

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4748OF 2022**

In the matter of:

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

And

Akbar Ali Khan being dead his heirs: Sufia Begum and others

... Petitioners

-Versus-

Panzu Shah and others

.... Opposite parties

Mr. Shasti Sarker with

Mr. Laxman Biswas, Advocates

.... For the petitioners.

None appears

.... For the opposite party parties.

**Judgment on 13.11.2024.**

This Rule was issued calling upon the opposite party Nos.1-4f(3) to show cause as to why the impugned judgment and decree dated 13.09.2022 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Jhenaidah in Title Appeal No.84 of 2020 disallowing the appeal and affirming the judgment and decree dated 02.09.2020 passed by the learned Senior Assistant Judge, Sadar, Jhenaidah in Title Suit No.19 of 2005 decree partly 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.

Facts in short are that petitioner as plaintiff instituted above suit for partition seeking a separate saham for 32.50 decimal land and for further declaration that the registered kabala deed No.5905 dated 22.03.1984 allegedly executed by the plaintiff No.2 in favour of the defendants is void, illegal and not binding upon the plaintiffs.

It was alleged that the plaintiffs acquired land in disputed S. A. Khatian No.638 by several registered kabala deeds and they also transferred some land to the defendants by several registered kabala deeds and they had title and possession in 32.50 decimal land. The plaintiff No.2 Sufia Khaton did not transfer 21 decimals land to defendant Nos.1-3 by the impugned registered kabala deed No.5905 dated 22.03.1984. Plaintiff No.2 is an illiterate, pardanshil, village woman and she did not receive any consideration money for above kabala deed nor she executed the same by putting her left thumb impression (LTI). Above document was created by the defendants by false persuasion. Above plaintiff did not have any land in Kushtia District but the defendants have registered above kabala deed for the disputed land of Jhenaidah District in the Officer Sub-Registrar of Kushtia by including a fictitious land of Kushtia District. As such above kabala deed was a void document since the same was registered by a Sub-registrar who had no legal jurisdiction. Above land has not been partitioned by meets and bound and the defendant denied to effect an amicable partition.

Defendant Nos.1-4 contested the suit by filing a joint written statement alleging that plaintiff No.2 Sufia Khatun transferred 21 decimal land to the defendant by registered kabala deed dated 22.03.1984 and by way of purchase by several documents from the plaintiffs the defendants are in peaceful possession in 47.75 decimal land. The plaintiff No.2 executed and registered above kabala deed dated 22.03.1984 while she was living along with her husband in the house of her father in Kushitia. Plaintiffs claimed that plaintiff No.2 had property in Kushtia which she got from her father and plaintiff No.1 Ahmed supervised the preparation, execution and registration of above kabala deed dated 22.03.1984.

At trial plaintiff examined 1 witness and documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-4 series and 6 series. On the other hand defendants examined two witnesses and the documents produced and proved by the defendants were marked as Exhibit Nos.Ka-Ta.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit in part and granted separate saham for the plaintiffs for 17.25 decimal land.

Being aggrieved by above judgment and decree of the trial Court plaintiffs preferred Title Appeal No.84 of 2020 to the District Judge, Jhenaidah which was heard by the learned Additional District Judge,

2<sup>nd</sup> Court, Jhenaidah who dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below the appellants as petitioners moved to this Court and obtained this Rule.

Mr. Shasti Sarker, learned Advocate for the petitioners submits that admittedly plaintiff and defendants are co-sharers in the above jama and the only dispute in this suit is that whether registered kabala deed dated 22.03.1984 executed by plaintiff No.2 in favour of defendant Nos.1-3 was a legal and effective document or the same was a fraudulent and void document. Above document was allegedly executed by plaintiff No.2 who is an illiterate and pardanshil village woman. The defendants did not produce above original document at trial. It has been merely stated that above original document has been lost without providing necessary particulars as to when and how above document was lost. The defendants could not prove the due execution of above document and receipt of consideration money by plaintiff No.2 Sufia Khatun by oral evidence of competent witnesses. It is not disputed that the disputed property is situated within the jurisdiction of Sub-Registrar of Jhenaidah Sadar. But above document was registered by the Sub-Registrar of Kushtia Sadar and 1 decimal fictitious land of Kushtia was incorporated in above document to show the jurisdiction of the Sub-Registrar of Kushtia. As such above

document was a void document. In support of above submissions the learned counsel for the petitioners referred to Shefali Rani Vs. Makhan Chandra Das, reported in 50 DLR (1998) Page-349.

