

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3404 of 2019

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Zakir Hossain and others

... Petitioners

-Versus-

Md. Nurul Islam Sheikh and others

... Opposite parties

Mr. Uzzal Paul, Advocates

... For the petitioners.

Mr. Md. Sadekur Rahman with

Mr. Mahabub-Ule-Islam, Advocates

... For the opposite party No.1.

Heard on 07.01.2025 and Judgment on 14.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 17.07.2019 passed by the District Judge, Madaripur in Title Appeal No.06 of 2018 dismissing the appeal and thereby affirming the judgment and decree dated 21.11.2017 passed by the learned Senior Assistant Judge, Shibchar, Madaripur in Title Suit No.95 of 2008 decreeing the suit in part should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that opposite party as plaintiff instituted above suit for redemption of usufructuary mortgage dated 03.07.1997 alleging that 58 decimal land as described in the schedule to the plaint belonged to the plaintiff who transferred the same to defendant No.1 by registered kabala deed dated 03.07.1997 and on the same date above defendant executed and registered an ekranama providing for return of above land to the plaintiff after seven years. The plaintiff asked defendant No.1 on 15.04.2008 for delivery of possession of above land who denied to do so.

The suit was contested by defendant Nos.1, 3, 5, 6, 7, 9, 11 and 12 by submitting two separate written statements. The case of the defendant in short are that the plaintiff sold above land to the defendants for a consideration of Taka 40,000/- by registered kabala deed dated 03.07.1997 and above defendant was possessing above land by mutating his name and paying rent to the Government. To deprive above defendant from the disputed land plaintiff disclosed about above ekranama in the 1st part of 2002 and the defendant paid Taka 20,000/- to the plaintiff and obtained an unregistered nadabipatra. The defendant No.1 has transferred above land to the defendant Nos.3-10 by registered kabala deed dated 17.12.2006 who in their turn transferred the same to the defendant Nos.10-13 by registered kabala deed dated

28.11.2011 and they are possessing above land by constructing their dwelling house.

At trial plaintiff examined one witness and documents of the plaintiff were marked as Exhibit No.1 series. On the other hand defendant examined three witness and documents of the defendant were marked as Exhibit Nos.'Ka' series to 'Gha' series.

On consideration of the facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant Nos10-13 as appellants preferred Title Appeal No.6of 2018 to the learned District Judge, Madaripur who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court with this petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Uzzal Paul, learned Advocate for the petitioners submits that defendant No.1 sold out the disputed land by registered kabala deed dated 03.07.1997 and above deed was not at all a deed of mortgage. But to avoid future complication above defendant obtained an unregistered

nadabipatra from the plaintiff on 16.10.2002 after making payment of Taka 20,000/- to him. By above nadabipatra the plaintiff abandoned his every claim over the disputed property. Defendant No.1 obtained above nadabipatra after the plaintiff claimed that the registered kabala deed dated 03.07.1997 was in fact a deed of mortgage. Since the plaintiff on receipt of valuable consideration executed above nadabipatra the plaintiff does not have any locus standi to institute this suit. Defendant Nos.10-13 purchased above land in lieu of money from defendant No.9 and possessing above land by constructing dwelling house. But the learned Judges of both the Courts below have failed to appreciate above facts and circumstances of the case and materials on record and the learned Judge of the trial Court most illegally decreed the suit and the learned Judge of the Court of Appeal below erroneously dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Md. Sadekur Rahman, learned Advocate for the opposite party No.1 submits that it has been admitted by the plaintiff that on 03.07.1997 after obtaining the registering kabala deed from defendant No.1 he executed and registered an ekrarnama deed providing for return of the disputed land after seven years. As far as the unregistered nadabipatra is concerned the plaintiff did not execute such

an unregistered document nor any such document create any right, title and interest in any immovable property. Had defendant No.1 actually paid Taka 20,000/- on 16.10.2002 he would have obtained a registered deed. The learned Judges of both the Court below concurrently found that above unregistered nadabipatra was in fact a false document which was not executed by the plaintiff on receipt of Taka 20,000/- and on correct appreciation of evidence on record the learned District Judge rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence adduced by the parties at trial.

It is admitted that disputed 58 decimal land belonged to the plaintiff who transferred the same to defendant No.1 by a registered kabala deed on 03.07.1997. It has been claimed that on the above date defendant No.1 executed an registered an ekrarnama providing for return of above land after seven years. Defendant No.1 initially denied that he executed above registered ekrarnama dated 03.07.1997 but subsequently defendant No.1 admitted the same and set up an alternative claim that due to claim of title by the plaintiff on the basis of

above ekrarnama defendant No.1 paid Taka 20,000/- to the plaintiff and obtained an unregistered nadabipatra on 16.10.2002.

In view of above later claim as to unregistered nadabipatra it can be presumed that defendant No.1 has admitted that he executed and registered above ekrarnama deed on 03.07.1997. Above registered kabala deed dated 03.07.1997 executed by the plaintiff in favour of defendant No.1 and the registered deed of ekrarnama of the same date executed by defendant No.1 in favour of the plaintiff providing for return of above land after seven years together convert above deed of sale into a deed of usufructuary mortgage as provided in Section 95ka of the State Acquisition and Tenancy Act, 1950.

At trial plaintiff himself gave evidence as PW1 and reiterated above claims that the registered kabala deed dated 03.07.1997 was supported by a registered ekrarnama and above kabala deed was in fact a deed of usufructuary mortgage. Above PW produced certified copies of above sale deed and the ekrarnama which were marked as Exhibit No.1 series.

As far as the unregistered nadabipatra is concerned it is well settled that such an unregistered nadabipatra does not create any right, interest or title in any immovable property. There is no mention either in the written statement or in evidence of the defendant witnesses as to

what claim was abandoned by the plaintiff by above nadabipatra. Since the registered kabala deed dated 03.07.1997 (Exhibit No.1 series) was a deed of usufructuary mortgage such a nadabipatre cannot convert the character of above mortgage deed into a deed of sale. The learned Judge of trial Court on a detailed analysis of the evidence on record held that the defendant could not prove by legal evidence the payment of taka 20,000/- to the plaintiff and proper execution of above nadabipatra. Above findings of the trial Court was endorsed by the Court of Appeal below and above concurrent findings of facts arrived at by the Courts below being based on materials on record this Court cannot in its revisional jurisdiction interfere with above findings of fact in the absence of any allegation as to misreading or non consideration of any legal evidence on record.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned District Judge on appreciation of evidence on record rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

I am unable to find any infirmity or illegality in the impugned judgment and decree of the Court of Appeal below nor I find any substance in this revisional application under Section 115(1) of the Code

of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is recalled.

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER