

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No. 375 of 2011

Md. Tajul Islam

....Appellant

-Versus-

Hasina Roushon Jahan and others

... Respondents

Mr. Dider Alam Kollol, Advocate

... For the appellant.

Mr. Md. Suruzzaman Akonda, Advocate

... For the respondent No.13.

Heard on 18.02.2026 and Judgment on 10.03.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 28.03.2011 passed by the learned Joint District Judge, 2nd Court, Narshindi, in Civil Suit No.126 of 2010 decreeing the suit.

Facts in short are that respondent Nos.1-4 as plaintiffs instituted above suit for declaration of title for 0.5205 decimal land and for further declaration that registered deed of power of attorney No.11787 dated 18.12.2003 and registered deed of Heba-bil-ewaz No.3906 dated 05.05.2004 are collusive, forged and ineffective documents alleging that above 5.05 decimal land and other land belonged to Abdul Khaleque Sarker who died leaving two sons

namely Md. Ali and Hossen Ali and three daughters namely Jinnatunnessa, Meherunnessa and Mazeda Khatun as heirs. Plaintiff's predecessor Hazrat Ali purchased 39 decimal land by six registered kabla deeds from the heirs of above Abdul Khaleque Sarker. Hazrat Ali and his two brothers acquired a deed of nadabipatra for 30 decimal land on 19.11.1993 and Hazrat Ali acquired 10 decimal land by above deed. Above Hazrat Ali transferred 46 decimal land to his minor daughter plaintiff No.2 by a registered deed of heba dated 27.09.1991 and delivered possession and died leaving the plaintiffs as heirs. Plaintiffs got their names mutated for above land and possessing the same by constructing boundary wall and several tin shed ghors. Above Hazrat Ali did not transfer above land to the defendants nor he executed any deed of power of attorney and above deed was created by false personation and forgery. Defendants denied plaintiffs title in above land on 02.08.2005 on the basis of above forged deeds of power of attorney and Heba-bil-ewaz.

Defendant Nos.1-2, 10-11, 16-17 and 19 contested above suit by filing separate written statements but the claims and allegations of all above defendants are identical which in short are that Hazrat Ali as the owner of 52 decimal land transferred the same to defendant No.2 Tajul Islam and Abdul Hannan for a consideration of Taka 6,50,000/- and executed an unregistered Angikarnama on 22.08.1996. Defendant No.2 paid Taka 5,00,000/- by a bank draft and Taka 1,00,000/- in cash

and Hannan paid Taka 15,000/- in cash. Hazrat Ali obtained time for registration of sale deed after obtaining permission from the Court to transfer the land of her minor daughter. Hazrat Ali delivered possession of 32.50 decimal land and could not trace out the remaining land. Defendant No.2 returned Taka 50,000/- to Hannan and Hazrat Ali executed and registered a deed of power of attorney on 1812.2003 authorizing defendant No.2 to transfer above land and on the strength of above deed defendant No.2 transferred above land to his wife defendant No.1 by registered deed of heba on 05.05.2004. Defendant No.1 transferred 25 decimal land to Abed Ali College and Al Faruk Academy and sold 7 decimal land to others and she is in possession in remaining 5 decimal land. The plaintiffs do not have title and possession in above land.

At trial plaintiffs examined two witnesses and defendants examined six. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of defendants were marked as Exhibit Nos."Ka" to "Jha".

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

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.2 as appellant moved to this Court and preferred this First Appeal.

Mr. Dider Alam Kollol, learned Advocate for the appellant submits that Hazrat Ali claimed to be the owner and possessor of 52 decimal land and transferred the same to defendant No.2 by an unregistered deed of Angikarnama dated 22.07.1996 (Exhibit No."Jha") and a registered deed of power of attorney (Exhibit No."Chha") but he delivered possession of $32\frac{1}{2}$ decimal land. Above Hazrat Ali could not deliver possession of remaining 20 decimal land to defendant No.2. He promised to return proportionate consideration money but he did not return above money. Plaintiffs claimed that Hazrat Ali owned 52 decimal land by the deeds they mentioned in the plaint cover only 39 decimal land. PW1 Hasina Rowshan stated that she had no knowledge as to the possession of above land which is possessed on her behalf by PW2 Md. Abdul Baset. But in his evidence as PW2 above Abdul Baset expressed his ignorance as to possession of above land. Above evidence of the plaintiffs clearly show that the plaintiff were out of possession but the learned Joint District Judge failed to appreciate above materials on record and most illegally decreed above suit which is not tenable in law. The learned Advocate lastly submits that in the plaint and in his evidence as DW1 Tajul Islam has stated that he paid Taka 5,00,000/- to Hazrat Ali by a bank draft and above bank draft was submitted in Court but the learned Joint District most illegally

omitted to mark above document as an exhibit and now above document could not be found with the lower court record.

On the other hand Mr. Md. Suruzzaman Akanda, learned Advocate for the respondent No.13 concedes that the plaintiff claimed title in 52.5 decimal land on the basis of registered deed of heba dated 27.07.1990 (Exhibit No.2) and by inheritance. In the plaint plaintiffs have given description of six registered kabla deed showing purchase of 39 decimal land by Hazrat Ali. The plaintiff also claimed 10 decimal land by nadabipatra but did not produce above document or other purchase deeds of Hazrat Ali since the defendants admitted title of Hazrat Ali in $52\frac{1}{2}$ decimal land. Since the defendants are now denying lawful title and possession of Hazrat Ali in total $52\frac{1}{2}$ decimal land the plaintiff would produce all purchase deeds of Hazrat Ali and above nadabipatra if the suit is remanded for retrial. The learned Advocate concedes that two witnesses of the plaintiffs could not prove possession of the plaintiffs in $52\frac{1}{2}$ decimal land due to their dispossession during pendency of above suit. The plaintiffs were dispossessed by the defendants from above land without their consent but above facts were not brought into the plaint due to error of the appointed Advocate of the plaintiffs. The learned Advocate lastly submits that in order to remove above deficiencies in the plaint and evidence the respondents have submitted two separate petitions

for amendment of the plaint to incorporate the facts of dispossession by the defendants during trial of the suit and another petition for further evidence and ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial.

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

As mentioned above plaintiffs filed above suit for declaration of title and cancellation of two documents, the registered deed of power of attorney dated 28.12.2003 executed by Hazrat Ali to defendant No.2 (Exhibit No."Chha") and the registered deed of Heba-bil-ewaz dated 05.05.2004 executed by defendant No.2 to his wife defendant No.1 (Exhibit No."Cha"). The defendants have claimed that Hazrat Ali transferred above $52\frac{1}{2}$ decimal land to defendant No.2 and Hannan by a unregistered deed of Angikarnama dated 22.08.1996 (Exhibit No."Jha") but Hazrat Ali could not execute and register a sale deed since he transferred above land to his minor daughter by a deed of heba. The plaintiffs did not seek any remedy against above deed of Angikarnama nor challenged due execution of above deed by Hazrat Ali. The learned Advocate for the respondent concedes above deficiency in the case of the plaintiff and submits that they will seek

appropriate relief against above document if the suit is remanded for retrial.

The plaintiff did not produce and prove any document showing acquisition of title by Hazrat Ali in $52\frac{1}{2}$ decimal land. The defendants admitted to have acquired 52 decimal land from Hazrat Ali but claimed that on the basis of above transfer they got possession of only $32\frac{1}{2}$ decimal land and Hazrat Ali could not deliver possession of remaining 20 decimal land and promised to return proportionate consideration money. As such it cannot be held that the defendants admitted title and possession of Hazrat Ali in $52\frac{1}{2}$ decimal land and the plaintiffs were required to prove by legal evidence lawful title of Hazrat Ali in total $52\frac{1}{2}$ decimal land. But as mentioned above plaintiffs failed to prove the same.

As far as possession of above land is concerned the learned Advocate for the respondent rightly concedes that PW1 Hasina Rawshan and PW2 Abdul Baset could not by their evidence prove possession of the plaintiffs in above land. In a suit for declaration of title the plaintiffs cannot be given a decree even if he succeeds to prove his title but fails to prove possession.

The learned Joint District Judge most illegally held that the signatures of Hazrat Ali appearing in the registered deed of power of

attorney (Exhibit No."Chha") were forged without comparing above signatures with admitted signatures of above Hazrat Ali in any other another document as provided in Section 73 of the Evidence Act, 1872.

The learned Advocate for the respondents submits that above deficiencies in the plaint and evidence of the plaintiffs caused due to professional inexperience and lack of the skill of the appointed Advocate of the plaintiffs and the plaintiffs should not made to suffer for the errors, mistake or lack of skill of their appointed Advocate. The learned Advocate for the appellant rightly pointed out that the defendants stated in their written statement and in the evidence of PW1 Tajul Islam that he paid Taka 5,00,000/- to Hazrat Ali by a bank draft and specifically mentioned the name of the bank and the number of above bank draft. The learned Advocate showed us from the lower court record that above bank draft was produced at trial by a firisti but above important document was not marked as an Exhibit.

On consideration of above facts and circumstances of the case and evidence on record we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence if any.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 28.03.2011 passed by the learned Joint District Judge, 2nd Court, Narshindi, in Civil Suit No.126 of 2010 is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence if any.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**