

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

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 272 of 2007.

Sree Ranjit Kumar Mondal and others

...Appellants.

-Versus-

Mst. Joygun Nesa and others

....Respondents.

Mr. A.B.M Mokdum Hossain Dewan, Advocate with

Mr. Md. Enamul Haque, Advocate

... For the appellant

None appears

... For the respondents.

**Heard on: 02.07.2026,09.07.2026 and
16.07.2026.**

Judgment on: 22.07.2026.

Md. Badruzzaman, J:

This appeal is directed against the judgment dated 15.05.2007 passed by the learned Additional District Judge, Chapainawabganj, in Title Suit No. 1 of 1985 (Probate), whereby the suit was dismissed.

The facts relevant for the disposal of this appeal are that the predecessor of the present appellants, namely, Vinod Bihari Kabiraj, instituted Probate Case No. 27 of 1974 on 03.05.1974 seeking the grant of probate in respect of a Will alleged to have been executed by Gayeshwari Bewa in his favour on 18th Kartik, 1380 B.S., corresponding to 04.11.1973, in respect of the suit land measuring 2.69 acres. The plaintiff contended, *inter alia*, that Gayeshwari Bewa, being the owner in possession of the suit land, executed the said Will

bequeathing the property to him. It was further contended that Gayeshwari Bewa died on 04.11.1973, that the said Will was her last Will and testament, and that no previous application or proceeding for the grant of probate in respect of the said Will had ever been filed. Subsequently, the case was renumbered as Title Suit No. 3 of 1977 and, thereafter, as Title Suit No. 1 of 1985 (Probate).

The suit was contested by three sets of defendants, namely, the heirs of Dhoroni Sarker; Lutu Mondal and others and Jaigunnessa and others who filed separate written statements.

In their written statement, Dhoroni Sarkar and others contended that the alleged Will propounded by the plaintiff was neither genuine nor legally valid. They asserted that the plaintiff was not an heir of the deceased Gayeshwari Bewa and did not acquire any right, title, or interest in her property on the basis of the alleged forged Will. It was further contended that Gayeshwari Bewa was an aged, infirm, and *pardanashin* Hindu lady. The impugned Will was fabricated with the object of grabbing the property of Gayeshwari Bewa. The attesting witnesses did not sign the Will, nor did Gayeshwari Bewa execute it. The Will had been brought into existence even before her death. Dayamanti, one of the daughters of Gayeswari Bewa, sold 0.83 acre of land out of the land comprised in the alleged Will to opposite party No. 4 by a registered sale deed executed on 19.1.1974. Since the date of purchase, opposite party No. 4 has been in open, continuous, and hostile possession of the said land, adversely to the interests of all others.

In their written statement, Lutu Mondal and others contended that, out of the land described in the alleged Will, Gayeshwari Bewa

had, by a registered deed of Will dated 21.06.1956, earlier transferred .83 acre of land to her grandsons, namely, Niranjana, Shankar, and Haren. Subsequently, they (Lutu Mondal and three others) purchased 1.26 acre and .83 acre land from the aforesaid grandsons by registered sale deeds Nos. 7776 and 7777 dated 2.4.1974 and have since been possessing and enjoying the same as lawful owners.

In their written statement, Joygunnessa and others contended that, while in possession of their respective shares, Lutu Mondol and others, by three separate registered sale deeds, all dated 03.03.1982, transferred different portions of the suit land to the added defendants, namely, Joygunnessa, Ashraful Haque, and Sabed Ali. By one registered sale deed, they transferred 0.64 acre of land to Joygunnessa; by another registered sale deed of the same date, they transferred 0.64 acre of land to Ashraful Haque; and by a third registered sale deed of the same date, they transferred 1.0650 acres of land to Sabed Ali. Possession of the respective portions of land was also delivered to them. Since then, they have been owning and possessing their respective portions of the land after mutating their names in the relevant records and regularly paying rent to the Government.

On the above assertions, the defendants prayed for dismissal of the suit.

During the trial, both parties adduced oral as well as documentary evidence in support of their respective cases. Upon consideration of the evidence on record, the trial Court dismissed the suit. Being aggrieved by and dissatisfied with the said judgment, the

legal heirs of the executor named in the Will have preferred the instant appeal.

