

Present:
Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 5129 OF 2022

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Ismail and another
Defendant-respondents-petitioners

Versus

Golapi Begum and others
Plaintiff-appellants-opposite parties

Mr. Md. Abdul Alim, Advocate
for the petitioners

Mr.Md. Moniruzzaman, Advocate with
Mr. Mohammad Jahangir Alam, Advocate and
Mr. Mohammad Motiar Rahman, Advocate
for the opposite parties

Heard on:13.01.26, 08.02.26 & 01.03.2026

Judgment on:19.04.2026

1.This Rule was issued calling upon the opposite party Nos.1-5 to show cause as to why the judgment and decreed dated 31.08.2022 (decree signed on 07.09.2022) passed by the learned Additional District Judge, 1st Court, Narshingdi, in Title Appeal No.77 of 2013 reversing the judgment and decree dated 24.01.2013 (decree signed on 30.01.2013) passed by the learned Assistant Judge, Palash Court, Narsingdi in Title Suit No.125 of 2010 decreeing the suit should not be set aside and/or pass such other or further order or orders passed as this Court may seem fit and proper.

2.The opposite party Nos.1-3 as plaintiffs filed Title Suit No.125 of 2010 before the learned Assistant Judge, Palalsh Court, Narshingdi, with a prayer for declaration of title, recovery of khas possession as well as declaration of registered deed No.2798 dated 22.08.2005 is illegal, invalid and unaffected upon the plaintiffs in the suit.

3.The plaintiffs case, in short is that the suit land of schedule ka originally belonged to Kaiyum Khan, A Naim Khan, A Rahim Khan, Habib Khan, Lutfunnessa Khanum and Achiban Nesa Khanom and accordingly S.A. Khatian Nos. 526, 609 was recorded in their name. During R.S. operation the R.S. Khatian No.68 was recorded in their names, the 13 decimals land of Shabek Plot No.590 turned into R.S. Plot No.740 and 15 decimal of Shabek Plot No.590 turned into R.S. Plot No.739. Thereafter, A. Naim Khan died leaving behind one wife named Anowara Begum, 6(six) daughters Sufia, Salima, Jarina, Khaleda, Shahina, Rabeya and one son Khairul Alam Khan, they have been enjoying and possessing the suit land by way of inheritance. Thereafter the S.A. and R.S recorded owners A Kaiyum Khan and others made a power of Attorney deed No.17763 dated 27.09.1982 in favour of their brother A. Rahim Khan to maintain and transfer the suit land, the said A. Kaiyum Khan and others being pleased to the service of the predecessor of plaintiff Ramjan Ali decided to give 28 decimals land in suit plot to said Ramjan Ali and accordingly A. Rahim Khan made the registered heba deed No.10860 dated 20.12.1983 in

favour of Ramjan Ali by way of power of attorney in the plot Nos.689 and 690, A. Rahim Khan accordingly handed over the possession of the suit land to Ramjan Ali and after the death of Ramjan Ali the plaintiffs inherited his property and became owner and possessor of the suit land. After the death of their father the plaintiff did not found the heba deed No.10860 dated 20.12.1983. Considering the future of the plaintiffs A. Quiyum Khan and others executed another deed No.52 dated 03.04.2008 in favour of the plaintiffs relating to the lands of the suit plot. It is mentioned that during the enjoyment of the aforesaid 28 decimal of land by the plaintiffs, the defendant Nos.1 and 2 filed a Pre-emption Misc. Case No.11 of 2008 dated 03.04.2008 against the heba deed No.1052 and disclosed the kha schedule deed No.2798 dated 22.08.2005 in that pre-emption case. The present plaintiff has contested the pre-emption case and that case was dismissed on contest against these plaintiffs. The plaintiff's appellant opposite party thus are entitled to get relief of declaration of title over the suit land and are also entitled to get the relief of recovery of khas possession.

