

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

***Present:***  
***Mr. Justice S M Kuddus Zaman***  
***and***  
***Mr. Justice Md. Saiful Islam***

***FIRST APPEAL No.195 of 2020***

Sultan Ahmed Chowdhury being dead his legal heirs;  
Laila Arjumand Banu and others

... Appellants

-Versus-

Setara Begum (Jhunu) and others

...for the respondents

Mr. Khandoker Sultan Ahmed, Advocate

... For the appellants

Mr. Md. Fakhar Uddin with

Ms. Jobeda Begam with

Md. Asif Akter with

Ms. Zannatul Nadia, Advocates

... For the respondents

**Heard on: 11.11.2025 & 24.11.2025.**

**Judgment on: 25.11.2025.**

**S M Kuddus Zaman, J**

This appeal is directed against the impugned judgment and decree dated 27.02.2020 passed by the learned Joint District Judge, Arbitration 2<sup>nd</sup> Court, Cox's Bazar in Other Suit No.12 of 2005 dismissing the suit.

Facts in short are that now deceased Sultan Ahmed Chowdhury as plaintiff instituted above suit for cancellation of registered deed of gift No.1211 dated 16.03.2004 allegedly executed by the plaintiff to defendant No.1 alleging that above deed was obtained by forgery and personation. Plaintiff is the lawful owner of 6.40 acres land and in possession of above land by cultivation, planting fruit

bearing trees and constructing dwelling huts. On the basis of above gift possession of above property was not delivered to the defendant.

Defendant No.1 contested above suit by filing written statement denying all claims and allegations made in the plaint and alleging that the plaintiff being satisfied with the cordial services and behavior of defendant No.1, the wife of his one son, transferred above land by oral gift in 1984 in presence of his wife and other family members and delivered possession. The defendant converted above total land into one compact plot and possessing the same in part by cultivation and planting fruit bearing trees and permanently residing in the house constructed in other part. After registration of Heba became compulsory the plaintiff willingly executed and registered above deed of gift dated 01.05.2004 to his wife was a witness to above document. The defendant did not procure above deed of gift by false personation or forgery.

At trial plaintiff examined 3 witnesses and defendant examined four. Documents of the plaintiff were marked as Exhibit No.1-4 series and those of the defendants were marked as Exhibit Nos.Ka-Ga.

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

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above plaintiffs as appellants moved to this court and preferred this first appeal.

Mr. Khandoker Sultan Ahmed learned Advocate for the appellants submits that now deceased Sultan Ahmed Chowdhury was an elderly man of 70 years age and father of the plaintiffs and father in law of defendant No.1. He was the owner and possessor of above 6.40 acres land and he himself as plaintiff instituted above

suit claiming that he did not transfer above land by gift to defendant No.1 in 1984 nor he executed and registered impugned registered deed of gift No.1211 dated 16.03.2004. Above Sultan Ahmed Chowdhury died leaving four sons, two daughters and one wife as heirs and two sons and daughters of above Sultan Ahmed Chowdhury were substituted as plaintiffs and other were substituted as defendants. Hosne Alam a son of Sultan Ahmed Chowdhury who is plaintiff No.1(Ga) gave evidence as P.W.1 and in his evidence he has reiterated all claims and allegations made in the plaint. Above witness was cross examined extensively by the defendants but his evidence that his father did not transfer above property by registered deed of gift dated 16.03.2004 (Exhibit No.3) remains consistent, free from material contradictions and credence inspiring. P.W.2 Maher Ali and P.W.3 Kamal Uddin have given consistent evidence as to continuous possession of the plaintiffs in above 6.40 acres land. In view of above facts and circumstances of the case and evidence on record the onus shifted upon the defendant No.1 to prove due execution and registration of above deed of gift dated 16.03.2004 by legal evidence. She was also required to prove the declaration of heba by Sultan Ahmed Chowdhury for above land to defendant No.1 and delivery of possession. But the defendant utterly failed to prove declaration of Heba by Sultan Ahmed Chowdhury and due execution and registered of above deed of gift dated 16.03.2004 by legal evidence. But the learned Judge of the trial court utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally dismissed the suit which is not tenable in law. The learned Advocate lastly submits that the properties of Sultan Ahmed Chowdhury were not partitioned by meets and bounds among the co-sharers and all the plaintiffs are in continuous and ejmali

possession of above property. The wife of now deceased Sultan Ahmed Chowdhury Joynob Begum was not a witness to above deed of gift dated 16.03.2004 nor she executed an affidavit admitting due execution of above deed of gift and the affidavit produced by the plaintiffs at trial was forged and without any lawful effect.

On the other hand Mr. Md. Fakhar Uddin with Ms. Jobeda Begam learned Advocate for the respondents submits that the plaintiffs have filed this suit challenging the legality and propriety of registered deed of gift dated 16.03.2004 and defendants No.1 while giving evidence as D.W.1 has produced above deed of gift dated 16.03.2004 which was marked as Exhibit No.Ka. She has claimed that above deed was executed and registered by now deceased Sultan Ahmed Chowdhury on commission and his wife was a witness of above document. D.W.2 Dilip is the scribe of above deed of gift and D.W.3 Mohammad Ullah is a witness to above deed of gift. Above two D.Ws gave consistent evidence as to due execution of above deed of gift. They were subjected to cross examination but their evidence remained consistent, free from material contradiction and credence inspiring. It is admitted that there is a dwelling house in above property but the plaintiffs did not claim that they are residing in above house. Defendant No.1 has succeeded to prove that she is permanently residing in above house since oral gift of 1984. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial court rightly held that the plaintiffs could not prove by legal evidence that impugned deed of gift dated 16.03.2004 (Exhibit No.Ka) was obtained by personation or forgery and accordingly dismissed above suit which calls for no interference.

