IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)
Present
Madam Justice Kashefa Hussain

Civil Revision No. 952 of 2022

Md. Sharifuddin
.....petitioner
-Versus-
Mst. Sayma Khatun and others
…… Opposite parties

Mr. Mohammad Ali with
Mr. Md. Toufiq Zaman, Advocates
…… For the petitioner
Mr. Md. Asadur Rahman with
Mr. Gazi Farhad Reza, Advocates
…… For the Opposite Parties

Heard on: 29.05.2023, 30.05.2023,
06.06.2023, 11.06.23, 09.07.2023 and
Judgment on 11.07.2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and decree dated 18.11.2021 (decree signed on 25.11.2021) passed by the learned Additional District Judge, 5th Court, Dhaka in Civil Appeal No. 131 of 2018 dismissing the appeal and thereby affirming the judgment and decree dated 20.06.2017 (decree signed on 22.06.2017) passed by the learned Senior Assistant Judge, 3rd Court, Dhaka in Civil Suit No. 120 of 2013 decreeing 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.

The instant opposite party as plaintiff filed Civil Suit No. 120 of 2013 in the court of Senior Assistant Judge, 3rd Court,

Dhaka praying for declaration of title in schedule property and further declaration that their names has been wrongly published in city survey khatian in column of legal permissive possession holder instead of owner's column impleading the instant petitioner as defendant in the suit. The trial court upon framing issues, adducing evidences and taking depositions etc. allowed the suit by its judgment and decree dated 20.06.2017. Being aggrieved by the judgment and decree of the trial court the defendant in the suit as appellant in the appeal filed Civil Appeal No. 131 of 2018 which was heard by the Additional District Judge, 5th Court, Dhaka. The appellate court upon hearing the parties dismissed the appeal by its judgment and decree dated 18.11.2021 and thereby affirmed the earlier judgment of the trial court. Being aggrieved by the judgment and decree of the courts below the defendant in the suit filed a civil revisional application which is presently before this court for disposal.

The Plaintiffs case inter alia is that one Rajendra Mohan Dutt was owner of schedule- Ka property in the plaint situated in Dhaka City under C.S khatan No. 10666 and Plot No. 645, S.A. khatian No. 2855 and plot No. 5088, R.S. Khatian No. 722 and Plot No. 8090 total land .0790 decimals municipal holding No. 13, Kabiraj goli Lane. Upon his death his share devolved upon his 3 sons Jogendra Mohan Dutt, Gopi Mohan Dutt and Brojendra Mohan Dutt. Upon death of Gopi Mohan Dutt his

share devolved upon his 8 sons (1) Bosekesh Dutt (2) Sree Indra Bhushan Dutt (3) Sree Ram Das Dutt (4) Sree Gobindra Das Dutt (5) Sree Sunil Kumar Dutt (6) Sree Subodh Kumar (7) Sree Sushil Kumar Dutt and (8) Sani Bhushan Dutt and children Sani Bhushan Dutt died living only wife Usha Rani Dutt as sole heirs. Subsequently 7 sons of Ray Saheb Jogendra Mohan and Gopi Mohan Dutt gave their 10 ana portion on executed permanent settlement deed No. 10527 dated 17.12.1953 handed over to Abdul Latif and on same date they also performed sale deed No. 10528 in favor of Abdul Latif. Since then Abdul Latif was owner of portion of suit land. Subsequently Sree Brojendra Mohan Dutt gave rest of 5 ana 6 gonda 2 kora 2 kranti properties on executing permanent settlement deed No. 1681 dated 16.02.1954 and handed over to Abdul Latif and on the same day executed Sale Deed No. 1682. On the other hand another owner Usha Rani wife of Sani Bhushan gave her 13 kranti portion on executing permanent settlement deed No. 2509 dated 18.03.1954 and handed over to Abdul Latif and on the same day on executing sale deed No. 2510 in favour of Abdul Latif. In this way Abdul Latif became owner of scheduled-Ka properties. Subsequently his name was recorded in S.A. khatian No. 2855 and R.S. khatian No. 722 and he was paying rent to the government and Dhaka city corporation. Said Abdul Latif died leaving 5 sons are (1) Md. Mohiddin (2) Md. Komor Uddin (3) Md. Jamal Uddin (4) Md. Sharfudding and (5) Md. Shahabuddin and 2 daughters are

