

District-Sirajgonj.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3819 of 2024.

Md. Shomesh Ali and others.

----- Defendants-Respondents-Petitioners.

-Versus-

Advocate Simki Imam Khan and others.

----- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Iqbal Hossain, with

Mr. S. M. Saiful Islam, Advocates

----- For the Defendants-Respondents-Petitioners.

Mr. Md. Shahidul Islam, Senior Advocate with

Mr. S. M. Zakir Hossain, Advocate

Mr. Ferdaus Ahmed Asief, Advocate and

Mr. Md. Riaz Hossain Sikder, Advocate

-----For the Plaintiff-Appellant-Opposite Party Nos.1-4.

Heard On: 22.06.2025, 30.06.2025 and 16.07.2025.

And

Judgment Delivered On: 20th Day of July 2025.

Md. Toufiq Inam, J.

This Rule was issued at the instance of the defendant-petitioners, calling upon the opposite parties to show cause as to why the judgment and decree dated 27.07.2023 and 03.08.2023, respectively, passed by the learned Joint District Judge, 3rd Court, Sirajgonj in Other Class Appeal No. 02 of 2022, allowing the appeal and thereby setting aside the judgment and decree dated 14.11.2021 and 21.11.2021, respectively, passed by the learned Assistant Judge, Chowhali, Sirajgonj in Other Class Suit No.435 of 2021 dismissing the suit, should not be set aside.

The opposite parties, as plaintiffs, instituted Other Class Suit No. 134 of 2012 before the learned Joint District Judge, 1st Court, Sirajgonj, impleading the petitioners as defendants. The suit was subsequently transferred to the Court of the learned Assistant Judge, Other Class, Chowhali, Sirajgonj, and renumbered as Other Class Suit No. 435 of 2021. In the suit, the plaintiffs sought a declaration of title and cancellation of Deed Nos. 5432 and 5431 of 2010, as fully described in the schedule to the plaint.

It is undisputed that the suit land, along with other non-suited land, originally belonged to Hasan Imam Khan, a highly educated and literate individual who was an engineer by profession. It appears inherently improbable that a person of such background would execute and register a deed using a thumb impression instead of his signature. The plaintiffs alleged that the defendants, in collusion with one another, procured the impugned deeds, Deed Nos. 5431 and 5432, both dated 20.07.2010 (Exhibits “Ka” and “Kha”), by misrepresenting facts and taking undue advantage of the physical infirmity of Hasan Imam Khan, thereby securing execution of the deeds using his thumb impression, without his knowledge or informed consent. Plaintiff No. 2, who is the father of Plaintiff No. 1, later transferred 3.16 acres of the suit and adjoining land to Plaintiff No.1 by executing and registering a deed of Hiba (gift), being Deed No. 7842 dated 27.11.2011. Upon acquiring title, Plaintiff No. 1 came to know that the suit land had already been transferred to Defendant Nos. 1–9 through the said deeds. Upon inquiry, Plaintiff No. 2 categorically denied having sold or transferred the land to the said defendants, leading to the institution of the present suit.

The defendants contested the suit by filing a joint written statement, denying all material allegations made in the plaint. Their case, in short, is that the vendor, Hasan Imam Khan (Plaintiff No.2),

voluntarily offered to sell the suit land for a total consideration of Tk. 10,50,000/- (ten lakh fifty thousand taka) through the mediation of his brother-in-law, Mir Nasir Anwar Mintu. An advance of Tk. 2,00,000/- (two lakh taka) was paid, and the remaining Tk. 8,50,000/- (eight lakh fifty thousand taka) was paid upon execution of two registered sale deeds dated 20.07.2010. The deeds were executed and registered on commission, and the vendor affixed his thumb impression due to physical incapacity arising from paralysis and other ailments. The said brother-in-law, Mir Nasir Anwar Mintu, was the identifier and attesting witness to the execution of the deeds. The defendants claim that the transaction was validly concluded without any fraud or illegality, and therefore the suit is liable to be dismissed.

