Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 5944 of 2022
Sheikh Golam Mowla represented by his constituted Attorney Sherina Akter
.....petitioner
-Versus-
Mohammad Sheikh
.....opposite party

Mr. Md. Harun-Or-Rashid with
Ms. Mahfuza Begum and
Mr. Md. Moinul Haque, Advocates
.....for the petitioner

No one appears for the opposite party

Heard on: 30.07.2026, 06.08.2026 and 12.08.2026

Judgment on: 13.08.2026

In the instant revision Rule was issued calling upon the opposite party 1 to show cause as to why the judgment and decree dated 06.10.2022 passed by the learned District Judge, Narail in Title Appeal Number 13 of 2022 allowing the appeal thereby reversing the judgment and decree dated 30.01.2022 passed by the learned Joint District Judge, 2nd Court, Narail in Title Suit Number 62 of 2018 dismissing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party as plaintiff filed Title Suit Number 68 of 2016 on 22.08.2016 in the Court of the Assistant Judge, Kalia, Narail. The plaint was returned on 13.11.2018 and was thereafter re-presented on 22.11.2018. The suit was subsequently transferred to the Court of the Joint District Judge, 2nd Court, Narail and was renumbered as Title Suit Number 62 of 2018. The suit was filed seeking a declaration that Gift Deed Number 1875 dated 06.06.2016 as described in the schedule to the plaint is illegal, fraudulent, collusive, inoperative and void.

The case of the plaintiff as stated in the plaint in brief is that the suit land belongs to the plaintiff and is under his possession. Defendant 1 is his son. The plaintiff has four other daughters and a wife who are alive. When the plaintiff became indebted he handed over the previous title deeds relating to his properties to defendant 1. He asked defendant 1 to arrange for the registration of a mortgage deed so that the plaintiff could obtain a bank loan. Defendant 1 accordingly took the plaintiff to the Registry Office. There in collusion with dishonest officials of the Registry Office and with the assistance of deed writer and identifier and witnesses of his choice he

fraudulently brought into existence the impugned Heba deed dated 06.06.2016.

The plaintiff further stated that he had no knowledge whatsoever of the said deed. He is an illiterate and simple person and the contents of the deed were not read over to him. He neither proposed to make any gift nor went to the Registry Office for execution and registration of the deed. He also did not deliver possession of the suit land to defendant 1.

When the plaintiff asked defendant 1 about the progress of the process for obtaining the bank loan defendant 1 failed to give any satisfactory answer. This raised suspicion in the mind of the plaintiff. He therefore went to the Registry Office and obtained a certified copy of the deed on 17.07.2016. Thereupon he became fully aware of the deed. The cause of action arose on that date and the plaintiff filed the suit and subsequently on 31.08.2021 he paid the requisite ad valorem court fee.

On the other hand defendant 1 denied all the material allegations made in the plaint. His case is that he used to send his earnings from abroad to his father Mohammad Sheikh. From those earnings substantial amounts were spent on the education of his younger sisters and on arranging their

marriages in respectable families. Defendant 1 has been residing jointly with his father, mother, wife and children. He also constructed a permanent residential building for the plaintiff from his own earnings.

Defendant 1 further stated that whenever he returned home from abroad he used to show great respect to his parents and take care of them. Being satisfied with his conduct and behaviour the plaintiff expressed his intention to gift the suit land measuring 4.26 acres of land to defendant 1. Defendant 1 expressed his willingness to accept the gift. Accordingly on 06.06.2016 the plaintiff executed and registered the impugned gift deed in favour of defendant 1 and delivered possession of the suit land to him.

It was further stated that the plaintiff voluntarily appeared before the Sub-Registry Office and with full knowledge of the transaction executed and registered the gift deed in favour of defendant 1 without being induced or influenced by anyone. The present suit was filed at the instigation and upon the ill advice of the plaintiff's daughters and sons-in-law. The plaintiff has been residing in the same homestead with his only son defendant 1 and the wife and

children of defendant 1. Defendant 1 therefore prayed for dismissal of the suit with costs.

The trial Court reframed as many as five issues. The plaintiff examined three witnesses whereas defendant 1 examined six witnesses. Both parties adduced documentary evidence in support of their respective cases.

By judgment and decree dated 30.01.2022 the trial Court dismissed the suit. Being aggrieved by the said judgment and decree the plaintiff preferred Title Appeal Number 13 of 2022 before the District Judge, Narail. The appellate Court heard the appeal and was pleased to allow the same by judgment and decree dated 06.10.2022.

Being aggrieved by and dissatisfied with the said judgment and decree passed by the appellate Court the defendant preferred the instant revision before this Court and obtained the Rule on 28.11.2022.

Learned Advocate Mr. Md. Harun-or-Rashid appearing for the petitioner submits that the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice. He submits that the suit was decreed in appeal upon complete misreading and non-consideration of material evidence which affected the merits of the case.

He points out that the appellate Court did not reverse the findings arrived at by the trial Court on the basis of the evidence adduced by the plaintiff. He further submits that without discussing the evidence of the plaintiff the appellate Court decreed the suit upon fanciful considerations based only on its discussion of the evidence adduced by the defendants.

