

Present:

**Mr. Justice Sheikh Abdul Awal**

**Civil Revision No. 5421 of 2022**

Md. Elias Majumder.

..... Defendant-petitioner.

Versus

Md. Zakir Hossain Khandokar and others.

..... Plaintiff-Opposite Parties.

Mr. Kishore Kumar Mandal, Advocate.

.....For the Defendant-petitioner.

Mr. Tobarak Hossain, Senior Advocate with

Mr. Meah Muhammad Abdullah Zahid, Advocates.

.....For the Plaintiff opposite-party No.1.

**Heard on 25.08.2024, 01.09.2024, 04.09.2024 and**

**Judgment on 04.09.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 24.08.2022 (decree signed on 28.08.2022) passed by the learned Special District Judge, Cumilla in Title Appeal No. 2 of 2020 affirming those dated 19.02.2017 (decree signed on 27.02.2017) passed by the learned Senior Assistant Judge, Daudkandi, Cumilla in Title Suit No. 142 of 2012 decreeing the suit should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Material facts of the case, briefly, are that the opposite party No.1 as plaintiff instituted Title Suit No. 142 of 2012 in the Court of the learned Senior Assistant Judge, Daudkandi, Cumilla praying the following reliefs:

উপরোক্ত অবস্থায় ও কারনাধীনে বাদীর সবিনয় প্রার্থনা এই যে,

ক) মাননীয় আদালত দয়া পরবশে ১ নং বিবাদীনি বাদী বরাবরে ২-৫ নং বিবাদীগনের জ্ঞান গোচর মতে নালিশী ৫৭ শতক ভূমি ২,২৪,০০০/= টাকা মূল্যে বিক্রয়ের চুক্তির ভিত্তিতে ২০/১২/০৪ ইং তারিখের কবলা দলিল বৈধ, পন প্রবৃতি মূলক, সরল ভাবাপন্ন দলিল সাব্যস্তে নালিশী ভূমি সম্পর্কে ১- ৫ নং বিবাদীর বিরুদ্ধে চুক্তি প্রবলে কবলা পাওয়ার ডিক্রী দিতে,

খ) তৎপর আদালতের ডিক্রীর মর্মে বিবাদীগন বাদীর বরাবরে আপোষে নালিশী ভূমির কবলা সম্পাদন ও রেজিস্ট্রি করিয়া দেওয়ার জন্য আদেশ দিতে, তদন্যথায় মাননীয় আদালত বাদীর বরাবরে ডিক্রীর মর্মে আইনতঃ কবলা দলিল সম্পাদন ও রেজিস্ট্রি করিয়া দিতে,

গ) ১-৫ নং বিবাদীর বিরুদ্ধে বাদীকে মোকদ্দমার ক্ষতি খরচ ডিক্রী দিতে,

ঘ) মোকদ্দমার প্রমাণ ও অবস্থা দৃষ্টে আদালতের ন্যায় বিচারে বাদী অপর যে কোন বৈধ উপকার ও প্রতিকার পাইতে পারে তাহা ও পাওয়ার আদেশ দানে মোকদ্দমার সুবিচার করিতে মর্জি হয়।

The plaintiff's case in short is that the father of the plaintiff, Dr. Badiur Rahman and mother Khodeja Begum were owners of 720 decimal of land by way of exchange and while owning and possessing the same they sold 187 decimals of land and the father and mother of the plaintiff had been owning and possessing rest of the land. The father of the plaintiff died leaving behind his 2nd wife Khodeja Begum, 2 sons being the plaintiff and his brother, 5 daughters of 2nd wife namely, Rejia Begum, Lutfa Begum, Hasneara, Rahima, Ayesha Begum and 1 daughter of first wife namely Mahmuda Khatun alias Ayesha. Thereafter, Khodeja Begum died leaving behind her 2 sons and 5 daughters. The defendant No. 1 proposed to sale her portion of land got from her father and mother and the plaintiff agreed to purchase 57 decimals land at the consideration of Taka 2,24,000/- in

