in nature, empowers the Court solely to effectuate rectification of the Register of Members upon the prior establishment of an unimpeachable title in an appropriate forum, and does not, either expressly or by necessary implication, authorize an original adjudication of intricate personal law questions involving succession, testamentary devolution, or rival claims arising out of an alleged ‘Will’.

The learned advocate further submitted that the present petition is vitiated by a twofold fundamental defect: first, the Petitioner standing is conclusively excluded by the subsisting and authentic Registered Joint Will, thereby lacking even the minimal threshold of prima facie title required to invoke the rectificatory jurisdiction of this Court; and secondly, the application is inherently premature, inasmuch as the ‘Will’ remains un-probated and is legally incapable of conferring transmissible title during the lifetime of Respondent No. 3 and therefore, any prayer for rectification is not only speculative and misconceived but also violative of the statutory bar imposed by the Succession Act.

The learned advocate finally submitted that unlike the Mitakshara school, according to the Dayabhaga school, a father can dispose of by ‘will’ all his property, whether ancestral or self-acquired.

Findings of the Court

Although the petitioner filed the instant company petition seeking rectification of the company’s share register on the plain and simple ground of succession, the matter assumed a new dimension when the respondents based their case on a joint ‘will’ executed by Sunil Kumar Saha and Sabitri Rani Saha, the parents of the petitioner and respondent no. 2. However, the petitioner, without challenging the said ‘will’ by way of any amendment to the petition, assailed it on the ground that said ‘will’ is void, being fraudulent and contrary to the principles of Hindu law of succession. Therefore, the question now before this Court is to determine whether or to what extent the petitioner is entitled to the relief sought and to maintain this petition, as well as the scope of this Court’s jurisdiction to order rectification of the company’s share register in the given facts.

According to the petitioner, since the ‘will’ is the outcome of fraud and has been executed in contravention of the principles of Hindu succession, the said deed cannot stand as a bar to grant relief to the petitioner.

On the contrary, the respondents’ contention is that, under the Dayabhaga school, a father can dispose of all his property, whether ancestral or self-acquired, by a will; and since the ‘will’ in question is a registered instrument, unless and until it is set aside by a competent civil court, there is no scope to act in derogation of the said ‘will’. The respondents’ further contention is that the application is inherently premature, inasmuch as the ‘will’ remains un-probated and is legally incapable of conferring transmissible title during the lifetime of Respondent No. 3 and therefore, any prayer for rectification is not only speculative and misconceived but also violative of the statutory bar imposed by the Succession Act.

Now, let us examine the status of the ‘will’ deed in question. It appears from record that the ‘will’ deed in question is a registered instrument and the same was registered with the Sub-registry Office, Khulna on 22.03.2011. The deed was executed jointly by Sunil Kumar Saha and Sabitri Rani Saha, the parents of the petitioner and respondent no. 2. However, Sunil Kumar Saha died on 08.01.2020. Moreover, following the order of this court the Sub-Registrar of Khulna placed the Thumb-Impression Book being Volume No. 5/2011 as well as the Volume (মূল বালাম বই) being no. 01/11 before this court and on examination the existence of that deed has been found at page nos. 180-184 and the thumb-impression at the relevant place. Admittedly, the petitioner has not filed any civil suit challenging the said deed. Moreover, although the petitioner submitted that he had filed a suit for partition being Suit No. 114 of 2020, in fact, the said suit was one for permanent injunction and not for partition; and even that suit was not filed by the petitioner himself, but by his attorney, the authenticity of which is seriously disputed by the respondents.

Now, turning to another aspect of the case, it has been submitted by the learned advocate for the petitioner that a Hindu cannot execute a will in favour of one of his sons to the exclusion of the others. In this respect he placed before this court some paragraphs from “The Principles of Hindu Law” written by Sree Mridulkanti Rakshit, 9th Edition, 2018. However, on going through the said paragraphs it appears that those are relating to Mitakshara school. But in Bangladesh, Dayabhaga school govern the personal laws of the Hindus. And according to Dayabhaga law, a father can dispose of by ‘will’ all his properties, whether ancestral or self-acquired. § 272 of "Hindu Law" written by Sir Dinshaw Fardunji Mulla, 23rd Edition, LexisNexis is very relevant in this regard which runs as follows:

> *" § 272. Absolute power of father to dispose of ancestral property.- Since sons do not, according to Dayabhaga law, acquire any interest by birth in ancestral property held by the father, the father can dispose of ancestral property, whether movable or immovable, by sale, gift, will or otherwise, in the same way as he can dispose of his separate property.*
>
> *According to Mitakshara, the powers of a father to dispose of ancestral property are limited (§ 258).*
>
> *Section 30 of the Hindu Succession Act, 1956, enables a male Hindu in a Mitakshara coparcenary to dispose of by will, his interest in the coparcenary property. It also recognizes in effect the right of a male Hindu governed by Dayabhaga law to dispose of by will his interest in coparcenary property."*

Unlike the Hindu Succession Act, 1956, there is no corresponding legislation in Bangladesh; however, the general principles of the Dayabhaga school still govern the relevant field.

