

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

Present:

Mr. Justice Rezaul Karim

Civil Revision No. 4401 of 2022

Md. Hossen Ali being dead and his heir 1(Ka) Hamida Begum and others

...Petitioners

-Versus-

Sufia Haque and others

...Opposite parties

Md. Shahadat Amin Tanvin (Rikon) with

Mr. Md. Selim Hossain, Advocates

....For the petitioners

Md. Zakir Hossain, Advocate

....For the opposite parties

Heard on: 24.06.2026 and 25.06.2026

Judgment on: 25.06.2026

This Rule was issued at the instance of the petitioners under Section 115(1) of the Code of Civil Procedure, 1908, upon the opposite parties in the following terms:

“Let a Rule be issued calling upon the opposite parties to show cause as to why the impugned order No.14 dated 21.07.2022 passed by the learned District Judge, Manikgonj in Tile Appeal No. 50 of 2021 rejecting the application dated 07.04.2022 for DNA Test of the defendant-appellant-petitioners, now pending before the aforesaid Court should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”

At the same time, this Court was also pleased to consider the supplementary affidavit as part of the original application and further be pleased to stay the operation of the proceedings of the Title Appeal No. 50

of 2021, pending in the Court of the District Judge, Manikganj, for a period of 2(two) months from date, which has been subsequently extended from time to time.

The facts of the case, in brief, are that one Bachir Uddin Ahmed, being the owner of 16 Anna 38 Decimals of land appertaining to khatian No. 81, plot No. 300, under former Mouza No. 343, Upazila-Manikganj, District-Manikganj, died leaving son Hossain Ali, 2 daughters and a granddaughter as his legal heirs. After the death of said Bachir Uddin, Hossain Ali, along with other heirs, obtained a mutation Khatian in his name through a mutual settlement agreement dated 02.09.2007. Before his death said Bachir Uddin gifted 03 decimals of land appertaining to khatian No. 81 plot No. 300 under former Mouza No. 343, Upazila-Manikganj, District-Manikganj by a registered deed No. 3388 dated 04.06.1992 in which the deed writer mistakenly put downed that "You are my adopted son, During your childhood, I brought you to my house as a foster son and nurtured you with love and education as a son." which is seriously misleading. As a result, the other legal heirs of said Bachir Uddin, in coalition with motivated vested quarters, were engaged in a conspiracy to deprive the said Hossain Ali of his inheritance by claiming that, as he is a foster son, he has no legal right to the property of said Bachir Uddin. After learning of the mistake, the plaintiff did not have time to correct it in the deed in his name during his father's lifetime. As a result, the plaintiff filed the instant suit before the Court of law for rectification of the said Deed No. 3388 dated 04.06.1992.

On the other hand, defendants-opposite parties, as the defendant Nos. 1, 2 and 4, contested the suit by filing a written statement denying all the material averments claimed in the plaint stating inter alia that the plaintiff is an adopted son and the deed writer rightly mentioned in the alleged deed as per the instruction of the said late Bachir Uddin and prayed for the dismissal of the plaintiff's case.

The learned Trial Court, after framing issues and recording the evidence of both parties, concluded the trial, and finally, delivered its Judgment and Decree dated 23.02.2021, dismissing the plaintiff's suit without any order as to costs.

Thereafter, the plaintiff, being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 23.02.2021 passed by the learned Assistant Judge, Harirampur, Manikgonj, in Title Suit No. 178 of 2019, preferred a Title Appeal No. 50 of 2021 before the learned District Judge, Manikgonj, which is now pending for appeal hearing.

During pendency of the appeal hearing, on 07.04.2022, the plaintiff filed an application praying for a DNA test of the heirs of Bashir Uddin before the learned Appellate Court, but the learned Court of District Judge, Manikgonj, being the appellate Court, most arbitrarily rejected the appellant's said application for DNA test without showing any cogent ground and posted the same on 01.09.2022 for appeal hearing. Hence, the petitioners invoked this revisional jurisdiction.

Mr. Md. Shahadat Amin Tanvin (Rikon), with Mr. Selim Hossain, learned Advocate, appearing on behalf of the petitioners submits that the

impugned judgment and order dated 21.07.2022 passed by the learned Court of District Judge, Manikganj in Title Appeal No. 50 of 2021 rejecting the application for DNA test is purely misreading, non-reading and misapplication of the evidence and documents on record and misconception of the legal aspect and misinterpretation of relevant material points of law and as such the impugned judgment and order is liable to be set aside.

Learned Advocate further submits that the opposite party No. 4, Shirin Akter, being the niece of the said Hossain Ali, has a biological relation with the appellants, and more so, there are two germane sisters of the said Hossain Ali who are the contesting defendants-respondents also have the genetic chain which can be revealed through DNA test that said Hossain Ali was the biological son of late Basir Uddin Ahmed, and accordingly, the order of rejecting the application for DNA test is not sustainable in the eye of law.

He further submits that in a matter where the paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires and the court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child and when there is apparent conflict between the right to privacy

of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed and as such the impugned order is liable to be set aside.

He further submits that the learned appellate Court failed to consider that a DNA test is the only conclusive proof in the eye of law regarding the legitimacy of child or whose paternity has already denied by others and in the instant case the other siblings of the plaintiffs *i.e.* the defendants denied the plaintiff as their biological brother and addressed him as adopted son of said late Bachir Uddin and in this context DNA test is the only solution to solve the issue but the appellate Court whimsically reject the appellants' application for DNA test and such order resulting in an error in the decision, occasioning failure of justice and as such the same is liable to be set aside.

Learned Advocate for the petitioners also submits that the learned appellate court failed to appreciate that the defendants treated the plaintiff as adopted brother on the basis of the gift deed No. 3388 dated 04.06.1992, the plaintiff mentioned as an adopted son of late Bachir Uddin without this deed, they have no other documents to prove their claim and DNA test is the only scientific and legally recognized way to identify one's parents or biological identity but the learned appellate court most arbitrarily reject the appellants' application for DNA test and as such the impugned order is liable to be set aside.

Learned Advocate finally posits that it is the duty of every court of law to avail all the opportunity to any party to prove his case and DNA Test is the ultimate and only scope to prove their case as well as his legitimacy and biological identity which upheld appellants' dignity in the society but the learned appellate court most arbitrarily reject the appellants' application for DNA test and as such the Rule is liable to be made absolute.

No one appears on behalf of the opposite parties at the time of hearing the matter, thus earlier the opposite parties entered appearance with an application for vacating the stay order, and in the said application, they contended *inter alia* that the impugned deed No. 3388 was executed and registered on 04.05.1992, and the suit was filed on 26.06.2018, where the plaintiff at paragraph 2 of the plaint stated that "বাদী তাহার পিতার জীবদ্দশায় তাহার নামীয় দানপত্র দলিলে থাকা ভ্রম সংশোধন করিয়া দেওয়ার সুযোগ করিয়া উঠিতে পারে নাই। ফলে বাদী আদালত প্রোগ দলিল সংশোধনের নিমিত্তে বাধ্য হইয়া অত্রাকারে মোকদমা দায়ের করিলেন।", and DW-01 in her Cross Examination revealed that the father of the plaintiff and grandfather of the DW1 Bachir Uddin died in June 2007. The learned trial Court, after hearing the parties and considering the evidence on record, was pleased to dismiss the suit as barred by limitation within the meaning of Article 96 of the First Schedule of the Limitation Act, 1908. They further contended that if the ultimate result of the suit must fail, the proceeding may well be buried at the earliest time. The petitioners misled the Hon'ble Court by failing to disclose that the suit is barred by limitation.

Considering the above facts, circumstances, and submissions advanced by the learned Counsel for the petitioner and the contents of the application for vacating the stay order, I find that the main controversy arises from the contentions that the defendants treated the plaintiff as adopted brother on the basis of the gift deed No. 3388 dated 04.06.1992, where the plaintiff mentioned as an adopted son of late Bachir Uddin, and the petitioners claimed that DNA test is the only scientific and legally recognized way to identify one's parents or biological identity. But the learned District Judge, Manikganj passed the impugned order dated 21.07.2022 in the following way:

"Heard both parties. Disallowed this petition as admittedly both parties of the impugned deed are not alive."

From a plain reading of the aforesaid order, it is manifest that the impugned order is nothing but a surmise and conjecture, and the same has been passed without showing any proper reason therefor, and thus concomitantly passed without applying a judicial mind, consequently causing a serious miscarriage of justice.

