

District- Bagerhat.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2369 of 2022.

Sheikh Shahidul Kabir (Bachchu) and another
----- Defendants-Appellants-Petitioners.
-Versus-

Sheikh Md. Badsha and others
----- Plaintiffs-Respondents-Opposite Parties.

Mr. Md. Moniruzzaman, Advocate with
Mr. Md. Sirajul Islam, Advocate
----- For the Defendants-Appellants-Petitioners.

Mr. Noor Mohammad Moral, Advocate
----- For the Plaintiffs-Respondents-Opposite Parties.

Heard On: 29.07.2025, 10.08.2025, 24.08.2025 and
01.09.2025.

And
Judgment Delivered On: 3rd Day of September 2025.

Md. Toufiq Inam, J:

By issuance of this Rule, the plaintiffs-opposite parties were called upon to show cause as to why the judgment and decree dated 03.04.2022 passed by the learned Additional District Judge, 2nd Court, Bagerhat in Title Appeal No. 201 of 2014 affirming the judgment and decree dated 28.09.2014 passed by the learned Senior Assistant Judge, Bagerhat Sadar passed in Title Suit No. 155 of 2012, should not be set aside.

The plaintiffs' case, in short, is that one Helal Uddin died leaving behind two sons, namely Ahmed Ali Shaikh and Lokman Shaikh.

During his lifetime, Ahmed Ali remained in joint possession of the “Ga” schedule land with his co-sharers. Upon his death, Ahmed Ali was survived by his widow, Khodeja Begum (proforma defendant no. 8), and the plaintiffs claim inheritance through Lokman Shaikh, their father, who was Ahmed Ali’s predeceased step-brother. On 05.10.2011, defendant Nos. 1 and 2 disclosed that Ahmed Ali had executed and registered an Exchange Deed No. 1726 dated 26.06.1993, whereby lands were mutually exchanged. Alleging that the deed was fraudulent, void, fictitious, inoperative, and not binding upon them, the plaintiffs instituted Title Suit No. 155 of 2012 seeking a declaration to that effect.

Defendant-petitioners Nos. 1 and 2 contested the suit denying the material statements of the plaint. They contended that the suit was barred by Section 42 of the Specific Relief Act, that the plaintiffs had no locus standi to impeach the deed, and that the deed was validly executed, duly registered, and acted upon during Ahmed Ali’s lifetime. They further contended that Ahmed Ali never possessed the “Kha” schedule land after the exchange, that mutation was effected in accordance with the exchange, and that the plaintiffs neither proved heirship nor possession, nor impleaded all heirs, rendering the suit defective.

The trial court decreed the suit on contest. Appellate court dismissed Title Appeal No. 201 of 2014 and affirmed the decree. Aggrieved, the

defendant-petitioners moved this Court in revision and obtained this Rule.

Mr. Md. Moniruzzaman, learned Advocate appearing with Mr. Md. Sirajul Islam, submits on behalf of defendants-petitioners that the plaintiffs, being sons of a predeceased step-brother (Lokman Shaikh) of Ahmed Ali, do not inherit from Ahmed Ali who died issueless. He argues that under Sunni Hanafi succession law, the widow (DW-1) and sisters are nearer heirs, and nephews through a predeceased brother are excluded. Therefore, the plaintiffs have no legal status or subsisting right to challenge the exchange deed and lack locus standi. A person not party to the deed may challenge it only if his own title or legal interest is affected. Since the plaintiffs have no inheritable right, their attempt to challenge the deed is purely academic and untenable in law. He emphasized that in the absence of proof of heirship by genealogy, succession certificate, or competent witnesses, the plaintiffs cannot claim standing.

He argues that Section 28 of the Registration Act, 1908, requires proper registration of instruments, which the defendants had complied with. Ahmed Ali himself executed the registered Exchange Deed No. 1726 dated 26.06.1993. The deed was lawfully acted upon, and the mutation was effected in the revenue records accordingly.

