

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 2074 of 2013

With

Civil Revision No. 2076 of 2013

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure. (Against Decree)

And

IN THE MATTER OF:

Sree Nimai Chandra Mondal

---- Plaintiff-Appellant-Petitioner

-Versus-

Sree Manik Chandra Mondal and others

---- Defendant-Respondent-Opposite Parties

(In C. R. No. 2074 of 2013).

Sree Nimai Chandra Mondal

---- Defendant-Appellant-Petitioner

-Versus-

Sree Manik Chandra Mondal and others

---- Plaintiff-Respondent-Opposite Parties

----(In C. R. No. 2076 of 2013).

Mr. Shasti Sarker, Senior Advocate with

Mr. Md. Amirul Islam,

Mrs. Lily Rani Saha and

Laxman Biswas, Advocates

---- For the Petitioner

----(In both the Cases).

No one appears

---- For the Opposite Parties

(In both the Cases).

Heard On: 22.01.2026, 28.01.2026, and 08.02.2026.

Date of Judgment: 09.02.2026.

S. M. Saiful Islam, J.

Since both Civil Revision No. 2074 of 2013 and Civil Revision No. 2076 of 2013 arise from the same impugned judgment, involve the same parties, and concern the same properties, these were heard together and are being disposed of by this common judgment.

In Civil Revision No. 2074 of 2013, Rule was issued calling upon the opposite party Nos. 1-7 to show cause as to why the judgment and decree dated 06.01.2013 (decree signed on 13.01.2013) passed by the learned Joint District Judge, 1st Court, Natore in Title Appeal No. 07 of 2002 disallowing the Appeal and affirming the judgment and decree dated 23.10.2001 (decree signed on 28.10.2001) passed by the learned Assistant Judge, Singra, Natore in Other Class Suit No. 15 of 1996 dismissing the suit should not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

In Civil Revision No. 2076 of 2013, Rule was issued calling upon the opposite party Nos. 1-7 to show cause as to why the judgment and decree dated 06.01.2013 (decree signed on 13.01.2013) passed by the learned Joint District judge, 1st Court,

Natore in Title Appeal No. 08 of 2002 disallowing the Appeal and affirming the judgment and decree dated 23.10.2001 (decree signed on 28.10.2001) passed by the learned Assistant Judge, Singra, Natore in Other Class Suit No. 127 of 1996 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

The facts relevant for the disposal of these Rules are that the petitioner in both the Revisions Sree Nimai Chandra Mondal instituted Other Class Suit No. 15 of 1996 in the Court of Assistant Judge, Singra, Natore, seeking partition of 1.155 acres of land as described in the schedule of the plaint. On the other hand, the defendants of that suit instituted Other Class Suit No. 127 of 1996 against the said plaintiff praying for a declaration that the deed No. 191 dated 05.01.1988 registered at the Natore Sub-Registry Office (the deed on the basis of which the petitioner claimed title to the suit land) is forged, fraudulent and void. Hereinafter in this judgment, unless otherwise specifically stated, the term, "plaintiff" shall refer to that plaintiff of the Other Class Suit No. 15 of 1996 and the term, "defendant" shall refer to the defendant of the said suit.

The short facts of the case of the plaintiff of Other Class Suit No. 15 of 1996, Sree Nimai Chandra Mondal, are that his father Biswanath Mondal was the owner of 1.49 acres of land