The learned advocate for the petitioner submitted that as per section 57 of the Succession Act, 1925 a will of a Hindu etc., is subject to certain restrictions and modifications as set out in Schedule III particularly restriction no. 1 which provides that, "nothing therein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos,* or to deprive any persons of any right of maintenance of which, but for the application of these sections, he could not deprive them by 'will'.

The question of deprivation of maintenance has not arisen in the instant case. However, to address the other restriction i.e. a testator cannot bequeath property which he could not have alienated *inter vivos* it will be proper to quote the 'note' of Chapter XIX dealing with WILLS in "Hindu Law" written by Sir Dinshaw Fardunji Mulla, 23rd Edition, LexisNexis which runs as follows:

> *"Under Hindu law, a Hindu cannot by will, bequeath property which he could not have alienated by gift inter vivos. That rule is now considerably modified in case of persons governed by Mitakshara law. Section 30 of the Hindu Succession Act, 1956, permits a member of a Mitakshara coparcenary to dispose of by will, his undivided interest in the coparcenary property. A coparcener under Mitakshara law has no power to dispose of his coparcenary interest by gift. That sale is not affected by the new legislation, but he is entitled to dispose of such interest by will.* ***The position of a coparcener under Dayabhaga law has not been altered in any manner. He could always dispose of his***

coparcenary interest by gift or will, subject to the claims of those who are entitled to be maintained by him*"*.

This point has also been clarified in the book titled "The Indian Succession Act" by Justice K Kannan, 11th Edition, LexisNexis wherein it has been mentioned as follows:

Restriction No. 1.- *Nothing therein contained shall authorize a testator to bequeath property which he could not have alienated inter vivos or to deprive any person of any right of maintenance of which, but for the application of these sections, he could not deprive them by will. Hence, a Hindu could bequeath whatever property he could alienate inter vivos. He may dispose of by will all his self-acquired property. A Hindu male governed by the Mitakshara law, could not by will bequeath his undivided share in the joint family property but if he is the sole surviving coparcener, he can bequeath the joint family property by will. A member of a Mitakshara family could bequeath his share in the joint family property after giving notice of partition to the other members. Now, s. 30 of the Hindu Succession Act, 1956 enables even the undivided interest in Hindu coparcenary to be bequeathed under a will. The effect is all the same where the testator treats a coparcenary property as his separate property in the will. The will would operate to create a bequest in respect of the interest which he had.*

> ***A Hindu father governed by Dayabhaga law can dispose of his self-acquired as well as ancestral property by will.***
>
> *But a Hindu cannot by will deprive his widow from a claim for maintenance 16 (see s. 22 of the Hindu Adoption and Maintenance Act, 1956).*
>
> *A Hindu female may dispose of her stridhan by will. By virtue of s. 14 of the Hindu Succession Act, 1956, a female Hindu is a full owner and can dispose of her property by will under s. 30 thereof.*

Therefore, the submission of the learned advocate for the petitioner on this point does not stand.

Another aspect of the case is that, the petitioner has filed the instant company matter claiming that he has become owner of some shares left by his father by way of succession i.e. it is a case of transmission of share by inheritance/succession. But in such a case for necessary rectification, he must have to produce succession certificate from competent court as per section 370 of the Succession Act, 1925 which is absent in the present case. Moreover, the court shall not grant any such certificate when the right is required by section 212 or section 213 of the said act to be established by letters of administration or probate. Therefore, even the respondent no. 2 will not be able to register his name against the share of his parents without complying section 213 and 370 of the Act, 1925. Section 213 runs as follows:

Section-213. (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in Bangladesh has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muslims, and shall only apply in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57.

Another submission of the learned advocate for the petitioner was that since there is no schedule in the 'will' deed therefore, the said deed has no value in the eye of law. On the going through the said 'will' deed it appears that the language that has been used is as follows:

"...আমাদের জী□নান্তে আমাদের ত্যক্ত □াংলাদেশের যা□তীয় স্থা□র অস্থা□র □িষয় সম্পত্তি ঘর□াড়ী, □্যা□সা প্রতিষ্ঠান, আস□া□পত্র ও □্যাংকে জমা টাকা ইত্যাদিসহ যাহা কিছু থাকি□ে...".

