

Present :
Mr. Justice Ashish Ranjan Das.

Civil Revision No. 3015 of 2012

In the matter of:

Suruj Miah and another
.....Defendants-Respondents- Petitioners
-Versus-
Md. Ramjan Ali and others
.....Plaintiffs-Respondents-Opposite
parties.
Mr. A.B.M.Matiur Rahman, Advocate
..... Defendant-Appellant- Petitioners.
Mr. H. Humayun Kabir, Advocate
.....Plaintiff-Respondent-Opposite parties.

**Heard on: 31.10.2019,18.11.2019,
25.11.2019 and 01.12.2019.**

Judgment on: 05.02.2020

Ashish Ranjan Das, J:

By this application under section 115(1) of the Code of Civil Procedure, the propriety of the judgment and decree dated 06.06.2012 passed by the learned 2nd Court of Additional District Judge, Gazipur in Title Appeal No.272 of 2009 reversing those dated 29.09.2009 passed by the learned Assistant Judge, 3rd Court, Kapasia, Gazipur in Title Suit No. 3478 of 2008 has been called in question.

The plaintiff opposite parties No.1-2 filed Title Suit No.3478 of 2008 impleading the petitioners and opposite parties no.3-9 as defendants praying for a decree for declaration to the effect that the deeds under challenge were fraudulent and illegal.

Facts relevant for the purpose of disposal of the rule may be summarized as under: -

The suit land originally belonged to Pana Ullah Sheikh. He died leaving 2 sons, namely, Kusai Sheikh and Jafar Ali Sheikh. Their names were correctly recoded in C.S, khatian No.95 in equal shares. Thereafter, Kusai Sheikh died leaving 2 sons, namely, Nasiruddin and Rahimuddin. During S.A. operation their names were correctly recorded in S.A. khatian No.161 and R.S. khatian No.105 was also correctly recorded in the names of aforesaid Rahimuddin and others.

Rahimuddin died in 1988 leaving behind wife, Ayesha Khatun, three sons, namely, Ramjan Ali, Lal Miah and Suruj Miah and two daughters, namely, Ajufa Khatun and Jayeda Khatun, who inherited aforesaid Rahimuddin's left out property. Ayesha Khatun died leaving her 3 sons, namely, Ramjan Ali, Lal Miah and Suruj Miah and one daughter Jayeda Khatun, all of them have been possessing their respective shares in accordance with amicable partition.

On 05.05.2004 the defendants claimed title over the scheduled land on the basis of some Heba bil ewaj deeds allegedly executed by their father Rahimuddin and mother Ayesha Khatun. They went to the local Sub-Registry Office and on search obtained certified copy of deed Nos.9803 and 9804 dated 17.10.1987, deed no.6494 dated 08.08.2001 respectively. On 17.10.1987 Rahimuddin transferred 26.25 decimals of land in favour of defendant no.3, Jayeda Khatun by registered deed no.9803 of 52.50 decimals land was gifted to Ayesha Khatun and defendant nos. 1-2 by registered Heba bil –ewaj deed no. 7804 and Ayesha Khatun gifted 10.5 decimals land in favour

of defendant nos.1-3. But allegation is that Rahimuddin did not execute the impugned deeds.

Defendant Nos.1 and 3 contested the suit by filing a written statement. Their case is that the father of the plaintiffs as well as of defendants no.1-3 transferred 17.5 decimals of land to Mst. Morzina Khatun wife of plaintiff No.1, by registered deed no.8006 dated 01.09.1987. On 17.10.1987 he again gifted 26.25 decimals of land to his daughter, Jayeda Khatun, defendant no.3 by registered Heba by heba bil ewaj deed No.9803 he gifted 52.5 decimals of land to his 2 sons, defendant nos.1 and 2 and his wife Ayesha Khatun by registered Heba bil ewaj deed No.9804 and handed over possession to them and they have been possessing the same in accordance with their respective shares. After the death of Rahimuddin, while Ayesha Khatun was in possession of her share which she inherited from her husband as well as got through deed No.9804, transferred 10.5 decimals of land to defendants No. 1-3 by registered Heba bil ewaj deed No.6494 dated 08.08.2001 and handed over possession to them. The plaintiff No. 1 purchased 8.66 decimals land from defendant Nos. 2 by 3 separate registered deeds No.861 dated 28.01.2003, No. 4487 dated 21.06.2003 and deed No. 7192 dated 30.09.2003. Defendant No.3 got 77 decimals of land through aforesaid Heba bil ewaj deeds by inheritance and mutated the same and has been possessing there. The plaintiffs filed the suit after 17 years of the registration of the impugned deeds. Defendant No. 2 filed a separate written statement

but did not turn up in the court to prove his case.