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

It is admitted that now deceased plaintiff Sultan Ahmed Chowdhury was the owner and possessor of disputed 6.40 acres land and he himself as plaintiff instituted above suit for cancellation of registered deed of gift dated 16.03.2004 (Exhibit No.Ka) alleging that above deed was obtained by defendant No.1 wife of his son Abdul Mannan Bahadur by personation, cheating and forgoing his signature. After filing of above suit above Sultan Ahmed Chowdhury died leaving four sons namely Mainul Haque, Abdul Mannan Bahadur, Hosne Alam and Nurul Hasan and two daughters namely Laila Arjumand Banu and Ummey Habiba Begum and one wife Joynab Begum and out of above heirs only two sons namely Hosne Alam and Nurul Hasan and two daughters Laila Arjamand Banu and Ummey Habiba Begum substituted as plaintiffs and prosecuted above suit.

In the written statement defendant No.1 has made specific claim that now deceased Sultan Ahmed Chowdhury transferred above land to her by oral gift in presence of his wife and other members of his family in October 1984 and delivered possession. The plaintiffs converted above 6.40 acres land into one compact piece and possessing the same in part by cultivation and horticulture and in part by constructing dwelling house. It has been further claimed that the defendant is permanently residing along with her family in above dwelling house. As far as the impugned registered deed of gift dated 16.03.2004 (Exhibit No.Ka) is concerned it has been claimed that above deed was executed subsequently to fortify above oral gift.

While giving evidence as D.W.1 defendant No.1 has reiterated all above claims as stated in the written statement. It turns out from impugned registered

deed of gift dated 16.03.2004 (Exhibit No.Ka) that specific mention has been made in above document that executant of above deed namely Sultan Ahmed Chowdhury transferred above property to defendant No.1 by oral gift in 1984. Defendant No.1 did not claim title on the basis of registered deed of gift dated 16.03.2004 (Exhibit No.Ka) but she claims title on the basis of oral gift of 1984. In the plaint it has been stated that the plaintiff did not declare any Heba in 1984 nor delivered possession. But there is no specific averment that the plaintiff did not make oral gift of above property to defendant No.1. In his evidence as P.W.1 plaintiff No.1 Hosna Alam did not say anything about above claim of oral gift of defendant No.1. Other P.Ws. also did not speak anything about above claim of oral gift of defendant No.1. While giving evidence as D.W.1 defendant No.1 has in her evidence made specific claim that now deceased Sultan Ahmed Chowdhury transferred above 6.40 acres land to her by oral gift in presence of her wife and other members of family in October 1984. Above D.W. was not cross examined by the plaintiff on her above claim. Nor any suggestion was put to D.W.1 that Sultan Ahmed Chowdhury did not transfer above property to her by oral gift in 1984. As such the claim of defendant No.1 that now deceased plaintiff Sultan Ahmed Chowdhury transferred above property to defendant No.1 by oral gift in October 1984 remains uncontroverted and not denied.

In a civil suit initial onus always lies with the plaintiff and above onus shifts upon the opposite side on successful discharge of the onus by the plaintiff. Plaintiff No.1(ka) while giving evidence as P.W.1 has reiterated the claims as set out in the plaint that now deceased Sultan Ahmed Chowdhury did not voluntarily execute and register impugned registered deed of gift dated 16.03.2004 and above document was obtained by personation and forgery. But the plaintiffs did not

make any endeavour to prove that the signature of Sultan Ahmed Chowdhury appearing in above deed was forged. While giving evidence as D.W.1 defendant No.1 has stated that Sultan Ahmed Chowdhury executed and registered above deed of gift dated 16.03.2004 willingly and voluntarily and his wife was a witness to above document. Above witness produced above original deed of gift dated 16.03.2004 which was marked as Exhibit No.Ka. D.W.2 Dilip is the scribe of above deed of gift and D.W.3 Mohammad Ullah is a witness to above deed of gift and above two D.Ws have given consistent and mutually supportive evidence in support of due execution of above deed of gift by now deceased Sultan Ahmed Chowdhury. The wife of above Sultan Ahmed Chowdhury appears to be a witness to above deed of gift (Exhibit No.Ka). She after the demise of her husband did not substitute as a plaintiff and prosecute this suit. The defendant has produced an affidavit executed by Joynob Begum alleging due execution of above deed of gift and recognized her signature as a witness to above deed.

As far as the possession of the disputed property is concerned admittedly there is a dwelling house, two tanks, tub well and other structures in a part of above property. Plaintiffs did not make any specific claim in the plaint or in the evidence of P.W.1 that any particular plaintiff permanently resides in above dwelling house. On the other hand D.W.1 has stated in her evidence that since 1984 she along with the members of her family permanently residing in above dwelling house. Above house and disputed land is situated in village Purba Para Vewla but the plaintiffs and the now deceased Sultan Ahmed Chowdhury appears to be the inhabitants of another village, namely Dhamusia. Besides D.W.1 has produced a mutated khatian and rent receipts showing payment of the rent for above land.

On consideration of above facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment nor we find any substances in this first appeal which is liable to be dismissed.

In the result, the First Appeal is dismissed.

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

**Md. Saiful Islam, J**

I agree.

*Md. Kamrul Islam*  
*Assistant Bench Officer*