

**IN THE SUPREME COURT OF BANGLADESH**

**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Hasan Foez Siddique**

**Chief Justice**

**Mr. Justice Obaidul Hassan**

**Mr. Justice M. Enayetur Rahim**

**CIVIL APPEAL NO.128 OF 2008.**

(From the judgment and order dated 22.08.2007 passed by the High Court Division in Civil Revision No.1542 of 2001.)

Md. Kamal Hossain and others Appellants.

**=Versus=**

Abdul Ahad and others Respondents.

For the Appellants : Mr. Alim Hossain, Advocate (appeared with leave of the Court), instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For the Respondents: Mr. A.J. Mohammad Ali, Senior Advocate, instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

***Date of hearing* : 12.04.2022.**

***Date of judgment* : 19.04.2022**

**JUDGMENT**

**Hasan Foez Siddique, C. J:** This appeal is directed against the judgment and order dated 22.08.2007 passed by the High Court Division in Civil Revision No. 1542 of 2001 making the Rule absolute upon setting aside the judgment and decree dated 27.09.2000 passed by the

learned Additional District Judge, 7<sup>th</sup> Court, Dhaka in Title Appeal No. 34 of 2000 reversing those dated 14.11.1999 passed by the learned Assistant Judge, 5<sup>th</sup> Additional Court, Dhaka in Title Suit No. 180 of 1997.

The relevant facts, for disposal of this appeal, in short, are that Azizan Bibi, predecessor-in-interest of the respondent No.1, filed the aforesaid suit for cancellation of document, declaration of decree not binding and recovery of khas possession of the suit land along with declaration of title to the same stating that the Government leased out the suit land for 99 years and delivered possession of the same to one Md. Hasib who sold it to plaintiff Azizan Bibi by registered deed of sale bearing No.3399 dated 01.04.1964. Defendant No.1 entered into the suit land as a tenant in the month of June/July, 1965 and at the beginning of the liberation war defendant No.1 terminated the tenancy and left the house. Just after liberation of Bangladesh, defendant No.1 forcefully took over possession of the case house and drove out the plaintiff therefrom and took her L.T.I.'s

on some blank papers and managed to receive the documents of the house from the plaintiff and thereafter finding no other alternative, she took shelter in the Geneva Camp and she had been living there. Thereafter, while she had been living in the Geneva Camp, defendant No.1 again took her L.T.I's on some blank and written papers. The Government declared the case house as an abandoned building. The plaintiff filed Case No.80 of 1989 in the First Court of Settlement for exclusion of the same from the list of abandoned buildings. Defendant No.1 also filed case No.81 of 1989 in the said Court and those two cases were heard analogously. The Court of Settlement allowed both the cases by a common judgment and order dated 15.08.1995. At the time of hearing of those cases it was revealed that defendant Nos.1-2 as plaintiffs instituted Title Suit No.1339 of 1981 for declaration of title and recovery of possession of the case house against the Government of Bangladesh in the Fourth Court of the learned Joint District Judge, Dhaka and, subsequently, it was re-numbered as Title Suit No.909 of 1985 on transfer to the

Second Court of the learned Joint District Judge, who, upon conclusion of hearing was pleased to decree the suit ex parte on 02.03.1991. Government of Bangladesh filed Miscellaneous Case No.100 of 1991 for setting aside the ex parte decree, but it was dismissed on contest on 30.04.1991, and thereafter, the Government preferred Miscellaneous Appeal No.112 of 1992, which was also dismissed on 11.06.1995. The plaintiff was not impleaded in that suit who came to know definitely about the story of purchase deed dated 23.10.1979 on 24.10.1995 by obtaining certified copy of the same. The deed of sale dated 23.10.1979 is void, ineffective, fraudulent and without consideration. The plaintiff is an old pardanshin illiterate lady and defendant No.1 fraudulently created the deed of sale in respect of the case house. She did not receive any consideration from defendant Nos.1-2. The cause of action of the suit arose on 15.08.1995 when defendant No.1 produced the aforesaid deed of purchase in the Court of Settlement. During the pendency of the suit the plaintiff died leaving

respondent No.1 as her legal heir, who was substituted in the suit.

