

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Miscellaneous Appeal No.309 of 2007

With

Civil Rule No.478(fm) of 2009

Jakia Chowdhury being dead his heirs- Md. Abul
Hossain and others

... Appellants

-Versus-

Sonali Bank, Shilpa Bhaban Branch and others

... Respondents

Mr. A. S. M. Rahmatullah, Advocate

... For the appellants.

Ms. Hosnara Begum, Advocate

....For the Respondent No.1.

Heard on 21.01.2026 and Judgment on 01.02.2026.

S M Kuddus Zaman, J:

This First Miscellaneous Appeal is directed against the impugned judgment and order dated 14.04.2007 passed by the learned Judge, Artha Rin Adalat No.1, Dhaka in Miscellaneous Case No.19 of 2002 arising out of Title Execution Case No.138 of 2001 allowing above Miscellaneous Case in part but refusing to release the disputed property at Nayapaltan from attachment.

Facts in short are that the appellants as petitioners filed above case for release of disputed property from attachment alleging that Murtuza Ali Chowdhury obtained loan of Taka 25,43,125/- from the

opposite party who as plaintiff instituted Artha Rin Suit No.84 of 1995 for recovery of above loan money which was decreed on 30.09.1998 and for execution of above decree filed Execution Case No.138 of 2001. Above Murtoza Ali Chowdhury obtained above loan by mortgaging his property at Savar and transferred Shantinagar property to his sister and disputed Nayapaltan property to his mother on 14.01.2001 by oral gift. The opposite party falsely claimed above properties as the properties of Murtoza Ali Chowdhury and submitted a petition under Order 21 Rule 54 of the Code of Civil Procedure for attachment of above properties and the learned Judge of the Artha Rin Adalat most illegally attached above properties vide impugned judgment and order dated 15.05.2002.

Opposite party No.1 contested above case by filing a written objection alleging that Murtoza Ali Chowdhury was the rightful owner and possessor of both the properties situated at Shantinagar and Nayapaltan and he did not transfer above properties to his mother and sister by oral gift. Above claims of oral gifts were false and unfounded. Above Murtoza Ali Chowdhury obtained loan from the plaintiff keeping mortgage of his property at Savar and the opposite party made several attempts to sale above mortgaged property but no bidder was found. The learned Judge of the Executing Court granted a certificate of ownership for above property but due to an order of stay by this Court opposite party returned above certificate. The market price of above mortgaged property was inadequate to fully satisfy above loan and the

opposite party submitted a petition under Order 21 Rule 54 of the Code of Civil Procedure for attachment of above properties of Murtoza Ali Chowdhury which was allowed. The appellant filed above case for release of above properties from attachment and the learned Judge of the executing Court rightly rejected above case in part for the property of Nayapaltan but most erroneously released the Shantinagar property from attachment which is not tenable in law. The opposite party as appellant preferred First Miscellaneous Appeal Tender No.484 of 2007 to the High Court Division challenging the legality of releasing the Shantinagar property which was dismissed for default on 22.11.2007.

At trial petitioner examined three witnesses and her documents were marked as Exhibit Nos.1-8. On the other hand opposite party examined one witness.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of Artha Rin Adalat allowed above case in part and released the property of Shantinagar.

Being aggrieved by and dissatisfied with above judgment and order of the learned Judge of the Artha Rin Adalat above petitioner as appellant moved to this Court and obtained this First Appeal.

Mr. A. S. M. Rahmatullah, learned Advocate for the appellants submits that Murtaza Ali Chowdhury was a loanee of the respondent and owner of disputed flat at Nayapaltan who transferred above flat to his mother the appellant by Heba on 14.01.2001 and delivered

possession. In support of above heba Murtoza Ali Chowdhury executed a notarized Affidavit on 14.11.2001. Above judgment debtor Murgoza Ali Chowdhury had no title and possession in above flat and the learned Judge of the Artha Rin Adalar committed serious illegality in passing an order of attachment for above property.

Above flat is an undivided part of the 4th storied building and the attachment of above joint and undivided property of the appellant and her co-sharers without partition was erroneous and unlawful. The learned Advocate lastly submits that judgment debtor Murtoza Ali Chowdhury had mortgaged his saver land as security of above loan but the respondent has most illegally moved for attachment of disputed flat without selling above mortgaged property and utilizing the sale proceeds for satisfying above loan which is not tenable in law.

On the other hand Ms. Hosneara Begum, learned Advocate for the respondent No.1 submits that the respondent made several attempts to dispose of mortgaged land of judgment debtor Murtoza Ali Chowdhury but no suitable bidder was available and above proceedings was stayed by this Court. Above judgment debtor did not transfer above flat to the appellant by Heba depriving his wife and children and above false claim has been raised to defeat the lawful interest of the respondent. On correct appreciation of materials on record the learned Judge of the executing Court rightly dismissed above case which calls for no interference.