described in the schedule “Ka” of the plaint. Out of the said land, Biswanath Mondal transferred .755 acre of land by registered Deed No. 191 dated 05.01.1988 and .40 acre of land by registered deed No. 15145 dated 24.06.1974 to his wife Bilashi Sundari. Bilashi Sundari thus got 1.155 acres of land being the suit land. Upon her death, she left behind her only son the petitioner, Nimai Chandra Mondal, as her sole heir. Subsequently, Biswanath Mondal also died leaving behind the same son Nimai Chandra Mondal as only heir. Accordingly, the plaintiff claims to have acquired title to the entire suit land and to have been in possession thereof. The defendants, who are the daughter of Biswanath Mondal and her sons, claimed that they had acquired some portion of land by registered deed from Biswanath Chandra Mondal, but they failed to produce any such deed. The defendants entered into possession of the remaining land except the “Kha” scheduled land. Although the plaintiff does not admit those deeds of the defendants, he requested them to partition the “Kha” scheduled 1.155 acres of land which he inherited from his mother Bilashi Sundari. The defendants refused to do so. Hence, the plaintiff instituted the Other Class Suit No. 15 of 1996 seeking partition of the suit land and allotment of his *saham* in the said 1.155 acres of land.

Defendant Nos. 1-6 contested the suit by filing a written statement denying all material averments made in the plaint. They contended, *inter alia*, that Biswanath Mondal being the lawful owner and possessor of the suit land, had transferred different portion of land to the defendants by several deeds. Specifically, Biswanath Mondal transferred .0825 acre of land in favour of defendant Nos. 1, 4 and 5 by registered deed dated 16.06.1980; .1825 acre in favor of defendant No. 6 by registered deed No. 1088 dated 25.01.1992; .3275 acre in favor of defendant No. 1 by registered deed No. 1522 dated 05.02.1992; .25 acre in favor of defendant No. 2 by registered deed No. 12957 dated 25.11.1993; .165 acre in favor of defendant No. 3 by registered deed No. 13237 dated 16.11.1994; and .15 acre in favor of defendant Nos. 4 and 5 by registered deed No. 938 dated 21.01.1995. Accordingly, the defendants claimed that they are in lawful possession of the respective portion of the land acquired through the aforesaid deeds. The defendants further asserted that Biswanath never executed deed No. 191 dated 05.01.1988 in favour of Bilashi Sundari, as claimed by the plaintiff. According to them, the said deed is forged, fraudulent and created by false personification. On these grounds, the defendants prayed for dismissal of the Other Class Suit No. 15 of 1996 and also sought

a decree in Other Class Suit No. 127 of 1996 declaring that the deed No. 191 dated 05/01/1988 is forged, ineffective and void.

The learned Trial Court tried both the suits analogously and framed following five issues for disposal of these two suits;

- 1) Whether the suit is maintainable in its present form;
- 2) Whether the suit is barred by the law of limitation;
- 3) Whether the suit is bad for defect of parties;
- 4) Whether the plaintiff has title, interest and possession over the “Kha” schedule land out of ka schedule;
- 5) Whether the plaintiff is entitled to the relief as prayed for;

The learned Trial Court, upon consideration of the oral and documentary evidence adduced by both the parties, decided issue Nos. 1-3 in favour of the plaintiff, while remaining issue Nos. 4 and 5 were decided against the said plaintiff. The learned Trial Court held that the disputed deed dated 05.01.1988 was registered in the Natore Sub-Registry Office instead of Singra Sub-Registry Office by incorporating a fictitious land within the jurisdiction of that Natore Sub-Registry Office. Accordingly, the said deed was registered without jurisdiction and is void *ab-initio*. The Trial Court further held that admittedly the plaintiff was not in possession of the suit land. The Trial Court observed that had the plaintiff acquired the suit land as heir of his mother, there was no plausible reason for his non-possession thereof. The

Trial Court held that the plaintiff's deed dated 05.01.1988 and 24.06.1974 were collusive, illegal and without jurisdiction and these deeds neither created any right, title, interest in favor of the plaintiff nor were they ever acted upon. The Trial Court further held that the deeds relied upon by the defendants of Other Class Suit No. 15 of 1996 were also collusive as some of them were executed by the signature while others were executed by the thumb impression of the same executant which was considered improbable. However, the learned Trial Court observed that the case of the defendants was comparatively better than that of the plaintiff. Accordingly, the learned Trial Court dismissed the Other Class Suit No. 15 of 1996 and decreed the Other Class Suit No. 127 of 1996 by the judgment and decree dated 23.10.2001.

Being aggrieved by the said judgment and decree, the plaintiff of the Other Class Suit No. 15 of 1996, namely, Nimai Chandra Mondal, as appellant preferred Title Appeal No. 07 of 2002 and as defendant of Other Class Suit No. 127 of 1996, he also preferred Title Appeal No. 08 of 2002 before the Court of District Judge, Natore. The defendants of Other Class Suit No. 15 of 1996 and the plaintiffs of Other Class Suit No. 127 of 1996 filed cross objections in both the Appeals. The said Appeals and cross-objections were heard analogously by the Joint District Judge, 1st Court, Natore, who, by the impugned judgment and

decree dated 06.01.2013 dismissed both the Appeals and cross-objections and thereby affirmed the judgment and decree of the trial court. Being aggrieved by the impugned judgment and decree of the Title Appeal Nos. 07 of 2002 and 08 of 2002, the petitioner has filed Civil Revision No. 2074 of 2013 and Civil Revision No. 2076 of 2013 respectively and obtained the Rules.

At the time of issuance of the Rules, the operation of the impugned judgment was stayed for a period of 6 (six) months which was extended on 15.06.2014 for a further period of 6 (six) months. However, it was not extended thereafter.

Learned Senior Advocate Mr. Shasti Sarker, appearing on behalf of the petitioner submits that the Appellate Court committed an error of law resulting in an error in the decision occasioning failure of justice. The Appellate Court did not comply with the provisions of Order 41 Rule 31 of the Code of Civil Procedure, 1908. The Judgment of the Appellate Court is nothing but a mere repetition of the judgment of the Trial Court. He further submits that the Appellate Court failed to assess the deposition of the PWs and DWs properly. The Courts below failed to consider that the Plaintiff-Petitioner Nimai Chandra Mondal is the son of Biswanath Mandal and Bilashi Sundari Dasi and that under *Dayvag Hindu Law*, the entire right, title, and interest in the properties left by them devolved upon their son,

the plaintiff-petitioner. It is contended that their daughters or daughters' sons are not entitled to any share by inheritance. He also asserts that the Judgment of the Courts below are not based on legal evidence, rather they are based on non-consideration and misinterpretation of the evidence on record. The deeds of gift dated 24.06.1974 and 05.01.1988 were genuine deeds executed by Biswanath Mondal in favour of his wife Bilashi Sundari. It was further contended that although a small portion of land included in the deed dated 05.01.1988 was fictitious, the entire deed does not become void *ab initio* on that ground. Moreover, since the Courts below found the 6 (six) deeds of the defendants to be forged and collusive, the title of Biswanath in that land would remain intact and upon his death, the petitioner, Nimai Chandra acquired right, title, interest in the entire land of schedule "Ka". On these grounds, the learned Advocate for the petitioner prayed for making the Rules absolute. In support of his submissions, he referred to the cases of *Md. Wali Miah and Others Vs. Musammat Halima Begum* 13 MLR (AD) 116, *Aboni Mohan Vs. Asst Custodian*, 39 DLR (AD) 223.

None appears on behalf of the opposite party at the time hearing of these Rules. However, as these Rules are long pending, I am of the view that justice would be best served if the Rules are disposed of on merit.

Accordingly, I have heard the learned Advocate for the petitioner. I have also perused the revisional application along with its annexures, the impugned judgment and decree and the lower Court records.