The defendant Nos.1-2 contested the suit by filing a joint written statement contending inter alia that the Government leased out the case house for 99 years and delivered possession of the same to one Md. Hasib by registered deed of lease dated 25.11.1963. He sold the case house and delivered possession of the house to plaintiff Azizan Bibi, mother of respondent No.1. Said Azizan Bibi transferred the case house to defendant Nos. 1-2 at a consideration of tk.20,000/- by deed of sale bearing No.5095 dated 23.10.1979 and delivered possession of the same to them on the same day. She appeared before the Sub-Registrar and put her L.T.I. in the deed of sale and in the L.T.I. register of the S.R. Office upon receiving consideration money from defendants Nos.1-2 in presence of witnesses. Azizan Bibi also handed over the original title deeds of the case house to defendant Nos.1-2 on the same day. They had been living in the case house since

23.10.1979 but the Government and its officials were disturbing the defendant Nos.1-2, hence they were constrained to institute Title Suit No.1339 of 1981 for declaration of title in the case property against the Government in the Fourth Court of Joint District Judge, Dhaka in 1981. Ministry of Housing and Public Works issued a notice to defendant Nos.1-2 to surrender possession of the house to them on 24.08.1982, and thereafter, defendant Nos.1-2 were evicted by Police force from the case house on 30.08.1982. Then defendant Nos. 1-2 amended the plaint of the suit and prayed for recovery of khas possession of the suit property and it was allowed by the Court. Title Suit No.1339 of 1981 was renumbered as Title Suit No.909 of 1985 on transfer to the Court of the learned Joint District Judge, Second Court, Dhaka who upon hearing was pleased to decree the suit ex parte on 02.03.1991. The decree holders Nos.1-2 filed Title Execution Case No.05 of 1991 in the said Court and possession of the suit land was restored to defendant Nos.1-2 by the learned Joint District Judge, Dhaka on

14.10.1991. The Government filed Miscellaneous Case No.100 of 1991 for setting aside the ex parte decree and it was dismissed on contest, and thereafter, the Government preferred Miscellaneous Appeal No.112 of 1992 in the Court of the learned District Judge and it was also dismissed on 11.06.1995.

The trial Court decreed the suit. Md. Siddiqur Rahman, predecessor-in-interest of the present appellant Nos.1-5 and another preferred appeal and the appellate Court allowed the appeal. Then plaintiff Azizan Bibi filed civil revisional application in the High Court Division and obtained Rule. The High Court Division, by the impugned judgment and order, made the Rule absolute. Thus, the contesting defendants have preferred this appeal upon getting leave.

Mr. Alim Hossain (appearing with the leave of the Court) appearing for the appellants, submits that Azizan Bibi executed the sale deed, hence she could not claim the sale deed to be void and thereafter, this suit was barred under Article 6 of P.O. No.16

of 1972. After exclusion of the suit property from the list of abandoned building by virtue of the judgment and order of the Court of Settlement, she was barred by the principle of estoppel, and therefore, the judgment and order of the High Court Division is liable to be set aside. He submits that plaintiff Azizan Bibi was admittedly out of possession from the suit land for more than 25 years, so her prayer for recovery of khas possession of the same was barred by limitation. He further submits that as per the decree of Title Suit No.909 of 1985, the possession of the case property was restored to the appellant and the Court of Settlement allowed the settlement case in their favour. Since the Court of Settlement released the property in favour of appellants, the instant case was not hit by the provision of P.O. No.16 of 1972 .