Amina Begum and Anwari Begum. In this way each son became owner of 131.67 decimals out of 13 kranti and each daughter became owner of 65.83 decimals. Subsequently, Komor Uddin, Sharfuddin and Shahabuddin from their each portion 68.66 decimals in total .206 decimals land sold to mother of Hafiz. After selling Komor Uddin 63.01 decimals Sharfuddin 63.01 decimals Shahabuddin 63.01 decimals Mohiuddin 131.67 decimals and Jamal Uddin 131.67 decimals and each sister 65.83 decimals were owner of rest of the properties. In the meantime, Komor Uddin died on 24.1.1991 leaving only wife Saima Khatun (plaintiff No. 1) 4 sons (plaintiff Nos. 2-5) and 5 daughters (plaintiff Nos. 6-10) as his heirs. On hearing of the miserable condition of plaintiffs other owners Amena and Anwari Begum orally gifted their portion to the plaintiffs and handed over possession and subsequently, gifted in favour of the plaintiffs. In this way the plaintiffs became owner being heirs on 63.01 decimals and by way of gift in 131.67 decimals in total 194.68 decimals. The plaintiffs being owner were in possession of scheduled Ka properties. In the meantime, the schedule property published in city survey khatian No. 7201. Then the plaintiffs came to know that in city survey in khatian No. 7201 their name was wrongly published in the column of possession as permissive possessors instead of owner, as being described in schedule ‘Kha’. The plaintiffs being aggrieved filed the instant suit for declaration that in city survey khatian name of the

plaintiffs has wrongly been published in column of possession holders as in permissive possession instead of owner.

The defendant No. 1 contested the suit by filing written statement and admittedly the 1st portion of plaint about ownership of his father Abdul Latif in the schedule property. Then stating inter alia that the suit is not maintainable in present form and barred by limitation and defect of parties and further stated that the predecessor of the defendant Komor Uddin on 23.10.1989 on executing deed No. 3504 sold out 0089 decimals of land to the defendant No. 1 and then handed over possession. That the defendant No. 1 was in possession of 0178 decimals of land and mutated in his name on filing mutation case No. 877 of 2006 dated 30.05.2006. That subsequently, city survey khatian No. 7201, plot No. 18103 has been correctly published in his name. The defendant No. 1 on death of Komor Uddin temporarily allowed the defendants to live in the suit land. The defendant No. 1 on 3.6.2011 requested the defendants to vacate the properties but they refused to vacate the same. Moreover, they setup printing machineries in the property. That is why the defendant No. 1 filed suit No. 3 of 2014 for recovery of possession. And the suit is liable to be dismissed.

That the defendant No. 2 submitted written statement supporting the plaint and stated that the defendant No. 1 in collusion with government survey servants recorded his name in

Dhaka city khatian No. 7201 and arranged to record his name with plaintiff in the column of possession holder instead of owner.

That the defendant No. 3 submitted written statement as the defendant No. 2 then stated that Komor Uddin did not execute sale deed No. 3504 dated 23.10.1989 in favor of the defendant No. 1, which is a false and fabricated deed.

The trial court framed issues, witnesses were examined by both sides and both parties produced documents marked as exhibits.

Learned Advocate Mr. Mohammad Ali along with Mr. Md. Toufiq Zaman appeared for the petitioner while learned Advocates Mr. Md. Asadur Rahman along with Mr. Gazi Farhad Reza represented the plaintiff as opposite parties.

Learned Advocate Mr. Mohammad Ali for the petitioner submits that both courts below upon misappraisal of the material facts and wrong interpretation of law gave wrong findings and therefore these judgments are not sustainable and ought to be set aside. He submits that the impugned deed by which the defendants claim title is a valid deed and there was valid transfer by the father of the plaintiffs in favour of the defendant No. 1 by way of sale. Upon a query from this bench regarding the continuous possession of the plaintiffs till his life time, the

learned advocate for the petitioner submits that even though the defendant No. 1 (brother of the plaintiff's farther) purchased the property from his brother but however he allowed the plaintiff's father to live in the premises by way of permissive possession. In support of his argument of permissive possession only of the plaintiff's he points out to Dhaka city jorip khatian exhibit- ঘ wherefrom he argues that from exhibit-ঘ it is clear that even in the record it is manifest that the plaintiffs were in permissive possession in the property as (অনুমিত দখলদার). He next submits that the deed is a valid deed and it was validly executed by both parties and was validly registered following the provisions of Registration Act, 1908.