It is admitted by both the parties that the suit land originally belong to Biswanath Mondal. The plaintiff-petitioner claims that Biswanath Mondal transferred .755 acre of land by registered Deed No. 191 dated 05.01.1988 and .40 acre of land by registered deed No. 15145 dated 24.06.1974 to his wife Bilashi Sundari Dasi and after the death of Bilashi Sundari Dasi, the petitioner inherited the total 1.155 acres of land. On the other hand, the defendants contend that Biswanath never transferred his land to Bilashi Sundari and that Biswanath himself, while owning and possessing that land, transferred 1.1575 acres thereof to defendant Nos. 1-6 of the Other Class Suit No. 15 of 1996. Both the Courts below held that all the deeds relied upon by both the plaintiff and defendants are forged and collusive. However, the learned Trial Court decreed the Other Class Suit No. 127 of 1996 filed by the defendants of the Other Class Suit No. 15 of 1996 on the ground that their case is comparatively better than that of the plaintiff of Other Class Suit No. 15 of 1996 as they are in possession of the suit land. In order to determine whether the impugned judgment and decree are sustainable in law, it is

necessary to assess deeds of the parties from a legal standpoint of view.

Firstly we consider deed No. 15145 dated 24/06/1974 and deed No. 191 dated 05.01.1988 filed by the plaintiff of Other Class Suit No. 15 of 1996. Certified Copies of these two deeds have been marked as Exhibit- 3 and Exhibit- 1 respectively. The plaintiff has failed to produce the original copy of these two deeds. It has been stated in the plaint of the Other Class Suit No. 15 of 1996, that originals of these deeds are in possession of the defendants. However, on this point, the plaintiff did not cross-examine the DWs to establish that the originals are indeed in the possession of the defendants. On perusal of the deed dated 24/06/1974, it appears that it is a deed of gift creating a life interest. The relevant recital of the deed states-

“নিম্ন তপশীল লিখিত জোত ভূমি তোমাকে জীবন স্বত্বে দান করিয়া স্বীকার ও অঙ্গীকার করিতেছি যে, যতদিন আপনি জীবিত থাকিবেন ততদিন নিম্নলিখিত জমির আকর আওলাত লভ্যাদি ভোগ দখল করিবেন এবং আপনার মৃত্যুর পর উক্ত সম্পত্তি আমার বা আমার ওয়ারিশান বা স্থলবর্তী গনের নিকট প্রত্যাবর্তন করিবে।”

Thus it appears from the recitals of the deed that the transfer was made for limited purpose and Bilashi Sundari was not conferred absolute right, title, and interest under the said deed. It is admitted by both the parties that Bilashi Sundari died

prior to his husband Biswanath Mondal. It has been stated in the
 plaint of Other Class Suit No. 15 of 1996,

“বিশ্বনাথ ওরফে ঘোতন মন্ডল তাহার স্ত্রী বিলাসী সুন্দরী দাস্যার
 বরাবরে দলিল মূলে সম্পত্তি হস্তান্তর করিলেও তিনিই স্ত্রীর পক্ষে সম্পত্তির
 দেখাশোনা ও দখল ভোগ করিতেন এবং মূল দলিলাদিও তাহার নিকটই
 সংরক্ষিত থাকিত।”

Thus it appears from such statement made in the plaint
 that Bilashi Sundari did not in fact, possess the land on the
 strength of the alleged deed of gift. The suit land remained
 throughout in possession of the Biswasnath Mondal. The suit
 land was never mutated in the name of Bilashi Sundari and there
 is no evidence to show that she had either actual or constructive
 possession over the suit land on the basis of these deeds.

Plaintiff-petitioner admitted in cross-examination, “আমার
 বাবা জীবিত থাকাকালে নালিশী জমি আমি দাবী করিনি।” It is admitted that Bilashi
 Sundari died in the lifetime of her husband Biswanath. In such
 circumstances, it is not clear that if Bilashi Sundari had owned
 and possessed the suit land on the basis of the alleged deed
 during her lifetime, why the plaintiff did not assert any claim
 over the suit land immediately after her death and during the
 lifetime of Biswanath. Moreover, from the recitals of the deed
 dated 24/06/1974, it appears that this deed was executed to
 ensure that Bilashi Sundori would not suffer for want of her
 maintenance in the absence of Biswanath Mondal. It has already

been mentioned that Bilashi predeceased Biswanath Mondal and during her lifetime she continued to live with him. Naturally, therefore, this deed did not come into operation because Bilashi Sundari did not require any separate maintenance. Furthermore, this deed was created conferring only a limited interest and after death of Bilashi, the property was intended to revert to Biswanath Mondal. In such facts and circumstances, although the defendants have not challenged the deed dated 24/06/1974 and no relief has been sought in respect thereof, the said deed is found to be infirm, ineffective, and not acted upon and no right, title, and interest was created in favor the plaintiff by virtue of the said deed.

