

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3966 OF 2019

In the matter of:

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

And

Md. Ershad Ali

... Petitioner

-Versus-

Md. Idris Ali and others

... Opposite parties

None appears

.... For the petitioner.

Mr. A.S.M. Sharif Newaz, Advocate

.... For the opposite party Nos.1-6.

Heard and Judgment on 16.07.2023.

On an application under Section 115(1) of the Code of Criminal Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 23.03.2016 passed by the learned Joint District Judge, 2nd Court, Rangpur in Other Class Appeal No.13 of 2011 disallowing the appeal and thereby affirming those dated 29.08.2010 passed by the learned Senior Assistant Judge, Pirgonj, Rangpur in Other Class Suit No.646 of 2008 disallowing the suit.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that Heba-bil-ewaz deed No.9572 dated 21.09.1968

and No.12664 dated 19.12.1970 are unlawful, created and defendants did not acquire any title in the disputed land on the basis of above deeds and for recovery of khas possession for 60 decimals land as described in 'Kha' schedul to the plaint.

It was alleged that Sefat Ullah transferred 36.50 decimals land to his son plaintiff by registered deed of Heba-bil-ewaz dated 17.12.1987. Plaintiff was in possession in above land and the defendants have dispossessed him forcibly about three years back.

Defendant Nos.1-6 contested above suit by filling joint written statement alleging that above Sefat Ullah transferred 36 decimals land to his wife Amena Begum by two registered deed of Heba-bill-ewaz dated 21.06.1968 and 16.12.1970 who has died leaving the plaintiff as her heir and they are owning and possessing above land as heirs of Amena Begum.

At trial plaintiff examined 4 witnesses and defendants examined 4. Documents produced and proved by the plaintiffs were marked as Exhibit No.1 series - 9 series and those of the defendants marked as Exhibit Nos. 'Ka'-'Kha'.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge, Rangpur dismissed above suit.

Being aggrieved by above judgment and decree the plaintiff preferred Other Class Appeal No.13 of 2011 which was heard by the learned Joint District Judge who dismissed the appeal and affirmed the judgment and decree of the Trial Court.

No one appears for the petitioner when the Civil Revision was taken up for hearing although the revision appeared in this list for hearing today.

Mr. A.S.M. Sharif Newas, learned Advocate for the opposite party Nos.1-6 submits that the plaintiff could not mention in clear terms what quantity of land he acquired by gift and what quantity of land by inheritance. In this case for recovery of possession the plaintiff could not mention the manner of his previous possession and the date of his alleged dispossession by legal evidence. On consideration of facts and circumstances of the case and evidence on record the learned Joint District has rightly dismissed the appeal and affirmed the lawful judgment and decree of the Trial Court which calls for no interference.

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

It is admitted that Sefat Ullah was the owner and possessor of 96 decimals land as described in 'Ka' schedule to the plaint and the plaintiff is a son of above Sefat Ullah by his first wife and defendant

Nos.1-4 are four sons of above Sefat Ullah by his second wife Amena Begum.

In this suit for partition the plaintiffs claim title both as heir of Sefat Ullah and by dint of a Heba-bil-ewaz deed dated 17.12.1987 from his father Sefat Ullah. The plaintiff did not mention in the plaint the quantity of land he acquired from his father by Heba-bil-ewaz deed dated 17.12.1987 nor it is clear what quantity of land he claims as heir of Sefat Ullah. The plaintiff has challenged the legality and propriety of two Heba-bil-ewaz deed dated 21.06.1968 and 19.12.1970 executed by Sefat Ullah to his second wife Amena Begum for 63 decimal land. The plaintiff has sought a decree for recovery of khas possession for 60 decimals land as described in 'Kha' schedule to the plaint. As mentioned above besides the plaintiff Sefat Ullah had another four sons and a wife namely Amena Khatun as his heirs. As such it is not understandable as to how the plaintiff alone could inherit 32 decimal land.

As mentioned above defendants claim that above Sefat Ullah transferred 45 decimals to his wife Amena Begum by registered deed of Heba-bil-ewaz dated 21.09.1968 and again transferred 18 decimal land to Amena Begum by another registered deed of Heba-bil-ewaz dated 19.12.1970. The defendants produced and proved above two registered

deeds of Heba-bil-ewaz in original and those were marked as Exhibit No.'Ka' and 'Kha' respectively. As soon as the defendants produced above two registered deeds of more than 30 years old the onus to prove that those documents were forged and not acted upon shifts upon the plaintiff. But the plaintiffs did not make any endeavor to prove the same by legal evidence.

In this suit plaintiff's claim recovery of khas possession on the basis of his better title but as mentioned above two registered deeds of the defendants (Exhibit No. 'Ka' and 'Kha') were executed and registered long before the deed of Heba-bil-ewaz dated 17.12.1987 of the plaintiff. The plaintiff claim recovery of possession on the basis of his title not on the basis of previous possession and since his title was seriously affected by above mentioned two registered documents of the defendants (Exhibit Nos.'Ka' and 'Kha') the plaintiff should have sought a declaration of title for the disputed property. But the plaintiff did not place his title for judicial review by the Court by way of seeking a decree for declaration of title for above property. As such this suit was not maintainable in law.

In the plaint the plaintiff did not mention anything about the nature of the disputed land and the manner of his previous possession before his alleged dispossession by the defendants. Plaintiff himself

gave evidence as PW1 but he could not mention the date of his alleged dispossession from the disputed land. In cross examination he stated that he cannot say the Bangla or English date of his alleged dispossession from the disputed land.

As far as his deed of Heba-bil-ewaz dated 17.12.1987 is concerned PW1 Ershsad Ali stated in his cross examination that in above deed there are 7 Plots but he cannot say from which plot what quantity of land he acquired. He cannot mention the date of receipt of possession in the disputed land on the basis of his Heba-bil-ewaz deed. PW2 Afser Ali is a relative of the plaintiff and he has mentioned that the defendants dispossessed the plaintiff from the disputed land on 01.03.2008. But he could not say anything about the previous possession of the plaintiff in the disputed land before above dispossession. PW3 Mozammel Haque stated in his cross examination stated that the plaintiff is a daily agricultural labour. Above witness gave evidence on 23.05.2010 and stated that the defendants dispossessed the plaintiff from the disputed land about three years back. PW4 Moshiair Rahman Prodhan could not mention the date of alleged dispossession of the plaintiff by the defendants.

On consideration of above evidence on record it is crystile clear that the plaintiff could not prove his previous possession in the

disputed land and his alleged dispossession from the same by legal evidence. Besides the plaintiff failed to prove his lawful title in the disputed land.

On correct appreciation of materials on record the learned Assistant Judge has rightly dismissed the suit and the learned Joint District Judge on an independent and correct assessment of the materials on record has rightly dismissed the appeal and affirmed above judgment and decree of the Trial Court which calls for no interference.

As such, this revision is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER