

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2133 OF 2020

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure, 1908.

(Against Decree)

-And-

IN THE MATTER OF:

Zibon Kumar Kundu (Through the Power of
Attorney held by the authorized persons).

--- Plaintiff-Appellant-Petitioners.

-Versus-

Md. Abdul Jalal Khan and others

--- Defendant-Respondent-Opposite Parties.

Mr. Md. Shahadat Tanveer Amin with

Mr. Md. Shaiful Islam, Advocates

--- For the Plaintiff-Appellant-Petitioners.

Mr. Mamun-Or-Rashid with

Ms. Taslima Zaman Happy, Advocates

---For the Defendant-Respondent-Opposite Parties.

**Heard on: 15.11.2023, 20.11.2023,
05.12.2023, 10.12.2023 and 12.12.2023.**

Judgment on: 12.12.2023.

At the instance of the present plaintiff-appellant-petitioner,
Zibon Kumar Kundu, this revisional application has been filed
through the power of attorney under section 115(1) of the Code
of Civil Procedure and this Rule was issued calling upon the
opposite parties to show cause as to why the judgment and
decree dated 30.09.2020 passed by the learned Additional

District Judge, Court No. 3, Khulna in the Title Appeal No. 159 of 2014 disallowing the appeal and thereby affirming the judgment and decree dated 29.06.2014 passed by the learned Joint District Judge, Court No. 3, Khulna in the Title Suit No. 1712 of 2008 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 1712 of 2008 on 02.11.2008 in the court of the learned Joint District Judge, Court No. 3, Khulna praying for a declaration of title and also declaration that the power of attorney deed No. 2443 dated 31.05.2005 is void, illegal, collusive and not binding upon the plaintiffs. The plaint further contains that one Kalipoda Kundu purchased 1.30 acres of land of C. S. Khatian No. 18 through a registered deed Nos. 2730 and 5409 dated 09.06.1952 and 02.09.1953 and handed over the possession of the suit land. Subsequently, the S. A. Khatian No. 17 of S. A. Plot No. 26 was correctly prepared and published in the name of Kalipoda Kundu who died on 26.01.1967 leaving behind one son, namely, Zibon Kumar Kundu and a daughter, namely, Sandha Rani Kundu who were the absolute owners and they both possessed the said 1.30 acres of the suit land of C. S. Khatian No. 18 corresponding to S.

A. Khatian No. 17 and S. A. Plot No. 26 of Mouza-Krishnanagar, Police Station- Botiaghata, District- Khulna.

The suit was contested by the present opposite party Nos. 1-15 as the defendants by filing a written statement contending, *inter alia*, that the original owner of the said 1.30 acres of land was Yousuf Ali Sheikh who transferred the suit land in favour of Kalipodo Kundu by a registered deeds dated 09.06.1952 and 07.09.1953 and the possession of the suit land was handed over. S. A. Khatian was correctly prepared and published in the name of Said Kalipoda Kundu. The said Kalipodo Kundu executed a power of attorney being No. 2443 dated 31.05.2005 in favour of Md. Abdul Jalil and Mahbubur Rahman. The attorney holders transferred .33 acres of land to Sajida Akter by the registered deed Nos. 242 and 2636 dated 06.06.2005 and 13.06.2005 which was void, collusive and illegal. The plaint also contains that Kalipado Kunddu died on 26.01.1967, as such, he could not give the power of attorney No. 2443 on 31.05.2005 in favour of Md. Abdul Jalil and Mahbubur Rahman. Zibon Kumar Kundu executed the power of attorney No. 4432 dated 15.09.2008 in favour of Probir Kumar Kundu, S. M. Jamal and Abu Saleh. The defendant-opposite parties disclosed on 21.10.2008 that they

purchased the suit land vide nine deeds on different dates which were sold by the power of attorney deed No. 2443 dated 31.05.2005 which was executed by Kalipado in favour of Md. Abdul Jalil and Md. Mahbubur Rahman, as such, the defendants were impleaded who had no right title and possession of the suit land. The present plaintiff-petitioners could not know the said case which was sold through the power of attorney No. 2443 dated 31.05.2005 which was executed by the Kalipodo Kundu in favour of Md. Abdul Jalil Khan and Md. Mahbubur Rahman (Piaru). For the first time, the plaintiffs came to know about the power of attorney deed No. 2443 dated 31.05.2005 which was executed by Kalipodo Kundu in favour of Md. Abdul Jalil Khan and Md. Mahbubur Rahman, as such, the defendants were impleaded who had no right, title and possession over the suit land.

