

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2735 OF 2021

In the matter of:

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

And

Abdul Malek and others

... Petitioners

-Versus-

Joynal Abedin and others

... Opposite parties

Mr. Abul Kalam Choudhury, Senior Advocate

Mr. Iqbal Kalam Choudhury, Advocate

Mr. Shahin Miraz Choudhury, Advocate

... For the petitioners.

Mr. Abul Khair, Senior Advocate with

Mr. Md. Rafiqul Islam Faruque, Advocate

Mr. Mohammad Zahir Uddin Limon, Advocate

....For the opposite parties.

Heard on 23.06.2025 and Judgment on 24.06.2025.

This Rule was issued calling upon the opposite party Nos.1-9 to show cause as to why the impugned judgment and decree dated 31.10.2021 passed by the learned Joint District Judge, 2nd Court, Noakhali in Title Appeal No.98 of 2019 disallowing the appeal by affirming the judgment and decree dated 29.07.2019 passed by the learned 1st Additional Assistant Judge, Sadar, Noakhali in Title suit No.402 of 2000 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs filed above suit for declaration of title for 54 decimal land of C. S. Khatian No.491 and $32\frac{3}{4}$ decimal land of C. S. Khatian No.166 and for further declaration that the registered kabla deed dated 12.01.1968 allegedly executed by Rajani Kumar Das, Surendra Kumar Das and Jugendra Kumar Das to Dalutunnessa the predecessor of the defendants is a forged and ineffective document which is not binding upon the plaintiffs.

It was alleged that Shama Sundori was owner and processor of 87 decimal land of C. S. Khatian No.491 who died leaving two sons Rajani Kumar Das and Jugendara Kumar Das who transferred 50 decimal land by registered kabla deed dated 09.12.1969 to the plaintiffs and Sadek Ali (Exhibit No.3). Above Jugendra Kumar Das again transferred 18.5 decimal land to plaintiff Nos.1 and 2 by registered kabla dated 14.01.1990. Above Rajani Kumar Das died leaving only son Pulin Bihari Das who in his turn transferred 18.5 decimal land to plaintiff No.1 and 2. The plaintiffs acquired total 87 decimal land and transferred 33 decimal land by registered kabla deed to Mominul Haque and others and possessing remaining 54 decimal land. The plaintiffs also claim title in 34 decimal land of C. S. Khatian No.166 by purchase from the heirs of Shama Sundari. The defendants created a forged registered kabla deed for above land

showing that three sons of Shama Sundari, namely, Rajani Kumar, Jugendra Kumar and Surendra Kumar transferred above 73 decimal land to Daulatunnesa, mother of the defendants. Above deed was allegedly registered in the Sub registry Office of Kosba of Cumilla District although disputed property is situated in Noakhali. 1 decimal fictitious land of Kosba Upazilla was included in above deed to create jurisdiction of above Sub registry office which was destroyed in 1971 and taking advantage of above occurrence the defendant created above forged deed.

Defendant No.1-7 contested above suit by filling a joint written statement alleging that Shama Sundari was the owner and possessor of 73 decimal land and she died leaving three sons Rajani Kumar, Jugendra Kumar and Surendra Kumar who transferred above 73 decimal land to Daulatunnessa mother of the defendants by registered kabla deed dated 12.01.1968 and delivered possession. Defendants are in possession in above land by mutating their names and paying rent to the Government. The plaintiffs created three false registered kabla deeds for above 73 decimal from two sons of shama Sundari.

At trial plaintiffs examined 5 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-18. On the other hand defendants examined 3 witnesses and documents of the defendants were marked as Exhibit Nos.“Kha”- “Gha”.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed above suit in part and declared plaintiffs title in 54 decimal land and further declared that registered kabla deed dated 12.08.1961 of the defendants was a forged and ineffective deed.

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Title Appeal No.98 of 2019 to the District Judge, Noakhali which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

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

Mr. Abul Kalam Chowdhury, learned Senior Advocate for the petitioners submits that the defendants have stated that Shama Sundari died leaving three sons namely Rajani, Jugendra and Surendra who inherited above 73 decimal land but plaintiffs claimed that above Shema Sundari died leaving two sons Rajani and Jugendra as heirs. The registered kabla deed dated 09.12.1969 of the plaintiffs executed by Rajani Kumar Das and Jugendra Kumar Das (Exhibit No.12) show that Shama Sundari had three sons Rajani Kumar Das, Jugendra Kumar Das and Direndra Kumar Das. The plaintiffs

claimed to have purchased the land of Rajani Kumar Das and Jugendra Kumar Das. As such on the basis of above three registered kabla deeds the plaintiffs could claim to have acquired only 58 decimal land and after transfer of 33 decimal land the plaintiffs could claim title in remaining 25 decimal land. The learned Judges of the both the Courts below utterly failed to appreciate above aspect of the case and most illegally decreed above suit for 54 decimal land which is not tenable in law. As far as the registered kabla deed dated 09.12.1969 of the defendants (Exhibit No.“Ga”) is concerned above kabla deed stands in the name of Daulatunnesa not in the names of the defendants. Defendants did not have any direct knowledge, participation and responsibility about above kobla deed. Above Daulatunnesa has died and the defendants in bonafide believe in the correctness of above document produced the same at trial. But the learned Judge of the Court of Appeal below failed to appreciate above materials on record correctly and most illegally granted criminal sanction against DW1 which is not tenable in law.