It is admitted that in the disputed deed dated 05/01/1988 (Exhibit- 1), a portion of land shown to be under the Sub-Registry Office, Natore was included which was later proved to be fictitious. The plaintiff-petitioner admitted in his cross-examination, “আমার বাবার নাটোর সদর থানায় কোনো জোত জমি নাই। আমার জানা মতে আগেও ছিলনা।”

Thus it appears that, to create jurisdiction for registration, fictitious land was included in the deed dated 05.01.1988. The learned Trial Court held that such a deed is without jurisdiction and void *ab-initio*. However, the learned Advocate for the petitioner, referring to the case of *Md. Wali Miah and Others Vs.*

Musammatt Halima Begum 13 MLR (AD) 116, submits that such a deed is not void *ab- initio*. It is relevant to note that section 28 of the Registration Act, 1908 deals with the jurisdictional defects in the registration of documents. The Provision of section 28(2) of the Registration Act, 1908 is as follows:

“(2) Notwithstanding anything contained in subsection (1)

- (a) After a document is registered, no party thereto shall be entitled to question the validity of its registration on the ground that the property which purported to give jurisdiction to the Sub Registrar to register it either did not exist or was fictitious or insignificant or was not intended to be conveyed, and
- (b) A document the registration of which is secured by the inclusion of a non-existent, fictitious or insignificant portion or item shall not in any manner affect the rights of a person who was not a party thereto and acquired rights in the property without notice of the transaction to which such document relates.”

Thus it is clear from the provisions of section 28 (2) of the Registration Act that a deed in which a portion of fictitious land is included solely to create jurisdiction for registration cannot be treated as void *ab-initio*. However, such a deed does not bind persons who were not parties to it and who acquired their right without notice of the deed. In view of this provision, the deed

dated 05/01/1988 cannot be held to be void *ab-initio*. Nevertheless, it is clearly not binding on the defendants of Other Class Suit No. 15 of 1996 as they were not parties to the deed and had no reasonable opportunity to have notice of it, particularly, because the deed was registered in a different Sub-Registry Office by including a fictitious land to artificially create jurisdiction.

Thus, upon consideration of the evidence on record and the relevant provisions of law, I am of the opinion that the deed dated 24/06/1974 is infirm, inoperative, ineffective and infructuous deed. Likewise, the deed dated 05/01/1988 filed by the plaintiffs in Other Class Suit No. 15 of 1996 is also inoperative, collusive and was never acted upon and in fact, it is not legally binding upon the defendants. These deeds appear to be mere paper transaction. Bilashi Sundari never came into possession of the land on the strength of these deeds. The land was neither mutated nor recorded in her name on the basis of these deeds and she did not obtain either actual or constructive possession thereof. On the contrary, Biswanath remained in continuous possession of the land as his own all along. Learned trial Court in this regard has rightly held that the deed dated 05/01/1988 is collusive and not binding upon the plaintiffs of Other Class Suit No. 127 of 1996.

Now let us consider the title deeds of the defendant in Other Class Suit No. 15 of 1996. The said defendants have produced 6 (six) original title deeds, claiming that Biswanath transferred a total of 1.1575 acres of land in favour of the defendant Nos. 1-6. These deeds were exhibited through DW- 1 and marked as Exhibits- “Gha” to “Cha” series. The learned Trial Court observed that some of these deeds were executed by affixing the thumb impression of the executant while others were executed by his signature. On this basis, the learned Trial Court held that it was improbable for a person capable of signing to execute certain deeds by thumb impression. Relying on this reasoning, the learned Trial Court concluded that the defendants deeds were also collusive.