The learned Joint District Judge, Court No. 3, Khulna received the plaint and the written statement and also considering the evidence adduced and produced by the parties thereby dismissed the suit through its judgment and decree dated 29.06.2014. Being aggrieved the present plaintiff-petitioners preferred the Title Appeal No. 159 of 2014 in the court of the

learned District Judge, Khulna which was heard by the learned Additional District Judge, Court No. 3, Khulna who passed the judgment and decree disallowed the appeal by affirming the judgment and decree passed by the learned trial court.

This revisional application has been filed by the present petitioner under section 115(1) of the Code of Civil Procedure challenging the legality of the impugned judgment and this Rule was issued thereof.

Mr. Md. Shahadat Tanveer Amin, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Shaiful Islam, submits that the plaintiff-petitioners positively proved their right, title and possession over the suit property by adducing and producing oral and documentary evidence but both the courts below committed an error of law resulting in an error in the decision occasioning failure of justice by misreading and non-consideration of the evidence on record.

The learned Advocate further submits that the plaintiffs adduced PW-2, Sandha Rani Kundu, the sister of the plaintiff-petitioners, deposed in the court that the name of her father is Kalipodo Kundu and mother's name Pushpo and both of them had died and after the death her parents she and her brother

Zibon Kumar Kundu executed a power of attorney in favour of her son and 2 others, as such, appointing an attorney to her son and 2 other persons for transferring the suit property and also look after the same against the Jibon Kumar Kundu but the learned courts below came to an unlawful decision against the present plaintiff-petitioners by passing the impugned judgment dated 30.09.2020 which is liable to be *set aside* by making the Rule absolute.

The Rule has been opposed by the present defendant-opposite parties.

Mr. Mamun-Or-Rashid, the learned Advocate, appearing along with the learned Advocate, Ms. Taslima Zaman Happy, for the opposite parties, submits that the present plaintiff-petitioners filed a title suit for declaration of title and also for declaration that the power of attorney deed No. 2443 dated 31.05.2005 appointing to Md. Abdul Jalil Khan and Mahbubur Rahman and subsequently deeds executed by them are void, illegal, collusive and not binding upon the plaintiffs, as such, the learned trial court after examining the evidence produced by the present parties came to a conclusion to dismiss the suit and the learned appellate court below also came to a concurrent finding in favour

of the present defendant-respondent-opposite parties and the learned courts below did not commit any illegality by passing the judgments, as such, the Rule is liable to be discharged.

The learned Advocate also submits that both the courts below properly examined the deeds produced by the parties in support of the respective cases and the learned trial court disbelieved the evidence as to the death of Kalipodo Kundu and also the plaintiffs could not prove its evidence as to the death of Kalipodo Kundu. Accordingly, the power of attorney deed dated 31.05.2005 was recognized as an invalid document as to the Kalipodo Kundu, as such, the courts below did not commit any illegality as to the evidence presented in the court, therefore, the Rule needs to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below as well as I have examined the essential documents available in the lower courts records, it appears to me that the present petitioners as the plaintiffs filed

the title suit for declaration of title and another declaration is that the power of attorney deed No. 2443 dated 31.05.2005 executed by the Kalipodo Kundu appointing the present opposite party Nos. 1 and 2, namely, Md. Abdul Jalil and Mahbubur Rahman, on behalf of Kalipodo Kundu. The plaint contains that the scheduled "Ga" properties which have been executed through the said power of attorney in favour of the defendant opposite party Nos. 3-15 by several deeds which are to be declared as illegal. The said Kalipodo Kundu validly empowered the attorney to execute deeds for the transfer of the scheduled property. The attorney holders transferred some measurements of land to the different persons. The executant Kalipodo Kundu was very much alive to execute the above-mentioned power of attorney. The present opposite parties have also contended that the said Kalipodo Kundu never executed any power of attorney on 31.05.2005 as well as the opposite parties also contended that Jibon Kumar Kundu executed a deed of registered power of attorney No. 4432 dated 15.09.2008 and Kalipodo Kundu never executed any power of attorney in order to empower to sell some properties and the present plaintiff-petitioners do not have any title upon the suit land.

In view of the above conflicting claims and counterclaims by the parties as to the execution of the power of attorney (one) on 31.05.2005 by the Kalipodo Kundu and (another one) executed by the son of Kalipodo Kundu on 15.09.2008 for empowering the attorney to undertake the transfer of the land. The plaintiff-petitioners were under an obligation to produce evidence in the courts below as to the genuineness of the power of attorney and transfers by the attorney holders. In order to get benefit from the suit the plaintiff-petitioners were under an obligation to support the plaintiffs' case. The learned trial court examined the evidence and concluded that the executant Jibon Kumar Kundu validly executed the power of attorney but the DWs and PWs could prove that the power of attorney by Jibon Kumar Kundu was not valid whereas the defendants adduced sufficient evidence for declaring the power of attorney dated 31.05.2005, as such, the learned trial court dismissed the suit on the basis of the following findings:

...“বিবাদী পক্ষের সাক্ষী ডি. ডব্লিউ. ১ এর সাক্ষ্য পর্যা-লাচনায় দেখা যায় যে, তাহার সহিত নালিশী জমির রেকর্ডীয় মালিক কালিপদ কুড়ুর কোন সম্পর্ক নাই। কালিপদ কুড়ু তহশীল অফিস-স যাতায়াত করার সময় তাহার সহিত পরিচয় হয় এবং উক্ত পরিচয়ের ভিত্তিতে কালিপদ

কুড়ু তাহা-ক ৩১/০৫/২০০৫ ইং তারি-খর পাওয়ার প্রদান ক-র এবং উক্ত পাওয়ার বুনিয়া-দ নালিশী ভূমি বেচা-কেনা করিয়া-ছ। এই সাক্ষীর সাক্ষ্য পর্যা-লাচনা কর-ল দেখা যায় যে, কালিপদ কুড়ুর সহিত তাহার পূর্ব হই-ত কোন সম্পর্ক নাই। মাত্র অল্প সময়ের পরিচয়ে কালিপদ কুড়ু তাহার জমি বেচা-কেনার পাওয়ার প্রদান ক-র যাহা বিশ্বাস-যোগ্য ন-হ। সম্পত্তির মত বিষয়ে একজন ব্যক্তি আরেকজন ব্যক্তিকে অল্প সম-য়ের পরিচ-য় অন্ত-র-বাহি-র পাওয়ার অব এটর্নী প্রদান করা বিশ্বাস করার যুক্তিযুক্ত কোন কারণ নাই। এই মামলার উভয়পক্ষ তাহা-দর স্বার্থ সংশ্লিষ্ট ব্যক্তিদের দ্বারা দখলের বিষয়ে সাক্ষ প্রদান করিয়া-ছন তাহা-দর অধিকাংশই উক্ত নালিশী ভূমি বর্গা চাষ করেন।”...

The learned appellate court below also concurrently found that the plaintiffs failed to prove their own case as to the statement made in the plaint and the learned appellate court below came to a lawful conclusion and decision by affirming the judgment of the learned trial court on the basis of the following findings:

...“এমতাবস্থায়, উপর্যুক্ত সার্বিক পর্যালোচনান্তে বিজ্ঞ বিচারিক আদালত মূল মোকদ্দমাটি খারিজ করে সঠিক সিদ্ধান্ত প্রদান করেছেন মর্মে অত্রাদালতের নিকট বিবেচিত হয় এবং তর্কিত রায় ও ডিক্রী-ত (পাতা নং- ১৪) হস্তক্ষেপ করার যুক্তিসঙ্গত কোন কারণ না থাকায় উক্ত রায় ও ডিক্রী বহাল ও বলবৎ যোগ্য হচ্ছে। সংগত কারণে অত্র আপীল নামঞ্জুর যোগ্য।”...

On the basis of the above conflicting judgments for authorizing the power of attorney executed by Kalipodo Kundu in the year 2005 appears to be a valid document to deal with the civil properties.

I have carefully examined the executed document including the power of attorney executed by the father Kalipodo Kundu and also by the son Jibon Kumar Kundu and also the findings of the courts below concurrently findings the documents submitted in the learned trial court and the learned appellate court below in favour of the present defendant-opposite parties. The important aspect of the facts in this case is that the plaintiffs could not prove as to the death of Kalipodo Kundu, therefore, both the courts below concurrently found that the defendants produced sufficient evidence to show the power of attorney executed by the said Kalipodo Kundu, which was valid, as such, I am not inclined to interfere upon the judgment of the learned appellate court below by affirming the judgment passed by the learned trial court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The concurrent judgment and decree dated 30.09.2020 passed by the learned Additional District Judge, Court No. 3, Khulna in the Title Appeal No. 159 of 2014 disallowing the appeal and affirming the judgment and decree dated 29.06.2014 passed properly by the learned Joint District Judge, Court No. 3, Khulna in the Title Suit No. 1712 of 2008 is hereby upheld.

The interim order passed by this court at the time of issuance of this Rule directing the parties to maintain *status quo* in respect of the possession and position of the suit land for a period of 6 (six) months and subsequently the same was extended time to time and lastly, it was extended till disposal of this Rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below at once.