presence of the plaintiff's brother, his nephew and the husband of Hosneara Begum. The defendant No. 1 and her husband went to Nangolkot Sub Registry Office and requested one deed writer named Md. Abul Hossain to write a sale deed in respect of the suit land at the consideration of Taka 2,24,000/-. Ultimately, after writing the deed the defendant No. 1 and the witnesses readout the deed and the defendant No. 1 received Taka 2,24,000/- and signed the deed but on that date due to shortage of time the bank refused to receive rest of stamp fees and other fees resulting which the deed couldn't be registered on that date. Thereupon, the plaintiff took the said kabala deed in his custody and requested to the defendant on several times to register the sub-kabala deed but the defendant didn't register the sub-kabala deed, the plaintiff has possessed the suit land. The defendant Nos. 2-5 disclosed that they purchased 60 decimal of land by sub-kabala Nos. 207 of 2005 and 208 of 2005 although the defendant Nos. 2-5 had knowledge of the plaintiff's purchase from the defendant No. 1 and his possession over the suit land. The plaintiff is entitled to get registration of sub-kabala deed from the defendant No. 1. Finally, on 29.07.2005 the plaintiff requested the defendant No.1 to register the sub-kabala deed in a vain and hence, the suit. Thereafter the suit was transferred in the court of learned Senior Assistant Judge, Daudkandi, Cumilla wherein it was renumbered as Title Suit No. 142 of 2012.

Defendant Nos. 1, 2 and 5 entered appearance in the suit by filing written statement denying all the material allegations made in the plaint contending, inter-alia, that the defendant No. 1 got the land by way of inheritance and on 03.01.2005 she sold 54 decimal of land to the defendant No. 2 by sub-kabala No. 207 of 2005 and also sold 06 decimals of land to the defendant Nos. 2-5 by sub- kabala No. 208 of 2005. The defendant Nos. 2-5 purchased total 57 decimals of land at the consideration of Taka 2,24,000/- and the sub-kabala deed was

executed on the stamp of Taka 520/- dated 20.12.2004. The plaintiff collusively created the alleged deed beyond the knowledge of the defendant No. 1. The defendant No. 1 didn't execute any agreement or sale deed with the plaintiff and the plaintiff didn't give any money to the defendant No. 1 as consideration money and the defendant No. 1 didn't hand over the possession of the suit land to the plaintiff. The defendant No. 1 didn't sign on the alleged deed and the alleged deed is forged one and as such, the suit is liable to be dismissed.

The learned Senior Assistant Judge on the pleadings of the parties framed the following issues for determination:

- i. Whether the suit is maintainable in its present form and manner?
- ii. Whether the disputes between the plaintiff and defendants are proved or not?
- iii. Whether the plaintiff is entitled to get a decree as prayed for?
- iv. Whether any deed was executed between the plaintiff and the defendant for sale of the suit land and out of which the plaintiff paid consideration money amounting to Taka 2,24,000/- or not?

At the trial the plaintiff-opposite parties examined 5 witnesses and also filed a series of documents and proved the same as "Ext. Nos. 1-7. The defendants only filed written statements but they did not examine any witnesses in their favour.

The learned Senior Assistant Judge, Daudkandi, Cumilla after hearing argument of the parties and on considering the evidence and materials on record by its judgment and decree dated 19.02.2017 decreed the suit in favour of the plaintiff.

On appeal being Title Appeal No. 2 of 2020, the learned Special District Judge, Cumilla by the impugned judgment and decree dated

24.08.2022 dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by the aforesaid impugned judgment and decree dated 24.08.2002 passed by the learned Special District Judge, Cumilla the defendant No.2 as petitioner preferred this revision application and obtained the present rule.

Mr. Kishore Kumar Mondal, the learned Advocate appearing for the defendant-petitioner in the course of argument takes me through the plaint of the suit, written statements, deposition of witness and other materials on record and then submits that both the courts below without applying their judicial mind into the facts of the case and law bearing on the subject most illegally decreed the suit in favour of the plaintiff which occasioned a failure of justice. The learned Advocate next referring the provision of section 17 and 17A of the Registration Act submits that the instant suit is barred by law inasmuch as in this case no registration took place and no contract was made between the parties. He further submits that when a question of law is raised for the first time in a court of last resort and then this Court sitting under revisional jurisdiction is well empowered to decide the same upon the construction of a document or upon facts either admitted or proved. The learned Advocate to fortify his submission has relied on the decisions reported in 21 BLT 155 and 26 DLR 10.

