

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.472 OF 2022**

In the matter of:

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

And

Md. Razib Al Hassan @ Anik

... Petitioner

-Versus-

Most. Jahanara Begum and another

... Opposite parties

Mr. Md. Masum Iqbal, Advocate

... For the petitioner.

Mr. Abu Hasnat Md. Mofijur Rahman, Advocate

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

**Heard and Judgment on 06.05.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 20.01.2022 passed by the Joint District Judge, 1<sup>st</sup> Court, Gaibandha in Title appeal No.98 of 2018, reversing those dated 29.05.2018 passed by the learned Assistant Judge, Saghata, Gaibandha in Other Class Suit No.65 of 2015 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 opposite party as plaintiff filed above suit for cancellation of registered deed of Heba-Bil-Ewaz No.1477 dated 21.05.2006 for  $87\frac{3}{4}$  decimal land allegedly executed by the plaintiff in favor of defendant No.1 alleging that defendant No.1 was the owner

and possessor of above land and he sold undisputed "Kha" schedule land to the father of defendant No.1 and went to the Registry Office for registration of above kabla deed on 21.05.2006 and taking advantage of presence of the plaintiff in the Sub-Registry Office defendant No.1 fraudulently obtained signature of the plaintiff on some stamp papers and collusively created above Heba-Bil-Ewaz deed.

Defendant No.1 contested above suit by filling a written statement alleging that plaintiff voluntarily and willingly transferred above  $83\frac{1}{4}$  decimal land to defendant No.1 by above deed of Heba-Bil-Ewaz.

At trial plaintiff examined two witnesses and defendant examined three. Documents of the plaintiffs were marked as Exhibit No.1 series, 2 and 3 and those of the defendants were marked as Exhibit "Ka", "Kha" and "Ga" respectively.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Other Class Appeal No.98 of 2018 to the District Judge, Gaibandha which was heard by the learned Joint District Judge, 1<sup>st</sup> Court who allowed above appeal set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court with

this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Masum Iqbal, learned Advocate for the petitioner submits that it is admitted that on 21.05.2006 the plaintiff went to the Saghata Sub-Registry Office and executed and registered kabla deed No.1478 transferring “Kha” schedule land to the father of defendant No.1. On the same date plaintiff transferred disputed “Ka” schedule land to the defendant No.1 by registered deed of Heba-Bil-Iwaz being No.1477 immediately before above registered deed of kabla. Above facts show that plaintiff herself executed and registered above deed of Heba-Bil-Iwaz. But while giving evidence in court as PW1 the plaintiff falsely claimed that at the time of execution registration above kabla deed she was in Dhaka. Above attitude and expression of the plaintiff shows that she was giving untrue evidence as to the execution and registration of above Heba-Bil-Iwaz and the plaintiff has filed to prove that above deed was obtained by fraud and misrepresentation. In support of above submission the learned advocate referees to the case law reported in 16 BLT (AD) 2008 at Page No.104 and 12 MLR (AD) 2007 at page No.166.

On the other hand Mr. Abu Hasnat Md. Mofijur Rahman, learned Advocate for the opposite party No.1 submits that plaintiff is a women and she transferred “Kha” schedule to the father of defendant No.1 by a registered sale deed on 21.05.2006 but she had no reason and cause to

transfer disputed  $87\frac{3}{4}$  decimal land to defendant No.1 by Heba-Bil-Ewaz. She never intended to transfer above land to defendant No.1 by Heb-Bill-Ewaz nor she accepted any Ewaz or delivered possession to defendant No.1. Taking advantage of presence of the plaintiff in the Shaghata Registry office defendant No.1 in collusion with the relevant deed writer and Sub-Registry Office employees fraudulently created above registered deed of Heba-Bil-Ewaz. Plaintiff herself gave evidence as PW1 and consistently reiterated all claims and allegations as set out in the plaint. She was cross examined by the defendant but her above evidence remains consistence and free from material contradiction. On the other hand defendant No.1 the alleged recipient of above deed of Heba-Bil-Ewaz did not give evidence in this suit. DW1 Lutful Ahmed Habib admitted in cross examination that he was not present in the Registry Office at the time of execution and registration of above Heba-Bil-Ewaz. DW2 Dr. Matin stated that he permanently resides at Dhaka and was not present in the Sub-Registry Office at the time of execution and registration of above deed of Heba-Bil-Ewaz. As such the defendants have utterly failed to prove the declaration of Heba, receipt of Iwaz and delivery of possession by legal evidence and on consideration of above 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.

It is admitted that plaintiff Dr. Jahanara Begum was the rightful owner and processor of disputed  $87\frac{3}{4}$  decimal land. While giving evidence as PW1 she stated that she did not transfer above land to defendant No.1 by Heba-Bil-Ewaz. Nor she executed above deed of Heba-Bil-Ewaz neither she received any Ewaz. Her signature was obtained by collusion and fraudulent measure. She went to Shagata Sub-Registry Office to sale "Kha" schedule land to the father of defendant by a registered kabla deed on 21.05.2006 and taking advantage of above occurrence defendant No.1 collusively and fraudulently created above forged deed of Heba-Bil-Ewaz.

A transfer of immovable property by Heba or Heba-Bil-Ewaz under the Mohamadan Law is done out of love, affection or respect and not for money or other valuable consideration. In such a transaction of immovable property declaration of Heba, receipt of Ewaz and delivery of possession of the land by the donor to the donee are indispensable and preconditions to make the transfer effective and lawful. The alleged executants of impugned deed of Heba-Bil-Ewaz (Exhibit No.2) has given evidence denying transfer of above land to defendant No.1 by Heba-Bil-Ewaz as mentioned above. In view of above consistent evidence of PW1 Dr. Jahanara the onus shifted upon defendant No.1 to prove declaration of Heba by the plaintiff delivery of Ewaz by

defendant No.1 and delivery of possession of above land by the plaintiff to defendant No.1.

Defendant No.1 did not give evidence in this suit. DW1 Lutful Ahmed Habib is the younger brother of defendant No.1 who stated in his cross examination that he was not present in the Sub-Registry Office on the date of execution and registration of above Heba-Bill-Iwaz deed. In his evidence he did not mention that he was present at the time of declaration of Heba by plaintiff, receipt of Ewaz by the plaintiff and delivery of possession of above land by the plaintiff to defendant No.1. DW2 Matin Mondal also did not say anything in his evidence as to declaration of Heba and receipt of Ewaz and delivery of possession pursuant to above deed of Heba-Bill-Ewaz. In cross examination he stated that he was not present at the time of execution and registration of impugned deed of Heba-Bill-Ewaz. PW3 Dulal Chandra Saha in the scribe of above registered deed of Heba-Bil-Ewaz who stated in cross examination that he did not know anything about the contents of above document.

On consideration of above facts and circumstance of the case and evidence on record the learned Judge of the Court of Appeal below rightly held that the defendant could not prove that the plaintiff transferred disputed  $87\frac{3}{4}$  decimal land to defendant No.1 by Heba-Bil-Ewaz and accordingly set aside the unlawful judgment and decree of the trial Court and decreed the suit which calls for no interference.

The facts and circumstance of the case laws referred to above by the learned Advocate for the petitioner is quite distinguishable from the facts and circumstance of the case in hand and above case laws are not applicable in the facts and circumstances of this case.

In above view of the materials on record I hold that 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, this Rule discharged. The order of stay granted at the time of issuance of the Rule is vacated

However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER.*