4.On the other hand, the defendant Nos.1-4 contested the suit by filling a written statement denying the material allegation made in the plaint contending inter alia that admittedly the S.A. and R.S. recorded tenant A.Nayem Khan died leaving behind one wife Anowara Begum, six daughters Sufia, Salima, Jarina, Khaleda, Shahina, Rabeya and one son Khairul Alam. They

inherited the property of A. Naiyem Khan by amicable settlement Anowara Begum and Khairul Alam got the property from the suit plot Nos. 740 and 739. Being possessed of the land in the suit plot they sold out 9.33 decimal of land in favour of defendant Nos.1 and 2 by registered kabala deed No.2798 dated 22.08.2005 and handed over the possession of the same to defendant Nos.1 and 2. A. Rahim Khan did not get any power to transfer the property of the suit mouja Santan Para by the power of attorney No.17763 dated 27.09.1982 which is mentioned in the plaint. It is found that only the lands of Berua and Mohani Mouja are referred in the power of attorney No.17763. So the plaintiffs falsely contended that A. Rahim Khan made the registered heba deed No.10860 dated 20.12.1983 relating to 13 decimal of land in suit plot Nos.689 and 15 decimals of land in suit plot No. 690 from Santan Para Mouja in favour of Ramjan Ali by way of alleged power of attorney. As such the heba deed No. 1052 is illegal and unlawful. The defendant Nos.1 and 2 have been in possession of the suit land from their predecessor, so the plaintiffs have no right title and possession over the suit plot and their contention of dispossession by the defendants is totally false and untrue. The plaintiffs have instituted the instant suit in order to harass the defendants and therefore the instant suit is liable to be dismissed.

5.After trial the learned Assistant Judge, Palash Court, Narsingdi, dismissed the suit by his judgment and decree dated

24.01.2013 (decree signed on 30.01.2013) finding no right title and possession of the plaintiffs over the suit land.

6. Being aggrieved by and dissatisfied with judgment and decree passed by the learned Assistant Judge, Palash Court, Narsingdi in Title Suit No.125 of 2010 the plaintiffs preferred an appeal being Title Appeal No.77 of 2013 before the learned District Judge, Narsingdi, which has been heard by the Additional District Judge, 1st Court, Narsingdi. Learned Appellate Court was satisfied to allow the appeal and reverse the judgment and decree by learned Assistant Judge, Palash Court, Narsingdi.

7. Being aggrieved by and dissatisfied with the judgment and decree passed by the learned Additional District, 1st Court, Narsingdi, the defendant respondent petitioner moved this revision and obtained the Rule.

8. Learned Advocate appearing for the defendant respondent petitioner takes me through the impugned judgment and decree, deposition of the witnesses and other materials on record and then submits that the S.A. and R.S. recorded tenant A. Kaiyum Khan and others did not delegate power in favour of A. Rahim Khan to transfer the property of the suit Mouja Santanpara, rather the said power of attorney deed No.17763 contains the property in Berua and Mohani Mouja under Police Station, Kaliganj of District-Gazipur.

9. He further submits that defendant No.1 in his deposition categorically stated that “ ২,৩, ও ৪ নং বাদী আমার বোন সেখানে আমি ১ নং