None appeared on behalf of the respondents when the appeal was taken up for hearing. On the other hand, Mr. A.B.M. Makhdum Hossain Dawan, learned Advocate, assisted by Mr. Md. Enamul Haque, learned Advocate, appeared on behalf of the appellants. Upon perusal of the records, we found that the appeal could be effectively adjudicated on the basis of the materials available on record. Being satisfied that the absence of the respondents would not prejudice the proper adjudication of the appeal, we proceeded to hear and dispose of the appeal in their absence.

The learned Advocate for the appellants submitted that, by adducing oral evidence and producing the relevant documentary evidence, the present appellants successfully proved, in accordance with law, that the Will was duly executed by Gayeshwari Bewa in favour of their predecessor, that it was her last testament, and that no previous application for the grant of probate in respect of the said Will had ever been filed. He further submitted that the trial Court, by misreading and failing to properly appreciate the evidence on record, as well as by misconstruing the applicable law, illegally dismissed the suit and refused to grant probate in favour of the present appellants, thereby committed an error of law warranting interference by this Court.

In support of his submissions, the learned Advocate for the appellants placed reliance on the decision in *Profullo Kumar Halder and others vs. Kamakshya Ranjan Halder and others*, reported in 16 ADC 140.

We have heard the learned Advocate for the appellants and perused the record of the case, the impugned judgment, and the other materials on record. It appears that the predecessor of the present appellants instituted the probate suit seeking the grant of probate in respect of the impugned Will. On the other hand, the contesting defendants challenged the genuineness of the Will and contended that they had acquired title to the land covered by the alleged Will by virtue of registered sale deeds.

In the above backdrop, the questions that arise for determination are whether the plaintiff has been able to prove, in accordance with law, that the impugned Will is genuine and was duly executed by the testatrix, and, if so, whether probate can lawfully be granted on the basis of the said Will.

Upon the pleadings of the parties, the trial Court framed the following issues for determination:

1. Whether the Will in question is genuine?
2. Whether the plaintiff is entitled to the relief sought or to any other relief available under the law?

After the death of the original propounder of the Will, his legal heirs were substituted as plaintiffs in the suit. During the trial, they adduced both oral and documentary evidence in support of the Will. The original Will was produced before the court and was admitted into evidence as Exhibit-1.

PW-1, Ranjit Kumar Mandal, one of the substituted heirs of the propounder of the Will, deposed on behalf of the substituted

plaintiffs. In his examination-in-chief, he stated that Gayeshwari was his grandmother and that she was the owner in possession of the suit property. She executed the Will in favour of his father, and it was her last Will. After the death of his father, he and his brothers became entitled to obtain probate of the Will. His father did not file any application for probate of the Will. He denied that the suit property had previously been bequeathed by the testatrix under an earlier Will dated 21.05.1956. He further deposed that they had been in possession of the suit property. In cross-examination, he deposed that the Will was written at the residence of the testatrix, Gayeshwari, and that it was attested by as many as seventeen witnesses. Altaf Hossain identified the thumb impressions of the executrix in the Will. He denied the suggestion that Gayeshwari had never executed the Will and that the document was forged and fabricated. He also stated that Gayeshwari had sold certain other properties which were not covered by the Will.

PW-2, Md. Ilias Ali, in his examination-in-chief, deposed that he knew both Gayeshwari Bewa and Binod Bihari Kaviraj. Gayeshwari Bewa executed the Will in his presence as well as in the presence of others, and that he was one of the attesting witnesses to the Will and signed it as such. The Will was scribed by Javed Ali Biswas and the contents of the Will had been read over and explained to Gayeshwari Bewa, she affixed her left thumb impressions thereon. He also identified Gayeshwari Bewa. In cross-examination, he stated that as many as seventeen persons were present at the time of the execution of the Will including him. He denied the suggestion that he had deposed falsely due to enmity with Javed Ali, one of the opposite parties. However, nothing could be elicited in his cross-

examination to discredit his testimony, and he remained consistent with the statements made in his examination-in-chief.

PW-3, Md. Altaf Hussain, in examination-in-chief, deposed that he knew Gayeshwari Bewa, who had no son, and that he also knew Binod Bihari Kaviraj. He deposed that he was present at the time the Will was executed and that he signed the Will as an attesting witness. He identified the thumb impression of Gayeshwari Bewa appearing on the Will. In cross-examination, he deposed that as many as seventeen persons were present as witnesses at the time of the execution of the Will. He was able to mention the names of thirteen of those witnesses but could not recall the names of the remaining four. However, nothing could be elicited in his cross-examination to discredit his testimony, and he remained consistent with the statements made in his examination-in-chief.

