

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5107 OF 2023

In the matter of:

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

And

Khondaker Manjur Ali

... Petitioner

-Versus-

Mst. Jarina Khatun and others

... Opposite parties

Mr. Syeda Shova, Advocate with

Mr. Sanowar Rahman, Advocate

... For the petitioner.

Mr. Mohammad Eunus, Senior Advocate with

Mr. Mu. Nazrul Islam, Advocate

....For the opposite party No.1.

Heard on 03.08.2025 and 26.08.2025.

Judgment on 27.08.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 10.08.2023 passed by the learned Additional District Judge, 1st Court, Faridpur in Title Appeal No.47 of 2021 dismissing the appeal and thereby affirming the judgment and decree dated 12.01.2021 passed by the learned Senior Assistant Judge, Sadar, Faridpur in Title Suit No.109 of 2013 decreeing the suit should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for declaration of title for 12 decimal land of S. A. Plot No.502 of S. A. Khatian No.223 corresponding to B. S. Khatian No.850 and for further declaration that the registered kabla deed of the defendant for above land dated 31.07.2011 (Exhibit No.9) is unlawful, ineffective and not binding upon the plaintiff. It was alleged that originally belonged to defendant No.2 who transferred above land to the plaintiff by registered kabala deed dated 27.07.1992 and plaintiff is in possession in above land.

Defendant No.1 contested above suit by filing written statement alleging that above land belonged to defendant No.2 and B.S. Khatian No.842 was recorded in her name and she was in possession in above land and transferred the same to defendant No.1 by registered kabla deed dated 31.07.2011 (Exhibit No.9) and defendant is in possession in above land. Defendant No.2 did not execute and register kabla deed dated 27.07.1992 (Exhibit No.5) to the plaintiff nor the plaintiff got any title and possession in above land on the basis of kabla deed.

At trial plaintiff and defendant examined two witnesses each and documents produced and proved by the plaintiff were marked as Exhibit Nos.1-9 and those of the defendant were marked as Exhibit No."Ka" - "Chha".

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

Being aggrieved by above judgment and decree of the trial Court defendant No.1 as appellant preferred Title Appeal No.47 of 2021 to the District Judge, Faridpur which was heard by the learned Additional District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this Civil Revisional Application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Ms. Syeda Shova, learned Advocate for the petitioner submits that admittedly disputed 12 decimal land of S. A. Plot No.503 corresponding to B. S. Plot No.850 belonged to Defendant No.2 Mostafa Begum. Plaintiff claims that he purchased above 12 decimal by a registered kabla deed dated 27.07.1992 (Exhibit No.5). But on the basis of above deed B. S. Khatian No.842 was not prepared in the name of the plaintiff. Above Khatian was prepared in the name of Mostafa Begum and defendant No.1 purchased above 12 decimal land from Mostafa Begum by registered kabla deed dated 30.07.2011 (Exhibit No.9) and possessing above land by mutating his name and paying rent to the Government. Plaintiff should have filed a case to the Land Survey Tribunal for correction of above B. S. Khatian but instead has most illegally filed this suit for declaration of title which is not tenable in law. The plaintiff has produced original Kabla deed dated 27.07.1992 but could not prove due execution of above deed by calling the witnesses and scribe of above

deed as witnesses in Court. As such the learned Judge of the Court of appeal below committed serious illegality in dismissing above Appeal and affirming the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Mohammad Eunos, learned Advocate for opposite party No.1 submits that 12 decimal land of S. A. Plot No.502 belonged to defendant No.2 Mostafa Begum who transferred 36 decimal land including above 12 decimal to the plaintiff by registered kabla deed dated 27.07.1992 (Exhibit No.5). On the other hand defendant No.2 claims title in above 12 decimal land on the basis of a kabla deed allegedly executed by defendant No.2 on 31.07.2011 (Exhibit No.9). Apparently the registered kabla deed of the plaintiff is earlier on point of time and that document shall prevail over the later document of the defendant. The husband of the plaintiff gave evidence as PW1 and produced above original registered kabla deed dated 27.07.1992 which was marked as Exhibit No.5. In the written statement and in his evidence as DW1 the defendant did not dispute the genuinity or correctness of above document. Moreover, defendant No.2 has executed and notarized an Affidavit on 25.01.2015 stating that the registered kabla deed dated 27.07.1992 of the plaintiff was genuine and effective deed and above Affidavit was produced at trial and marked as Exhibit No.6. The defendant did not cross examine PW1 as to the correctness or genuinity of above Affidavit. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of

both the Courts below rightly and concurrently held that the plaintiff acquired valid title in above 12 decimal land by purchase by registered kabla deed dated 27.07.1992 (Exhibit No.5) which calls for no interference.

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

It is admitted that defendant No.2 was the lawful owner and possessor of 12 decimal land of S. A. Plot No.502 and above land was recorded in her name in B. S. Khatian No.842.

Plaintiff claims that above defendant No.2 transferred 36 decimal land including above 12 decimal land by registered kabla deed dated 27.07.1992 and delivered possession. The husband of the plaintiff while giving evidence as PW1 produced above original registered kabla deed dated 27.07.1992 which was marked as Exhibit No.5. In the written statement or in his evidence as DW1 defendant No.1 did not claim that above registered kabla deed of the plaintiff was a forged document. It has been merely stated that defendant No.1 did not sale above 12 decimal land to the plaintiff. The defendant also claims title in above land by purchase from defendant No.2 by registered kabla deed dated 30.07.1911 (Exhibit No.9). But above deed of the defendant No.1 is later on point of time from the sale deed of the plaintiff. The registered sale deed which is earlier in point of time than the registered sale deed executed by the same executant for the self-same land to another person shall prevail over a later document. The original registered deed of sale

of the plaintiff (Exhibit No.5) upon production at trial carries a presumption as to correctness and effectiveness. Defendant No.1 cross examined PW1 but above evidence of PW1 as to the correctness, genuinity and effectiveness of above kabla deed remained unshaken. As soon as PW1 produced and proved above original kabla deed dated 27.07.1992 the onus shifted upon the defendant to prove that above kabla deed was an ineffective document. But the defendant did not make any endeavor to discharge above onus. Moreover, PW1 produced and proved an Affidavit sworn in by defendant No.2 before a notary public stating that above registered kabla deed of the plaintiff was a genuine and effective deed and above Affidavit was marked as Exhibit No.6. Defendant No.1 did not cross examine PW1 as to above document.

This is a suit for declaration of title and further declaration that the later registered document of defendant is not binding upon the plaintiff. A land survey tribunal does not have the legal jurisdiction to entertain a suit involving questions of title and possession. As such I am unable to find any substance in above submission of the learned Advocate for the petitioner that instead of filing above suit the plaintiff should have filed an appropriate suit to the land survey tribunal.

In above of view of the facts and circumstance of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Additional District Judge in above appeal nor I find any substance in this Civil

Revisional Application and the Rule in this connection is liable to be discharged.

Accordingly, this Rule is discharged.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER