

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 3875 of 2022
Maulana Nurul Islam....Petitioner
-Versus-
Mawlana A.B.M Nuruzzaman and another....Opposite parties
Mr. A.B.M. Bayezid, Senior Advocate
....For the petitioner
Mr. Khondker Shamsul Hoque Reza, Advocate
....For the opposite party Nos. 1-2
Heard on 17.06.2026, 18.06.2026 and 24.06.2026
Judgment delivered on 28.06.2026

On an application under 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.02.2022 (decree signed on 06.03.2022) passed by District Judge, Pirojpur in Title Appeal No. 70 of 2019 affirming the judgment and decree dated 30.05.2019 (decree signed on 03.06.2019) passed by Assistant Judge, Bhandaria, Pirojpur in Title Suit No. 185 of 2014 dismissing 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 petitioner, as plaintiff, filed Title Suit No. 185 of 2014 in the Court of Assistant Judge, Bhandaria, Pirojpur praying for a decree of declaration that the disputed heba deed No. 2039 dated 28.08.2006 is not binding on the plaintiff stating that 4.36 acres of land of S.A. Khatian No. 545, S.A Dag No. 4216, 4230, 4256, 4257, 4258, 4299, 4250, 4470, 4471, 4474, 4636, 4638, 4326, 4298 J.L No. 18 of Mouza-Dhawa under Bhandaria Upazilla, Pirojpur belonged to Munshi Azizuddin Hawlader and after his death, Eskandar Ali, son of said Munshi Azizuddin Howlader, including his other heirs inherited the property and Shaha Sufi Eskandar Ali obtained 54 decimals of land out of total 4.36 acres of land described in Ka schedule of the plaint. During the lifetime of said Eskandar Ali distributed his land amongst his three sons, the plaintiff and the defendant Nos. 1 and 2, in equal shares and accordingly handed over possession. The defendant Nos. 1 and 2 each got 18 decimals of land. But the defendant Nos. 1 and 2, in connivance with each other, taking advantage of the illness of their father, created heba deed No. 2039 on 28.08.2006, and on 20.10.2014 disclosed that they got the land based on the heba deed dated 28.08.2006 executed by their father. The plaintiff asserted that he is possessing 18 decimals of land inherited by him from his father. After getting the certified copy of the said deed, he filed the suit on 09.11.2014.

The defendant No. 2 contested the suit by filing written statement denying the assertions made in the plaint regarding the ownership of the plaintiff in the

suit land stating that Shaha Sufi Eskandar Ali, father of the defendant Nos. 1 and 2, got 1.62 decimals of land of S.A Khatian No. 545, S.A Dag No. 4299 and 4298 of Mouza Dhawa under Bhandaria Upazilla, Pirojpur out of 4.35 acres of land and gifted 20.25 decimals of land to the defendant Nos. 1 and 2 by registered heba deed No. 2039 dated 28.08.2006 and handed over possession to the defendant Nos. 1 and 2 and their father told the plaintiff to construct the house on other land. The plaintiff dishonestly filed the suit to forcibly evict defendants from the suit land and to grab their property.

During trial, the plaintiff examined 4(four) P.Ws and the defendant Nos. 1 and 2 examined 6 D.Ws. P.W. 1 Mauland Nurul Islam is the plaintiff. P.W. 2 Morshed Hawlader is the nephew of P.W. 1. P.W. 3 Abdul Bari and P.W. 4 Nazrul Islam are cousin of the plaintiff. D.W. 1 Nurul Amin is the defendant No. 2. D.W. 2 Sultan is a resident of Rajpasha of Bhandaria Thana. D.W. 3 Nurujjaman is the defendant No. 1. D.W. 4 Kaiser is the deed writer. D.W. 5 Kamrujjaman is a resident of the village Raipasha and D.W. 6 Toybur Rahman is a resident of village Dhawa.

After concluding trial, the Assistant Judge, Bhandaria, Pirojpur by judgment and decree dated 30.05.2019 (decree signed on 03.06.2019) dismissed the suit on contest against the defendant Nos. 1 and 2 against which, the plaintiff-appellant filed Title Appeal No. 70 of 2019 in the Court of District Judge, Pirojpur who by impugned judgment and decree dated 27.02.2022 dismissed the appeal affirming the judgment and decree passed by the trial Court against which, the plaintiff obtained the Rule.

Learned Senior Advocate Mr. A.B.M. Bayezid, appearing on behalf of the plaintiff-petitioner, submits that the alleged deed of gift was not accepted by the defendant Nos. 1 and 2 and no possession was handed over pursuant to the deed No. 2039 dated 28.08.2006, and D.Ws 2 and 3 admitted that the plaintiff is residing in the disputed land constructed by his father. He further submits that, taking advantage of the illness of the father of the plaintiff, the clever defendants took the father of the plaintiff to the town in the name of treatment, but fraudulently they executed and registered a deed which is not binding on the plaintiff. Having drawn the attention of this Court to the judgments and decrees passed by the Courts below, learned Advocate submits that both the Courts below found possession of the plaintiff in the suit land but illegally passed the impugned judgment and decree dismissing the suit and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for setting aside the impugned judgment and decree passed by the Courts below.

Learned Advocate Mr. Khondker Shamsul Hoque Reza, appearing on behalf of the defendant-opposite party Nos. 1 to 2, submits that the plaintiff filed the suit for declaration that the impugned deed No. 2039 dated 28.08.2006 (exhibit 2) is not binding on the plaintiff without praying for a decree of cancellation of the said deed. He further submits that there is no statement in the plaint that the father of the plaintiff did not execute and register the deed, and no expert opinion was prayed for by the plaintiff during trial of the case to prove that the disputed deed (exhibit 2) was not executed and registered by the father of the plaintiff. He also submits that the plaintiff could not prove that, at the time of execution and registration of the deed (exhibit 2), the father of the plaintiff was sick, and long after eight years of the execution and registration of the deed, the plaintiff filed the suit in 2014. In support of his submission, the learned Advocate relied on a decision made in the case of Kazi Rafiqul Islam vs Kazi Zahirul Islam and others reported in 70 DLR (AD) 135.

I have considered the submissions of the learned Senior Advocate Mr. A.B.M. Bayezid, who appeared on behalf of the plaintiff-petitioner, and the learned Advocate Mr. Khondker Shamsul Hoque Reza, who appeared on behalf of the defendant-opposite party Nos. 1 to 2, perused the evidence adduced by the parties, the impugned judgments and decrees passed by the Courts below, and the records.

At the very outset, it is noted that the petitioner filed an application under Order XXIII Rule 1(1) and (2) of the Code of Civil Procedure for withdrawal of the suit to file afresh. But ultimately, the learned Senior Advocate, Mr. A.B.M. Bayezid not pressed the said application. Therefore, the said application is rejected as not being pressed.

On perusal of the evidence, reveals that the plaintiff is the brother of the defendant Nos. 1 and 2 and son of late Shaha Sufi Eskandar Ali. Admittedly, Shaha Sufi Eskandar Ali is the owner of 54 decimals of land of S.A Khatian No. 545, S.A Dag No. 4299 and 4298 of Mouza Dhawa under Bhandaria Upazila of Pirojpur District. The plaintiff filed the suit for declaration that the deed No. 2039 dated 28.08.2006 (exhibit 2) is not binding on the plaintiff. In the plaint, no statement is made that the father of the plaintiff did not execute and register the said deed (exhibit 2). During cross-examination, P.W. 1 stated that his father did not execute and register the deed. He asserted that he did not file any application for sending the deed to the handwriting expert to ascertain that his father did not execute and register the deed.

After issuance of a certificate under section 60 of the Registration At, 1908 regarding the registration of a deed, it is to be presumed that the deed has

been duly registered in the manner provided under the Registration Act and that the facts mentioned in the endorsement referred to in section 59 of the Registration Act, 1908 have been complied with. The presumption under section 60 of the Registration Act, 1908 is rebuttable. If any person disputes the registration of the deed after issuance of the certificate under section 60 of the Registration Act, 1908, he may adduce evidence to prove that the deed was not executed and registered by the executant of the said deed. In the instant case, no application has been filed by the plaintiff for sending the LTI or handwriting of the father of the plaintiff to the handwriting expert for ascertaining that his father did not execute and register the disputed deed (exhibit 2). During cross-examination, P.W. 1 denied that his father did not execute and register the deed, but he failed to adduce evidence that his father did not execute and register the deed (exhibit 2).

