

District-Satkhira.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1476 of 2020.

Fatema Khatun being dead her legal heirs-
 1(Ka) Md. Forhad Hossen and others.

----- Defendant No.7-Appellants-Petitioners.

-Versus-

Md. Rokon Uddin alias Rafiq Mollik and others.
 ----- Plaintiff-Appellant-Opposite Party.

Mr. Md. Akbar Hossain, Advocate
 ----- For the Defendant No.7-Appellants-Petitioners.

Mr. Md. Abdus Salam, Advocate with
 Mr. Nikhil Kumar Biswas, Advocate
 ----- For the Plaintiff-Appellant-Opposite Party.

Heard On: 01.09.2025.

And

Judgment Delivered On: 04.09.2025

Md. Toufiq Inam, J.:

This Rule, at the instance of the defendants-petitioners, was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 31.05.1994 passed by the learned Assistant Judge, Satkhira, in Title Suit No. 73 of 1990, and the judgment and decree dated 18.05.1995 passed by the learned Joint District Judge, Satkhira, in Title Appeal Nos. 77 of 1994 and 86 of 1994 should not be set aside, and/or why such other or further order or orders should not be passed as this Court may deem fit and proper.

The relevant facts, in brief, are that the appellant in Appeal No. 77 of 1994, who is also respondent No. 1 in Appeal No. 86 of 1994, as plaintiff, instituted Title Suit No. 73 of 1990 before the Court of Assistant Judge, Satkhira, seeking to set aside and cancel the ex parte decree dated 24.05.1980 passed in Title Suit No. 158 of 1978. The plaintiff alleged that the decree had been obtained by fraud and collusion, without his knowledge, and was therefore a nullity in the eyes of law.

The plaintiff's case, in substance, is that the suit land originally belonged to C.S. recorded tenants Mofizuddin and Joinuddin Gazi. Due to arrears of rent, a certificate case was instituted, resulting in auction purchase of the land by Malek in 1920. Malek subsequently transferred the land by registered patta in 1925 to three brothers, namely Rohel Mollik, Akkas Uddin, and Tofel Uddin, who possessed the property in equal shares. On the death of Tofel Uddin, his only son, the present plaintiff, succeeded to his share. Both S.A. and B.S. surveys duly recorded the names of the plaintiff and his predecessors.

While the plaintiff was in possession, the defendant Fatema Khatun, without notice to the plaintiff, instituted Title Suit No. 158 of 1978 and obtained an ex parte decree on 24.05.1980 by practicing fraud. The plaintiff came to know of the decree only on 28.11.1989 and promptly filed Title Suit No. 73 of 1990 seeking cancellation.

The defendants contested the suit through written statements, denying the plaintiff's title and claiming that Nurjahan Begum, sister of Zoinuddin, had lawfully acquired title and possession and that the decree in Title Suit No. 158 of 1978 was valid. They further contended that the plaintiff's suit was barred by limitation and was otherwise not maintainable.

The learned Trial Court framed five issues, including cause of action, maintainability, limitation, and entitlement of the plaintiff to the relief prayed for. Upon trial, the plaintiff examined five witnesses, while the defendants examined four. The Trial Court, considering the pleadings and evidence, decreed the suit by setting aside the fraudulent decree, purportedly "restoring" Title Suit No. 158 of 1978, and awarded costs of Tk. 5,000 in favour of defendants Nos. 6 and 7.

Being aggrieved, the plaintiff filed Title Appeal No. 77 of 1994 seeking complete cancellation of the ex parte decree, while the defendants filed Title Appeal No. 86 of 1994 challenging the very setting aside itself. Both appeals were heard analogously. The learned Appellate Court, upon reassessment of the materials on record, held that the decree dated 24.05.1980 in Title Suit No. 158 of 1978 was obtained by fraud and collusion and, therefore, was a nullity in law. Accordingly, the Appellate Court allowed Title Appeal No. 77 of 1994, dismissed Title Appeal No. 86 of 1994, and

set aside the decree in Title Suit No. 158 of 1978 entirely. Against this judgment, the instant Rule was obtained.

Mr. Md. Akbar Hossain, learned Advocate for the defendant No. 7-petitioner, submits that the Appellate Court failed to appreciate that the plaintiff's suit was hopelessly barred by limitation. He argues that the plaintiff's plea of knowledge in 1989 was false and concocted. Fraud, if any, should have been pleaded and proved with specific particulars, which was not done. He further contends that the Trial Court's decree could not be set aside after nearly ten years and that the Appellate Court erred in law in completely cancelling the decree of Title Suit No. 158 of 1978.

Relying on the case reported in 8 BLC (AD) 77, he argues that the Appellate Court, being the final court of fact, failed to discuss the effect of correction of SA Khatian and rent receipts. He continues that, in accordance with the decisions reported in 39 DLR (HCD) 339 and 46 DLR (HCD) 34, without a prayer for khas possession and specific boundary in the plaint, the suit is not maintainable.

He further submits that the Appellate Court committed a grave error of law in completely setting aside the decree passed in Title Suit No. 158 of 1978. According to him, even if fraud is alleged, the proper course would have been to restore the decree upon terms, instead of annulling it in toto. He contends that the plaintiff's reliance upon

ancient documents, as well as S.A. and B.S. khatians, is misplaced. The C.S. khatian clearly recorded the name of their predecessor, which carries a strong presumption of correctness under law. Therefore, the petitioners argue that the Appellate Court erred in disregarding the C.S. khatian and in placing undue reliance on subsequent records.

