

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Rafizul Islam
In the Matter of:

Civil Revision No.431 of 2008

IN THE MATTER OF:

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

And

Amar Kumar Das being died his legal heirs 1(a)
Lili Rani Das and others.

... Plaintiff-Appellant-Petitioners

-Versus-

Dr. Monoranjan Mohuri and others

...Defendant-Respondent-Opposite

Parties

Mr. Samiron Das Gupta

... For the petitioner

Mr. Toufiq Anowar Chowdhury, Advocate

... For the Opposite Parties.

Heard on 15.06.2026, 28.06.2026, 30.06.2026,
06.07.2026 and Judgment on 09.07.2026.

Mr. Justice Md. Rafizul Islam

This Rule has been issued calling upon the opposite party
No.1 to show cause as to why the impugned judgment and
decree dated 23.09.2007 (decree signed on 30.09.2007)
passed by the learned Additional District Judge, 1st Court,
Chittagong in Other Appeal No.330 of 2000 disallowing the
appeal and affirming the impugned judgment and decree
dated 22.06.2000 (decree signed on 27.06.2000) passed by
the learned Sub-Ordinate Judge, Patiya, Chittagong in Other
Suit No.37 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, relevant for disposal of this Rule, in brief are that, one Sreemoti Shoulabala Das as plaintiff instituted a suit being other Suit No.37 of 1998 before the Court of the Sub-Ordinate Judge, Patiya, Chittagong against Dr. Monoranjana Mohuri and 2 others for declaration of title in the suit land as described in the schedule to the plaint. Ramkanta Biswash, father of the plaintiff purchased the suit land in the benami of his son Satish Chandra Biswash by the deed of 30.06.1920. R.S Khatian was recorded in the name of Ramkanta Biswash. Satish Chandra Biswash married Sabitry Bala. Satish Chandra Biswash died leaving behind his wife Sabitry Bala during life time of his father Ramkanta Biswash. Ramkanta Biswash died on the last of 1933 leaving behind 3 daughters namely Shoulabala Das (plaintiff), Nirubala Chowdhury (Defendant No.4) and Saju Bala (Defendant No.5) . The daughters of Ramkanta Biswash inherited the suit property. Defendant Nos.4 and 5 transferred their shares to the plaintiff by amicable settlement. Thus the plaintiff acquired title and possession in the suit land by inheritance and amicable settlement. Sabitry Bala resided in the resident of her father-in-law and B.S. Khatian was recorded in the name of Sabitry Bala. The plaintiff used to enjoy interest of the suit land. The defendant No.1 is the son of the sister of Sabitry Bala.

House of the defendant No.1 is 30/40 miles away from the suit land. There was difference of opinion between the plaintiff and Sabitry Bala who died in March 1997. Son of the plaintiff performed funeral function of Sabitry Bala and yearly function of Satish Chandra Biswash and Ramkanta Biswash. The peon of the land office served a notice on 05.06.1998 upon the son of the plaintiff namely Amar Kumar Das. From the notice the plaintiff came to know that the defendant No.1 has filed mutation case in the office of the Assistant Commissioner (Land), Boalkhali. The plaintiff came to know that Sabitry Bala sold the suit land to the defendant No.1 and the defendant No. 1 has filed the mutation case. On 14.07.1998, the plaintiff collected certified copy of the kabala deed being No.2574 dated 30.11.1996 executed by Sabitry Bala in favour of the defendant No.1 which is fabricated, fraudulent and illegal and hence the suit.

The defendant No.1 contested the suit by filing separate written statement denying all the material facts contending inter alia that the land of C.S. plot No.4412 and C.S. plot No.4827 was sold to Birahar Bala Biswash, who sold 1.35 acres of land by registered kabala dated 30.06.1920 in favour of Satish Chandra Biswash, son of Ramkanta Biswash. C.S plot No.4412 corresponding to R.S plot No.7042 and C.S plot No. 4827/ 4834 /4759 corresponding to R.S plot No. 5515/ 6449/ 6455 was

purchased by Satish Chandra Biswash by kabala deed dated 30.06.1920 by his own money. Ramkanta Biswash had no title and possession in the purchased land of Satish Chandra Biswash. Two sons of Birahar Bala Biswash namely Nagendra Lal Biswash and Bipin Chandra Biswash were aware of sale. R.S khatian was wrongly recorded in the name of Ramkanta Biswash and he did not acquire any title in the suit land. Kabala, dated 30.06.1920 was executed before R.S operation, as such C.S plots were mentioned. Rest land of Birahar Bala was recorded in the name of her two sons Nagendra Lal Biswash and Bipin Chandra Biswash. Nagendra Lal Biswash and Bipin Chandra Biswash intentionally recorded the suit land in the name of Ramkanta Biswash during R.S operation while Satish Chandra Biswash was in Burma. First wife of Ramkanta Biswash died leaving her sons Satish Chandra Biswash and the second wife of Ramkanta Biswash died leaving three daughters including the plaintiff. Ramkanta Biswash separated with Satish Chandra Biswash after marriage where there was quarreling between wife of Satish Chandra Biswash namely Sabitry Bala and daughters of Ramkanta Biswash. The plaintiff has no right, title and interest in the suit land and the suit is liable to be dismissed with cost.