In spite of the service of the process opposite party did not enter appearance and contest this Civil Revision.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that the plaintiffs and defendants are co-sharers of S.A. Khatian No.638 and the plaintiff Nos.1 and 2 have transferred land to the defendant Nos.1-3 by several registered kabala deeds. The subject of sole dispute of this suit is the registered kabala dated No.5905 dated 22.03.1984 allegedly executed by plaintiff No.2 to defendant Nos.1-3 for 21 decimal land of above khatian.

It is admitted that at the time of execution of above kabala deed plaintiff No.2 had subsisting interest in 15.25 decimal but by above kabala plaintiff No.2 allegedly transferred 21 decimal land. Plaintiff No.2 is a village women and she gave her LTI on the plaint and claimed that she is an illiterate and elderly woman and above claims have not been denied by the defendants. Plaintiff No.2 has denied to have executed above kabala deed and receipt of any consideration for the same. She has claimed that above kabala deed was created fraudulently by false personation. Plaintiff No.4 gave evidence as PW1 and produced and proved a certified copy of above kabala deed dated 22.03.1984

which was marked as Exhibit No.2. Above witnesses stated in his cross examination that his mother plaintiff No.2 was sick and she went to the appointed Advocate at the time of drafting of the plaint.

Since plaintiff No.2 is an old and illiterate village woman and she has denied to have executed above registered kabala deed (Exhibit No.2) the onus shifted upon the defendant to prove due execution of above document by legal evidence. Defendants could examine at trial the scribe and other witness of above document to prove proper execution of above document and receipt of consideration money by plaintiff No.2. But the defendants did not make any endeavor to prove due execution of above document.

Defendant No.4 gave evidence as DW1 but he did not claim that he was present at the time of the talk of sale of above land or execution and registration of above document by plaintiff No.2. DW1 produced a certified copy of above registered kabala deed dated 22.03.1984 which was marked as Exhibit No.Ja. In cross examination he stated that he was not a recipient of above kabala deed and above original deed has been lost in March 1956. No GD was entered in the police station. It is not understandable as to how above kabala deed of 1982 could be lost in 1956. The defendants could not prove the due execution of above kabala deed (Exhibit No.Ja) by plaintiff No.2 by legal evidence.

It is an admitted fact that above kabala deed (Exhibit No.Ja) was registered in the Sub-Registered Office of Kushtia although the

disputed land is situated within a jurisdiction of Jhenaidah Sub-Registrar Office. In the second schedule of above kabala deed 1 decimal land of Kushtia was shown to have been transferred. But plaintiffs have stated in the plaint that plaintiff No.2 did not have any title in above 1 decimal land of Kushtia District and the same was a fictitious land. As the recipient of kabala deed the onus the shifted upon the defendants to prove by legal evidence that plaintiff No.2 had title in above 1 decimal land of Kushtia district. But the defendant did not make any endeavor to prove the same by oral and documentary evidence.

As such I find substance in the submissions of the learned Advocate for the petitioner that above kabala deed was registered by the Sub-Registrar of Kushtia who had no legal authority to register the same and the impugned kabala deed is a void deed. The case law referred to above by the learned Advocate for the petitioner is applicable in the facts and circumstances of this case.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Additional District Judge, 2<sup>nd</sup> Court, Jhenaidah failed to appreciate above facts and materials on record properly and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

Accordingly, this Rule is hereby made absolute.

The impugned judgment and decree dated 13.09.2022 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Jhenaidah in Title Appeal No.84 of 2020 and affirming the judgment and decree dated 02.09.2020 passed by the learned Senior Assistant Judge, Sadar, Jhenaidah in Title Suit No.19 of 2005 are set aside.

Above suit is decreed on contest in preliminary form against defendant Nos.1, 2 and 4 and ex-parte against the rest. Plaintiffs are granted saham for 32.50 decimals land.

Parties are directed to effect partition of above land amicably within 60(sixty) days, in default, plaintiffs shall get the same through Court.

It is further declared that the registered kabala deed No.5905 dated 22.03.1984 is an illegal and void document and the same is not binding upon the plaintiffs.

However, there is no order as to costs.

Send down the lower Courts records immediately.