Therefore, the language used is very clear leaving no room for any sort of ambiguity at all. Mr. Mahmudul Islam in his book titled "Interpretation of Statutes and Documents", published in February, 2009 highlighted this point at page 316-319. Some important parts of the same are as follows:

> *In construing a document, the plain and ordinary meaning is to be adopted. The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all words in their ordinary, natural sense. …………..Thus in Re Purnchard {[1848], Ch.312} the words 'all my stocks and shares' were construed to include all forms of investment as the whole scheme of the will and the circumstances suggested that the testator intended a wider meaning………..*

Chapter VI of Part VI of the Succession Act, 1925 deals with "Of the Construction of Wills". From a plain reading from section 74 to section 111 of the said chapter it appears that those provisions emphasizes that the language used should be construed to give effect to the clear meaning and intention of the testator. Bequeathing "all property" is a clear expression of intent to pass on everything at the death of the testator(s). Moreover, in the deed it has been mentioned that consent of other successors has been obtained before execution of the same.

Therefore, upon consideration of all aspects, this Court is of the view that the veracity of the will, being found *prima-facie* correct, cannot be assailed within the summary jurisdiction of this Court. Accordingly, so long as the will remains valid and subsisting, the petitioner has no scope for relief and cannot maintain a petition under section 43 of the Companies Act, 1994.

Now, turning to the last question *i.e.* scope of this Court's jurisdiction to order rectification of the company's share register in the given facts, it is pertinent to mention that, although, as per section 43(3) of the Companies Act, 1994 the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law; but there is some contours in exercising this power.

In the case of *Kamla Devi Mantri v. Grasim Industries Ltd., (1990) 69 Com Cases 188 (MP):MANU/MP/0075/1989,* it was held that-

It is not in dispute before me that this being a case prior to the amendment in the Companies Act, 1956, this court can exercise powers under Section 155 of the Companies Act, as it stood before the amendment. According to Section 155(3) of the Companies Act, the court is empowered to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and is also empowered generally to decide any other question which it is necessary or expedient to decide in connection with the application for rectification. However, the object of this provision under the Companies Act is to provide a summary remedy in non-

controversial matters or in matters where a quick decision may be necessary to obviate any irreparable injury to the party. In S. Bhagat Singh v. Piar Bus Service Ltd [1960] 30 Comp Cas 300 ; AIR 1959 Punj 352, it has been held that the provisions of Section 155 of the Companies Act are not intended for settling controversies under several heads necessitating a regular investigation. When serious disputes are involved, the proper forum for their adjudication is a civil court. The proceedings for rectification of the register of members are of summary nature. Therefore, where a summary remedy may be necessary to obviate an irreparable injury to a party, then Section 155 can be invoked. In Jayashree Shantaram Vankudre v. Rajkamal Kalamandir P. Ltd. [1960] 30 Comp Cas 141 MANU/MH/0002/1960 : AIR 1960 Bom 136, the Bombay High Court has also taken the same view that the proceedings under Section 155 of the Companies Act are summary in nature and issues of complicated nature arising therein should not be decided in those proceedings. The proper form for adjudication of those disputes is a regular civil court. The Allahabad High Court in the case of Surendra Kaur v. Singh Engineering Works (P.) Ltd. (1977] 47 Comp Cas 638, placing reliance on the Supreme Court judgment, Mahendra Kumar Jain v. Federal Chemical Works Ltd. [1965] 35 Comp Cas 651, has held that where the petitioner's title was itself seriously disputed and where there are several disputed questions of facts requiring determination, Section 155 could not be applied and the share register could not be rectified and the petitioner was free to pursue the remedies in the civil court. Similarly, *the Punjab and Haryana High Court, in the case of Smt. Puran Devi v. S. Gurnam Singh [1977] 47 Comp Cas 796, has held that complicated questions of fact involving civil rights of the parties cannot, be decided in a company petition. Section 155 of the Companies Act being for the exercise of summary jurisdiction, the company court would refuse to exercise jurisdiction under this section where complicated facts are involved for determination of the petition. Proceedings under Section 155 are meant for rectification of a mistake or an error of a minor nature. Reliance has been placed on Public Passenger Service Ltd. v. M. A. Khader 6 [1966] 3 comp Cas 1 , wherein the Supreme Court has held that where, by reason of complexity or otherwise, the matter can more conveniently be decided in a suit, the court may refuse relief under Section 155 in exercise of its discretionary jurisdiction and relegate the parties to a civil suit.*