The defendant No. 08 filed written statement, although finally he did not contest the suit.

The suit was tried by the learned Sub-ordinate Judge, Patiya, Chittagong. The plaintiff examined 3 witnesses and the defendant examined 4 witnesses to prove their respective cases. After conclusion of trial, the Trial Court by his judgment on 22.06.2000 dismissed the suit.

Thereafter, the plaintiff preferred Other Appeal being Other Appeal No.330 of 2000 before the learned District Judge, Chittagong against the said judgment and decree of the trial court. The appeal was heard and dismissed by the learned Additional District Judge, 1st Court, Chittagong vide judgment and decree dated 23.09.2007.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the learned appellate court, the plaintiff-appellant filed this application under section 115(1) of the Code of Civil Procedure, 1908 and obtained the instant Rule.

Learned Advocate Mr. Samiran Das Gupta appearing for the petitioner submits that the suit land belonged to Ramkanta Biswash, who purchased the suit land in the benami of his only son, Satish Chandra Biswash on 30.06.1920. R.S Khatian was published in the name of Ramkanta Biswash which has been marked as Exhibit-1. He next submits that original purchased deed was in the

Custody of Ramkanta Biswash and he paid rent to the Government and possessed by him till his death and as such, the suit land was purchased in the Benami of his son. He further submits that Ramkanta Biswash had only son namely Satish Chandra Biswash and 3 daughters. The plaintiff is the daughter of Ramkanta Biswash having son. He again submits that during the life time of Ramkanta Biswash his only son Satish Chandra Biswash died and thereafter Ramkanta Biswash died leaving behind three daughters, plaintiff and defendant Nos.4/5 and predeceased son's wife namely Sabitry Bala. He further submits that as per Dayabhaga School of Hindu law the wife of predeceased son is entitled to get the land as life interest and during her life time she alienated total suit land by a registered deed, dated 30.11.1996 to the defendant No.1 describing false and baseless legal necessity. He again submits that 3 P.Ws and 4 DWs have been examined and cross examined in the trial court and all the P.Ws proved the case of plaintiff on the other hand the D.Ws did not prove the case of legal necessity of the widow though it is the duty of the defendant No.1 to prove legal necessity who purchased the land from the widow, and as such, the alleged deed dated 30.11.1996 describing legal necessity is liable to be declared as false, not acted upon and also not binding on the plaintiff. He finally submits that in passing the

impugned judgment and decree, both the courts below committed error of law, resulting in an error in the decision occasioning failure of Justice. He concludes that the Rule has merit and the same should be made absolute.

Mr. Taufiq Anwar Chowdhury the learned Advocate appearing for the opposite parties on the other hand submits that both the courts below, upon evaluating the oral and documentary evidence on record concurrently found that the plaintiff failed to establish that Satish Chandra Biswash was the benamdar of his father, Ramkanta Biswash. He further submits that the courts below also found that the B.S Khatian relating to the suit property was duly recorded in the name of Satish Chandra Biswash's wife Sabitry Bala and P.W.1 admitted in his cross-examination that the B.S Khatian was prepared in accordance with possession. He next submits that the Courts below concluded that the suit property was not purchased by Ramkanta Biswash in benami in the name of his son Satish Chandra Biswash and that the question whether Sabitry Bala alienated the suit property for 'legal necessity' does not arise for adjudication in the present suit. Since, under the Dayabhaga School of Hindu Law in Bangladesh, a sister of the deceased Hindu male is not a reversioner during the lifetime of the widow, the plaintiff had no locus-standi to impugn the alienation on that ground. He finally submits that the learned trial court

lawfully and justly dismissed the suit and the learned appellate court also rightly disallowed the appeal and affirmed the impugned judgment and decree of the trial court. He concludes that the Rule has no merit and the same is liable to be discharged.

We have considered the submissions of the learned Advocates for the parties, perused the judgments of the courts below and examined the materials on record.

The principal question is to determine whether the plaintiff has succeeded in proving that the purchase in the name of Shatish Chandra Biswash was a benami transaction.