At this stage, it is relevant here to rely on a decision made in the case of Gangamoyi Devi Vs. Troilukhya Nath Chowdhury and another, reported in 33 I. A. 60, page 65, in which, the Privy Council observed that;

““The registration is a solemn act, to be performed in the presence of the competent official appointed to act as registrar, whose duty it is to attend the parties during the registration and see that the proper persons are present and are competent to act and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duty and in order. Of course it may be shown that a deliberate fraud upon him has been successfully committed; but this can only be by very much stronger evidence than is forthcoming here.”

In this respect, it is further relevant here to refer the decision made in the case of Abani Mohan Saha Vs. Assistant Custodian (S.D.O.) Vested Property, Chandpur and ors. reported in 39 DLR (AD) 223, in which the Appellate Division considering the above decision has held that;

“The approach of the trial court appears to be confusing and contrary to the well-settled principles of law. If the question is whether the deed of gift is genuine or not, the simple answer is, it being a registered document under section 60 of the Registration Act, a strong presumption is attached to it as the Privy Council stated in 33 I.A. 60 “what remains to be shown is that the person admitting execution before the Registrar was this Purshotam Das

and no imposter. The question is one of fact except insofar as there was as matter of law a presumption that the registration proceedings were regular and honestly carried out.”

Since there is a presumption under section 60 of the Registration Act, 1908 as to the correct registration of the deed, it is the duty of the plaintiff to prove that the deed was not executed and registered following the law. The plaintiff failed to discharge his duty to prove that his father did not execute and register the disputed deed (exhibit 2). In the plaint, it has been asserted that at the time of execution and registration of the deed, the father of the plaintiff was sick. No evidence was adduced by the plaintiff to prove that at the time of execution and registration of the deed (exhibit 2), his father was really sick.

In the disputed deed (exhibit 2), it has been mentioned that possession of the gifted land has been handed over to the defendant Nos. 1 and 2. During cross-examination, P.W. 2 Morshed Hawlader stated that there was no good relation between the plaintiff and his father and later on, he heard that Eskandar Ali executed a deed in favour of defendant Nos. 1 and 2. D.Ws 2 and 3 admitted that the plaintiff is residing on a portion of the suit land. D.W. 2 Sultan stated that Eskander Ali gifted the land to the defendant Nos. 1 and 2 and at that time, he was not sick. He added that father of the plaintiff was not pleased with the plaintiff, for which he gifted the land to his two sons, defendant Nos. 1 and 2. The father of the plaintiff instructed him to construct his house on the land situated outside the house. He admitted that the plaintiff is residing in the house of his father, but he did not construct any house. The defendant Nos. 1 and 2 constructed the house on 4/5 kathas of land. The plaintiff resides in the house wherein his father used to reside. D.W. 3 admitted in cross-examination that the plaintiff is possessing 2/2.5 decimals of land in the suit dag. From the evidence adduced by both the parties, it revealed that defendant Nos. 1 and 2 are residing in the house constructed on the suit land. The plaintiff is residing in the house constructed by his father on a small portion of the suit land which does not prove that the disputed deed (exhibit 2) was not executed by the father of the plaintiff.

In this respect, I recall the observation made in the case of Kazi Rafiqul Islam vs Kazi Zahirul Islam and others reported in 70 DLR (AD) 135, in which, our Apex Court held that;

“In this respect we find the leave of petitioner’s contention on onus, quite erroneous and ill conceived. The rule of evidence as is universally acclaimed and recognized in common law areas, is that one who asserts must prove. This follows that since it is the plaintiffs who asserted that the

documents were obtained by deceitful devices, the onus is fully on them to establish that said assertion by adducing evidence. The burden would shift to the defendants, if, and only if, the plaintiffs could discharge their initial burden of proving what they claimed, the standard of proving, however, being balance of probabilities, which is the civil standard.”

It transpires that the disputed deed 2039 (exhibit 2) was executed and registered on 28.08.2006 and vendor Eskandar Ali did not challenge the disputed deed. The suit has been filed 10.11.2014 long after 8(eight) years of its registration. The evidence presented during trial of the case by both the parties proved that Eskandar Ali, father of the plaintiff Maulana Nurul Amin, executed and registered the disputed deed No. 2039 dated 28.08.2006 (exhibit 2) in favour of his sons, defendant Nos. 1 and 2.

I do not find any misreading and non-reading of any evidence.

I find no merit in the Rule.

In the result, the Rule is discharged.

The order of status quo granted earlier at the time of issuance of the Rule on 01.09.2022 is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court’s records at once.