However, I am unable to agree with the findings of the learned Trial Court on this point as the same do not appear to be just, proper and well founded. Upon careful perusal of the said deeds, it appears that out these 6 (six) deeds, only one deed was executed by signature, while the remaining 5 (five) were executed by affixing thumb impression. The signature attributed to Biswanath indicates that he was barely literate. In such circumstances, it is not improbable that he may have attempted to sign one deed experimentally, while executing the others by thumb impression in the usual manner. Therefore, it cannot be

conclusively held that those deeds are collusive merely on the ground that one document bear a signature and the others bear thumb impressions. It is also pertinent to note that the plaintiff of Other Class Suit No. 15 of 1996 did not specifically challenge these deeds nor did he seek any relief against them. In effect, the plaintiff has implicitly acknowledged the existence of these deeds and status of the defendants as co-sharers by virtue thereof. In his examination-in-chief, the plaintiff himself stated,

“পরবর্তীতে বিশ্বনাথ মারা গেলে তার কন্যা দৌহিত্ররা অর্থাৎ বিবাদীরা “ক” তপশীলের কিছু জমি বিশ্বনাথের কাছ থেকে দলিল মূলে পেয়েছে এই মর্মে দখল করতে থাকে। আমি দলিল দেখাতে বললেও তারা দেখায়নি। আমি জটিলতা এড়ানোর জন্য দলিল তাদের না থাকা সত্ত্বেও আমার মায়ের অংশ বাদে অবশিষ্ট অংশ তাদের তা মেনে নেই।”

This statement suggests that the defendants are possessing the land on the basis of the said deeds. The defendants have asserted that they have separated their holding on the strength of these deeds and have been paying rent independently. In support thereof rent receipts and separate *Khatians* have been produced and marked as Exhibits- “Kha” and “Ga” series. Moreover, four indentifying witnesses to the execution of the deeds examined as DW Nos. 3-6, have supported the execution and their testimonies appear to be consistent and reliable. In view of the foregoing discussions, I am of the opinion, that the deeds purportedly executed by Bishwanath in favour of the defendants are genuine

and the defendants have validly acquired right, title, and interest by virtue of these deeds and have been possessing the suit land accordingly. Finding of the learned Trial Court that these deeds are collusive, is therefore, illegal, illogical and unsustainable. Moreover, such finding is self contradictory, inasmuch as the Trial Court on the one hand decreed the Other Class Suit No. 127 of 1996, while on the other hand, held the title deeds of the plaintiff of that suit to be collusive. Such inconsistency renders that judgment confusing and conflicting. Accordingly, I am of the view that these findings of the learned Trial Court are liable to be set aside to secure the ends of justice.

In view of the discussions made above, I am of the opinion that, in the instant case, learned Trial Court rightly dismissed the Other Class Suit No. 15 of 1996 and also rightly decreed the Other Class Suit No. 127 of 1996. However, while decreeing the Other Class Suit No. 127 of 1996, learned Trial Court recorded adverse findings regarding the title deeds of the plaintiffs of the said suit which appear to be illegal, inappropriate and based on non-consideration and/or misreading of the material evidence on record. The learned Appellate Court also affirmed such findings of the Trial Court which, in my view is erroneous and unsustainable in law. Accordingly, such findings of the Courts below are liable to be set-aside.

Considering the facts and circumstances of the case, I am of the view that although the Rules are devoid of merit and are liable to be discharged, the judgments of the Courts below require modification to the extent indicated above.

In the result, both the Rules are discharged without any order as to costs, with modifications as indicated above.

The orders of stay passed earlier by this Court at the time of issuance of both the Rules stand vacated.

Let the records of the Courts below be sent down at once to the concerned Court along with a copy of this judgment.