On the other hand, DW-1, Basudeb Sarkar, the son of the deceased opposite party No. 4, Dharani Sarkar, deposed in support of the case set out in the written statement. He mainly contended that the alleged Will was a forged and fabricated document. In cross-examination, he denied the suggestion that Gayeshwari had executed the suit Will in favour of Binod Bihari. He admitted that Binod Bihari was the son of Gayeshwari's husband's elder brother (her nephew by marriage). He further denied the suggestion that the deeds referred to by him were false.

DW-2, Md. Taimur Hossain, in his examination-in-chief, deposed that he knew Dharani Sarkar and Lutu Mandal. His own land is situated adjacent to the suit property. The suit property is presently in the possession of Sabed Doctor and previously it was

possessed by Lutu and Dharani. Binod Bihari Kaviraj never possessed the suit property, nor did his sons ever possess it. In cross-examination, he denied the suggestion that Binod Bihari Kaviraj had previously been in possession of the suit property and that, after his death, his sons continued such possession.

DW-3, Rais Uddin, a T.C. Assistant of the District Sub-Registry Office, Chapainawabganj, produced the relevant volumes containing Registered Sale Deed Nos. 7776, 7777 dated 2.4.1974 and No. 997 dated 19.1.1974. He deposed that the said deeds were duly recorded in the official registers maintained by the Sub-Registry Office. Upon his identification, Deed No. 7776 dated 02.04.1974 was marked as Exhibit-Ka, Deed No. 7777 dated 02.04.1974 was marked as Exhibit-Kha and Deed No. 997 dated 19.01.1974 was marked as Exhibit-Ga. According to him, the particulars of the deeds (exhibits Ka, Kha and Ga) were duly recorded in the relevant volumes and fully tallied with the entries maintained in the official records. In cross-examination, he admitted that he had no personal knowledge of the schedule or the contents of the deed. He clarified that his testimony was limited to proving the registration of the deed and that he had no personal knowledge of the transaction evidenced by the deed.

D.W-4, Md. Sabed Ali, one of the opposite parties, deposed on his own behalf as well as on behalf of his wife Joygunnessa and his son Ashraful Haque. In examination-in-chief, he stated that Gayeshwari Bewa was the owner of the property involved in the probate proceeding. During her lifetime, by a registered Will dated 21.05.1956, she bequeathed the suit property in favour of her three grandsons, namely Narayan, Shankar and Haren. While they were in

possession of the property, transferred 1.26 acres thereof by two registered deeds dated 02.04.1974, being Nos. 7776 and 7777, in favour of Lutu Mandal, Sabed Ali, Bahar Ali and Naresh Mandal. After the death of Gayeshwari Bewa, her daughter, Daimonti Dasi, transferred her interest in the property to Dharani Mandal by a registered sale deed dated 19.01.1974. Thereafter, Dharani Mandal and others by a registered sale deed dated 03.03.1982, sold 2.13 acres of land to him along with his wife and son. He subsequently purchased .4250 acre land from the said five persons and has been possessing the purchased land after paying rent to the Government. He also got decree in respect of .4250 acre land from Shibgonj Court in Other Suit No. 78 of 1991. He has also been in peaceful possession of the property purchased by him. He denied that Gayeshwari Bewa had ever executed any Will in favour of Binod Bihari Kaviraj. In cross-examination, he denied the suggestion that he had acquired no right, title or interest in the suit property in the manner claimed by him.

D.W-5, Md. Harez Uddin, a clerk of the Rajshahi Sadar Sub-Registry Office, produced the relevant volume containing the registered Will dated 21.05.1956. He proved the registration of the said Will executed by Gayeshwari Bewa. Upon his identification, the said Will was marked as Exhibit-Chha.

