

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.2 of 2021

Md. Nur Alam Nantu and others

....Appellants

-Versus-

Most. Shamsun Nahar being dead her legal heirs- Md.
Nurul Imam Dula and others

... Opposite parties

Mr. Bhabesh Chandra Mustfi, Advocate with

Ms. Shamsun Nahar Begum, Advocate

... For the appellants.

Mr. Md. Sumon Ali, Advocate with

Mr. Kazi Md. Akhtaruzzaman, Advocate

... For the respondent No.2.

Heard on 22.10.2025 and 16.11.2025.

Judgment on 23.11.2025

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 08.09.2020 passed by the learned Joint District Judge, 2nd Court, Gaibandha in Other Suit No.19 of 2013 decreeing the suit for declaration and cancellation of the Heba bil Awaz deed Nos.1536 and 1537 dated 13.03.2013 against the defendant.

Facts in short are that now deceased Nurunnahar as plaintiff instituted above suit for declaration that registered deed of gift

Nos.1536 and 1537 dated 13.03.2013 of Sadullahpur Sub-Registry Office allegedly executive by the plaintiffs to her sons and daughter, defendant Nos.1-3, are fraudulent, ineffective and not binding upon the plaintiff. It was alleged that plaintiff is the lawful owner and processor of the property covered by above two deeds of gift and she has three sons and four daughters including defendant Nos.1-3. She was sick and took Taka 70,000/- from Biplob Shil for sale of 3 decimal land for medical expenses. After release from Rangpur Medical College Hospital defendant Nos.1-3 asked him to give signature on some stamp papers for making sale deed for Biplob Shil but subsequently the plaintiff came to know that above documents were converted into above two deeds of gift. Plaintiff did not make above heba to defendant Nos.1-3 nor she delivered possession of above land.

Defendant Nos.1-3 contested above suit by filling a joint written statement wherein they have denied all claims and allegations made in the plaint and alleged that plaintiff is an old and sick woman and defendant No.1 used to bear expenses for her medical treatment and maintenance. Plaintiff being satisfied with above services, love and respect voluntarily transferred above property to the defendants by above two registered deeds of heba.

At trial plaintiffs examined two witnesses and defendants examined three. Documents of the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.“Ka”-“Gha” Series.

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

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant Nos.1-3 as appellants moved to this Court and preferred this First Appeal.

Mr. Bhabesh Chandra Mustafi, learned Advocate for the appellants submits that now deceased plaintiff was the mother of the defendant Nos.1-3 and they provided her maintenance and medical expenses and she being satisfied with above services, love and respect voluntarily transferred above property to the defendants by above two registered deeds of heba. As far as delivery of possession of above property is concerned the learned Advocate submits that although there is nothing on record as to delivery of physical possession it is to be assumed that above possessions was delivered constructively since plaintiffs and defendants were members of the same family. Defendant No.1 himself gave evidence as DW1 and produced above two registered deeds of gift which were marked as

Exhibit Nos. “Ka” and “K-1”. The plaintiff admits execution of above two documents and their due registration. As such the onus lies upon the plaintiffs to prove that above documents were obtained by fraud or above documents were not acted upon but the plaintiffs could not adduce any legal evidence to substantiate above claims. But the learned Judge of the trial Court utterly failed to appreciate above facts and circumstances of the case and materials on record most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Md. Sumon Ali, learned Advocate for opposite party No.2 submits that admittedly above property belonged to now deceased plaintiff Nurunnahar who had three sons and four daughters including defendant Nos.1-3. Above Nurunnahar herself filed this suit as plaintiff alleging that she did not make gift of above property to defendant Nos.1-3 and they have obtained above two registered deeds of gift by suppression of facts and cheating. But before recording of evidence plaintiff Nurunnahar died and her two daughters and other heirs were substituted as plaintiffs. PW1 Rina is a daughter of Nurunnahar has stated that after demise of Nurunnahar she and her other siblings inherited above property and plaintiff did not transfer above property to defendant Nos.1-3 by above two deeds of heba and those deeds were obtained by cheating and fraud. Defendants could not adduce any evidence oral or documentary to

prove the delivery of possession pursuant to above heba. Above two deeds of gift were registered on commission which shows that Nurunnahar was very sick and unable to walk. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial court rightly decreed 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 above property belonged to now deceased Nurunnahar who had three sons and three daughters including defendant Nos.1-3 and she was a sick, illiterate and elderly woman of 70 years of age. Above Nurunnahar as plaintiff filed this suit alleging that she did not transfer above land by heba to defendant Nos.1-3 and above two registered deeds of heba were obtained by fraud and cheating. Above suit was filed within one month and five days of the execution and registration of above two deeds of heba. Before recording of evidence above Nurunnahar died and her heirs who were not recipients of above deeds of heba were substituted as plaintiffs. Plaintiff No.1Kha Rina who is another daughter of Nurunnahar gave evidence as PW1 and reiterated all claims and allegations made in the plaint alleging that Nurunnahar did not

transfer above land by heba to defendant Nos.1-3 and above two deeds of heba were obtained by fraud and cheating.

A deed of heba as a deed of transfer of property is distinguishable from a deed of sale. The consideration of a deed of heba is love and affection of the donor for the donees. A valid transfer by heba requires a declaration of heba by the donor and acceptance of the heba by the donee and more importantly delivery of possession of the property by the donor to the donee. There was no requirement for writing or registration of a heba before the Act No.XXVI of 2004 and Registration (Amendment) Act, 2005, came into effect on 01.07.2005. As such a registered deed of heba does not carry any presumption as to delivery of possession as it is available in a registered deed of sale. In their written statement defendant Nos.1-3 did not make mention of delivery of possession of above property pursuant to above heba. There is no claim that Nuruannahar transferred possession of above property physically or constructively to defendant Nos.1-3. While giving evidence as DW1 defendant No.1 did not claim that pursuant to above two deeds of heba defendant Nos.1-3 received delivery of possession. DW2 is a witness to above deeds of gift and DW3 is the scribe of above two gift deeds. As such there is no evidence oral or documentary as to delivery of possession

of above property to defendant Nos.1-3 pursuant to above two deeds of heba.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Judge of the trial Court nor we find any substance in this appeal which is liable to be dismissed.

In the result, the First Appeal is hereby dismissed.

Send down the lower Court's record immediately.

Md. Saiful Islam, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**