There was some query from this bench regarding the specific denial of the defendant No. 1's claim from the oral evidence some DWs. Wherein the DW-2 from his oral evidences and the DW-3 who clearly denied and clearly stated that he did not execute the deed and clearly denied his signature in the deed. To this query the learned advocate for the petitioner however could not give any satisfactory reply. Regarding the specific denial of the claim of possession by the DW-2 and DW-3 particularly on the issue of the plaintiff being in permissive possession as claimed by the defendant No. 1, the defendant No. 1 could not controvert the denials by way of any other evidences except the city jorip exhibit-ঘ. He submits that the city jofip is a

public document and is an evidence of possession and also states the nature of possession and therefore it is in an indirect manner the claim of title of the suit land by the defendant No. 1.

While making some other submissions the learned advocate for the petitioner attempts to place some arguments relying on the prayer portion of the plaint. He points out that the suit is basically for correction of records. He submits that the suit was filed in 2013 and a suit for correction of record in a civil court was not maintainable. Upon elaborating his submissions he argued that any person aggrieved by any publication of record after 2009 ought to have resorted to the land survey tribunal which was established section 145A of the State Acquisition and Tenancy Act, 1950. He points out to Section 145 A and submits that Section 145 A contemplates that after the establishment of the tribunal all cases relating to record of rights shall be filed before the Land Survey Tribunal and not in any Civil Court. He submits that the language of Section 145 A of the State Acquisition and Tenancy Act is quite clear regarding filing of any application etc arising out of any dispute before the Land Survey Tribunal and not in a civil court. He submits that the suit is not maintainable in limine and ought to have been rejected by the courts below. He contends that the courts completely overlooked the issue of non maintainability on point of law and

therefore committed serious error of law occasioning failure of justice.

He next submits that the suit is also barred by limitation. He argues that the plaintiff is very much aware of the fact that the plaintiff is in permissive possession only and the plaintiffs also filed case and appeal under Rule 30 and Rule 31 of the State Acquisition and Tenancy Act, 1950 which was dismissed. He submits that therefore the plaintiff's claim that they have no knowledge of the city jorip is not acceptable but however the courts below completely overlooked the fact.

He next submits that in the contents of the judgment and the decree however the impugned deed exhibit- Kha was not at any point declared null and void by the court. He argues that unless formally declared by the court as null and void such deed is still existing and the defendant No. 1 can continue to claim legal entitlement of the suit land while the deed remains valid. He concludes his submissions upon assertion that however both courts upon misappraisal of facts and evidences and upon wrong interpretation of law came upon wrong findings and both the judgments of the courts below ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Asadur Rahman for the opposite parties vehemently opposes the Rule and submits that the courts below upon correct appraisal of the

facts and circumstances came upon correct concurrent findings and those need not be interfered with in revision. Regarding the reliance of the petitioner on the City jourip exhibit-ঘ, learned advocate for the opposite parties controverts such contention. He submits that it is a settled principle that a record of right by way of city jorip whatsoever can be only evidence of possession and not evidence of title. He moreover contends that in this case the city jorip also does not manifest the genuine possession of the suit land. He contends that it is clear from the oral evidence by the DW-2 and DW-3 particularly that the city jorip was created by the defendant No. 1 who broke the trust and good faith of the plaintiffs and the others defendants. Upon elaborating his submissions he argues that it is clear from the statements made in the plaint and other materials including oral evidences that since the defendant No. 1 and the plaintiff and the other defendants belong to the same family and are heirs of same predecessor, the record of the city jorip was delegated to the defendant No. 1 by the plaintiffs and the other defendants upon good faith. He submits that the defendant No. 1 however betraying the good faith and trust collusively created and stated the name of the plaintiffs and some other defendants also as in permissive possession. He submits that these facts are as clear as day light from the deposition of the oral evidence of the defendants particularly DW-2 and DW-3. He submits that no where till the appeal the defendant No. 1 could specifically controvert the oral

evidences of the PW-2 and PW-3 who clearly supported the plaintiff's case throughout including in their written statements. He submits that the defendant No. 1 also could not show or prove at any stage that the DW-2 and DW-3 may not be independent witnesses or may otherwise be influenced by the plaintiffs.

He next makes submissions on the issue of the impugned deed exhibit-ক. He submits that although the defendant No. 1 relies on the deed and claims that the defendant No. 3 made his signature on the deed, however it is clear from the oral evidences including cross examination of the defendant No. 3 that he never executed the deed nor did he put his signature. He submits that the defendant No. 1 claims his title to the property primarily relying on the deed and therefore it was the defendant No. 1's duty to prove the validity of the deed. He submits that the defendant No. 1 also did not produce the deed writer nor was the other Esadi witness produced before the court. He argues that on the face of specific clear denial the defendant No. 3 on the issue of Esadi witness and in absence of the deed writer and the other Esadi witness the defendant No. 1 failed to prove the validity of the deed and it is clear that the deed was created and obtained by way of fraud. He submits that fraud vitiates everything and therefore even if there are any other lacunas in the case however

on the face of a fraudulent deed all other lacunas may be overlooked.

He points out to the finding of the appellate court on the issue of the signature of the defendant No. 3. He points out that the appellate court mainly examined and compared the signature of the defendant No. 3 from elsewhere with the signature in the deed and clearly found that the signature in not the defendant No. 3's. He assails that it is a settled principle that any court itself may examine a signature if it is so inclined to. He persuades that therefore it is clear as day light that the deed is a fraudulent deed.

Regarding the learned advocate for the petitioner's contention that the deed is still in existence and valid since the deed has not been declared as null and void, the learned advocate for the opposite party vehemently controverts such contention of the petitioner. He reiterates that since it is clear as day light that the impugned deed itself is a fraudulent deed therefore mere technical flaws cannot defeat or frustrate the substantive merits of the case. He also reiterates that moreover fraud vitiates everything and it is clear as day light that the impugned deed is a fraudulent deed.

There was a query from this bench upon the opposite party on point of law under Section 145A of the State Acquisition and Tenancy Act, 1950 raised by the petitioner. The learned advocate for the opposite party contends that apart from other factors it is

also clear that the instant suit was primarily filed for declaration of title and correction of record was an ancillary prayer only which was necessary for disposal of the suit. He submits that evidently issue of title cannot be decided by any other forum except a civil court. He submits that therefore the issue of Section 145A raised by the learned advocate for the petitioner is totally misplaced and is not applicable in the instant case.

On the issue of limitation the learned advocate for the opposite party submits that both courts below concurrently found that the suit is not barred by limitation and the case was filed within the statutory six years provided by the Article 120 of the Limitation Act, 1908. He concludes his submissions upon assertion that therefore the courts below correctly gave their judgment and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on records including both the judgments of the courts below. The initial fact as stated in the plaint and origin of the suit land is admitted. It is also an admitted fact that the plaintiffs and the defendants are close relatives from the same family and Abdul Latif was the plaintiffs and the defendant's common predecessor. The dispute arises from the fact that the plaintiffs claim that they are the actual owners of the land by inheritance. While the defendant No. 1

uncle of the plaintiffs claims that he eventually purchased the suit land from plaintiff's father the defendant No. 1's bother. Regarding the issue of possession of the plaintiffs the defendant No. 1 claims that even after execution of the deed exhibit-খ the defendant No. 1 allowed his brother the plaintiff's father to reside in the suit land by way of permissive possession and not as owners.

The plaintiffs relies on the fact that admittedly they are heirs of Abdul Latif. That their father son of Abdul Latif is an admitted owner of the property and also claims that after their father's death they are the legal heirs of the property and are in lawful possession thereof. The plaintiff's claim that their cause of action arose when they discovered the city jorip which was wrongly recorded.

They claim that the city survey mistakenly recorded the plaintiffs as in permissive possession. The plaintiffs also claim that they in good faith and trust they delegated the duty to enlist their names as owner in the city jorip to their uncle defendant No. 1 but which good faith and trust the defendant No.1 betrayed. The plaintiffs also claim that since their title was clouded by way of the city jorip they discovered further that the defendant No. 1 produced a fraudulent deed exhibit- খ to claim title.

My considered view is that this suit primarily involves the issue between title and permissive possession. The plaintiffs claim title to the suit land while the defendant No. 1 claims that the plaintiffs are only in permissive possession in the suit land. The defendant No. 1 claims title to the land by dint of the impugned deed. Therefore the main issue to be decided is title of the parties in the suit land. It is settled principle that to examine title one must examine the deed itself by which the claim of title arises in the suit. Therefore I have examined exhibit- খ and I have also compared with the deposition and oral evidences of the other witnesses. The PW-1 evidently supported the plaint and claims that his father did not execute any deed. I have particularly examined the oral evidences of the DW-2 and DW-3. From the written statements of the DW-2 and DW-3 (the other brothers of the defendant No. 1 and uncle of the plaintiffs) it is clear as day light that the DW-2 and DW-3 unequivocally and without any ambiguity support the plaintiff's claim. The defendant No. 1 claims that the defendant No. 3 was a witness to the deed and put his signature therein. The DW-3 however clearly denies the claim of the defendant No. 1. It is also clear from his oral evidences that he did not put any signature on any deed. Coupled with this fact it also appears that the appellate court itself examined the signature in the deed and compared the signature with the signature of the DW-3 elsewhere. The appellate court's observation is reproduced below:

"প্রদর্শনী -খ (১) হিসেবে ১নং বিবাদী পক্ষ থেকে উপস্থাপিত উক্ত ২৩.১০.১৯৮৯ ইং তারিখের ৩৫০৪ নং দলিল পর্যালোচনায় দেখা যায় যে, উক্ত দলিলে সাক্ষীর কলামে ২নং ক্রমিকে Mohiuddin S/o Late Abdul Latif, 13, Kabiraj Lane, Dhaka-1100 লেখা আছে। উক্ত দলিলের স্বাক্ষরটির সাথে ডি,ডব্লিউ-৩ হিসেবে সাক্ষী মহিউদ্দিনের জবানবন্দিতে প্রদত্ত স্বাক্ষর তুলনামুলক পর্যালোচনায় দেখা যায় উক্ত স্বাক্ষর দুটির মধ্যে কোন মিল নেই, যা খালি চোখেই প্রতীয়মান হয়।"

Therefore it is clear that the defendant No. 1's claim that the defendant No. 3 put his signature in the deed is not true. Furthermore, since the defendant No. 1 is relying on his claim to title primarily by dint of a deed, therefore it was his duty to prove the veracity of the deed. Section 103 of the Evidence Act, 1872 provides that when that any party relies on any particular fact, upon in that event it is the duty of that party to prove such facts. In this case apart from the defendant No. 3's clear denial and the appellate court's comparison of the signature and moreoer, the defendant No. 1 did not produce other isadi witness nor did the defendant No. 1 taking any steps to produce the deed writer as a witness. It is needless to state that isadi witness and deed writer are necessary witnesses in a suit where title is claimed through a deed and such title is challenged. From the overall examination

of these materials and the evidences it is clear that the deed which is the source of title of the defendant No. 1 on the suit land is a forged and fraudulent deed.

The learned advocate for the petitioner argued that since the deed has not been declared null and void by the courts below in the contents of the decree, therefore the deed is still in existence and consequently defendant No. 1 can claim title to the suit land by dint of the deed. My considered view is that even if there are any technical flaws in the judgment and decree however since in this case it is a fraudulent deed which has been proved upon evidence therefore fraud vitiates everything and the deed is null and void ab initio.

Learned advocate for the petitioner also made arguments on the issue of limitation and insisted on the plaintiff's knowledge of the city survey since they filed a case under Section 30 and 31 of the State Acquisition and Tenancy Rules, 1950.

My considered view is that whatever case may have been filed against the city jorip however such city jorip cannot be evidence of title under any circumstances. It is a settled principle that any record of rights can be only evidence of possession. In this case it is also clear from the evidences of the other DWs that the city jorip and upon comparison with the fraudulent deed, it is further clear that the city jorip was created by the defendant No.

1 who betrayed the trust and good faith upon him by his close family members. It is an admitted fact by the other defendants that the plaintiffs are not in permissive possession rather they are lawful owners of the property supported by the fact that the impugned sale deed has been proved to be a fraudulent deed.

I am of the considered view that the suit was filed within time since the plaintiffs filed the suit for title and title was challenged. It may also be reiterated here that this suit is primarily for declaration of title and the correction of record of rights are only ancillary and necessary prayers in the suit.

Learned advocate for the petitioner also contended on point of law and asserts that the suit is not maintainable in limine. He argued that after the establishment of the Land Survey Tribunal, 2009 under Section 145A of the State Acquisition and Tenancy Act, 1950 the proper forum for correction of records in city jorip is the land survey tribunal. My considered view is that in this case the main issue is declaration of title and it goes without saying that title must be decided by a civil court. Whatsoever city jorip might have been challenged is only an ancillary prayer in this suit and which is necessary for proper disposal of the suit. Since the main prayer is for declaration of title and the whole suit involves around the dispute over the title, therefore I am of the considered view that the plaintiffs filed a suit before the proper forum which is the civil court.

I have examined some other materials claimed made by the plaintiffs inter alia involving claims of the plaintiffs regarding some of their relatives that granted them some land by way of heba and also produced notary certificate. However there is no specific denial by the defendant-petitioner.

Be that as it may, under the foregoing discussions and under the facts and circumstances, upon hearing the parties and relying on the materials placed before me. I do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to costs.

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

Send down the lower court record at once.

Communicate the order at once.

Shokat (B.O)