Upon a careful consideration of the entire evidence adduced by the parties, it appears that the original Will allegedly executed by Gayeshwari Bewa was produced before the Court and marked as an exhibit. A perusal of the Will reveals that it bears the signatures or thumb impressions of seventeen persons, including the scribe, as witnesses to its execution. Out of those witnesses, the plaintiffs

examined two attesting witnesses, namely P.Ws. 2 and 3, both of whom categorically deposed that Gayeshwari Bewa executed the Will in their presence of her own free will after fully understanding its contents. They also identified the thumb impressions of Gayeshwari Bewa appearing on the Will. Although the defendants alleged that the Will was forged and fabricated, they failed to adduce any cogent, credible, or reliable evidence in support of that allegation. We are, therefore, of the view that the due execution and attestation of the Will have been satisfactorily proved by reliable, convincing, and trustworthy evidence.

It appears that by the said Will dated 04.11.1973, Gayeshwari Bewa bequeathed 2.26 acres of land out of the total area of 4.53 acres comprised in C.S. Plot Nos. 57, 64 and 39, together with 0.43 acre of land comprised in C.S. Plot Nos. 87, 94 and 120, aggregating a total of 2.69 acres of land, in favour of Binod Bihari Kabiraj, the propounder of the Will, who was the son of her husband's brother (her nephew by marriage).

On the other hand, the defendants produced several registered deeds, which were marked as exhibits. According to the registered Will dated 21.05.1956 (Exhibit-Chha), Gayeshwari Bewa was the executrix, while Niranjana, Sankar and Horen were the beneficiaries. The schedule to the said Will described only 0.83 acres of land out of a total area of 2.71 acres comprised in C.S. Plot No. 64.

According to Registered Sale Deed No. 7776 dated 02.04.1974 (Exhibit-Ka), the vendors were Niranjana, Sankar and Horen and the vendees were four persons, including Lutu Mondal. The schedule to

the deed described 0.83 acre of land out of 2.71 acres comprised in C.S. Plot No. 64.

Under Registered Sale Deed No. 7777 dated 02.04.1974 (Exhibit-Kha), the same vendors transferred 0.5150 acre out of 2.71 acres of C.S. Plot No. 64 and 0.3150 acre out of 0.63 acre of C.S. Plot No. 57, aggregating 0.83 acre, together with 0.29 acre of C.S. Plot No. 87, 0.07 acre of C.S. Plot No. 94 and 0.07 acre of C.S. Plot No. 120, aggregating 0.43 acre, to four purchasers including Lutu Mondal.

Under Registered Sale Deed No. 997 dated 19.01.1974 (Exhibit-Ga), Dayamanti Dasi transferred 0.4525 acre out of 2.71 acres of C.S. Plot No. 64, 0.1050 acre out of 0.63 acre of C.S. Plot No. 57, aggregating 0.5575 acre, together with 0.0966 acre of C.S. Plot No. 87, 0.07 acre of C.S. Plot No. 94 and 0.07 acre of C.S. Plot No. 120, aggregating 0.2366 acre, to Dharani Sarkar.

The evidence on record further reveals that subsequent to the execution of the present Will on 4.11.1973, whereby Gayeshwari Bewa bequeathed 2.69 acres of land in favour of Binod Bihari Kabiraj, her three grandsons, namely Niranjan, Sankar and Horen, claiming themselves to be her heirs, transferred 1.26 acres of the said land to Lutu Mondal and three others by Registered Sale Deed No. 7777 dated 2.4.1974. Likewise, Dayamanti Dasi, claiming ownership over 0.7941 acres of land, transferred the same to Dharani Sarkar by Registered Sale Deed No. 997 dated 19.01.1974. Evidently, both of the aforesaid sale deeds were executed subsequent to the execution of the Will and are, therefore, subsequent transfers.

The principal contention of the defendants is that Gayeshwari Bewa had no subsisting right, title or interest in the suit property to bequeath under the impugned Will, having already executed the registered Will dated 21.05.1956 (Exhibit-Chha). A careful reading of the said document, however, shows that it covered only 0.83 acres out of a total area of 2.71 acres comprised in C.S. Plot No. 64. Thus, it did not dispose of her entire property. Moreover, the propounder of the present Will specifically denied both the existence and execution of the alleged Will of 1956.

D.W-4, Sabed Ali, claimed that he, together with his wife and son, purchased 2.13 acres of land from Dharani Sarkar and others by three registered sale deed dated 03.03.1982 and subsequently he purchased another 0.4250 acres by a registered sale deed dated 17.08.1982. However, he failed to produce either of those sale deeds or any other documentary evidence in support of his claim.