We have considered the submissions of the learned Advocate for the respective parties and carefully examined all materials on record.

It is admitted that above properties of Shantinagar and Nayapaltan belonged to Murtoza Ali Chowdhury who obtained loan of Taka 25,43,125/- from the opposite party who for realization of above outstanding loan filed Artha Rin Suit No.84 of 1995 and obtained decree for Taka 93,56,991/- and for execution of above decree filed Execution Case No.138 of 2001. It is also admitted that Murtoza Ali Chowdhury as security of above loan mortgaged his another property at Savar and opposite party attempted to sale out above mortgaged property to satisfy above loan but failed due to non-availability of a suitable bidder and the opposite party submitted a petition for attachment of above additional properties of Murtoza Ali Chowdhury at Shantinagar and Nayapaltan which was allowed and above properties were attached.

Challenging the legality of above attachment petitioner filed above case for release of above properties from attachment and the learned Judge of the Artha Rin Adalat allowed above Miscellaneous Case in part and released the property of Shantinagar from attachment. It is also admitted that being aggrieved by above judgment and order of the executing Court the petitioner as appellant preferred First Miscellaneous Appeal Tender No.484 of 2007 to this Court which was dismissed for default on 22.11.2007. As such this Court shall not

examine the legality of the part of the impugned judgment and order which relates to the release of the property of Shantinagar.

It has been alleged that above Murtoza Ali Chowdhury transferred his property of Shantigar and Nayapaltan by oral gift on 14.01.2001 to his sister Hasina Parvin and Jakia Chowdhury respectively and delivered possession. The appellant did not mention the venue and time of making of above oral gift or the persons who witnessed the declaration of heba by Murtoza Ali Chowdhury and acceptance of heba by Hasina Parvin or Jakia Chowdhury. As far as delivery possession is concerned the manner of delivery of possession was not stated in the plaint. Nor the names of any witnesses who saw the delivery of possession was mentioned. The petitioner did not mention the motive of Murtoza Ali Chowdhury for transfer of above valuable properties by heba to his sister and mother depriving his wife and children.

In support of above heba Jakia Chowdhury or Hasina Parvin the recipients of above heba or oral gift or Murtoza Ali Chowdhury the donor of above oral gift did not give evidence at trial. No cause shall be assigned by the appellant for non-examination of above relevant and competent witnesses in this case. The petitioner made relentless endeavors to prove due execution of the notarized deed of declaration of heba but as stated above the heba was not effected by above deed. On a detailed analysis of evidence on record the learned Joint District

Judge rightly held that the petitioner could not prove transfer of above properties by oral gift by Mortuza Ali Chowdhury by legal evidence. We are unable to find any irregularity or illegality in above findings of the learned Judge of the Artha Rin Adalat that the petitioner could not prove the transfer of Nayapaltan property of Murtoza Ali Chowdhury to his mother by oral gift on 14.01.2001. Since the petitioner could not prove her title in the disputed property of Nayapaltan by oral gift she has no locus-standi to challenge the attachment of above property of Murtoza Ali Chowdhury.

In the title deed of above property of Murtoza Ali Chowdhury and in the petition for attachment the opposite party has described the disputed flat as follows: "The 2nd floor western side apartment of the 4th storied building of Nayapaltan". As such above flat is not a share of an undivided joint property but separate and distinguishable property of Murtoza Ali Chowdhury.

The objection raised by the appellant the respondent cannot proceed for attachment of the disputed flat within selling out the mortgaged property of Murtoza Ali Chowdhury and utilizing the sale proceeds for satisfying above loan. Above objection could be raised by the loanee and true owner of disputed apartment of Nayapaltan namely Mr. Mortuza Ali Chowdhury and the appellant having no right or title in above flat has no locus-standi to raise above objection.

The Artha Rin Adalat Ain, 2003 provides that the financial institution shall first proceed against the borrower not the guarantor and first sale the secured or mortgaged property to the loan and if above sale proceeds was insufficient only then proceed for attachment of unsecured properties of the loanee.

On consideration of above facts and materials on record we are directing the respondent to sale the mortgaged property of Murtoza Ali Chowdhury first to satisfy above loan and then if the sale proceeds of mortgaged property fails to fully satisfy above loan only then proceed for sale of the attached property in accordance with law.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this appeal which is liable to be dismissed.

In the result, the First Miscellaneous Appeal is dismissed on contest and the connecting Civil Rule No.478(fm) of 2009 is discharged.

However, there will be no order as to cost.

Tamanna Rahman Khalidi, J:

I agree.