

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1715 OF 2023

In the matter of:

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

And

Mahmuda Begum and others

.... Petitioners

-Versus-

Maifuza Akhter and others

.... Opposite parties

Mr. A.K.M. Moniruzzaman Kabir with

Mr. Nizamul Haque Nizam, Advocates

....For the petitioners.

Mr. Minhajul Hoque Chowdhury, Advocate

.... For the opposite party Nos.1-11.

Heard on 19.02.2025 and Judgment on 20.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-11 to show cause as to why the impugned judgment and decree dated 30.01.2023 passed by the learned Joint District Judge, 1st Court, Barishal in Title Appeal No.52 of 2008 allowing the appeal and thereby reversing the judgment and decree dated 28.01.2008 passed by the learned Senior Assistant Judge, Sadar, Barishal, in Title Suit No.300 of 1998 should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration that the ex-parte judgment and decree dated

06.08.1997 passed by the learned Senior Assistant Judge in Title Suit No.35 of 1997 is unlawful, collusive, fraudulent and not binding upon the plaintiffs.

It was alleged that 2.40 acres land belonged to Lal Mohammad who transferred above land to his two brothers namely Khondoker Malek and Khondoker Abdur Razzak by registered deed of Heba-bil-ewaz dated 15.07.1977 and delivered possession. Plaintiff is one of the recipients of above Heba-bil-ewaz and he is in possession in above land by excavating tank and growing trees and paying rent to the Government. On 18.05.1998 plaintiff came to know for the first time about above ex-parte judgment and decree in Title Suit No.35 of 1997 which the defendant obtained fraudulently without impleading the plaintiff as a defendant.

The defendant contested the suit by filing written statement alleging that the plaintiff does not have any right, title and possession in above land and the Heba-bil-ewaz deed dated 15.07.1977 was a forged and ineffective document. Plaintiff did not get any title and possession in above land nor he has any possession in the same. Above Lal Mohammad while in rightful ownership and possession of above land he transferred the same by oral gift to defendant No.1 and he is possessing above land by constructing dwelling house and he transferred some land to other persons by registered kobala deed and the latest record of right was prepared in the name of the defendant.

At trial plaintiffs and defendants both examined three witnesses each. Documents of the plaintiffs were marked as Exhibit No.1-4 but the defendant did not produce any document.

On consideration of the facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendant preferred Title Appeal No.52 of 2008 to the District Judge, Barishal which was heard by the learned Joint District Judge, 1st Court who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with a revisional application under Section 15(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Minhajul Hoque Chowdhury, learned Advocate for the petitioners submits that admittedly disputed 2.40 acres land belonged to Lal Mohammad. Above Lal Mohammad transferred above land by oral gift to the defendant on 28.03.1995 and defendant is in possession in above land by constructing dwelling house and selling some land to other persons by registered kabala deeds and in his name B.R.S. Khatian of above land has been correctly prepared. Plaintiff did not have any right, title, interest and possession in above land and above

deed of Heba-bil-ewaz dated 15.07.1977 was an ineffective and forged document. As such plaintiff was not a necessary party in Title Suit No.35 of 1997 and rightly he was not impleaded in above suit. The learned Advocate further submits that since the latest record of right being B.R.S. Khatian No.165 was prepared in the name of the defendants this suit of the plaintiff is not tenable in law without a declaration of title. The learned Advocate lastly submits that if it is found that the plaintiff was necessary party of Title Suit No.35 of 1997 which was decreed ex-parte this Court may set aside the above ex-parte judgment and decree and restore above suit. So that above suit may be disposed of on merit after impleading the plaintiff as a defendants.

On the other hand Mr. Sk. A. K. M. Moniruzzaman Kabir, learned Advocate for the opposite party Nos.1-11 submits that the opposite party is the nephew of Lal Mohammad and above Lal Mohammad transferred above 2.4 acres land to plaintiff and his other two brothers by a registered deed of Heba-bil-ewaz dated 15.07.1997 long before the filing of Title Suit No.35 of 1997 but the petitioners did not implead the opposite party as a defendant in above suit. As such the judgment and decree of above suit is not binding upon the opposite party. The learned Advocate further submits that on the strength of above Heba-bil-ewaz deed opposite submitted a petitioner under Order 1 Rule 10 of the Code of Civil Procedure in above Title Suit No.35 of 1997 to be added as a defendant. But above petition was rejected on 04.06.1998 by the learned

Senior Assistant Judge due to objection by the plaintiff of above suit. The opposite parties are in possession of above land and they have lawful interest and claim over the same. But since they were not deliberately impleaded in above suit as a defendant the learned Judge of the Court of Appeal below rightly held that above judgment and decree is not binding upon the opposite party and accordingly allowed the appeal and set aside the flawed judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on records.

It is admitted that disputed 2.40 acres land belonged to Lal Mohammad and the opposite party as plaintiff instituted Title Suit No.35 of 1997 for declaration of title in above 2.40 acres land alleging that above Lal Mohammad transferred above land to the plaintiff by oral gift. On the other hand opposite party claims that above Lal Mohammad transferred above 2.40 acres land to the opposite party and two other persons by a registered deed of Heba-bil-ewaz dated 15.07.1977. While giving evidence as PW1 Syed Nesar Khondoker produce a certified copy of above registered Heba-bil-ewaz deed dated 15.07.1977 which was proved by CW1 at the Court of Appeal below and marked as Exhibit No.4. It turns out from

above registered deed of Heba-bil-ewaz that Lal Mohammad transferred 2.40 acres land to the plaintiff and other two persons.

It is admitted that opposite party was not made a defendant in Title Suit No.35 of 1997 which was filed by the petitioner as plaintiff for declaration of title for above 2.40 acres land of Lal Mohammad claiming that Lal Mohammad transferred above land by oral gift. It is also admitted that the opposite party submitted a petition in above suit under Order 1 Rule 10 of the Code of Civil Procedure in above suit to be impleaded as a defendant alleging that Lal Mohammad transferred above 2.40 acres land to the petitioner by a registered Heba-bil-ewaz deed dated 15.07.1977 (Exhibit No.4). But the learned Judge of the trial Court rejected above petition due to objection by the plaintiff of above suit.

It is well settled that the judgment and decree of a Civil Court as to the title and possession in immobile property is binding only upon the parties to the suit and above impugned ex-parte judgment and decree of Title Suit No.35 of 1997 is binding only against the defendants of above suit. Plaintiff has filed this suit under Section 42 of the Specific Relief Act for declaration that above ex-parte of judgment and decree of Title Suit No.35 of 1997 is not binding upon the plaintiff since they were not impleaded as a defendants and on the contrary their petition to be added as defendants in above suit was

rejected. In such a suit the plaintiff is required to prove that he has locus stadi to maintain the suit or he has a reasonable claim or interest in the subject matter of the suit. As mentioned above the opposite party has produced a certified copy of a registered Heba-bil-e-waz deed allegedly executed by Lal Mohammad long before the institution of Title Appeal No.35 of 1997 by the petitioners. As such the opposite party was a necessary party of Title Suit No.35 of 1997 but they were not deliberately impleaded as a defendant in above suit. In such a suit the question of title and possession can be seen by the Court causal since no relief is sought as to title and possession of disputed property. There are conflicting claims of title and possession in above 2.40 acres land of Lal Mohammad by the plaintiffs and the defendants and they be at liberty if so wishes to institute an appropriate suit in a proper Court of law for determination of question of title and possession.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revision under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER