

**Present:**

**Justice Fatema Najib**

**Civil Revision No. 1234 of 2009**

Mokbul Hossain and others

.....petitioners

-Versus-

Biplob Kumar Shil and others

.....Opposite Parties

Mr. Lutfor Rahman, Advocate

..... For the petitioners

Mr. Md. Moniruzzaman, Advocate

..... For the opposite-parties

**Heard on: 30.08.2022, 31.08.2022, 19.10.2022,  
06.11.2022 and 22.11.2022**

**Judgment on: 06.12.2022**

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree complained of in the petition moved in court today should not be set aside and/ or such other or further order or orders passed as to this court may seem fit and proper.

Pending hearing of the Rule, the operation of the impugned judgment and decree passed by the courts below was stayed till disposal of the Rule.

The opposite party No. 1 as plaintiff filed Title Suit No. 375 of 1981 for declaration of title, cancellation of registered deeds described in 'Kha' schedule to the plaint and for confirmation of possession described in 'Ga' schedule to the plaint and in the alternative prayer for khas possession if found dispossess.

The plaintiff's case in short is that the property described in serial Nos. 1-5 under 'Ka' schedule as described in schedule to the plaint was originally belonged to Dharendra Nath. After his death his wife Anjali

Bala got the same in her life interest over the property in question. After death of Anjali Bala, mother of Dharendra Nath namely Santoshi got life interest of the said property left by Dharendra Nath. After the death of Santoshi the nephew of Dharendra Nath, the plaintiff has become owner of the property but on 25.11.1979 the defendants restrained the plaintiff's father from cultivating the said property on the pleas that Anjali Bala transferred the property in question to the defendants. The father of the plaintiff after searching obtained the aforesaid transfer deeds and filed the instant suit.

That defendants contested the said suit by filing a written statement contending inter-alia that Dharendra Nath had been suffering from various diseases and due to which huge money had to taken as loan for his treatment. During the life time of Dharendra Nath, he sold land to pay debt and after his death his wife Anjali Bala had to pay the debt of Dharendra Nath and to perform religious ceremonies and due to which she transferred the property in question. The alleged transfer was done legally having legal necessity and as such the defendants prayed for dismissal of the suit.

In the suit the plaintiff examined 3 P.Ws and the defendant examined 3 D.Ws. Documents produced by the plaintiff was marked as 1-8 and the documents produced by the defendant were marked as A-F. Considering the evidences oral and documentary the trial court decreed the suit on the ground that Anjali Bala sold the property due to legal necessity which have not been proved by the defendants.

Being aggrieved by and dissatisfied with the judgment and decree dated 30.04.1989 passed by the learned Assistant Judge, Sadar, Pirojpur,

the defendants filed Title Appeal being No. 90 of 1989 before District Judge which was heard by Joint District Judge, First Court, Pirojpur. Learned Joint District Judge dismissed the appeal on same finding.

Feeling aggrieved by and dissatisfied with the judgment and decree dated 29.01.2009 the defendants as petitioners filed the instant Civil Revisional application and obtained this Rule.