Conversely, Mr. Md. Abdus Salam, learned Advocate appearing with Mr. Nikhil Kumar Biswas, Advocate for the opposite party No. 1, supports the impugned judgment. He submits that the Appellate Court rightly held that the ex parte decree was obtained by suppressing summons and misrepresentation, amounting to fraud. Since fraud vitiates everything, limitation cannot be a bar. He relies on the settled principle that a decree obtained by fraud is a nullity and can be challenged whenever discovered. He further submits that the Appellate Court properly re-assessed the evidence of both parties, unlike the Trial Court, which failed to discuss the testimony of witnesses.

He also submits that the plaintiff's predecessors-in-interest lawfully acquired the suit land through auction purchase in 1917, followed by a registered patta dated 20.06.1925 in favour of the three brothers, namely Rohel Mollik, Akkas Uddin, and Tofel Uddin. The plaintiff, being the heir of Tofel Uddin, succeeded to his share.

He further argues that the plaintiff's title and possession were duly reflected in the S.A. and B.S. records of rights, and substantiated by rent receipts. In contrast, the defendants failed to establish any valid title traceable to their alleged predecessor. Hence, the Appellate Court rightly placed reliance upon the plaintiff's documentary evidence. The ex parte decree in Title Suit No. 158 of 1978 was obtained by fraud, suppression of summons, and non-impleadment of necessary parties. It is argued that such a decree, being founded on fraud, is a nullity in law.

Regarding limitation, he submits that the plaintiff came to know of the ex parte decree only on 28.11.1989, and the suit was instituted within three years thereof, squarely covered by Article 95 of the Limitation Act, 1908. Therefore, the suit was not barred by limitation, as erroneously contended by the petitioners.

Having heard the arguments, the first point for consideration is whether the plaintiff's suit was barred by limitation. It is well-settled that limitation does not run against fraud until the party alleging fraud discovers it. In the instant case, the plaintiff specifically pleaded that he became aware of the ex parte decree only on 28.11.1989, and the present suit was filed shortly thereafter in 1990. The defendants failed to adduce any credible evidence to disprove this assertion. Therefore, the Appellate Court rightly held that the suit was not barred by limitation.

The next question is whether the decree passed in Title Suit No. 158 of 1978 was obtained by fraud and collusion. The record shows that the plaintiff, who had recorded interest in both S.A. and B.S. khatians, was not impleaded as a party in the said suit. Suppression of a necessary party amounts to fraud on the Court. Moreover, there is no evidence that proper summons was served, which further strengthens the allegation of fraudulent procurement of the decree.

It is trite law that fraud vitiates even the most solemn proceedings. A decree obtained by practicing fraud upon the Court is a nullity and can be set aside at any stage. Similarly, suppression of summons constitutes fraud and renders the decree void ab initio. Following these principles, the Appellate Court correctly concluded that the decree dated 24.05.1980 was void and liable to be set aside.

Additionally, the principle of bona fide possession and the continuous acts of ownership by the plaintiff and his predecessors further strengthen the claim of rightful title. The plaintiff had been in uninterrupted possession for decades, cultivating the land, paying rent, and being recorded in official records. This supports the legitimacy of his claim and reinforces the Court's finding that fraud vitiated the ex parte decree. The Appellate Court's reliance on consistent documentary evidence, including historical records, SA and BS khatians, and authenticated patta, provides an independent and additional basis to uphold the decree cancellation. Furthermore,

the absence of notice and non-impleadment of the plaintiff, who was a necessary party, compounded the fraudulent nature of the ex parte decree, leaving no room for partial restoration or compromise.

The argument that the decree should only have been restored with costs cannot stand in the face of the principle that fraud unravels all. Since the very foundation of Title Suit No. 158 of 1978 was fraudulent, there was no legal basis for restoring that decree. The Appellate Court, therefore, committed no error in setting aside the decree in its entirety.

Moreover, upholding the decree cancellation aligns with the principle of public policy and prevention of fraudulent claims. Allowing a decree obtained by fraud to remain operative would encourage parties to procure judgments through deceit, undermining the integrity of the judicial process and public confidence in property rights. The Court must ensure that legal rights established through genuine possession, lawful inheritance, and proper registration are protected, and that fraudulent acts are penalized by declaring any decree founded on such acts null and void. This serves not only the interests of the parties but also the larger interest of justice and the rule of law.

It is also worth noting that the Trial Court had failed to properly assess the evidence of P.Ws. and D.Ws. The Appellate Court, being

the final Court of facts, undertook a fresh assessment of evidence and rendered its own findings, which this Court does not find to be perverse or contrary to law.

For the reasons stated above, this Court is of the view that the Appellate Court was justified in allowing Title Appeal No. 77 of 1994, dismissing Title Appeal No. 86 of 1994, and completely setting aside the ex parte decree dated 24.05.1980 passed in Title Suit No. 158 of 1978. This Court, therefore, finds no illegality or material irregularity in the impugned judgment warranting interference under Section 115 of the Code of Civil Procedure.

Accordingly, this Court finds no merit in the Civil Revision. **The Rule is discharged** without any order as to costs.

The judgment and decree of the Appellate Courts are lawful, well-reasoned, supported by evidence, and are hereby affirmed.

The interim orders of stay and status-quo granted earlier are hereby recalled and vacated.

Let the lower court records be sent down along with a copy of this judgment forthwith.

(Justice Md. Toufiq Inam)