He contends that the plaintiffs failed to implead Ahmed Ali's sisters or other heirs. Non-joinder of necessary parties further undermines the

plaintiffs' standing and renders the suit defective. He adds that DW-1, the widow, confirmed the validity and operation of the deed. Ahmed Ali and his widow never disputed it during their lifetimes. This long acquiescence, coupled with mutation, negates any claim that the deed was not acted upon.

Per Contra, Mr. Noor Mohammad Moral, learned Advocate for the plaintiffs-Opposite parties submits that the defendants in their written statement did not specifically deny the heirship of the plaintiffs. Under Section 58 of the Evidence Act, 1872, facts admitted need not be proved. Once the defendants refrained from traversing the plaintiffs' assertion that they are nephews of Ahmed Ali, this fact stands admitted and the plaintiffs' locus standi follows. He continues to argue that when a material fact in pleadings is not denied specifically and by necessary implication, it shall be deemed admitted within the meaning of Order VIII Rule 5 CPC. Therefore, the trial and appellate courts rightly treated the plaintiffs as heirs entitled to challenge the deed, and the defendants cannot now be permitted to dispute such heirship indirectly at the revisional stage.

He next submits that the suit is filed under Section 42 of the Specific Relief Act, 1877, to declare Exchange Deed No. 1726 dated 26.06.1993 as fraudulent, void, fictitious, inoperative, and not binding. This is not a partition suit; the plaintiffs seek only declaratory relief. Reliance was placed on *Md. Abdul Bari Chowdhury Vs. Md.*

Moklisur Rahman reported in 2 ALR 247 (para 13), where it was held that a necessary party is one whose absence prevents effective adjudication. The sisters of the plaintiffs were not essential to adjudicate the dispute.

He argues that the deed was obtained by fraud, misrepresentation, and lack of delivery of possession. He cites the case of *Hajee Mohammad Ali Sons Vs. Burma Eastern Ltd.* [38 DLR (AD) 41], that holds that if fraud is proved, limitation does not apply, and heirs can challenge fraudulent instruments. He argues that the defendants had no title over 3.31 acres of land exchanged for Ahmed Ali's 3.27 acres, rendering the deed void under *Kali Kishore Mondal Vs. Gurudas Mondal* [6 ALR (HCD) 242].

He further contends that defendants failed to prove ownership of the exchanged land. They relied on the case of *Md. Atiq Vs. Nurun Nahar Begum* [33 BLD (AD) 2013] and *Urban Housing and Technical Development Company Ltd. Vs. Ashis Sarker @ Ashish* [25 BLD (AD) 2005], which emphasize that where fraud is alleged, the burden of proof lies on the party asserting the deed is valid, and a declaratory suit under Section 42 is maintainable without recourse to Section 39.

He adds that an exchange requires lawful title of both parties and immediate transfer of ownership. Since defendants had no title over the exchanged land, the exchange is invalid; the age of the deed is

immaterial if the transaction was fraudulent or no title existed. Even if Ahmed Ali and his widow did not challenge the deed in their lifetime, the heirs can challenge it after proving succession, provided fraud, misrepresentation, or lack of delivery of possession exists. He finally submits that the written statement of the defendants did not raise any objection on non-joinder of sisters, and the law allows a declaration even in absence of such parties when fraud is alleged.

Heard the learned Advocates for the parties and perused the pleadings, depositions, judgments of the courts below, the impugned Exchange Deed, and connected records. Certain facts are beyond dispute:

- i) Ahmed Ali died issueless, leaving his widow (Khodeja Begum, DW-1) and three sisters;
- ii) The plaintiffs are sons of Lokman, the step-brother of Ahmed Ali;
- iii) The Exchange Deed dated 26.06.1993 exists and was duly registered.