Mr. Lutfor Rahman, learned Advocate appearing for the petitioners submits admittedly Anjali Bala having limited interest to sell the property left by her husband only on legal necessity. The defendant proved by evidences that Anjali Bala sold the property on legal necessity. He further submits learned trial Court did not frame issue on 'legal necessity'. In this contest he contends whether the suit land had been sold on legal necessity or not that should be settled first. He next submits due to non framing of substantive issue on 'legal necessity' the defendant did not produce witness and due to which the suit was decreed. He then drawing my attention to the evidence of D.W. 1 submits that the said witness stated “ধীরেন্দ্র তাহার জীবদশায় তাহার ঋনের কারণে নামাজপুর মৌজায় মোজাম্মেলর নিকট ১৬ শতক ভূমি বিক্রয় করিয়াছে। এই সেই দলিল। এবং অঞ্জলী বালার বৈধ কারণে আমার নিকট জমি বিক্রয় করে এবং আমি তাকে টাকা বুঝাইয়া দেই। অঞ্জলী বালার বৈধ কারণে জমি বিক্রয় করে।” in cross stated-“ধীরেন্দ্র মারা যাওয়ার সময় দেবেন্দ্র শীল ও রশিদ মাস্টার তাহার নিকট টাকা পাইত। তাহারা জীবিত নাই। তাহাদের বাড়ী ধীরেন্দ্র নাথের একই গ্রামে। দেবেন্দ্র নাথ ও রশিক ধীরেন্দ্র নাথের নিকট টাকা পাইত তাহা দেখানোর মত আমার কাছে কিছু নাই। রসিক মাস্টার ১০০০/- টাকা এবং দেবেন্দ্র নাথ শীল ৫০০/- টাকা পাইত।” and “প্রিয় নাথ আমাকে বলে যে, অঞ্জলী বালার দেনা পরিশোধ এবং ধীরেন্দ্র নাথের শ্রাদ্ধ করার টাকার প্রয়োজন বিধায় জমি বিক্রয় করা দরকার।” which clearly proved due to legal necessity, property in question had been sold. He also submits the

witnesses of the deeds in question died long ago, so no direct witnesses were produced to prove the recital of the deeds, in this circumstance the recital of the said deeds themselves prove the legal necessity. He then submits the plaintiff did not produce any single witness that Dharendra Nath had not debt, Anjali Bala did not perform religious ceremony seeking salvation of the soul of Dharendra Nath, Anjali did not go Gaya Dhan to offer pindo. In support of his submission he referred the decision reported in 1983 BLD (AD)-313, 12DLR (1960)-143, 10 BLT(AD) (2002)-150, AIR, 1916 privy council 21 DLR(1969)-673.

Mr. Moniruzzaman, learned Advocate appearing for the plaintiff opposite party submits that earlier the plaintiff respondent came to High Court Division by filing revision wherein it has been categorically stated that the evidence adduced before court and on that basis to sell the property in question by Anjali on legal necessity is enough to prove and there is no necessity to send the case on remand to trial court. He further drawing my attention to 21 DLR (1999)- submits that legal necessity is to prove by the transfer or i.e. the defendant, which the defendant failed to prove. He next submits the transaction in question are colusive, because of facts that all transaction were made to father and 5 sons and one Fajlur Rahman on the same date on different serial numbers. He also submits the property in question was situated in Barisal but those were registered in Khulna which also proved the conduct of the executor and recipients are not fair. He next submits Fajlur Rahman, defendant No. 7 is one of transfer or who is alive but he was not produced before court. The said Fajlur Rahman is also witness of deed in question Nos. 476 dated 23.02.1958, 477 dated 23.02.1958. So, his presence was necessity,

but he was not produced before court. He further submits the deed writer Rashid Lal, Shamlal Barek who either deed writer or witness of those deeds. With these submissions learned Advocate prayed to discharge the Rule.

At the fag-end of the argument the learned Advocate for the plaintiff noticed to the court that schedule land were not specified by boundary. Then the plaintiff filed an application under Order VI Rule 17 of the Code of Civil Procedure by inserting the boundary which was allowed by this court.

From the above facts and circumstances I am of the view that by dint of amendment of plaint the plaintiff may adduce evidence in support of that. The defendant shall have the liberty to file additional statement and in support of that the defendant may adduce evidences. All the questions including the question of title shall remain open.

In the result, the Rule is disposed of without any order as to cost.

The judgment and decree dated 29.01.2009 is set-aside and send the same on remand to appeal court below for disposal in the light of the findings made above. The appeal court below is directed to dispose of the suit as expeditiously as possible preferable within 6(six) months from the date of receipt of this judgment and order.

Send down the lower Court records along with a copy of this judgment at once.