Now, the paramount question is whether a DNA test is required for determining the legitimacy of a child in the context of a civil suit. To get the answer, I need to examine the documents annexed to the instant application, and on perusal thereof, it is found that Bachhir Uddin was admittedly the original owner of the suit property. The plaintiff-petitioners claimed that Bachhir Uddin died, leaving his son Hossain Ali, 2 daughters and a granddaughter as his legal heirs. After the death of said Bachir

Uddin, Hossain Ali, along with other heirs, obtained a mutation Khatian in his name through a mutual settlement agreement dated 02.09.2007. Thus, defendants claimed that in life-time Bachir Uddin gifted 03 decimals of land appertaining to khatian No. 81 plot No. 300 under former Mouza No. 343, Upazila-Manikganj, District-Manikganj by a registered deed No. 3388 dated 04.06.1992 to Hossain Ali, the predecessor of the petitioners in which the deed specifically mentioned "You are my adopted son", which indicates that Hossen Ali is not co-sharer by inheritance. It is noticeable that before 2005, the vendee of any deed was not required to be present at the Sub-registry office; consequently, the plaintiff's doubt found substance, as someone conspired with him at the time of registration of the said deed No. 3388 dated 04.06.1992, or even the deed writer made mistakes to that effect. More importantly, it is found that 2 daughters and one granddaughter of said Bachhir Uddin are still alive to prove the legitimacy of Hossen Ali, but they are now in favour of the defendants. Thereby, the plaintiff was bound to bring the application for a DNA test.

However, the question in this case is whether the paternity of a person in a civil inheritance case can be determined by a DNA test. Admittedly, the petitioners' predecessor, Hossen Ali, whom they claim as a biological son of Bachhir Uddin, is deceased. The DNA test is sought to be conducted by matching the blood samples of one of Hossen Ali's sons with those of his paternal aunts (opposite party Nos. 1 & 2) or his cousin (opposite party No. 4). They are the admitted successors of Bachhir Uddin. It is also an admitted fact that during the lifetime of the deceased,

Hossen Ali, the petitioner's paternity was never disputed. It is only questioned when the petitioners claimed a share in the property of her deceased father. The petitioners are asking for a DNA test to be conducted routinely, without first establishing that such a test is inevitable. The resort to a DNA Test is made in rare and exceptional circumstances in Bangladesh. Entertaining applications for DNA testing as routine in inheritance cases would be risky if an alternative were available. The law governing the collection of blood samples and the conduct of DNA tests came up for consideration in various cases. The Supreme Court of Pakistan, in the case of *Salman Akram Raja and another v. Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others* (2013 SCMR 203), held that no one could be compelled to submit blood samples for the conduct of a DNA test. The Court has to consider the facts and circumstances of each case. If a person does not give consent for such a test, he/she cannot be compelled to take the test. It amounts to interference with a person's personal liberty. It was finally concluded that the Court has the power to order a DNA test or any blood test to ascertain the truthfulness of allegations, but such an order must be passed with the consent of a party; the order cannot be made routinely. Compelling a person to undergo a DNA test can have serious consequences. It is the duty of a court to safeguard and protect the personal liberty of every citizen.

Considering the above facts, submissions of the learned Advocate for the petitioners and legal propositions, I am of the view that the case in

hand is somewhat of a particular nature, as the direct biological daughters, namely Sufia Haque and Sahida Akter, of Bachhir Uddin are alive, and one descendant, namely Shirin Akter, is contesting the suit as defendant, who relied on evidence of the impugned deed 3388, dated 04.06.1992. So, there is no alternative but to undergo a DNA test with strict direction for the specific purpose at the established DNA Lab in Bangladesh.

Having bestowed my anxious consideration upon the facts and circumstances of the case, the relevant proposition of law, and the respective submissions advanced by the learned Advocate for the petitioners, I am of the considered view that failure of justice has been occasioned by the impugned order passed by the learned District Judge, Manikganj. Consequently, the order dated 21.07.2022 passed by the said Court is hereby set aside, and the application dated 07.04.2022 for a DNA test is allowed.

Accordingly, I find substance in the Rule. The Rule is, therefore, made absolute.

There shall, however, be no order as to costs.

However, the learned Appellate Court, Manikganj, is hereby directed to take proper steps to conduct the DNA test with one of the petitioners and one of the respondents Nos. 1, 2 and 4, providing them due summons and notice in respect of conducting the DNA test for ascertaining the biological relations among the legal heirs or descendants of late Bachhir Uddin. In that effect, the authority must comply with the

strict rules and procedures as contained in the ডিঅস্ক্রাইবোনিউক্লিক এসিড (ডিএনএ) আইন, ২০১৪ (২০১৪ সনের ১০ নং আইন).

The order of stay granted earlier by this Court is hereby recalled and vacated.

The learned Appellate Court is hereby directed to hear and dispose of the appeal upon receipt of the DNA test report. In the event the respondents fail, without sufficient cause, to appear within a reasonable time for the purpose of undergoing the DNA test, the learned Appellate Court shall be at liberty to draw an adverse inference against them under section 114, illustration (g) of the Evidence Act, 1872, and thereafter dispose of the appeal expeditiously in accordance with law.

Office is directed to communicate this judgment and order forthwith.