On the other hand, Mr. A. J.Mohammad Ali, learned Senior Counsel, appearing for the respondent No.1, submits that the suit property was enlisted as abandoned property under P.O. No.16 of 1972 and the same was



under the control and management of the Government till 14.10.1991 as per the admission of defendant- appellant, and the impugned deed dated 23.10.1979 and the ex parte decree dated 02.03.1991 were null ex parte decree and void in view of Article 6 of P.O.16 of 1972, therefore, the appeal is liable to be dismissed. He further submits that admittedly the plaintiff was lawful owner of the property and after the war of liberation she took shelter in Geneva Camp, Mohammadpur, Dhaka to save her life and the property was enlisted as an abandoned property under P.O. No.16 of 1972 and that property was under the control and management of the Government through Government allottee Md. Hanif till 14.10.1991 and the defendant -appellant took over possession of the said property on 14.10.1991 through Court on the basis of the impugned deed dated 23.10.1979 and the ex parte decree dated 02.03.1991. The plaintiff was not party to the decree and that Court of Settlement released the property on 15.08.1995 and the plaintiff came to know about the disputed deed and decree from the record of Court of

Settlement which delivered judgment on 15.8.1995 and the instant suit was filed on 27.4.1996 which was within time, therefore, the High Court Division rightly decreed the suit. He lastly submits that the impugned deed and the ex parte decree obtained by the defendant appellants are products of fraud and that the plaintiff was not a party to the said ex parte decree and her title in property has not been lost by the said ex parte decree and that said decree is not binding upon the plaintiff, the High Court Division rightly decreed the suit.

It appears from the materials on record that Azizan Bibi instituted the instant suit stating that the Government allotted the suit plot to one Md. Hasib on 25.11.1963, who sold the same to plaintiff Azizan Bibi by the deed dated 01.04.1964. It is the case of the plaintiff that the defendant took her L.T.I. on a blank paper on gun point and compelled her to leave the house and, thus, she took shelter in Geneva Camp and, thereafter, the suit house was enlisted as abandoned property under P.O. No.16 of 1972

and the said property was enlisted as abandoned property in the Government published official gazette in 1986 and plaintiff filed Settlement Case No.80 of 1989 before the Court of Settlement for getting the said property released. On the other hand, defendant No.1, predecessor-in-interest of the present appellants, filed Settlement Case No.81 of 1989 for getting the said property released claiming that he obtained the suit property on the basis of kabla deed dated 23.10.1979 and also obtained ex parte decree in Title Suit No.1339 of 1981 and got possession through Court on 14.10.1991. The claim of the plaintiff was that the said kabla deed and decree were products of fraud and those were null and void.

Since the plaintiff instituted the suit for cancellation of deed dated 23.10.1979, it is the duty of the plaintiff to prove that the sale deed was obtained fraudulently. It appears that the High Court Division treated the said deed void assuming that the defendant appellants purchased the said land when the property was declared as abandoned