Mr. Tabarak Hossain, the learned Senior Advocate appearing for the plaintiff-opposite party No.1, on the other hand, opposes the Rule and supports the impugned judgments of 2 Court below, which were according to him just, correct and proper. He submits that in the facts and circumstances of the case both the courts below committed

no wrong in decreeing the suit in favour of the plaintiff inasmuch as in this case it is apparent from the evidence and materials on record that the defendant No.1 by putting his signature executed deed of sale on 20.12.2004 but due to shortage of time of that day the registered process was not completed before the Sub Registry office and thereafter, on the following day the defendant No.1, sister of the plaintiff did not turn to register the deed and ultimately finding no other alternative way the plaintiff filed the suit on 18.08.2005 to get the deed register from the court within the period of limitation and therefore, in no way it can be said the case is barred by any law whatsoever. The learned Advocate further submits that the reasons best known to the defendants as to why they did not turn to lead evidence before the trial Court and it is on record that the defendants entered appearance in the suit and filed written statements although did not raise any point that the case is barred by section 17A and 17B of the Registration Act. The learned Advocate further submits that the instant Revisional application is directed against the judgment of affirmance and in-fact judgments of 2 courts below are well founded in law and fact which immune from any interference by this Court sitting under Revisional Jurisdiction. Finally, the learned Advocate submits that it is well established proverb that law does not help any indolent rather it helps the vigilant and it is on record that in this case contesting defendant No.2 did not raise any point as to not maintainability of the suit at the initial stage or at any point of time during trial or appellate stage and now defendant No. 2 raised this plea before this Court although defendant No.2 was not a party in the impugned the deed and as such, the rule is liable to be discharged.

Having heard the learned Advocates for the parties and having gone through the materials on record, the only question

that calls for my consideration in this Rule is whether the trial Court as well as appellate Court committed any error in decreeing the suit in favour of the plaintiff opposite party No.1.

On scrutiny of the record, it appears that the opposite party No.1, Md. Zakir Hossain Khandokar as plaintiff instituted Title Suit No. 2 of 2020 in the Court of the learned Senior Assistant Judge, Daudkandi, Cumilla against her sister claiming to get registration the deed in question dated 20.12.2004 on 18.08.2005 and it is on record that during trial the plaintiff side examined as many as 5 PWs out of which plaintiff himself was examined as PW-1, who categorically testified that- “২২৪০০০/- টাকায় দাম ঠিক হয়। ২০/১২/০৪ তারিখে দলিল রেজিস্ট্রি করে দেবে মর্মে সাব্যস্ত হয়। ২০/১২/০৪ তারিখে সাব রেজিস্ট্রি অফিসে মুজিবুর রহমান, মোস্তাফিজুর রহমান, আয়েশা বেগম নালিশী দলিল রেজিস্ট্রি করার উদ্দেশ্যে যায় ১নং বিবাদী ও তার স্বামী পরে গিয়েছে। আমরা পৌছার পরে দলিল লেখক আবুল হোসেনকে দায়িত্ব দিয়েছিল। দলিল লেখক নালিশী কবলা দলিল লিখেছে। দলিল লেখার সময় আমরা মোকাবেলা ছিলাম। দলিল লেখার পরে ১নং বিবাদী দলিল পাঠ করে মর্ম অবগত করে মোস্তাফিজুর রহমান। আমার বোন ১নং বিবাদী মর্ম অবগত হয়েছে। নালিশী ভূমি বাবত আমার বোন ১নং বিবাদীকে ২২৪০০০ টাকা দিয়েছি। আমার বোন টাকা পেয়ে দলিলে দস্তখত করেছে। উপস্থিত যারা ছিল তাদের মধ্যে মজিবুর রহমান ও মোস্তাফিজুর রহমান। সাক্ষী হওয়ার পর টাকা পয়সা নেয়ার পর আমার বোন দলিল আমার নিকট হস্তান্তর করেছে। আমি দলিলে বক্রি টাকা জমা দিতে স্থানীয় ব্যাংকে গিয়েছি। সময় বেশি হয়ে যাঁয়া কারণে ব্যাংক টাকা নেয় নাই। পরে যে কোনদিন দলিল রেজিস্ট্রি করা হবে সাব্যস্ত হয়। নালিশী দলিল আমার নিকট হতে দলিল লেখক হেফাজতে রাখে। আমি এরপরে ১নং বিবাদীকে দলিল রেজিস্ট্রি করার জন্য তাগাদা করি। নিজে বলেছি, টেলিফোনে বলেছি।”

