

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.2473 OF 2022**

In the matter of:

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

And

Moazzem Hossain and others

.... Petitioners

-Versus-

Md. Golam Kibria and others

.... Opposite parties

Mr. Md. Asad Uddin, Advocate

.... For the petitioners.

Mr. Subrata Saha with

Mr. Mirza Sultan-Alraza and

Mr. Kamal Hossain, Advocates

.... For the opposite party Nos.1-4

and 6.

**Heard on 16.02.2025 and 17.02.2025.**

**Judgment on 18.02.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated

09.05.2022 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Sirajgonj in Other Class Appeal No.126 of 2018 allowing the appeal and thereby reversing the judgment and decree dated 28.03.2018 passed by the learned Assistant Judge, Tarash, Sirajgonj in Other Class Suit No.59 of 2008 dismissing the suit should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration that the registered deed of exchange dated 14.02.1986 executed by defendants No.2 and 3 for above minor plaintiffs exchanging 66 decimal land with defendant No.1 is fraudulent, ineffective, collusive and not binding upon the plaintiffs alleging that above 66 decimal land belonged to Abu Yousuf Mohammad Khaled who died leaving the minor plaintiffs five sons and one daughter and defendant Nos.2 and 3 two wives and two daughters defendants No.4 and 5 as his heirs. Defendant Nos.2 and 3 were illiterate pordanshil village women and defendant No.1 paternal uncle of the plaintiffs fraudulently obtained above deed of exchange and on the same date obtained a sale deed from defendant Nos.2 and 3 showing transfer of 66 decimal land which was allotted to the plaintiffs and above defendants in above deed of exchange. The plaintiffs came to know about above deed of exchange on 1<sup>st</sup> June 2007.

Defendant Nos.6-11 and 15 contested above suit by filling a joint written statement alleging that defendant Nos.2-3 who were the

mothers and defecto guardians of the minor plaintiffs for themselves and for above minors jointly with defendant Nos.4 and 5 exchanged their 66 decimal land for 66 decimal land of defendant No.1 and executed and registered above deed of exchanged on 14.02.1986. On the basis of above exchange defendant Nos.2 and 3 transferred their 66 decimal land to defendant No.6 on the same date. Defendants while owning and possessing above land transferred the same to the defendant Nos.5-11 and 15 by several registered kabola deeds on different dates. Above defendants mutated their names and paid rent to the Government and possessing above land by cultivation.

At trial plaintiffs examined three witnesses and defendants examined four witnesses. Documents of the plaintiffs were marked as Exhibit No.1 series and 2 and those of the defendants were marked as Exhibit Nos. "Ka" to "Ga" series.

On consideration of facts and circumstance of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Other Class Appeal No.126 of 2018 to the District Judge, Sirajgonj which was heard by the learned Joint District Judge, 2<sup>nd</sup> Second who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

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

Mr. Asad Uddin, learned Advocate for the petitioners submits that admittedly plaintiffs were minors at the time of exchange of disputed 66 decimal land with defendant No.1 and on behalf of minor plaintiffs above deed of exchange was executed and registered by their mothers defendant Nos.2 and 3. But the plaintiffs did not institute any suit for cancellation of above deed of exchange within three years after attaining majority, as such, this suit is barred by limitation. Pursuant to above deed of exchange (Exhibit No.1Ka(c)) defendant No.1 was in possession in above 66 decimal land and by purchase from defendant No.1. Defendants Nos.6-11 and 15 are in continuous possession in above land. The plaintiffs have instituted above suit under Section 42 of the Specific Relief Act but they did not seek any consequential relief for recovery of possession, as such, this suit is barred by Section 42 of the Specific Relief Act. The learned Advocate lastly submits that the defendants are in possession in above land for more than 12 years and they have acquired valid title by way of adverse possession.

On the other hand Mr. Subrata Saha, learned Advocate for opposite party Nos.1-4 and 6 submits that the impugned deed of exchange dated 14.02.1986 is not only unlawful since the same was executed by defendant Nos.2 and 3 for the minor plaintiffs above deed was never acted upon. To be the effective the parties to an exchange deed must get possession of their respective land. The plaintiffs have claimed that there was no talk of exchange and defendant No.1 obtained above deed of exchange by fraud and misrepresentation from

defendant Nos. 2 and 3, two illiterate and pordanshil village women. Defendant No.1 did not enter appearance in the suit and give evidence in support of effectiveness of above deed of exchange nor there is any evidence on record to show that pursuant to above deed of exchange defendant Nos.2-5 got possession of above land or defendant No.1 went into the possession of disputed 66 decimal land. The impugned deed of exchange was a void deed and there is no averment in the pleadings as to when plaintiffs attained majority and how the suit was hit by Article 44 of the Limitation Act. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal below rightly allowed the appeal, set aside the unlawful judgment and decree of the trial Court and decreed the suit which calls for no interference.