In the instant case, the will executed by the petitioner has been challenged by her on the basis of fraud, misrepresentation and indirectly, the petitioner has sought relief from this court to ignore a registered will which is executed by the petitioner on the ground of fraud, misrepresentation and undue influence. Similarly, the letters alleged to have been written by the petitioner to the company seeking inclusion of the name of respondent No. 2 as a joint holder of the shares along with the petitioner is also challenged on the basis of undue influence, fraud and misrepresentation. These are issues which can very well be decided in a civil court where detailed evidence can be led by the parties pertaining to *the relationship between the petitioner and respondent No. 2 and the circumstances under which the will was executed and the letters were sent to the company in respect of inclusion of the name of respondent No. 2 in the shares as a joint holder and also intimation to the company that in the event of the death of the petitioner, respondent No. 2 shall be the sole owner of the shares. This question cannot be decided on the basis of affidavits and in summary proceedings before this court.*

In *National Insurance Co. Ltd. v. Glaxo India Ltd. (1999) 98 Com Cases 378: MANU/MH/0187/1999: AIR 1999 Bom. 240* it was held that where the Company Court felt that the matter did not fall within the scope of rectification e.g. disputes involving ownership, fraud, forgery etc., it could relegate the parties to a civil suit.

In *Prabodh Jamnadas Lothari v. Vikram Jamnadas Kothari (2013) 112 CLA 617: (2013) 177 Com Cases 199 (Bom): MANU/MH/1845/2012* it was held that although company Law Board has exclusive jurisdiction to decide applications for rectification of members but when there are questions relating to ownership and title of shares and fraud or forgery in relation thereto, it will by beyond the jurisdiction of the CLB and have to be decided by the Civil Court.

In *Maharaj Devraj v. SMS Investment Corporation P Ltd. (2011) 105 CLA 354 (CLB) [Referred in "Guide to the COMPANIES ACT, by A Ramaiya, 18th Edition, Vol. 1, LexisNexis at page-1104"]* it was held that disputed and complicated questions of law and facts cannot be decided by the CLB in the summary jurisdiction under s. 111 of the 1956 Act [now s. 59 of the 2013 Act]. Therefore, where complicated question of law and facts in relation to claim for transmission/transfer of shares based on succession certificate are involved, the validity of which has been challenged, the same cannot be adjudicated in petition under s. 111 of the 1956 Act and the parties have to be relegated to the Civil Court for trial.

In *Harbaksh Singh Batra v. Larson & Toubro Limited (2010) 98 CLA 153 (CLB): MANU/CL/0086/2010* it was held that under the 1956 Act, even though sub-section (7) of s. 111 of the 1956 Act empowers the Company Law Board to decide the question relating to title of any person it meant to provide only in non-controversial matter and is not intended for settling controversies which may require detailed examination of complicated questions of fact and law. Therefore, such cases the adjudication has to be done by a Civil Court.

In the Case of *Tamizul Haque and another v. Shamsul Haque and others, reported in 43 DLR (AD) 34* it was held that when highly disputed questions of fact is involved and if it appears that the facts involved are so complicated calling for a detailed investigation then in a rectification of share register case the exercise of summary jurisdiction should be refused.

Therefore, it stands that relief under section 43 of the Companies Act, 1994 may be granted only for the purpose of undoing a wrong or compelling the performance of a right act, and not for making a declaration as to the present ownership of shares. In the instant case, as long as the 'will' remains subsisting and in force, there is no scope for adjudication in favour of the petitioner.

Since the petitioner's prayer under section 43 of the Companies Act, 1994 has failed, his prayer under section 233 of the said Act also fails automatically.

In the result, this Company Matter is hereby dismissed.

Send down the record of the respondent-company as well as the Thumb-impression book and the volume to the concerned authorities at once.

The respondent-company expressed his willingness to donate Tk. 1,00,000/- (One Lac) which is to be given in the form of pay order. Out of the said amount Tk. 50,000/-(Fifty thousand) to be paid in favour of "Tahfijul Quran Adarsha Madrasha", A/C No. 20804130201290917, Islami Bank PLC, Phulpur Branch, Mymensingh and Tk. 50,000/- (Fifty thousand) to be paid in favour of "Pachdorilla Jame Masjid" A/C No. 0100004218218, Janata Bank PLC, Nandail Road Bazar Branch, Mymensingh. Upon furnishing receipts of the payment, the respondent will be entitled to procure certified copy of the instant judgment.

Communicate a copy of the judgment and order to all concerned at once.

(Sikder Mahmudur Razi, J;)