বাদী । সকলের পক্ষে জবানবন্দী দিচ্ছি । নালিশা ভূমি সান্তান পাড়া মৌজায় । এস, এ রেকর্ডের মূল মালিক ছিল আঃ কাউয়ুম খান গং । এস, এ খতিয়ান নং ৫২৬ ও ৬০৯ । আর, এস, পর্চাও কাইয়ুম খান গং দের নামে হয় । আর, এস, খতিয়ান নং ৬৮ । সাবেক ৫৮৯ দাগে ১৩ শতাংশ আর, এস, ৭৪০ দাগে রেকর্ড হয় । সাবেক ৬৯০ দাগের ১৫ শতাংশ আর, এস, ৭৩৯ দাগে রেকর্ড হয় । নাইম খানের মৃত্যুর সময় আনোয়ারা বেগমকে স্ত্রী ও ৬ মেয়ে, ২ ছেলে রেখে যান । কাউয়ুম খান গং নালিশা ভূমি রক্ষণাবেক্ষনের ও বিক্রিয় জন্য তাদের ভাই রহিম খানকে ৭৭৬৩ নং আমমোক্তার নামা দলিল মূলে ২৭.০৯.১৯৮২ তারিখে ক্ষমতা প্রদান করা হয় । আমার দাদা কুদরত আলী এস, এ ও আর, এস রেকর্ডীয় মালিক কাইয়ুম খানের পিতা আসিব খানের বাড়িতে গৃহকর্মচারী হিসাবে কাজ করত । আমার বাবা রমজান আলী হাসিব খানের বাড়িতেই জন্মগ্রহণ করে এবং বড় হয় । দাদার মৃত্যুও পর আমার পিতা ও ঐ বাড়িতে গৃহকর্মী হিসাবে কাজ করত । আমার পিতা কোন সহায় সম্পত্তি না থাকায় হাসিব খানের পুত্র কাইয়ুম খান গং নালিশা দাগ দ্বয়ের ২৮ শতাংশ ভূমি আমার বাবাকে দান করে । সেমতে গত ২০.১২.৮৩ ইং তারিখে ১০৮৬০ নং হেবা দলিল মূলে নালিশা ৬৮৯ দাগ হতে ১৩ শতাংশ ও ৬৯০ দাগ থেকে ১৫ শতাংশ মিলে ২৮ শতাংশ দান করে দখল বুঝাইয়া দেয় । আমার পিতা উক্ত সম্পত্তিতে ফসলাদি করে ভোগদখলে থাকবস্থায় আমাদেরকে ৩ কন্যা রেখে মারা যায় । আমরা মালিক দখলকার হই উক্ত সম্পত্তির । কিন্তু ২০.১২.৮৩ ইং তারিখের ১০৮৬০ নং হেবা দলিলটি হারিয়ে যাওয়ায় কাইয়ুম খান গং গত ০৩.০৪.০৮ ইং তারিখে ১০৫২ নং হেবা দলিলমূলে পূর্বের রেজিস্ট্রিকৃত ভূমিটা পুনরায় দান করে । পরে পূর্বের হেবা দলিল খুঁজিয়া পায় কাইয়ুম গং । ১ ও ২ নং বিবাদী আমাদের বিরুদ্ধে ৩.৪.০৮ইং ১০৫২ নং হেবা দলিলের বিরুদ্ধে একটি প্রিয়েমশন মিসকেস নং ১১/০৮ আদালতে দায়ের করে । এ মামলা চলাকালীন সময়ে ১০.৭.২০০৯ ইং তারিখে শুক্রবার সকালে ১ ও ২ নং বিবাদী তফসিল বর্ণিত ভূমিটা দখল করে দুইটা চৌচলা ঘর ও ১টি টিনের ঘর করে ২৮ শতাংশের পূর্বাংশে । পরে আত্মীয় স্বজনের কাছ থেকে খরচ করে নালিশা ভূমিতে এসে বিবাদীদের বাধা দিলেও তারা জোর করে ঐ ভূমিতে ঘরবাড়ী করে দখল করে । ঐ প্রিয়েমশন

মামলায় আমরা ও প্রতিদ্বন্দ্বিতা করি। প্রিয়েমশন মোকদ্দমার আরজি পড়ে প্রথম জানতে পারি যে, ২২.০৮.০৫ ইং তারিখে বিবাদীগণ একটি ২৭৯৮ নং সাব কবলা দলিল সৃজন করে। এই দলিলের বিষয়ে ইতিপূর্বে জানতান না। প্রিয়েমশন মোকদ্দমার আরজি পড়ে প্রথম জানতে পারি যে, ২২.৮.০৫ ইং তারিখে বিবাদীগণ একটি ২৭৮৯৮ নং সাব কবলা দলিল সৃজন করে। এই দলিলের বিষয়ে ইতিপূর্বে জানতান না। প্রিয়েমশন মোকদ্দমা টা দোতাফাসূত্রে নামঞ্জুর হয়েছে। নালিশি ভূমির দখল ফিরাইয়া দিতে বললে তারা তা ফিরাইনা দেয়নি তারা বলেছে তারা খরিদ সূত্রে মালিক। ০১.০৬.১০ ইং তারিখে নালিশা খ তফছিল বর্ণিত দলিলের সহমুহুরী নকল তুলে বিস্তারিত জানতে পারি। উক্ত ভূমি ও ৩ নং বিবাদীর সহিত একত্রে গত ২০.১২.৮৩নং তারিখে ১০৮৬০ নং হেবা দলিল মূলে আমার দাদা রমজান আলীর কাছে দখল হস্তান্তর করে দখল বুঝাইয়া দেয়। এর পর বিবাদীরা নালিশি ভূমিতে কখনও দখলে ছিলনা। তারা মিথ্যা দলিল করেছে এবং নালিশি ভূমি হস্তান্তর করে। ২৭৯৮ নং দলিল খানা অকার্যকর ও বেআইনী। বিবাদীদের কোন স্বত্ব ও দখল অর্জিত হয়নি। আরজির প্রার্থনামতে প্রতিকার চাই নালিশী ভূমিতে স্বত্বের ঘোষণা চাই। দখল চাই, তফসিল বর্ণিত দলিল বাতিল। সত্য নয় যে, ১৯৮৩ সনে হেবা দলিল মূলে নাইম খানের স্ত্রী নালিশা ভূমি দান করেনি। ভোগদখলে ছিল, দখল বুঝাইয়া দেয়নি। তারা হেবা করেনি। জবাবে বিবাদীরা মিথ্যা বিবরণ দিয়াছে।”

10.Learned Advocate in this context argues that the hebanama deed was executed by A. Rahim Khan based on the power of attorney No.17763 which is beyond his jurisdiction and he was not delegated with the power to transfer the property of Santanpara Mouja. A power of attorney should construed strictly and the same gives only such authority as it confers expressly or by necessary implication. He cited a decision reported in AIR 1947 Nag, at page 17 and 20 BLT 2012 (HCD) at page 163. The present

defendant petitioners as prior transferee of the suit land are entitled to enforce their rights of priority over that of the respondent by virtue section 48 of the Transfer of Property Act. In this context he referred a decision reported in 13 MLR HCD, at page 01. He asserts his argument citing this decision that the sub kabala deed No.2798 dated 22.08.2005 shall take precedence over the subsequent deed No.1052 dated 03.04.2008. A Rahim Khan by virtue of power of attorney deed No.17763 was entitled to transfer and capable to transfer the property of Berua and Mahani Mouja. Therefore through the heba deed No.1052 dated 03.04.2008, the plaintiff opposite party shall not accrue any right title and interest in the suit land. Learned Advocate further put his argument that the defendant petitioner instituted the pre-emption suit No.11 of 2008 on the basis of wrong advise of his advocate and as soon as the defendant petitioner became aware, decided not to proceed with the said pre-emption suit and as such that pre-emption suit was dismissed. Therefore the judgment and decree passed by the learned Additional District Judge, 1st Court, Narshingdi is liable to be set aside.

11.On the other hand, learned Advocate appearing for the plaintiff appellant opposite party argues that learned appellate Court rightly allowed the appeal and reversed the judgment and decree of learned trial Court. The deceased of the plaintiff appellant opposite party Ramjan Ali was a landless people and he served a large period of time in the house of A. Rahim Khan and

others. Being satisfied to the service of the Ramjan Ali A. Rahim Khan and others transferred the suit land in favour of Ramjan Ali and Ramjan Ali had been in possession since the execution of the heba deed. A Rahim Khan have been empowered to transfer the suit land to the deceased of the plaintiff by way of power of attorney deed No.17763. The defendant respondent petitioners have been extinguished from the suit land in as much as their predecessor A. Rahim Khan and others transferred the suit land to Ramjan Ali.

12.Having heard the arguments advanced by the learned Advocate from both the sides and having considered the evidence both oral and documentary, it appears that admittedly the suit property was belonged to S.A. and R.S. recorded tenant A. Naiyem Khan. The suit property inherited by his wife, daughter and his son. On amicable settlement Anowara Begum and Khairul Alam got the suit plot Nos.740 and 739 and being in possession Anowara Begum and Khairul Alam sold out 9.33 decimals of land to the defendant Nos.1 and 2 by registered kabala deed No. 2798 dated 22.04.2005. The defendant respondent petitioner produces oral and documentary evidence in substantiating their claims. The defendant respondent petitioner have been able to prove the sub kabala deed No.2798 dated 22.04.2005 which is executed by the successor of the S.A. and R.S. recorded tenant. The defendant petitioner also have been able to prove that the sub kabala deed No. 2798 is duly acted upon by preparing mutation khatian in their

names. They also submitted duplicate carbon receipt in respect of the suit land to the trial Court. These all are the evidence of possession of the defendant.