Points for Determination by this Court:

- 1. Whether the plaintiffs have locus standi to challenge the deed;
- 2. Whether a declaratory suit under Section 42 of the Specific Relief Act, 1877 (SRA) is maintainable on the facts proved;
- 3. Whether fraud was pleaded and proved in accordance with law;
- 4. Whether the deed was acted upon;

5. Whether the deed constitutes a valid exchange under Section 118 of the Transfer of Property Act; and
6. Whether the courts below committed errors of law justifying revisional interference.

Locus Standi and Succession under Sunni Hanafi Law:

It is a settled principle under Section 42 SRA that a plaintiff must establish a subsisting legal character or right to property which is clouded by the instrument sought to be declared void. Unless a present legal status is demonstrated, a declaratory suit cannot be maintained.

The plaintiffs claim heirship to Ahmed Ali through their father, Lokman, a predeceased step-brother. Under Sunni Hanafi law, as expounded in *Mulla's Principles of Mahomedan Law* (22nd Edn., paras. 63–65, 70–71), heirs are classified as sharers and residuaries. The widow is a Quranic sharer, as are sisters in the absence of sons. Nephews through a predeceased brother are residuary heirs, entitled to inherit only when no nearer sharers or residuaries exist. Thus, in the presence of a widow and sisters, nephews through a predeceased step-brother are excluded. Succession opens at the time of death of the deceased; remote heirs cannot claim in the presence of nearer heirs.

It is well settled that heirs may challenge a deed executed by the deceased on grounds of fraud, misrepresentation, or non-delivery of possession (*Hajee Mohammad Ali Sons Vs. Burma Eastern Ltd.* [38

DLR (AD) 41]; *Md. Atiq Vs. Nurun Nahar Begum* [33 *BLD (AD) 2013*]). However, this right presupposes that the plaintiff is a lawful heir whose inheritance or legal interest is affected by the instrument. The plaintiffs, being excluded under Sunni Hanafi succession, possess no inheritable interest in Ahmed Ali's estate. Consequently, even if fraud were alleged, the plaintiffs have no subsisting right to protect, and the doctrine of posthumous challenge does not extend to remote or excluded relatives.

The plaintiffs produced no genealogical proof, succession certificate, or independent evidence to substantiate heirship. Their failure to implead Ahmed Ali's sisters further underscores their lack of legal standing. Accordingly, the plaintiffs have no subsisting legal character affected by the Exchange Deed and, therefore, lack locus standi. This alone is sufficient to non-suit them; the declaration sought is academic and not maintainable.

Effect of Admission and Proof of Heirship:

The defendants did not specifically deny plaintiffs' heirship-this submission, though attractive at first blush, does not withstand legal scrutiny. The concept of "admission" under Section 58 of the Evidence Act and Order VIII Rule 5 CPC applies to simple facts within the personal knowledge of parties, not to questions of legal status or heirship which must be proved strictly in accordance with law. Heirship is not a matter of mere pleading; it is a matter of legal

character governed by the law of succession, requiring proof through genealogy, succession certificate, or reliable testimony. Even if the defendants did not specifically traverse the assertion of heirship, the Court is not bound to accept it blindly.

Here, Ahmed Ali's widow and sisters were admitted heirs; nephews through a predeceased step-brother are excluded under Sunni Hanafi law. Thus, even if heirship was not denied, the plaintiffs could not be clothed with a legal character they never possessed. Courts are under a duty to apply succession law, and cannot confer locus standi merely by default of pleading. Therefore, the courts omission to test heirship against settled principles of Muslim inheritance law was a jurisdictional error leading to an erroneous decree.

DW-1's Testimony and Acquiescence:

DW-1, the widow of Ahmed Ali, affirmed the exchange deed and did not allege fraud, coercion, or want of title. Mutation was effected in accordance with the deed, and the transaction was acted upon during Ahmed Ali's lifetime. Long acquiescence and administrative recognition weigh heavily against the plaintiffs' unsubstantiated allegations of inoperation or fraud.