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

It is admitted that disputed 66 decimal land belonged to Muhammad Khaled who died leaving five sons and one daughter the plaintiffs and two wives defendant Nos.2 and 3 and another two daughters defendant Nos.5 and 6 as his heirs. It is also admitted that plaintiffs were minor on 14.02.1986 when impugned deed of exchange was allegedly executed by their mothers defendants Nos.2 and 3.

There is no mention either in the plaint or in the written statement of the defendants as to what was the age of which plaintiff on the date

of above exchange. The defendants did not mention when the plaintiffs attained majority and now this suit for cancellation of above registered deed of exchange was barred by limitation. No evidence was adduced at trial by the defendants to show that the plaintiffs attained majority long before the institution of the suit and the same was barred by limitation. A question of limitation is a mixed question of law and fact which cannot be decided without analyzing evidence. In above view of the materials on record I hold that the submissions of the learned Advocate for the petitioner that above suit is barred by Article 44 of the Limitation Act is beyond pleadings and without any legal evidence which is not tenable in law.

The exchange is a form of transfer of immovable property which is different from transfer by sale. A sale is a transfer of immovable property in lieu of money and for exchange the consideration is land not money. If a widow mother is in financial crisis and unable to bear expenses of living, education and medicare of her minor children she may sale the property of the minors with the permission of the Court. It is true that after attaining majority above minors may file a suit for recovery of possession of their land which was sold by their mother. Exchange is a transfer of property in lieu of another property. Such a transfer is effected by the parties for their convenience of use or utilization of their property. As such the exchange of the property of a minor by his guardian can in no way be justified. The convenience or suitability of use of a particular property can be determined by the

owner of the property not by another person. There is nothing on record to show that defendant No.2 and 3 were appointed guardians by any Court for the person and property of minor plaintiffs. As such the impugned registered deed of exchanged dated 14.02.1986 (Exhibit No.AK(c) as far as the minor plaintiffs are concerned is a void document.

The plaintiffs have claimed that there was no talk of exchange of their land by their mothers defendants No.2 and 3 with their paternal uncle defendant No.1 and defendant Nos.2 and 3 were illiterate pordanshil village women and by practicing fraud defendant No.1 obtained above deed of exchange. In fact there was no exchange and the property which was given to the defendant No.2 and 3 was fraudulently taken away by a registered kabola deed on the same date in the name of defendant No.6 who is the brother in law of defendant No.1. While giving evidence as PW1 plaintiff No.4 has reiterated above claims as set out in the plaint. He stated that no talk of exchange was held and no land was transferred to defendant Nos.2-3 pursuant to above deed of exchange and 66 decimal land which was shown allotted to the defendant Nos.2-6 and the plaintiffs were shown sold to brother in law of defendant No.1 on the same date. PW1 Rezaul Karim was cross examined by the defendant but he was not cross examined on his above evidence. Above witness has produced and proved two certified copies of above registered deed of exchange and registered kabola deed No.523 dated 14.02.1986 which were marked as Exhibit No.1Ka

and 1Kha respectively. It turns out above documents that the impugned deed of exchange and the deed of sale were executed and registered one after another on the same date and the land which was allotted to defendant Nos.2-6 and the plaintiffs were shown transferred to Akbar Hossain who is the brother in law defendant No.1. Above oral and documentary evidence clearly show that on the basis of above deed of exchange there was in fact no real exchange of land and defendant Nos.2-6 and plaintiffs did not get physical possession of 66 decimal land allotted to there. As such it can be safely concluded that above deed of exchange was not acted upon.

It is admitted that defendant No.1 is the paternal uncle of the plaintiffs and a co-share of the disputed jomas and by purchase by registered kabola deed dated 14.02.1986 defendants Nos.6-11 and 15 acquired title and possession in the land of defendant No.1 not the land of the plaintiffs.

In above view of the facts and circumstance of the case and evidence on record I hold that the learned Judge of the Court of appeal below on correct appreciation of materials on record has rightly allowed the appeal and set aside the unlawful judgment and decree of the trial Court and decreed the suit which calls for no interference.

I am unable to find any substance in this petition 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.



However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*