13. The title of the plaintiff appellant opposite party is based on the power of attorney deed No.17763. The plaintiff appellant opposite party contended that A. Rahim Khan transferred the suit land being empowered by the aforesaid power of attorney deed No.17763. But on appreciation of the power of attorney deed No.17763, it appears that A. Rahim Khan have not been authorized to transfer the property of the suit land of Mouja Santan Para which the plaintiff rightly brought in the schedule of the plaint. The alleged power of attorney contains the property of Berua and Mohani Mouja which is not the suit land. So A. Rahim Khan being not authorized by the alleged power of attorney, he could not transfer the property of the suit Mouja Santan Para by the registered heba deed No.10860 dated 20.12.1983. So the transfer by the attorney A. Rahim Khan by including the suit property of Santan Para Mouja in hebanama deed is not a valid deed and proper.

14. The plaintiff appellant opposite party contended that after the death of their father they did not find the heba deed No.10860 dated 20.12.1983. In this stage, considering the future of the plaintiff opposite party A. Kaiyum Khan and others executed another heba deed No.1052 dated 03.04.2008 in favour of the plaintiffs regarding the suit plot. But on perusal of the heba deed

No. 1052 exhibit as 5, it is found that the deed is a fresh deed and there is no any reference of the earlier heba deed No.10860 dated 20.12.1983 which is nothing but a perverse one.

15.Though the defendant Nos.1 and 2 admitted that they have filed a pre-emption Misc. Case No.11 of 2008 dated 03.04.2008 against the plaintiff appellant opposite party for the pre-emption of the land of heba deed No.1052 but it is of the evident that the defendant respondent petitioner contended that, being wrongly advised by their advocates they instituted the aforesaid pre-emption case and afterwards they withdrew that pre-emption case. Also it is found that the alleged pre-emption case does not recognize the title of the plaintiff appellant opposite party. So the pre-emption case as alleged, did not affect the right title and possession of the defendant respondent petitioner.

16.Though the plaintiff appellant opposite party contended that they and their predecessor have been in possession of the suit land since the period of 1983 and were dispossessed by the defendant Nos.1 and 2 on 10.07.2009 but the witnesses of the plaintiff could not prove their possession of the plaintiff appellant opposite party. P.W.2 admitted in his cross examination that it is untrue that the defendants are forcibly possessed the suit land. The defendant opposite party could not submitted mutation khatian or rent receipt in support of their exclusive possession over the suit land. On the contrary the defendant respondent petitioners have

been able to submit mutation khatian and duplicate carbon receipt in respect of the possession of the suit land.

17. Learned Advocate appearing for the defendant respondent petitioner submits that in absence of different intention in a deed expressly or impliedly, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property. A. Rahim Khan was in no manner entitled to transfer and capable to transfer of the property of Santan Para Mouja according to the version of the alleged power of attorney deed No.17763 dated 29.09.1982. We find a similar decision in the case of Mangal Chandraw Sarker and others Vs. Government of Bangladesh reported in 20 BLT (HCD) 2012 at page 63 where the principle is adopted that since the petitioner did not execute power in respect of the land recorded in the suit plot, so by virtue of that power the petitioner will not benefit in any manner. This leading decision is very much applicable in the present case.

18. In view of the discussion made as above, I am of the opinion that the defendant-respondents-petitioners are entitled to get the remedy as prayed for. So the impugned judgment and decree passed by the learned appellate Court in Title Appeal No.77 of 2013 warrants interference.

In the result the Rule is made absolute without any order as to costs.

The judgment and decreed dated 31.08.2022 (decree signed on 07.09.2022) passed by the learned Additional District Judge, 1st Court, Narshingdi, in Title Appeal No.77 of 2013 reversing the judgment and decree dated 24.01.2013 (decree signed on 30.01.2013) passed by the learned Assistant Judge, Palash Court, Narsingdi in Title Suit No.125 of 2010 decreeing the suit is hereby set aside.

The order of stay and status-quo granted earlier, at the time of issuance of Rule, is hereby vacated.

Send down the lower Courts' record with a copy of this Judgment to the Courts' below at once.