On the other hand Mr. Abul Khair, learned Senior Advocate for the opposite parties submits that admittedly Shama Sundari had title and possession in disputed 87 decimal land and Rajani Kanta and Jogendra were her two sons and heirs. It is also not disputed that Rajani Kanta died leaving one son Pulin Bihari. By the registered kabla deed dated 09.12.1969 plaintiffs purchased 50 decimal land

from Rajani Kumar Das and Jugendra Kumar Das. Plaintiffs also purchased 18.5 decimal land from Jugendra Nath by registered kobla deed dated 14.11.1990 and another 18.5 decimal land from Pulin Bihari Das son of Rajani Kanta by registered kabla deed dated 12.02.2015. Plaintiffs produced above documents at trial which were marked as Exhibit Nos.3, 11 and 12 respectively. Plaintiffs have transferred 33 decimal land by registered kabla deed and they are continuously remaining 54 decimal land. Plaintiffs succeeded to prove their title and possession in above land by documentary and oral evidence of competent witnesses. It is admitted that disputed land is situated in Noakhali District but the registered kabla deed dated 12.01.1968 (Exhibit No.Ka) of the defendants was registered in Kosba Sub registry of Cumilla District. Above Sub registry Office was destroyed during Liberation war of 1971 and taking advantage of above occurrence defendants have created above forged documents to grab the disputed property.

On consideration of above facts and circumstance of the case and evidence on the learned Judges of both the Courts below rightly held that the plaintiffs have succeeded to prove their lawful title in 54 decimal land and the defendants could not prove legality and effectiveness of their kabla deed dated 12.01.1968 and above concurrent findings of the courts below being based on evidence on

record this court cannot in its revisional jurisdiction interfere with above concurrent findings of fact, concluded the learned Advocate.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that Shama Sundari had title and possession in 87 decimal land of C. S. Khatian No.491 and 166 and she died leaving three sons Rajani Kanta, Jugendra Nath and Surendra. Plaintiffs claim title in above 87 decimal land of Shama Sundari but they have purchased above land from two sons namely Rajani Kanta and Suredra Nath. It turns out from the contents of registered kabla deed dated 09.12.1969 executed by Rajani Kumar Das and Jugendra Kumar Das to the plaintiffs that the executants of above document had another brother who also inherited the property of their mother Shama Sundari and on the basis of gift and amicable partition with above brother they were in possession in above 87 decimal land.

The plaintiffs could not adduce any evidence oral or documentary in support of gift by third son of Shama Sundari to his two brothers Rajani Kanta and Jugendra Nath. Plaintiffs have further claimed that Rajani and Jugendra were owners and possessors of above 87 decimal land on the basis of an amicable partition. It is true that possession of a co-sharers on the basis of amicable partition with other co-sharer does not extinguish the title of other co-sharers who are out of possession nor above possession create title to the co-

sharer who is in possession. If a third party purchases land from the co-sharer in exclusive possession of joint property on the basis of amicable partition with other co-shares that third party is entitled to maintain possession until partition by meets and bounds.

The defendants have claimed to have purchased above land from three sons of Shama Sundori namely Rajani, Jugendra and Surendra by registered kabla deed dated 12.01.1968 (Exhibit No.Gha). Above kobla deed was registered in the Kosba Sub registry Office of Cumilla although the disputed property was situated within the territorial jurisdiction of the Sub registry Office of Noakhali. It turns out from above kobla deed that 1 decimal land of Kosba was shown in above kabla deed to create jurisdiction of kosba Sub registry Office for registration of above deed.

The learned Advocate for the opposite party claims that above 1 decimal land was fictitious having no existence nor the executants of above deed had any title or possession in above land. It is not disputed that above Sub registry office was totally destroyed by fire during 1971 liberation war. Since disputed property is situated in the District of Noakhali and above documents was registered in the Sub registry Office of Kosba under Cumilla district the defendants were required to provide an explanation in the written statement as to why above document was not registered in the Sub registry Office of Noakhali and how that deed could be registered in the Sub registry

Office of Kosba of Cumilla. But the defendants did not provide any explanation in the written statement nor any evidence was adduced to prove that above 1 decimal land of kosba was real and three sons of Shama Sundori had title and possession in above land.

On consideration of above facts and circumstances of the case and materials on record the learned Judges of both the courts below rightly held that above document was a forged document which was never acted upon and above findings of the Courts below being based on materials on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

Above kabla deed stands in the name of Daulatunnessa who has died. DW1 merely produced above document at trial believing that above document of their mother was a genuine deed. The plaintiffs did not seek criminal sanction against above defendant witness nor the trial court granted criminal sanction against above witness. There is no findings by the Court of appeal below that DW1 had knowledge that above document was a forged document and he knowingly used above forged document in evidence. In above view of the materials on record I hold that the granting of criminal sanction against DW1 by the Court of Appeal below is misconceived and not tenable in law.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and decree

passed by the Court of Appeal below nor I find any substance in this Civil Revisional application and the Rule issued in this connection is liable to be discharged with above modification.

In the result, the Rule is hereby discharged. The impugned judgment and decree dated 31.10.2021 passed by the learned Joint District Judge, 2nd Court, Noakhali in Title Appeal No.98 of 2019 is upheld with modification that the criminal sanction granted against DW1 be set aside.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER