

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 2036 OF 2021**

In the matter of:

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

And

Md. Md. Alamgir Hossain (Sunni)

... Petitioner

-Versus-

Rahima Akter and others

... Opposite parties

None appears

... For the petitioner.

Mr. Md. Shaikhul Islam, Advocate

....For the opposite party No.1.

**Heard and Judgment on 21.04.2025.**

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 04.04.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Manikganj in Title Appeal No.142 of 2013 affirming the judgment and decree dated 29.05.2013 passed by the learned Senior Assistant Judge, Singair, Manikganj in Title Suit No.117 of 2008 decreeing the suit 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 instituted above suit for declaration that registered deed of Heba No.257 dated 21.01.2007 transferring of decimal land by the plaintiff to defendant No.1 is fraudulent, ineffective and not binding upon the plaintiff. It was

alleged that plaintiff inherited above 11 decimal land from her deceased father and possessing the same jointly with her other brothers. In the 1<sup>st</sup> part of Chaitra 1414 B.S. plaintiff came to know that the defendant has created above forged registered Heba deed showing transfer of above land by the plaintiff. The defendant obtained signatures of the plaintiff on some blank sheet of papers in order to make her guarantor of a bank loan of the defendant and created above forged Heba deed using above papers.

Defendant No.1 contested above suit by filling written statement alleging that after demise of their father the defendant promised maintenance of the plaintiff and his other siblings and being satisfied with above conduct of the defendant his elder sister the plaintiff voluntarily transferred above 11 decimal land by registered deed of gift dated 21.01.2007 and delivered possession. The plaintiff has mutated his name for above land and possessing the same by excavating a tank and paying rent to the Government.

At trial plaintiff and defendant No.1 examined three witnesses each. Documents of the plaintiff were marked Exhibit Nos.1 and 2 series and those of the defendant were marked exhibit No."Kha".

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

Being aggrieved by above judgment and decree of the trial Court above defendant as appellant preferred Title Appeal No.142 of

2013 to the District Judge, Manikganj which was heard by the learned Joint District Judge, 2<sup>nd</sup> Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and the dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Mr. Md. Shakhul Islam, learned Advocate for the opposite party No.1 submits that admittedly plaintiff is the elder sister of defendant No.1 and there is no basis of the claim of the defendant that after demise of their father he provided maintenance to the plaintiff. The defendant could not mention the date of declaration of gift by the plaintiff or delivery of possession. Defendant No.1 himself gave evidence as DW1 but he could not mention in his evidence the date of declaration of heba and delivery of possession. Nor he has stated who were present at the time of delivery of possession. DW2 Mohammad Siddik and DW3 Kismat Ali did not mention anything in their respective evidence as to declaration of heba and delivery of possession of the disputed land to defendant No.1. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below concurrently and rightly held that the defendant could not prove by legal evidence that the plaintiff

transferred above 11 decimal land to defendant No.1 by heba and delivered possession. Above concurrent findings of fact being based on evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

I have considered the submissions of the learned advocate for the opposite party No.1 and carefully examined all materials on record.

It is admitted that disputed 11 decimal land was owned held and possessed by the plaintiff who is the elder sister of defendant No.1.

Plaintiff herself gave evidence as PW1 and in her evidence she has reiterated all claims set out in the plaint. She stated that she was owning and possessing above land jointly with her other brothers and defendant No.1 obtained impugned Heba deed dated 21.01.2007 fraudulently. Defendant obtained her signatures on blank papers on the pretext of taking bank loan. PW2 Balijan is the mother of the plaintiff and defendant No.1 who stated that the defendant has obtained impugned deed of heba by fraud and he did not possess above land. PW3 Nazimuddin is another brother of the plaintiff who stated that the disputed land is being possessed by the plaintiff and defendant No.1 obtained impugned deed from the plaintiff by fraud.

In view of above consistence evidence of the plaintiff and her mother and brother the onus shifted upon defendant No.1 to prove that the plaintiff willingly and voluntarily made a declaration of heba for disputed 11 decimal land and she delivered possession of above land to defendant No.1. In his evidence as DW1 defendant did not mention

anything as to when plaintiff made declaration of above heba or who witnessed the delivery of possession of above 11 decimal land by the plaintiff. DW2 Siddik and DW3 Kismat did not mention that in their presence plaintiff made declaration of heba of above 11 decimal land or she delivered possession of above land to defendant No.1.

On consideration of above facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the concurrent findings of the learned Judges of the Courts below that the defendant could not prove that his elder sister transferred disputed 11 decimal land by registered deed of gift dated 21.01.2007 and delivered possession nor I find any illegality or irregularity in the impugned judgment and decree passed by the learned Judge of the Court of Appeal below. This Civil Revisional application under Section 115(1) of the Code of Civil Procedure is devoid of any substance 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 hereby vacated.

However, there will be no order as to costs.

Send down the lower Court's records immediately.