

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

Present:
Mr. Justice S M Kuddus Zaman
and
Mr. Justice Sayed Jahed Mansur

FIRST APPEAL No.215 of 2017

Dulal Chandra Dey

... Appellant

-Versus-

Porikhit Chandra Dey and others

... Respondents

Mr. Topan Kumar Chakroborty with

Mr. Tushar Banik, Advocates

... For the appellants.

No one appears

... For the respondents.

Heard on: 21.10.2025 & 29.10.2025.

Judgment on: 30.10.2025.

S M Kuddus Zaman, J

This appeal is directed against the impugned judgment and decree dated 16.05.2017 (decree signed on 23.05.2017) passed by the learned Joint District Judge, 1st Court, Bhola in Title Suit No.05 of 2010 dismissing the suit on contest.

Facts in short are that the appellant as plaintiff instituted above suit for declaration that registered kobla deed No.2531 of 2009 dated 16.09.2009 of Borhanuddin Sub-Registry office executed by Santi Bala Dey to defendant Nos1-2 is fraudulent, illegal and not binding upon the plaintiff.

It was alleged that total 8.32 acres land including disputed 2.56 acres belonged to Onnoda Charan Dey who died leaving four daughters namely Birola

Sundori, Hemlata, Rangoda Sundari and Santi Bala as heirs. Above Birola Sundori died leaving above three sisters as heirs. Hemlata died leaving two sons plaintiff No.1 and defendant No.5 as heirs. Rangoda Sundori gave birth to one son who is defendant No.1. Santi Bala was married but her husband died and she is childless. Above Santi Bala had life estate in above 2.56 acres land and plaintiff and defendant Nos.1 and 5 are the reversionar heirs of Onnoda Charan and rightful owner of above property. Defendant No.1 and 2 by fraudulent means without any consideration obtained above registered kobla deed dated 16.09.2009 for 2.56 acres land from above Santi Bala. She is an old and illiterate village woman and she had no legal necessity to transfer above land. In above document a false statement has been incorporated that above Santi Bala was transferring above land for legal necessity which is not true.

Defendants No.1-4 contested above suit by filing a joint written statement alleging that above property belonged to Onnoda Charan who died leaving four daughters namely Birola Sundori, Hemlata, Rangoda Sundari and Santi Bala as heirs. Above Birola Sundori died leaving three sisters as heirs. Plaintiff and defendant No.5 are two sons of Hemlata and defendant No.1 is a son of Rangoda. Above Santi Bala is a childless widow and she had transferred some part of his land on several dates to others by registered kobla deeds. Above Santi Bala was in need of money for maintenance and medical treatment and performing religious rites for her deceased father. She sought money to defendant No.1 and plaintiff No.1 but the plaintiff refused to give her any money and then the plaintiff and defendant No.4 Santi Bala wanted to sale above 2.46 acres property and defendant Nos.1-2 agreed to purchase above land for consideration of Tk.5,10,000/-. Defendant No.4 executed and registered above sale deed dated 16.09.2009 and delivered possession to the defendants.

At trial plaintiff examined three witnesses and defendant examined two. Documents of the plaintiff were marked as Exhibit Nos.1-3 series and those of the defendants were marked as Exhibit Nos.Ka-Ga series.

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

Being aggrieved by above judgment and decree of the learned Joint District Judge plaintiff as appellant moved to this court and preferred this appeal.

Mr. Tushar Banik learned Advocate for the appellant submits that disputed 2.46 acres land was acquired by Santi Bala in life estate from his father Onnoda Charan and plaintiff and defendant No.1 are revisionar heirs of above Onnoda Charan. Santi Bala is an old, illiterate and childless widow who had limited interest in above property and authorized to transfer above land only for legal necessity. Plaintiff as a revisionary heir has challenged the legality and propriety of registered kobla deed dated 16.09.2009 (Exhibit No.2) alleging that Santi Bala had no legal necessity to transfer above land. It was further alleged that above kobla deed was obtained by undue influence and cheating. The burden to prove that above kobla deed was lawfully executed by Santi Bala for legal necessity lies on defendant Nos.1 and 2 but the defendants have miserably failed to prove the existence of legal necessity. The learned Joint District Judge should have declared above kobla deed as an unlawful document but the learned Joint District Judge most illegally on the basis of averments of above kobla deed held that Santi Bala transferred above land for legal necessity which is not tenable in law.

The respondent did not enter appearance in this appeal nor any one was found available on behalf of the respondent when this appeal was taken up for hearing.

We have considered the submissions of the learned Advocate for the appellant and carefully examined all materials on record.