Fraud and Evidentiary Requirements:

The plaint contains only general and conclusory allegations of fraud, without particulars of misrepresentation, inducement, or coercion. No

independent or corroborative evidence was adduced to substantiate the allegation. Mere assertion that a deed is “fraudulent, void, or fictitious” cannot meet the strict evidentiary threshold required by law. Allegations of fraud render a deed voidable, but require cogent proof, which is absent here.

Title, Possession, and Section 118 TPA Analysis:

The plaintiffs argued that the defendants had no title in 3.31 acres purportedly conveyed in exchange for 3.27 acres of Ahmed Ali, and thus no ownership passed. Section 118 of the Transfer of Property Act defines “exchange” as a mutual transfer of ownership of property other than money. For a valid exchange: (i) both parties must have lawful title over the respective properties; (ii) the transfer must be by consent; and (iii) ownership must pass immediately upon the contract.

In the present case, the plaintiffs failed to prove that the defendants had no title or that the exchange did not transfer ownership. No coherent chain of title, boundary identification, possession evidence, or revenue records were produced. Mutation records and the course of possession show that the parties acted in accordance with the deed for a considerable period, including during Ahmed Ali’s lifetime. While mutation does not create title, it corroborates that the transaction was acted upon and accepted by those immediately concerned. The plaintiffs’ unsubstantiated claim of non-title cannot invalidate the deed. Ahmed Ali and, after him, DW-1 never challenged the deed. The

widow's positive affirmation and the administrative recognition of the transaction weigh against belated third-party allegations of fraud.

Defect of Parties:

Defendants argued non-joinder of the plaintiffs' alleged sisters and other heirs. Since the suit fails for want of standing, the Court refrains from deciding this as a fatal defect. Nonetheless, where a declaration touches the estate of a deceased, surviving heirs are proper parties, and their absence further illustrates why the suit, as framed, was ill-conceived.

Errors by Courts Below:

The trial and appellate courts decreed the suit without first determining locus standi, without scrutinizing DW-1's decisive testimony, and without requiring strict proof of fraud. This misdirection constitutes a failure of justice, justifying revisional interference under Section 115 CPC.

This Court's Views:

- (i) In a declaratory suit under Section 42 SRA, the trial court must first determine the question of locus standi before entering into the merits of fraud, validity, or operation of the impugned deed, since declaratory relief presupposes a subsisting legal character or right to property affected by the instrument; absent such status, the suit fails at the threshold and any adjudication on

fraud or other issues becomes unwarranted, rendering the trial court's contrary approach a clear error of law resulting in failure of justice;

- (ii) Heirship under Muslim law cannot be presumed from an admission; it must be strictly established. Courts are duty-bound to apply the rules of succession, and a party excluded under those rules cannot acquire locus standi merely by virtue of a non-denial or an admission in pleadings or testimonies.
- (iii) Plaintiffs who fail to establish heirship or subsisting interest lack locus standi to impeach a registered deed. In a suit under Section 42 SRA, proof of legal character is a condition precedent to declaratory relief;
- (iv) DW-1's affirmative testimony, mutation, and long acquiescence negate the allegation that the exchange deed was sham or inoperative;
- (v) Courts of fact erred in granting a declaration without first resolving standing and without adequate scrutiny of the evidentiary burden for fraud;
- (vi) Under Section 118 TPA, a valid exchange requires lawful title and mutual consent; the plaintiffs failed to prove lack of title or invalidity of transfer, and the transaction was acted upon during the lifetime of Ahmed Ali.

Conclusion and Result:

For the foregoing reasons, the plaintiffs had no locus standi; the suit for a bare declaration was not maintainable on the facts proved; and, in any event, the allegation of fraud or non-operation of the Exchange Deed remains unproved. The impugned judgments suffer from errors of law resulting in a failure of justice.

The Rule is made absolute. The judgments and decrees passed by the courts below are set aside. Title Suit No. 155 of 2012 stands dismissed.

No order as to costs.

Let a copy of this judgment be communicated to the court concerned together with LC Records at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.