The evidence adduced by both sides reveals that there is some overlap between the land bequeathed under the impugned Will and the land claimed by the defendants under the alleged sale deeds. In other words, the defendants asserted title to a portion of the property covered by the Will. The dispute, therefore, necessarily involves a disputed question of title.

It is a settled principle of law that, in a probate proceeding, the Court is not competent to determine questions relating to the title or ownership of the property bequeathed under a Will. The sole enquiry in such proceedings is whether the testator duly executed the Will and whether it represents his last Will and testament. It is equally well settled that the grant of probate establishes only the due

execution, genuineness and operative character of the Will. It neither invalidates any subsequent transfer nor declares that the beneficiaries under the Will have acquired a better title to the property.

However, a subsequent purchaser may oppose the grant of probate only on grounds relating to the genuineness or validity of the Will, such as by alleging that the Will is forged or fabricated, was not duly executed or attested in accordance with law, that the testatrix lacked testamentary capacity, or that its execution was surrounded by suspicious circumstances. But, such a purchaser cannot invite the probate Court to adjudicate questions of title or to declare that his or her sale deed conveys a better title than that of the beneficiaries under the Will, because such issues lie beyond the limited jurisdiction of a probate Court.

Accordingly, even if the defendants claim title under registered sale deeds allegedly executed by the heirs of Gayeshwari Bewa, the validity or otherwise of such title cannot be adjudicated in the present probate proceeding. Those questions must be determined in an appropriately constituted civil suit.

It appears from the impugned judgment that, upon considering the registered sale deeds and the record-of-rights produced by the defendants, the trial Court held that Gayeshwari Bewa had not executed the alleged Will in favour of the original plaintiff, Binod Bihari Kabiraj. The trial Court further observed that Gayeshwari Bewa had, during her lifetime, transferred the suit property by a registered Will executed in 1956 in favour of her grandsons, who subsequently transferred the same to Dharani

Sarkar, and that through successive transfers the present contesting defendants acquired right, title and possession over the suit land. The Court also relied upon the admission of one of the plaintiff's witnesses regarding the defendants' possession and observed that the plaintiffs had never got possession of the property pursuant to the alleged Will. These findings unmistakably demonstrate that the trial Court entered into an adjudication of the parties' title and possession, which was wholly beyond the scope of a probate proceeding and, therefore, beyond its jurisdiction.

The trial Court also disbelieved the Will on the ground that the word "দান" (gift) appearing therein had been overwritten by the word "উইল" and, on that basis also, concluded that the document was not genuine. This finding of the Court below is misconceived because the due execution and attestation of the Will have otherwise been proved in accordance with law and such overwriting can only be regarded as a minor irregularity. Standing by itself, it neither creates any legitimate suspicion nor renders the Will invalid.

In our view, the plaintiffs have successfully proved that the Will was duly executed and attested by the attesting witnesses, that the testatrix possessed the requisite testamentary capacity at the time of its execution, and that no suspicious circumstances surrounded its execution. Accordingly, the plaintiffs have established that the Will is genuine. On the other hand, the defendants failed to adduce any credible evidence to prove that the Will was forged or fabricated, that it was not duly executed or attested in accordance with law, that the testatrix lacked testamentary capacity, or that any suspicious circumstances existed at the time of its execution.

It appears that the trial Court misread the evidence, failed to consider the material evidence on record, misconstrued the scope of its jurisdiction, and proceeded upon an erroneous view of law. Consequently, it illegally dismissed the suit, and as such the impugned judgment cannot be sustained.

Accordingly, we find merit in this appeal.

In the result, the appeal is allowed without any order as to costs. The judgment dated 15.05.2007 passed by the learned District Judge, Chapainawabganj, in Probate Suit No. 1 of 1985, dismissing the suit, is hereby set aside.

Consequently, Title Suit No. 1 of 1985 (Probate) is decreed in favour of the plaintiff-appellants. The application for probate is hereby allowed. Let probate of the Will and Testament dated 04.11.1973 (corresponding to 18 Kartik, 1380 B.S.) be granted in favour of the plaintiff-appellants, subject to payment of the requisite court fees and compliance with all other legal formalities prescribed by law.

Let the lower court records (LCR) be transmitted to the court below forthwith along with a copy of this judgment.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)