Both sides adduced oral and documentary evidence in support of their respective claims. Upon hearing both parties and examining the evidence on record, the learned Assistant Judge, Chowhali, Sirajgonj, by judgment and decree dated 14.11.2021 and 21.11.2021, respectively, dismissed the suit. Aggrieved by that decision, the plaintiffs preferred Other Class Appeal No. 02 of 2022 before the learned District Judge, Sirajgonj. Upon transfer, the appeal was heard and allowed by the learned Joint District Judge, 3rd Court, Sirajgonj, who by judgment and decree dated 27.07.2023 and 03.08.2023, respectively, reversed the findings of the trial court and decreed the suit.

Consequently, the present Civil Revision, being No. 3819 of 2024, has been filed by the defendant-petitioners challenging the aforesaid appellate judgment and decree, whereby the judgment of the trial court was reversed and the suit was decreed in favor of the plaintiffs. The defendant-petitioners obtained this Rule, which is now taken up for final disposal.

Mr. Md. Iqbal Hossain, learned advocate appearing with Mr. SM Saiful Islam, advocate for the defendants-petitioners, submits that the learned appellate court committed gross illegality by failing to consider the well-settled principle that it is the plaintiffs who must prove their own case through proper oral and documentary evidence. A suit must succeed on the strength of the plaintiff's own case, not on the weakness of the defence. In the instant suit, the plaintiffs utterly failed to discharge this burden. Although the learned trial court meticulously examined the pleadings, evidence, and circumstances, and dismissed the suit by a well-reasoned and founded judgment, the learned appellate court, without assigning any cogent reason, whimsically reversed the same. Hence, the impugned judgment and decree are liable to be set aside by making the Rule absolute.

Mr. Hossain further submits that Plaintiff No. 1 obtained the subsequent Gift Deed dated 27.11.2011 (Exhibit-5) with the ulterior motive of grabbing the suit land along with other properties. The learned trial court rightly observed that *"Upon perusal of the original copy of the Hiba Deed dated 27.11.2011, marked as Exhibit-5, it appears that Hasan Imam gifted 316 decimals of land, including the 'Ka' schedule land, to his daughter Simki Imam Khan. However, on the first page, his signature appears as 'Md. Imam Khan', on the second page as 'Md. Hasan Imam Khan', and on the sixth page as 'Md. Hassan Imam Khan'. The court is of the view that as an educated engineer, Hasan Imam Khan could not have signed differently on different pages. The presence of varying signatures creates doubt regarding the genuineness of the deed."* Despite these serious doubts raised by the trial court, the learned appellate court failed to consider this vital discrepancy and reversed the judgment without addressing this fundamental issue. Therefore, the impugned appellate judgment is liable to be set aside for ends of justice.

He also argues that the plaintiffs-opposite parties failed to establish possession over the suit land, which is essential in a declaratory suit of this nature. Plaintiff No. 1, Advocate Simki Imam Khan, as PW-1, could not even specify the number of plots or the extent of land covered by the impugned deeds during her cross-examination. She merely stated: *"I am in possession of the suit land through sharecroppers, but I do not harvest crops myself, nor can I identify which person tills which plot."* PW-2, Md. Abdur Razzak, a contractor with no ownership of land, deposed vaguely that the plaintiffs were in possession and had erected houses, but could not specify any plot. PW-3, Shamim Reza, a jute trader, claimed that Plaintiff No.1 possessed the land through a caretaker, but in cross-examination admitted, *"I do not have any land in the suit khatian."* PW-5, G.M.M. Kamal Pasha, identified the Gift Deed (Exhibit-5), but made no statement about delivery of possession and could not identify the plots covered under the deed. PW-4, PW-6, and PW-7 gave no credible testimony about the plaintiffs' possession.

He goes onto argue that from the cumulative analysis of the plaintiffs' witnesses, it is evident that their testimonies are contradictory, vague, and insufficient to prove possession over the 'Ka' schedule land. As such, the Gift Deed (Exhibit- 5) appears not to have been acted upon, and the plaintiffs failed to acquire any right, title, or possession therein. The trial court rightly held that a person not in possession cannot succeed in a declaratory suit of this nature. The appellate court, however, improperly reversed the dismissal by scrutinizing the defendants' evidence, which is not legally required to decree the plaintiffs' suit. The judgment of reversal is therefore perverse, based on misapplication of law, and liable to be set aside as it resulted in a failure of justice.

Mr. Hossain further submits that the suit, as framed, suffers from a fundamental legal defect, inasmuch as the plaintiffs sought a declaration of title under Section 42 of the Specific Relief Act, 1877, along with a prayer for cancellation of documents under Section 39 thereof, without seeking any consequential relief or satisfying the essential preconditions for invoking both provisions simultaneously.

He further contends that according to the plaintiffs themselves, Plaintiff No. 2 (Md. Hasan Imam Khan, since deceased during the pendency of the suit) was frequently ill but occasionally recovered. Therefore, in such circumstances, it was incumbent upon the plaintiffs to examine him during his lifetime under Order XVIII Rule 16 of the Code of Civil Procedure to establish whether he executed and registered the disputed deeds on his own volition and after receiving consideration. The plaintiffs, however, failed to take any such initiative. Their failure to produce the key witness, on whose capacity the entire case depends, creates serious doubt about their claim, and undermines their allegation that the deeds were executed fraudulently or collusively.

Finally, Mr. Hossain submits that the plaintiffs failed to substantiate their core allegation that the disputed deeds (Nos. 5431 and 5432 dated 20.07.2010) were fraudulently procured in collusion with Mir Nasir Anwar (the brother-in-law and 'Beyai' of Plaintiff No. 2) and Mohsina Begum (his full sister). Nowhere did the plaintiffs explain why these close relatives of the plaintiff would act in collusion with the defendants, who are unrelated river-eroded people from another upazila. No allegation or suggestion was made that either Mir Nasir Anwar or Mohsina Begum obtained any benefit from the disputed deeds. The trial court rightly took note of these inconsistencies and the lack of motive, and dismissed the suit upon considering all material

facts and legal principles. The learned appellate court, however, ignored these critical aspects.

Per Contra, Mr. Shahidul Islam, learned Advocate appearing for the plaintiffs- opposite parties, submits that admittedly the Plaintiff No. 2, Md. Hasan Imam Khan, was the original owner of the suit land. In early July 2010, he became severely ill, suffered a paralytic attack, lost his normal cognitive faculties, became unconscious, and was unable to speak or recognize people around him. During this period of serious physical and mental incapacity, the impugned deeds were fraudulently procured by the defendant-petitioners. Hasan Imam Khan neither received any consideration nor voluntarily executed or delivered possession of the suit land. After regaining health, Hasan Imam instituted the present suit for cancellation of the fraudulent deeds.

He submits that the appellate court rightly found that the plaintiffs had successfully discharged their burden of proof by adducing consistent and corroborative oral and documentary evidence. Contrary to the petitioners' contention, the trial court failed to appreciate the plaintiffs' case in light of the uncontroverted facts which demonstrated that Hasan Imam Khan, the original owner of the suit property, was not in a sound physical or mental state to execute the sale deeds in question. The plaintiffs examined seven witnesses and produced documentary evidence (Exhibits 1–8), which collectively established that the deeds were not executed voluntarily and were the product of fraud and misrepresentation.

Referring to the plaintiffs' witnesses, Mr. Islam emphasizes that PW-1, Simki Imam Khan, categorically stated that *"My father was speechless and unconscious at the time. When he recovered, he clearly said he did not sell the land."* Further, PW-6, Saiful Islam,

corroborated her account, testifying that *“In early July 2010, he became paralyzed and speechless... He could not recognize anyone and had no normal cognitive function.”* These statements establish the physical and cognitive incapacity of Hasan Imam Khan at the relevant time.

Importantly, these claims find support in the admissions of the defendants’ own witnesses. DW-1, Shafiuddin, conceded that *“Hasan Imam gave his thumb impression on the deed because he was paralyzed.”* While DW-3, Ketab Ali, stated that *“Hasan Imam was not present when the deed was written.”* These testimonies strongly support the plaintiffs’ assertion that the sale deeds were obtained in the absence of free will and informed consent, warranting their cancellation.

Addressing the petitioners’ objection regarding alleged inconsistencies in the signatures appearing on the Gift Deed dated 27.11.2011 (Exhibit-5), Mr. Islam submits that such variation is, at best, a matter for handwriting expert analysis, and does not invalidate a registered instrument that has been acted upon and is supported by possession. PW-1 stated in her cross-examination that *“I am in possession of the suit land... I have submitted three DCRs (Exhibit-6 series), two rent receipts, and one mutation record.”* Her testimony is corroborated by PW-2, who confirmed that *“The land is in the possession of the plaintiffs. They have constructed homesteads and cultivated crops.”* PW-3 further stated that *“I know the suit land on the ground.”* These consistent statements, supported by documentary evidence, establish both the validity and legal effect of the Gift Deed. The appellate court rightly found that possession had passed to Plaintiff No. 1 pursuant to Exhibit-5.

Mr. Islam also contends that the petitioners' argument, regarding the impermissibility of seeking relief under both Sections 42 and 39 of the Specific Relief Act, is wholly misconceived in the present factual context. He submits that where a plaintiff's lawful title is threatened by the existence of fraudulent or voidable instruments, both a declaration of title (Section 42) and cancellation of documents (Section 39) may be jointly prayed for. These remedies are complementary where the existence of the deeds in question constitute a cloud upon title. Hence, the suit is properly framed, and the appellate court correctly granted the dual reliefs in order to fully adjudicate the parties' rights and avoid multiplicity of proceedings.

It is further submitted that the plaintiffs successfully proved possession over the suit land. The petitioners' claim that Plaintiff No.1 could not specify individual plots is of no consequence, as actual cultivation and control over the land through sharecroppers was clearly proven. PW-1 stated that she was in possession of the land and submitted tax and revenue receipts. PW-2 and PW-3 confirmed physical possession, while PW-6's testimony supports the plaintiffs' timeline and factual assertions. The appellate court rightly held that possession was sufficiently established, and the trial court erred in concluding otherwise.

In view of the above, Mr. Islam submits that the appellate court's judgment is well-reasoned, supported by unshaken oral testimony and contemporaneous documents, and properly addressed the legal and factual issues involved. On the other hand, the trial court overlooked crucial admissions and documentary evidence, and placed undue emphasis on minor inconsistencies. The appellate court, by reversing that decision, rightly exercised its jurisdiction and corrected the miscarriage of justice.

Having heard the learned Advocates for both the parties, and on careful examination of the lower courts' records, this Court is of the view that the appellate court rightly interfered with the erroneous findings of the trial court and properly appreciated the evidence on record. Accordingly, no interference under Section 115 of the Code of Civil Procedure is called for in revisional jurisdiction.

The primary case of the plaintiffs was that the impugned sale deed dated 20.07.2010 was not lawfully executed, as the vendor, Hasan Imam Khan, was seriously ill, mentally disoriented, and physically incapacitated at the relevant time. This version has been consistently supported by multiple witnesses, both from the plaintiffs and the defence. PW-1, Simki Imam Khan, the daughter of Hasan Imam Khan, categorically stated that *“My father was ill in November 2009 and was later taken to my uncle’s house in July 2010 without our knowledge. On 20.07.2010, the land was allegedly sold. My father was an educated man and an engineer, yet only a thumb impression appears on the deed. He was speechless and unconscious at the time. When he recovered, he clearly denied selling the land.”*

In cross-examination, she further stated that- *“At the time of execution, my father was unwell. The deed was executed using his thumb without his knowledge. We were and are in possession of the suit land.”* This statement is corroborated by PW-6, Saiful Islam, an independent and credible witness, who deposed that *“In early July 2010, he (Hasan Imam) became paralyzed and was speechless. He lived for three months at his brother-in-law’s house. During this time, he couldn’t recognize anyone and had no cognitive ability. He couldn’t move his limbs.”*

These statements convincingly establish that at the relevant time, Hasan Imam was suffering from a medical condition that rendered

him incapable of understanding or executing a legal document. Notably, the defence witnesses did not refute this condition. Rather, they supported it. DW-1, Shafiuddin, clearly admitted that *“Hasan Imam gave his thumb impression on the deeds as he was paralyzed.”* In cross-examination, he stated that *“After execution, the land was not mutated, no rent was paid, and none of Hasan Imam’s children were present during registration.”* DW-3, Ketab Ali, another defence witness, admitted that *“Hasan Imam was not present when the deed was drafted. I gave evidence because the lawyer asked me to. None of his children were present during the transaction.”* Such admissions by the defendants' own witnesses seriously undermine the credibility of the execution of the sale deeds. The appellate court rightly found that the circumstances of the execution were highly suspicious and that the vendor, in a paralyzed and speechless condition, could not have voluntarily and knowingly executed deeds of sale. The trial court completely failed to appreciate these crucial pieces of evidence and dismissed the suit mechanically.