The learned Assistant Judge, 3rd Court (Kapasias), Gazipur recorded evidences for the respective parties and upon full-fledged hearing, dismissed the suit by her judgment and decree on 29.09.2009.

Being aggrieved by the aforesaid judgment and decree, the plaintiffs opposite parties preferred an appeal and the learned Appellate Court allowed the appeal and decreed the suit by her judgment and decree dated 06.06.2012.

The plaintiffs initially filed the suit for declaration of title to the effect that registered Heba bil ewaj deeds no.9803 and 9804 dated 17.10.1987, no. 8006 dated 01.09.1987 after long 17 years of execution and registration of those deeds were not genuine. The defendants claimed title over the suit land on 05.05.2004 which is not supported by any other P.Ws. The learned Assistant Judge rightly found the suit hopelessly barred by limitation, but the appellate court without reversing the finding of the trial court allowed the appeal. Hence is this revisional application at the instance of the defendant-respondents—petitioner nos. 1 and 2.

Admitted position is that the plaintiffs are not in possession of the suit land and the defendant nos.1 and 2 have been possessing the suit land for more than 12 years.

I have gone through the materials annexed to the file and heard the learned advocates for the contesting parties at length.

Mr. A.B.M. Matiur Rahman, the learned Advocate for the

petitioners pointed out that the plaintiffs filed the suit for declaration in respect of the property left behind by their father and mother along with challenging some registered deeds, as such the suit is not maintainable without prayer for partition. He next submits that the suit is not maintainable in its present form without a prayer for partition of ejmali property. He lastly submits that the appellate court without adverting to the aforesaid findings illegally allowed the appeal and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Mr. H. Humayun Kabir, the learned advocate for the opposite party pointed out that Rahimuddin did not execute the impugned deeds, those were collusively and fraudulently obtained by the defendants No.1-3. He next submits that the learned Appellate Court rightly allowed the appeal based on material evidences on record. He lastly submits that the plaintiff No.1 purchased 8.66 decimals of land from the defendant no.2 by 3 separate registered deeds on different dates, as such the Rule liable to be discharged.

It is admitted that Rahimuddin and the plaintiffs were the owners of the suit land. The plaintiffs and the defendants are the heirs of Rahimuddin i.e the plaintiffs and the defendants are co-sharers by inheritance. The plaintiffs claimed that the defendant nos.1-3 created the deed nos. 9803 & 9804 dated 17/10/1987 AD from Rahimuddin fraudulently. P. W. 1 stated that the deed nos. 9803 & 9804 dated 17/10/1987 AD is inoperative and paper transaction only but did not

specifically mention as to why the impugned deeds are inoperative and void or what type of fraud the defendants have committed with the impugned deeds. The defendants further alleged that the impugned deeds have not been acted upon and the plaintiffs and defendant are in joint possession of their inherited property. The defendants possessed their share in the suit land by constructing house and planting trees there. But could not prove this by sufficient corroborative evidence. On the other hand, the defendants claimed the suit land through impugned deed nos. 9803 & 9804 dated 17/10/1987 AD, 6494 dated 08/08/2001 AD and submitted the original copies of the impugned deeds. The plaintiffs have completely failed to discharge their initial onus to prove that the impugned deeds are void inoperative and not binding upon the plaintiffs since the plaintiffs and defendants are co-sharer in the ejmali property.

In view of the facts and findings, I hold that the petitioners have totally failed to prove their case by documentary and oral evidence. I find force in the submissions of the learned advocate for the opposite parties and it is in conformity with the narration of the plaint.

Thus, I find no merit in the Rule. Accordingly, the Rule is discharged and the judgment and decree dated 06.06.2012 passed by the learned 2nd Court of Additional District Judge, Gazipur in Title Appeal No.272 of 2009 is hereby set aside and the judgment and decree dated 29.09.2009 passed by the learned Assistant Judge, 3rd Court, Kapasia, Gazipur in Title Suit No. 3478 of 2008 is upheld

without any order as to costs.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

Communicate the judgment and order to the concern Court at once.

Send down the Lower Court records at once.

Justice Ashish Ranjan Das.

Bashar, B.O.