

Present :
Mr. Justice Ashish Ranjan Das.

Civil Revision No. 387 of 2006

In the matter of:

Yousuf Ali Sheikh being dead his heirs of
1(a)Md. Mahbub Hossain and others
..... Petitioners

-Versus-

Mohammad Shamsur Rahman Kotal and others
..... Opposite parties.
Mr. Md.Abdus Salam Mondal, Advocate
.....For the petitioners.
Mr. S.M.A. Sabur, Advocate
... For the opposite parties

**Heard on : 28.10.2019, 06.01.2020,
22.01.2020, 04.02.2020 and 10.02.2020**
Judgment on: 10.03.2020

Ashish Ranjan Das, J:

Baru Bibi (subsequently dead) as plaintiff brought Title Suit No. 386 of 1976, which was renumbered as 390 of 1985 for cancellation of the registered kabala deed described in the schedule of the plaint and also for permanent injunction in respect of the suit land. The suit was contested and dismissed by judgment and decree dated 31.07.1990 and 04.08.1990 by the learned Assistant Judge, Kachua, District-Bagerhat.

The plaintiff side preferred appeal being Title Appeal No.174 of 1990 before the court of District Judge, Bagerhat that was heard and disposed of by the learned Additional District Judge, Bagerhat and by his judgment and decree dated 10.08.1999 and 16.08.1999 respectively he reversed the judgment of dismissal and decreed the

suit. Being aggrieved the contesting defendant Yousuf Ali Sheikh preferred this revisional application.

Short facts relevant for the purpose of disposal of the Rule may be summarized as under:-

2.22 acres of land occurring in C.S. khatian No. 111, S.A. khatian No. 148 of mouza Sangdia, police station Kachua, distributed in several plots admittedly belonged to Baru Bibi the initial plaintiff. She used to be an illiterate rural Pardanishin old woman and her husband Taher Sekh was also sick. In order to generate fund for medical treatment of her husband she made up a mind to sell 33 decimals of land that equals to 10 kathas of the local standard to the defendant no.1. Accordingly the defendant took her all the way to Kachua Sub-registrar's office and made a kabala deed drafted by a Moharar appointed by the defendant himself. The kabala was not read over and explained to Baru Bibi. However on good faith she signed the kabala without receiving any consideration and the document was registered. Subsequently she came to know that in the guise of getting a kabala for only 10 kathas of land, the defendant inserted all her properties i.e. 2.22 acres in the kabala without paying any farthing. Illiterate pardanisin rural woman Baru Bibi started running from earth to heaven. She filed an application to the then Sub-Divisional Officer so that the kabala is not delivered. At her instance an administrative inquiry was also held wherein it was reported that the transaction was not genuine. Finally Baru Bibi brought the suit which was initially

numbered as Title Suit No.386 of 1976 in the Court of the then Ist. Court of Munsif, Bagerhat. The contesting defendant petitioner contested the suit by filing a written statement and denied all the material allegations of the plaint. The defendant took a further plea that a time after Baru Bibi's husband also sold some portion of land to this defendants and had there been any trick or dishonesty in the dealing Baru Bibi's husband would have not done so. The defendant was inducted in to possession but subsequently restrained by way of temporary injunction as the suit was filed.

The learned Assistant Judge dismissed the suit simply holding that Baru Bibi admitted her execution and in the given facts and circumstances she could not be branded as a Pardanishin woman. While in appeal the learned lower appellate court held that for all practical purposes and as it could be gathered from the attending circumstances that Baru Bibi used to be a rural illiterate Pardanishin woman and during the period her husband was sick. Thus the clever defendant did not give Baru Bibi a chance to understand texts of the kabala in terms of its area of land she sold. Considering the facts and circumstances he reversed the decision. In appeal he decreed the suit as prayed for, hence is this civil revisional application.

I have heard the learned advocates for the contesting parties in details and perused the materials annexed including the Lower Court Records.

Admitted position is that:-

- (i) *the entire suit property of 2.22 acres belonged to Baru Bibi,*
- (ii) *she was an old illiterate rural woman and pardanshin too and*
- (iii) *after execution of the kabala she consistently raised objection against its bonafide in different forum including before the Sub-Divisional Officer, Bagerhat.*

Now in respect of status of Baru Bibi as pardansin, the courts below took conflicting views, Baru Bibi had no issue and her husband was old sick and feeble. The learned advocate for the petitioner Mr. Md. Abdus Salam Mondal vehemently argued that Baru Bibi's husband himself introduced Baru Bibi as the vendor before the Sub-Registrar. But finally he withdrawn his argument.

It appears from the kabala that Baru Bibi just put her L.T.I that justified her standard, she used to be an illiterate rural woman. It further appears from (Ext-Ga) that one Abdul Jabbar Sheikh identified her and it is expected that for the purpose since Baru Bibi had no son or any other close male and capable relation to do the job and since her husband was sick that person going to purchase the land should engage some responsible persons for Baru Bibi to introduce her. But the degree of responsibility and relationship between Baru Bibi and introducer Abdul Jabbar Sheikh remained in the dark. In its turn it justified the findings of the

learned appellate court that for a Pardanishin rural illiterate woman the safe guard prescribed by law was rather overlooked. In the situation the benefits should go to the plaintiff.

Mr. S.M.A. Sabur, learned advocate for the plaintiff opposite parties submitted that it remained not known as to what was the degree of sickness of her husband. But the disputed kabala (Ext-Ga) suggests that Baru Bibi sold her entire property. In that event had it been genuine how Baru Bibi would survive for rest of her life. The learned trial court while dismissing the suit did not throw any light in the practical aspect of the suit.

Had the kabala (Ext-Ga) been genuine, Baru Bibi would have not immediately complained to the Sub-Divisional Officer that initiated a proceedings. Finally, as regards payment, the learned advocate for the petitioner prays that in fact out of the total consideration of Tk. 5000/-, Tk.3500/- was paid at the time of signing of the bainapatra but it is in the written statement itself that among so many papers only that piece of bainapatra was lost and there was no reliable evidence of making payment of that 3500/-taka or remaining 1500/- taka, rather it is in the administrative report of the Sub-registrar that there was dispute and confusion as regards payment of consideration.

This has been a suit for cancellation of the deed and it has been crystal clear that Baru Bibi had no occasion to read and understand the contents of the kabala by which all her properties

were going to be sold and there is no evidence of payment of consideration.

Therefore, I find nothing to disagree with the findings of the learned lower appellate court as he decreed the suit. Accordingly the Rule is discharged. The Judgment and decree dated 10.08.1999 and 16.08.1999 passed by the learned Additional District Judge, Bagerhat in Title Appeal No.174 of 1990 is affirmed.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the L.C.Records at once.

However, there is no order as to costs.

The office is directed to communicate the judgment and order to the court below at once.

Justice Ashish Ranjan Das.