It is admitted that Onnoda Charan was the rightful owner and possessor of 8.32 acres land including disputed 2.46 acres and he died leaving four daughters namely Birola Sundori, Hemlata, Rangoda Sundari and Santi Bala as heirs and Santi Bala acquired disputed 2.46 acres land in life estate as a heir of Onnoda Charan. It is also admitted that plaintiff and defendant No.5 are two sons of Hemlata and defendant No.1 is son of Rangoda and Birola Sundari died issueless.

It is admitted that Santi Bala is an illiterate, childless and old widow of above 70 years of age and she executed and registered impugned kobla deed No.2531 of 2009 dated 16.09.2009 for above 2.46 acres land to defendant Nos.1 and 2 for consideration of Tk.5,10,000/-. Plaintiff as a revisionar heir of Onnoda Charan Dey has challenged the legality and propriety of above kobla deed dated 16.09.2009 (Exhibit No.2) on the ground that above Santi Bala did not have any legal necessity to transfer above land. Plaintiff himself gave evidence as P.W.1 and reiterated above claims and allegations as set out in the plaint that Santi Bala had limited interest in above 2.46 acres land as a daughter of Onnoda Chanran Dey and she had no legal necessity to transfer above land and above registered kobla deed was obtained by defendant No.1 by undue influence and cheating. In cross examination P.W.1 stated that he possessed 2 acres land of his maternal grandfather Onnoda Charan Dey on behalf of his mother. He denied that Santi Bala sold above land for her maintenance, medical treatment and for performing religious rites for her deceased father and and to bear the expenses for visiting religious sites. He also denied that Santi Bala received Tk.5,10,000/- from defendant Nos.1 and 2 as consideration of above registered kobla deed. P.W.1

also denied that after being sick Santi Bala wanted money to him and defendant No.1 for medical treatment but he refused to give money.

In view of above evidence of P.W.1 the onus shifted upon defendant Nos.1 and 2 to prove that Santi Bala transferred above land for legal necessity and they paid Tk.5,10,000/- as consideration of above kobla deed to Santi Bala. In their written statement defendants No.1 and 2 has mentioned that Santi Bala needed money for her maintenance, performing religious rites for her deceased father and visiting holy sites and she approached plaintiff and defendant No.1 for money but the plaintiff refused to give money. Plaintiff and defendant No.4 wanted to sale above land and defendant No.1 and 2 agreed to purchase above land and consideration of above sale was fixed at Tk.5,10,000/-. There is no clear and specific claim that Santi Bala sold above land to bear the expenses of her maintenance, medicinal treatment, performing rites for her deceased father and visiting religious sites. Nor there is any claim in the written statement that above Santi Bala applied sale proceeds of above land for her medical treatment and maintenance and for performing rites for her deceased father and for visiting religious sites. At trial defendant No.1 gave evidence as D.W.1 but in his evidence he did make specific mention that Santi Bala wanted to sale above land for her maintenance, medical treatment and performing religious sites for her deceased father or visiting holy sites. He merely stated that Santi Bala sought money to him for performing religious rites for her deceased father. But in the written statement it was claimed that Santi Bala demanded money to plaintiff and defendant No.1 for her maintenance, medical treatment, visiting holy sites and performing rites for her father. The plaintiff did not produce any evidence oral, documentary to show that sale proceeds of above land was applied for medical treatment, performing religious rites or visiting holy places. In cross examination

D.W.1 stated that Santi Bala is of 70 years of age and she resides with him. She is suffering from arthritis. But no medical certificate was produced in support of medical treatment of Santi Bala.

On consideration of above facts and circumstances of the case and materials on record we hold that defendants have miserably failed to substantiate their claim that Santi Bala transferred above 2.46 acres land for legal necessity or they paid consideration of above kobla deed Tk.5,10,000/- to Santi Bala or above money was applied for her medical treatment, maintenance, performing rites for her father or visiting holy places by legal evidence. But the learned Joint District Judge utterly failed to appreciate above materials on record and most illegally dismissed above suit which is not tenable in law.

In above view of facts and circumstances of the case and materials on record we find substance in this appeal which deserves to be allowed.

In the result, the appeal is allowed.

The impugned judgment and decree passed by the learned Joint District Judge, 1st Court, Bhola in Title Suit No.05 of 2010 on 16.05.2017 is set aside and above suit is decreed on contest against defendant Nos.1-4 and ex-parte against the rest without cost. It is hereby declared that the registered kobla deed No.2531 of 2009 dated 16.09.2009 of Borhanuddin Sub-Registry Office executed by Santi Bala Dey to defendant Nos.1-2 as described in “Ka” schedule to the plaint is unlawful and not binding upon the plaintiff.

Let a copy of this judgment be transmitted down at once.

Sayed Jahed Mansur, J

I agree.

Md. Kamrul Islam
Assistant Bench Officer