property. Therefore, such transfer was null and void. The trial Court as well as High Court Division in their judgments did not draw any such conclusion that plaintiff Azizan Bibi did not execute the kabla deed dated 23.10.1979, though it was the case of the plaintiff that defendant No.1 obtained her signatures on blank papers and created the kabla deed dated 23.10.1979. In the plaint, the plaintiff, inter alia, stated, “বাংলাদেশ স্বাধীন হবার পর “ক” তপসিল বর্নিত সম্পত্তিতে ১নং বিবাদী ও আরো কিছু লোক জোরপূর্বক প্রবেশ করিয়া প্রানের ভয় দেখাইয়া কিছু অলিখিত কাগজে জোর পূর্বক বাদিনীর টিপ নিয়াছিল। পরবর্তীতে বাদিনী জেনেভা ক্যাম্পে একাকী থাকাকালীন সময়ে ১নং বিবাদী তৎক্ষণাতমূলে কিছু লিখিত ও অলিখিত কাগজে এই বলে বাদিনীর টিপ নেয় যে বাদিনীর তাহার নালিশী সম্পত্তি ফেরৎ পাওয়ার জন্য ঐ সমস্ত কাগজে বাদিনীর টিপসহি দরকার। টিপসহি নেবার পর ১নং বিবাদী বাদিনীকে এই মর্মে ভয় দেখাইয়াছে যে, এই টিপ সহির কথা অন্য কাহারও নিকট প্রকাশ করিলে ১নং বিবাদী বাদিনী এবং তাহার ছেলে মেয়েদেরকে প্রানে মারিয়া ফেলিবে। এমতাবস্থায় ১-২নং বিবাদীর অনুকূলে বাদিনী দত্তা মর্মে প্রকাশিত বিগত ২৩-১০-১৯৭৯ইং তারিখের সম্মাদিত ও রেজিস্ট্রিকৃত নালিশী কবালা দলিল পন প্রবৃতিহীন তৎক্ষণী, ফেরারী, ফল ও বলবিহীন এবং নিম্নোক্ত হেতুতে রদ যোগ্য বটে।” The plaintiff brought the allegation that defendant No.1 managed to get the kabla deed executed and registered by practising fraud, but none of the Court drew any conclusion that the plaintiff has been able to prove the

allegation of fraud. Since the Kabla deed dated 23.10.1979 was executed and registered, it is to be presumed that all the official acts were done accordingly. It was the plaintiff's duty to prove fraud which has not been done in the instant case. It further appears from the judgment and order passed by the Court of Settlement dated 15.08.1995 in Settlement Case No.80 of 1989 and 81 of 1989 that it was held that the property should not have been included in the list of abandoned properties and it ordered that the property was liable to be excluded from 'Ka' schedule of the abandoned building. It further appears from the materials on record that before publication of the property in the official gazette in 1986 in the list of the abandoned properties, the defendant Nos.1-2 instituted Title Suit No.1339 of 1981, in the 4<sup>th</sup> Court of the then Subordinate Judge, Dhaka against Government claiming the property on the basis of kabla deed dated 23.10.1979 (the said suit was renumbered as Title Suit No.909 of 1985 in the 2<sup>nd</sup> Court of Subordinate Judge, Dhaka) and for declaration that the claim of the Government that the

suit property is abandoned property was illegal and also for recovery of khas possession. They added the prayer for recovery of possession after Government had dispossessed them from suit land on 30.08.1982. The said suit was decreed on 02.03.1991 and upon execution of the said decree they took possession of the same, that is, the present plaintiff Azizan Bibi had no possession in the suit land and she did not take any step for getting the possession of the same. It appears from the judgment and order of the Court of settlement that Azizan Bibi never left this country and her whereabouts was not untraced. So inclusion of the property as abandoned property was not justified. Azizan Bibi transferred her right and title in the suit land to defendant Nos.1-2 by virtue of kabla deed dated 23.10.1979 and we have found that there is no finding of the Court below that defendant No.1 obtained the said deed by practising fraud, therefore, the right and title of Azizan Bibi to the suit land has been extinguished after execution and registration of the sale deed dated 23.10.1979 and by

virtue of the said deed her title to the suit land has been divested to defendant Nos.1-2.

It appears from the judgment and order of Court of Settlement that it opined that the property was wrongly included in the list of abandoned properties and Azizan Bibi and defendant No.1 can settle their dispute in competent Court. Since after execution and registration of sale deed dated 23.10.1979 Azizan Bibi lost her title to the suit land and that she failed to prove that the impugned deed was fraudulent one, we are of the view that plaintiff Azizan Bibi has no title to the suit land, the High Court Division has committed an error of law in making the Rule absolute thereby decreeing the suit.

Accordingly, we find substance in the appeal. Thus, the appeal is allowed. The judgment and order dated 22.08.2007 passed by the High Court Division in Civil Revision No. 1542 of 2001 is hereby set aside.

**C. J.**

**J.**

**J.**