

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3740 OF 2010

In the matter of:

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

And

Md. Hashem Howlader being dead his heirs- Md.
Khalilur Rahman Howlader and others

.... Petitioners

-Versus-

Abdul Berik Fakir and others

.... Opposite parties

Mr. Mohammad Eunos, Advocate

....For the petitioners.

Mr. M. A. Mannan Mohan, Advocate

.... For the opposite party Nos.1-5, 7-
9 and 11-19.

Heard and Judgment on 12.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-19 to show cause as to why the impugned judgment and decree dated 04.07.2010 passed by the learned Joint District Judge, 3rd Court, Patuakhali in Title Appeal No.61 of 2009 reversing those dated 04.06.2009 passed by the learned Assistant Judge, Kalapara, Patuakhali in Title Suit No.43 of 2005 decreeing 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 the petitioners as plaintiffs instituted above suit for declaration of title and confirmation of possession for 1.67 acres land alleging that Jente Ali Howlader, Kalu Howlader, Baser Ali Howlader, Hachan Ali Howlader and Azahar Ali obtained settlement of 5 acres land including above 1.67 acres by a registered deed of patta dated 15.05.1945 and by amicable partition Jente Ali was in possession of disputed 1.67 acres land. Above Jente Ali Howlader died leaving wife Howa Bibi and three sons of cousin brother namely Kalu Hoslader, Baser Ali Howlader and Hachan Ali Howlader and one daughter of his brother namely Rahim Jan Bibi as heirs. Plaintiffs are as successive heirs of Jente Ali in possession of above land by constructing dwelling house and cultivation. In S. A. Khatian No.107 $\frac{1}{3}$ share of Jinnet Ali was erroneously recorded in the name of the defendants.

Defendant Nos.1-10 contested the suit by filing a joint written statement denying all the claims and allegations made in the plaint and alleging that above Jente Ali Howlader was childless and he adopted a boy namely Sher Ali and before his death he transferred above land to Sher Ali by an unregistered deed of gift on 14 Srabon 1344 B.S. Above Sher Ali while in possession of above land transferred the same by a registered kabla deed on 01.02.1949 to Sejon Ali who in his turns transferred the same to the predecessor of the defendants namely Khanjon Ali and Motaher Ali Fakir by registered kabla deed dated 20.06.1950 and delivered possession. S. A. Khatian No.107 was rightly

recorded in the names of above Khajon Ali and the plaintiffs do not have any right, title, interest and possession in above land.

At trial plaintiffs examined three witnesses and defendants examined two. Documents of the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos."Ka' - "Ja" series.

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

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Title Appeal No.61 of 2009 to the District Judge, Patuakhali which was heard by the learned Joint District Judge, 3rd Court who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

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

Mr. Mohammad Eunos, learned Advocate for the petitioners submits that admittedly Jente Ali Howlader and Kalu Howlader, Baser Ali Howlader and Hachan Ali Howlader and Azahar Ali Howlader jointly acquired five acres land by registered patta dated 03.07.1945 and Jente Ali by amicable partition was in possession in disputed 1.67 acres land. Plaintiffs are successive heirs of above Jente Ali who died issueless. Defendants claimed that above Jente Ali transferred above

land by an unregistered deed of gift dated 14 Srabon 1354 B.S. but above deed required registration but the same was not registered. As such above document is a void document and the learned Judge of the trial Court did not admit above document into evidence. As such the defendant has failed to prove that Sher Ali was the rightful owner and possessor of disputed 1.67 acres land and the defendants did not get any title and possession in above land by successive purchase by registered kabla deed dated 01.02.1949 (Exhibit-“Ka”) nor Khonjon Ali Howlader and others acquired valid title and possession in above land. Since Khanjon Ali and others did not have any rightful title and possession in above land the recording of his name in S. A. Khatian No.107 was without any lawful basis. On consideration of above facts and circumstances of the case and evidence on record the learned Assistant Judge rightly decreed above suit. But the learned Judge of the Court of Appeal below utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally allowed above appeal, set aside the lawful judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

On the other hand Mr. M. A. Mannan Mohan, learned Advocate for the opposite party Nos.1-5, 7-9 and 11-19 submits that the plaintiffs were not legal heirs of Jente Ali nor the plaintiffs have succeeded to prove their title and possession in the disputed land by legal evidence. 10 persons as plaintiffs have instituted this suit but they did not make specific mention as to the mode and manner of their possession in 1.67

acres land. S.A. Khatian No.107 was recorded in the name of Khonjan Ali the predecessor of the defendant on the basis of two registered kabola deed dated 01.02.1949 (Exhibit No."Ka") and 20.06.1950 (Exhibit No."Kha"). Above two original registered documents of more than 30 years old were produced at trial and the S. A. Khatian having prepared on the basis of above deeds the same cannot be designated as unlawful and erroneous.

It is admitted that Jente Ali was issueless. Defendants claimed that above Jente Ali raised a boy namely Sher Ali and Jente Ali transferred 1.67 acres land to above Sher Ali by an unregistered deed of gift dated 14 Srabon 1354 B.S. Above deed was produced at trial but the same was not admitted into evidence and marked as an Exhibit. The gift of the disputed land by Jente Ali Howlader to Sher Ali having made effective by declaration of gift and delivery of possession the same cannot be designated as unlawful or void. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal below has rightly allowed the appeal, set aside the unlawful judgment and decree of the trial Court and dismissed the suit 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 Jente Ali Howlader, Kalu Howlader, Baser Ali Howlader, Hachon Ali Howlader and Ajhar Ali Howlader obtained settlement of five acres land in separate shares by registered deed of

patta dated 03.07.1945 and Jente Ali had title and possession in disputed 1.67 acres land. It is also admitted that above Jente Ali died issueless and in relevant S.A. Khatian above 1.67 acres land was recorded in the name of Khanjon Ali, predecessor of the defendants.

Plaintiffs claim to be heirs of above Jente Ali but above claim has been denied specifically by the defendants both in their written statement and in the evidence of DW1. As to the genology of above Jente Ali plaintiff has made following statement at Paragraph No.2 of the plaint:-

“জেনতে আলী হাওলাদার তাহার অংশের ভূমিতে স্বত্বান মালিক দখলকার নিযুক্ত থাকিয়া মারা যাওয়ায় তৎত্যাগ্য অংশ প্রাপ্ত হয় ১ স্ত্রী হাওয়া বিবি এবং চাচাতো ভাইর ৩ পুত্র কালু হাওলাদার, বাছের হাওলাদার এবং হাচন হাওলাদার ও ১ ভাইজি রহিমজান বিবি।”

In his evidence as PW1 plaintiff No.1 stated that after demise of Jente Ali Howlader his wife Howa Bibi, nephews Hachon Ali Howlader, Baser Ali Howlader, Kalu Howlader and Rahimjan Bibi and Laljan Bibi inherited his property. Above Laljan Bibi was not mentioned as a heir of Jente Ali Howlader in the plaint. The plaintiff did not mention the name of the cousin brother of Jente Ali Howlader who was the father of Hachon Ali Howlader, Baser Ali Howlader and Kalu Howlader nor mentioned the name of the brother of Jente Ali Howlader who was the father of Rahimjan Bibi and Laljan Bibi. In cross examination PW1 stated that at the time of death of Jente Ali Howlader

his was above 8 years and he did not see Khanjon Ali Howlader or Sher Ali. The plaintiffs could not mention the date of death of Jente Ali when his inheritance opened and the plaintiffs acquired the disputed property as his heirs.

The learned Advocate for the petitioners submits that the recipients of registered deed of patta dated 03.07.1945 (Exhibit No.3) were cousin brothers and plaintiffs are successive heirs of other recipients above patta deed. But it turns out from above patta deed that the father's name of Jente Ali is different from that of other recipients of above patta deed and there is no mention that father of Jente Ali Howlader and father of other recipients of above patta deed were full brothers or cousin brothers. There is no such mention in the plaint nor any such evidence was adduced by the plaintiffs in support. As such the claim of the plaintiff that they were heirs of Jente Ali Howlader and after his demise they inherited disputed 1.67 acres land as stand no prove.

As mentioned above 10 persons as plaintiffs instituted this suit and they claimed to possessing disputed 1.67 acres land but there is no specific mention as to the mode and manner of possession of above plaintiffs nor any evidence was adduced in this regard at trial.

It is admitted that S.A. Khatian No.107 was recorded in the names of the predecessors of the defendants Khanjon Ali and Motahar Ali Fakir. Defendants have produced a bunch of rent receipts showing payment of rent for above land. Besides the defendants has produced

the original registered kabla deed dated 04.07.1945 executed by Sher Ali to Season Ali and registered kabla deed dated 20.06.1950 executed by Season Ali to defendants predecessors Khanjon Ali, Razzak Ali, Kashem Ali and Motahar Ali Fakir which marked as Exhibit No. "Ka". Above registered documents were more than 30 years old and on the basis of above documents above S.A. Khatian was prepared. The oral evidence of the defendants witnesses as to possession of the defendant in above land appears to be consistent and credence inspiring.

It is true that if a transfer is effected by a written instrument which requires registration but not registered that document becomes inadmissible in evidence. But in case of a Muslim gift neither writing nor registration was required before 2004. It is not disputed that Jente Ali was a childless man and he raised a boy namely Sher Ali. If a gift is declared and possession of the property is delivered then the gift become effective and irrevocable. The defendants have succeeded their possession in the disputed property on the basis of successive transfer from Sher Ali.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of materials on record has rightly allowed the appeal and set aside the erroneous judgment and decree of the trial Court and dismissed the suit which calls for no interference.

I am unable to find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER