

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 5189 of 2023

Md. Nazmul Islam ..... petitioner

-Versus-

Iftekhhar Hossain and others ..... opposite parties

No one appears for the petitioner

Mr. Md. Aminul Islam, Advocate

..... for the opposite parties

Judgment on 15.05.2024

This rule at the instance of the defendant was issued calling upon the plaintiff-opposite parties to show cause as to why the judgment and decree of the Additional District Judge, Court No. 2, Rajshahi passed on 07.08.2023 in Title Appeal No. 46 of 2022 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Putia, Rajshahi passed on 10.02.2022 in Other Class Suit No. 134 of 2015 decreeing the suit should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaintiffs instituted the suit stating, *inter alia*, that Alhaj Deen Mohammad Mondal, proforma defendant 2, was the original owner of the suit land described in schedule 'Ka' to the plaint. He gifted the property to plaintiffs 1 and 2, defendant 1 and proforma defendant 3 through a registered *heba* dated 07.02.1996. Defendant 1

approached the plaintiffs and requested them to put signatures on some blank papers disclosing that those would be required for the sale made by the father of the minor in respect of the gifted property. The plaintiffs put their signatures on those papers in good faith. Subsequently, defendant 1 created a *solenama* with those papers, submitted it in Other Class Suit No. 178 of 2005 and managed to obtain a compromise decree. Such decree caused injury to the plaintiffs and as such the suit for declaration that the decree obtained in the aforesaid suit described in 'Kha' schedule to the plaint is void and not binding upon the plaintiffs.

Defendant 1 filed written statement denying the statements made in the plaint. He further stated that plaintiffs 1 and 2 and defendants 1 and 3 used to possess the gifted land in *ejmali* and for convenient of its enjoyment he instituted Other Class Suit No. 178 of 2005 for partition. In that suit plaintiffs and proforma defendant 3 were defendants. The suit was decreed on compromise between the parties and accordingly final decree was prepared. Defendant 2 being the guardian of all put his signatures in the *solenama*. The plaintiffs instituted this suit on false averments being influenced by the 3<sup>rd</sup> party and as such the suit would be dismissed.

Defendants 4-7 also filed written statement stating that proforma defendant 2 was the original owner of the suit land. Defendant 1 instituted Title Suit No. 178 of 2005 behind their back.

Defendant 2 was then suffering from old age diseases. Defendant 1 took the opportunity of his illness and managed to collect his signatures on some blank papers. He did not put any signature in the compromise application. The compromise decree was obtained collusively and fraudulently. Practically this defendant admitted the case of the plaintiffs.

On pleadings the Assistant Judge framed 5 issues. In the trial, the plaintiffs examined 3 witnesses while defendant 1 examined 4. The document produced by the plaintiffs were exhibits-1 and 2 and that of the defendants were exhibits-‘Ka-Yeo’. However, the Assistant Judge decreed the suit deciding all the material issues in favour of the plaintiffs. Defendant 1 then preferred appeal before the District Judge, Rajshahi. The Additional District Judge, Court No. 2, Rajshahi heard the appeal on transfer and dismissed it affirming the judgment and decree passed by the trial Court. The petitioner then filed this revision in this Court upon which the rule has been issued.

No one appears for the petitioner although the matter has been appearing in the daily list for a couple of days with the name of the learned Advocate for the petitioner.

Mr. Md. Aminul Islam, learned Advocate for opposite parties 1 and 2 taking me through the judgments passed by the Courts below and other materials on record submits that this is a judgment of affirmance. The suit has been decreed. The Assistant Judge entered

into every four corners of the case and then passed the judgment. The appellate Court dismissed the appeal and affirmed the judgment and decree passed by the trial Court. The finding of facts arrived at by the Courts below should not be interfered with in revision unless the petitioner can show that the judgments suffer from non reading and misreading of the evidence on record and as such an error has been committed. He then submits that it has been well proved that defendant 4 of Other Class Suit No. 178 of 2005 was a minor at the time of submitting *solenama*. He being a minor cannot compromise the suit without appointment of a guardian on his behalf as required by the law. Moreover, defendant 2 who was the original owner of the suit land did not admit of putting his signatures and submitting *solenama* in the suit. Mr. Islam finally submits that since the plaintiffs' title and possession in the suit land have been proved in evidence, the instant suit for mere declaration that the decree has been obtained fraudulently and not binding upon the plaintiffs is maintainable as well. The rule, therefore, having no merit would be discharged.

I have considered the submissions of the learned Advocate for opposite parties 1 and 2, gone through the judgments passed by the Courts below and the grounds taken in the revisional application.

It admitted by the parties that proforma defendant 2, Alhaj Deen Mohammad Mondal owned and possessed the suit land

described in schedule 'Ka' to the plaintiff. It is also admitted that he gifted the land to plaintiffs 1 and 2 and defendants 1 and 3 in 1996. The registered deed of gift exhibit-1 proves that Deen Mohammad gifted the aforesaid 'Ka' schedule land to the donees and handed over possession thereof. The plaintiffs claimed that defendant 1 took signatures of the plaintiffs and defendant 2 on some blank papers and by using those created a *solenama* and obtained a suitable compromise decree in his favour in Other Class Suit No. 178 of 2005 fraudulently. By that decree he has been gained over and got more share in the suit land. It is found in the evidence that defendant 2 of this suit Deen Mohammad put his signatures in the said *solenama* on behalf of minor defendant 3 Deen Islamul Awal alias Omi. But he was the grandfather of Omi not his legal guardian as per the provisions of Order 32 rule 2, 3 of the Code of Civil Procedure. The father of minor Omi is still alive and as such opposite party 2 in no way can put his signature on behalf of the minor unless and until he was appointed as guardian through Court. Section 278 of Mullah's Muslim law do not empowers the grandfather to put signatures on behalf of the minor while his father is alive. The father of the minor was examined as DW 4, who deposed supporting plaintiffs' case stating that he did not appoint any one as guardian of his minor son.

In the evidence of PWs and DWs, I find that plaintiffs are in possession of the suit land. The plaintiffs proved that fraud has been

committed by defendant 1 in obtaining the compromise decree in Title Suit No. 178 of 2005. They proved title over the suit land through exhibit-1 the deed of gift. Therefore, the suit in the present from praying for declaration that the preliminary and final decree passed in the aforesaid suit on compromise is fraudulent, illegal and not binding upon the plaintiffs and for its setting aside is well maintainable. On perusal of the grounds taken in the revisional application, I find that no such ground has been taken therein that the Courts below misread the evidence on record and thus committed error of law which may be called for interference of this Court. It is well settled principle that a decree of affirmance can be interfered with by this Court in revision, if any gross misreading and non consideration of evidence is found for which the decision passed by the Courts below could have been otherwise. I find no such ground to interfere with the judgment and decree passed by the Courts below.

Therefore, this rule bears no merit and accordingly it is discharged. No order as to costs. The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Court records.