Defendant side cross-examined this witness but they could not able to discover anything as to the credibility of the witness on the matter to which he testifies. PW-2 and PW-3 in their respective evidence corroborated the evidence of PW-1 in respect of all material particulars. PW-4 stated in his deposition that he known the parties. This witness also stated that- “নালিশী জমি আমার বাড়ির পাশে এ কারণে চিনি। বাদী

ঢাকায় থাকে। ২-৫নং বিবাদী নালিশী সম্পত্তি ভোগ দখল করে না।” PW-5, Abul Hossain, as Deed writer stated in his deposition that the plaintiff paid consideration money amounting to Taka 2,24,000/- to Rezia Begum (defendant No.1) in his presence. This witness also stated that he put his signature in deed as deed writer and identified his signature as “Ext.-2/ka”. He also stated that- “দলিলের সব কাজ কর্ম শেষ হয়ে যাওয়ার পর টাকা জমা দিতে গিয়ে দেখে ব্যাংক বন্ধ হয়ে গেছে এ কারণে দলিলটি রেজিস্ট্রি হয়নি। দলিলটি সদ্য সঠিক দলিল।” Defendant side cross-examined this witness but failed to find out any contradiction in the evidence of PW- 5.

On an analysis of the evidence of PWs, it appears that all the PWs categorically testified in one voice that the plaintiff purchased the land from defendant No.1 (sister of plaintiff) on payment of consideration money amounting to Taka 2,24,000/- on 20.12.2004. It further appears that the plaintiff filed the suit on 18.08.2005 to get the unregistered deed for registration, which is well within the time. Therefore, I am unable to see eye to eye to such submission of the learned Advocate for the petitioner that the case is barred by provisions of section 17A and 17B of the Registration Act. Moreover, Mr. Tabarak Hossain, the learned Advocate for the plaintiff-opposite party submits with force that section 17A deals with the instrument of contract for sale but the instrument involved in the instant suit is not a contract for sale rather the same is a sale deed executed by the owner of the land. So, there is clear distinction between the provision of this section and instrument involved in the instant suit and thus, the contention raised by the learned Advocate for the defendant-petitioner that the suit is barred by the provisions of section 17A and 17B of the Registration Act has no leg to stand. In the fact and circumstances and the position of the case as I have discussed above, I find a good deal of substance in this submission of the learned Advocate for the



plaintiff-opposite party. Therefore, I find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

The impugned judgment is based on concurrent findings of facts and the defendant-petitioner failed to make out any case of non-reading or misreading of evidence on record and both the Courts below passed the impugned decisions upon consideration of materials on record and thus the same are not liable to be inferred with by this Court sitting under revisional jurisdiction.

On a plain reading of the impugned Judgment as well as the judgment of the trial Court, I find no flaw in the reasonings of 2 Courts below. The judgments of 2 Court below are well founded in law and facts. No interference is, therefore, called for.

By the way, it may be observed that maintainability of the suit is a mixed question of fact and law, which has to be raised in original proceedings but in this case the same has been raised by the learned Advocate for the first time before this Revisional Court, which can be decided only at the trial on taking evidence and without taking evidence it is difficult to decide whether the suit was maintainable or not.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

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

Let a copy of this judgment along with lower Courts' record be sent down at once.