On the question of possession, the plaintiffs produced strong oral and documentary evidence. PW-2, Md. Abdur Razzak, deposed that *“The land is under possession of the plaintiffs. They have built houses and grow crops. Some parts are under sharecropping.”* PW-3, Shamim Reza, confirmed knowledge of the suit land and also testified that Hasan Imam was seriously ill around mid-July 2010. Revenue documents (DCRs, rent receipts, mutation entries, exhibits 6 series, 7, 8) were submitted by PW-1 to substantiate continuous possession. These were not effectively rebutted by the defendants. The defence admitted that they had not mutated the land or paid rents. Hence, the claim of possession by the plaintiffs was stronger and more credible.

This Court further finds that the appellate court’s observation regarding the inconsistency in the signatures appearing on different

pages of the Hiba Deed (Exhibit-5) does not, in itself, render the deed invalid or unauthentic. It is not unusual for an individual, even one who is educated, to exhibit minor variations in signature across different documents or at different times. More significantly, Hasan Imam Khan, the donor of the Hiba Deed, is a co-plaintiff in the present suit and has expressly acknowledged the gift in favour of Plaintiff No. 1. Notably, neither Hasan Imam Khan nor any of his heirs or legal representatives has ever challenged the validity of the deed on the grounds of forgery or impersonation. The deed has been acted upon and relied upon by the plaintiffs without objection from any other interested parties, thereby strengthening its legal efficacy. In these circumstances, the minor discrepancy in signatures, absent any formal challenge by the executant or his heirs, is insufficient to discredit the deed or to undermine the title claimed by the plaintiffs under it.

As regards the objection raised by the petitioner that the suit was not maintainable for seeking both declaration under section 42 and cancellation under section 39 of the Specific Relief Act, this Court finds no merit in such contention. The law is well settled that where a plaintiff seeks a declaration of title and also challenges a deed as fraudulent or voidable, especially one that casts a cloud upon the title, reliefs under both Sections 42 and 39 may be jointly sought. The reliefs in this case were not inconsistent but rather complementary. The declaratory relief was necessary to affirm title, and cancellation was sought to remove the cloud created by the deeds in question. The appellate court rightly accepted the maintainability of the suit.

In light of the foregoing discussion, this Court arrives at the following findings:

- i) The plaintiffs have successfully established that the deeds in question were neither voluntarily nor lawfully executed by the Plaintiff No. 2;
- ii) The defendants-petitioners have failed to prove due execution of the deeds or lawful transfer of title;
- iii) The Plaintiff No.1's possession over the suit land has been consistent and continuous, pursuant to a completed Hiba Deed, and is corroborated by documentary evidence; and
- iv) The suit was properly framed and is maintainable in law.

These findings are founded in both the evidence on record and established legal principles relating to the burden of proof, execution of deeds, and rights arising from a valid Hiba. As the plaintiffs challenged the validity of the deeds in question, the initial burden rested upon them to prove that the deeds were not lawfully or voluntarily executed. This burden was duly discharged through credible oral and documentary evidence, including inconsistencies in execution, lack of attesting witnesses, and the conduct of the parties. Once the plaintiffs established a prima facie case casting serious doubt on the validity of the deeds, the evidentiary burden shifted to the defendant-petitioner to prove due execution and delivery of title, which they failed to do. On the contrary, the plaintiff No. 1 further demonstrated that her possession over the suit land stemmed from a valid and completed Hiba from the plaintiff No. 2, which had been acted upon and remained unchallenged by any interested party. The continuous and documented nature of this possession, along with the donor's own acknowledgment in the plaint, strengthens the claim. Furthermore, the reliefs sought by the plaintiffs were within the scope

of their cause of action, and the suit was properly framed and maintainable under the law.

Therefore, the findings of the appellate court are not only supported by credible evidence but are also legally sustainable. There is no error of law, misreading of evidence, or jurisdictional defect to justify interference in revision.

Accordingly, **the Rule is discharged.**

The judgment and decree dated 27.07.2023 and 03.08.2023 passed by the learned Joint District Judge, 3rd Court, Sirajgonj in Other Class Appeal No. 02 of 2022 affirming the plaintiffs' claim are hereby upheld.

Let the Lower Court's Record be sent back and this judgment be communicated to the court concerned at once.

(Justice Md. Toufiq Inam)

Ashraf /ABO.