He submits that the appellate Court thereby violated the provisions of Order 41 Rule 31 of the Code of Civil Procedure. The impugned judgment being perverse and misconceived cannot therefore be sustained in law and is liable to be set aside outright.

He strongly submits that a gift cannot be undone unless a clear case of fraud is established. The evidence on record clearly shows that the plaintiff miserably failed to establish any case of fraud. He finally submits that the impugned judgment having been passed in violation of the settled principles of law cannot be sustained by this Court in revision. He accordingly prays that the Rule be made absolute.

The record does not show that any vokalatnama has been filed by any learned Advocate on behalf of the opposite party after the Rule was made ready for hearing. Although the matter was heard on 30.07.2026, 06.08.2026 and 12.08.2026

none appeared to oppose the Rule. Ground number 4 of the memorandum of appeal shows that the plaintiff-appellant took the plea of fraud in obtaining the impugned gift document dated 06.06.2016.

I have heard the learned Advocate for the petitioner and perused the materials on record as well as the judgments passed by the Courts below.

This is a suit instituted under Section 42 of the Specific Relief Act seeking a declaration that Gift Deed Number 1875 dated 06.06.2016 is illegal, fraudulent, collusive, without lawful authority, inoperative and liable to be cancelled. It is to be noted that the plaintiff himself is a party to the impugned deed. Therefore the appropriate remedy was to seek cancellation of the instrument under Section 39 of the Specific Relief Act. A suit for a mere declaration under Section 42 is not the proper remedy when the instrument sought to be avoided was executed by the plaintiff himself and remains operative. Moreover the concerned Sub-Registry Office was not impleaded as a party to the suit.

The plaintiff's specific case is that he had become indebted and intended to obtain a bank loan. For that purpose he handed over the previous title deeds relating to the suit land

to defendant 1 and asked him to arrange for execution and registration of a mortgage deed in favour of the bank. His further case is that instead of arranging for such mortgage deed defendant 1 fraudulently procured execution and registration of the impugned gift deed.

PW-1 stated in his examination-in-chief that he had become indebted and asked his son to arrange a bank loan for him. He further stated that he handed over all the relevant papers for that purpose. Significantly neither in his examination-in-chief nor in his cross-examination did he state that any mortgage deed was prepared or executed in favour of the bank. There is also no satisfactory evidence showing that he went to the Registry Office for execution of any mortgage deed. Thus the very foundation of the plaintiff's allegation that he had gone to the Registry Office for the purpose of executing a mortgage deed remains unsupported by his own evidence.

The evidence of PW-1 also does not support the allegation of fraud and collusion. In cross-examination he initially stated that he did not know the identifier Mizanur. He thereafter stated that Mizanur was his relative although he did not meet him. He further stated that the deed writer Shariful

resided at Rajapur and is the son of Kazi Nasir. He also admitted that his son-in-law accompanied him on the date of registration of the deed.

Thus from the evidence of PW-1 itself it appears that the plaintiff was acquainted with the identifier and the deed writer and his son-in-law was also present with him on the date of registration. In such circumstances the allegation that the deed was procured through collusion with the identifier and the deed writer is not established by the evidence of PW-1.

There is also a material contradiction in the evidence of PW-1 regarding his thumb impression. At one stage in cross-examination he stated that his thumb impression was been taken and the thumb impression appearing on the deed was his. At another stage he stated that the thumb impression on the deed was not his and somebody else had put the thumb impression. These contradictory statements concern the very execution of the impugned deed. They materially affect the credibility of PW-1 and make his allegation regarding fraudulent execution highly doubtful.

PW-2 also does not provide any independent support to the plaintiff's case. In examination-in-chief he stated that he had heard that the deed was obtained in the name of taking

money from the bank. In cross-examination however he admitted that he had no personal knowledge regarding the deed. He stated that he knew the deed writer Shariful and the attesting witness Mahbubur Rahman. He also stated that Mahbubur Rahman was not a bad person. He further admitted that he had no knowledge regarding the land covered by the deed. His evidence is therefore based on what he had allegedly heard and not on any personal knowledge of the transaction.

PW-3 is similarly unable to establish the plaintiff's case. In examination-in-chief he stated that he heard that the defendant had got the suit land written in his favour. In cross-examination he admitted that he had no knowledge about the preparation of the deed or its contents or the suit land. He further stated that the elder son-in-law of the plaintiff took him there and he knew only what he had heard. Thus the evidence of PW-3 is also hearsay and has no substantive value in proving the alleged fraud.

Upon consideration of the evidence of PW-1 to PW-3 it appears that the plaintiff has failed to establish the alleged fraud. PW-2 and PW-3 had no personal knowledge of the transaction. Their evidence is based on hearsay. The evidence of PW-1 is materially inconsistent on the question of

execution of the deed and his thumb impression. The allegation that defendant 1 procured the deed through fraud and collusion therefore remains unproved.

The defence evidence on the other hand is consistent with the material aspects of the transaction. DW-1 is the wife of defendant 1 and her competence to give evidence is not in question under Section 120 of the Evidence Act read with Exhibit-Ka. She supported the case of the defendant with regard to the plaintiff's intention to make the gift.

DW-2 Shariful is the deed writer. He proved his writing and signature on the deed which was marked as Exhibit-Kha-1. In cross-examination he stated that the plaintiff told him that he had one son and wanted to give land to that son and asked him to prepare the deed. He further stated that the plaintiff and his son went together to purchase the stamps.

The impugned gift deed itself lends support to this evidence. It appears from Exhibit-Kha that all eight stamps used for the execution of the deed were purchased in the name of the plaintiff Mohammad Sheikh. This circumstance is consistent with the defendant's case that the transaction was initiated by the plaintiff himself.

DW-3 Mizanur Rahman is the identifier of the deed. He proved his signature which was marked as Exhibit-Kha-2. In cross-examination he stated that the plaintiff had gone to his house on the day preceding the execution of the deed and told him that he would give land to his son and he would have to go to the Registry Office for the purpose. This is a material piece of evidence. The plaintiff did not make any effective attempt in cross-examination to discredit or contradict this statement.

DW-4 also supported the defendant's case regarding the proposal and acceptance of the gift. In cross-examination he stated that the plaintiff called him to his house at about 10 or 11 in the morning. His evidence regarding the transaction remained substantially unshaken.

DW-5 and DW-6 are sharecroppers. They stated that since 2016 they had been cultivating the land and giving the defendant his share of the crops. Nothing material was elicited from their cross-examination to discredit their evidence. Their evidence therefore supports the defendant's case in respect of delivery of possession and subsequent possession.

The evidence of the defence witnesses is mutually consistent and materially corroborative. Their evidence

supports the defendant's case regarding the proposal and acceptance of the gift and delivery of possession. Their evidence also receives corroboration from the recitals contained in the impugned gift deed Exhibit-Kha.

DW-1 stated in clear terms in cross-examination that her father-in-law proposed to give the land to defendant 1 in 2016. She stated that the proposal had been made about three or four months earlier and her brother-in-law Kamruzzaman was present. DW-4 Kamruzzaman also gave evidence in support of the gift and his evidence in examination-in-chief and cross-examination is substantially consistent with that of DW-1.

There is another significant circumstance which supports the defence case. The plaintiff himself admitted in the plaint that he handed over the previous title deeds relating to the suit land to defendant 1. Defendant 1 produced those six original title deeds before the Court and they were marked as Exhibit-Gha series. The production of those original title deeds by defendant 1 is consistent with the plaintiff's own admission and with the surrounding circumstances of the transaction.

The cumulative effect of the oral and documentary evidence therefore establishes that the gift was made by the plaintiff voluntarily and possession was delivered to defendant

1. The plaintiff has failed to establish that the deed was procured through fraud or misrepresentation.

It is settled that an allegation of fraud must be specifically pleaded and proved. Order 6 Rule 4 of the Code of Civil Procedure requires particulars to be stated where fraud or misrepresentation is alleged. In the present case the plaintiff has not been able to prove any specific fraudulent act or misrepresentation on the part of defendant 1. The allegation that the plaintiff intended to execute a mortgage deed but was instead made to execute a gift deed has not been established by reliable evidence.

The registered gift deed is also entitled to the statutory presumptions available under the Evidence Act in appropriate circumstances. Section 114 illustration (e) permits the Court to presume that judicial and official acts have been regularly performed. These presumptions are rebuttable but the plaintiff has failed to produce convincing evidence sufficient to displace the evidentiary value of the registered instrument and the official acts surrounding its registration.

Under Sections 101-103 of the Evidence Act the initial burden lay upon the plaintiff to establish the facts on which his claim was founded. The plaintiff therefore had to establish that

the deed was obtained through fraud or misrepresentation. He has failed to discharge that initial burden. The defence evidence on the other hand substantially supports the validity of the gift.

In the present case the appellate Court mainly considered portions of the evidence of the defence witnesses and arrived at a conclusion against the defendant without properly considering the evidence of PW-1 to PW-3. More importantly it did not properly reverse the material findings of the trial Court on the basis of an independent assessment of the entire evidence. Such approach is contrary to the requirement of Order 41 Rule 31 of the Code of Civil Procedure. The appellate Court therefore committed error of law in reversing the judgment and decree of the trial Court.

For the reasons stated above I find that the plaintiff has failed to prove that Gift Deed Number 1875 dated 06.06.2016 was obtained by fraud, misrepresentation or collusion. The gift has been proved by the evidence on record and there is no legal basis for declaring the same void or inoperative.

Accordingly the judgment and decree dated 06.10.2022 passed by the District Judge, Narail in Title Appeal Number 13 of 2022 is hereby set aside. The judgment and decree dated

30.01.2022 passed by the trial Court dismissing Title Suit Number 62 of 2018 is hereby restored.

In the result the Rule is made absolute.

The order of stay passed by this Court stands vacated.

Communicate the judgment and send down the lower Courts' records at once.

Md. Ali Reza, J:

Naher-B.O