It is now a settled principle that the burden of proving benami lies heavily upon the person who alleges it. Mere assertion however, strong, cannot substitute legal proof. The source of purchase money, possession of the property after purchase, custody of the title deed, motive for benami purchase, relationship between the parties and their subsequent conduct are all relevant circumstances, but no single circumstance is conclusive. Although the plaintiff relied upon the custody of the original deed by Ramkanta Biswash, the recording of the R.S. Khatian in his name and payment of rent by him, these circumstances, by themselves, are insufficient to conclusively establish that the consideration money proceeded from Ramkanta Biswash or

that Shatish Chandra Biswash was merely his benamdar. Custody of a document by a father relating to the property of his son is not an uncommon circumstance in a Hindu joint family. Likewise, an entry in a record-of-rights is neither a document of title nor conclusive proof of ownership; it merely carries a rebuttable presumption.

On the contrary, the defendants have consistently asserted that Shatish Chandra Biswash purchased the suit land with his own money. More importantly, the latest B.S Khatian stands in the name of Sabitry Bala, widow of Sahtish Chandra Biswash. The evidence of P.W.1 produced by the plaintiff side, clearly establishes the possession of Sabitry Bala over the suit land. Thus, the evidence of P.W.1 substantially supports the defendant's case regarding possession.

Even assuming, for the sake of argument, that the plaintiff could assert a right as a reversioner, such claim cannot succeed unless it is first established that Ramkanta Biswash had title to the suit property. Since the alleged benami purchase has not been proved, Ramkanta Biswash acquired no title to the suit land. Consequently, no right could develop upon any alleged reversioner through him. Furthermore, under the Dayabhaga School of Hindu Law, where a Hindu male dies leaving a wife, the wife succeeds to his property as a Hindu widow. During her lifetime, the

property remains vested in her, and the right of the reversioners remains merely a *spes successionis*. A sister of Hindu male does not become entitled to claim title and possession of the property as reversioner.

In the instant case, the learned Advocate appearing for the petitioner submits that both the courts below committed an error of law in refusing to determine whether the transfer made by Sabitry Bala was supported by legal necessity. According to him, irrespective of the plaintiff's present title, the Court was competent to determine the legality of the alienation.

On the other hand, the learned Advocate for the opposite party No.1 submits that only a reversioner is competent to challenge an alienation made by a Hindu widow on the ground of legal necessity. Since under the Dayabhaga School of Hindu Law applicable in Bangladesh, the sister of the deceased Hindu male is not a reversioner during the lifetime of the widow, the plaintiff had no *locus standi* to raise such challenge.

Under the Dayabhaga School of Hindu Law, a Hindu widow substituted to the property of her deceased husband during her life time. Although her power of alienation is restricted, an alienation made by her can ordinarily be challenged only by the person who is entitled to succeed to the property as reversioner upon determination the widow's

property. A person who has no present or contingent reversionary interest lacks the legal capacity to impeach such transfer merely on the allegation that it was not made for legal necessity.

In the instant case, the plaintiff Shreemoti Shoulabala Das is the sister of the deceased Hindu male. During the lifetime of the widow, she does not acquire the status of a reversioner so as to question the widow's transfer. Consequently, the issue of legal necessity was not one arising for determination in the present suit. A Court is required to adjudicate only those issues which directly arise from the rights of the parties before it. Since the plaintiff herself had no enforceable right to challenge the transfer, any adjudication on legal necessity would have been purely academic and without legal consequence.

The courts below, therefore, rightly held that once the plaintiff was found to have no title, interest or locus standi, there remained no occasion to enter into the question whether the transfer was supported by legal necessity. The findings recorded by the courts below are in consonance with the settled principles of Hindu Law and do not suffer from any error of law resulting in failure of justice.

In view of the above discussion, we find that both the Courts below, after meticulous examination of the oral and documentary evidence, concurrently found that the plaintiff

utterly failed to prove the alleged benami transaction. These findings are purely findings of fact based upon appreciation of evidence. Unless such findings are shown to suffer from misreading of evidence, non-consideration of material evidence or patent perversity, this Court, in exercise of its revisional jurisdiction, ought not to interfere. We find no illegality, misreading or non-consideration of evidence warranting interference by this Court. Accordingly, the Rule should be discharged.

In the result, the Rule is discharged.

The impugned judgment and decree dated 23.09.2007 (decree signed on 30.09.2007) passed by the learned Additional District Judge, 1st Court, Chittagong in Other Appeal No.330 of 2000 disallowing the appeal and affirming the impugned judgment and decree dated 22.06.2000 (decree signed on 27.06.2000) passed by the learned Sub-Ordinate Judge, Patiya, Chittagong in Other Suit No.37 of 1998,, is hereby upheld.

Send down the copy of the judgment and order along with lower Court's records to the court concerned at once.

Sheikh Abdul Awal, J:

I agree.