

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.444 OF 2004

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Akbor Ali Pramanik

... Petitioner

-Versus-

Divisional Commissioner, Rajshahi and others

... Opposite parties

None appears

... For both the parties.

Heard and Judgment on 19.06.2023

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 13.07.2003 passed by the Additional District Judge, Second Court, Rajshahi in Title Appeal No.109 of 2001 dismissing the appeal and affirming those dated 29.03.2001 passed by the learned Assistant Judge, Baghmara in Title Suit No.67 of 1999 dismissing the suit should not be set aside.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that the judgment and order dated 29.06.1992 passed by defendant No.1 in Appeal No.61 of 1990 is illegal, collusive, without jurisdiction and not binding upon the plaintiff.

About 2.67 acres of land as described in the schedule to the plaint belonged to Khabir Uddin Dewan who transferred the same to the plaintiff by registered kabala deed on 12.06.2021. On the above date the plaintiff executed and registered a deed of Ekrarnama promising that he would return above land to the seller if the sale proceeds is returned on any date before 1391 B.S. After a few days above Khabir Uddin

Dewan died leaving two daughters Patujan Bibi, the mother of the plaintiff and Shaban Bibi and one nephew who is the predecessor of the defendant Nos.3-7. Above mentioned Saban Bibi filed a Miscellaneous Case under Section 95(Ka) of the State Acquisition and Tenancy Act, 1950 to the Revenue Officer for redemption of above usufractory mortgage. The Revenue Officer rejected above case and the petitioner preferred an appeal before the Additional Deputy Commissioner (Revenue) who also dismissed the same. Thereafter above Shaban Bibi preferred an appeal before the Divisional Commissioner which was heard by the Additional Divisional Commissioner, Rajshahi who allowed above appeal and directed for return of possession of the disputed land to the appellant vide impugned judgment and order mentioned above.

Challenging the legality and propriety of above judgment and order passed by the Additional Divisional Commissioner, Rajshahi respondent Md. Akbor Ali Pramanik as plaintiff instituted above suit. Above suit was contested by the defendant No.1 and defendant Nos.2-7 by filing two separate set of written statements.

In his written statement the defendant No.1 stated that the impugned judgment and order was passed lawfully on consideration of facts and circumstances of the case and the provision of Section 95(Ka) of the State Acquisition and Tenancy Act, 1950.

Defendant Nos.2-7 stated in their joint written statement that they are heirs of deceased Khabir Uddin Dewan and above Khabir Uddin Dewan created an usufractory mortgage for disputed property by executing a registered deed of sale on 12.06.1981 in favour of the plaintiff and the plaintiff executing a registered deed of Ekrarnama on the same date. Since the impugned registered deed of kabala dated 12.06.1981 executed by Khabir Uddin Dewan to the plaintiff was not a deed of out and out sale but a deed of usufractory mortgage the

Additional Divisional Commissioner has rightly directed for redemption of above mortgage which calls for no interference.

To substantiate their respective claims before the Trial Court plaintiffs and defendants both examined 3 witnesses each. Documents produced and proved by the plaintiff were marked as Exhibit- 1-3 and those of the defendants were marked as Exhibit-‘Ka’.

On consideration of above facts and circumstances of the case and materials on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree the plaintiff preferred Title Appeal No.109 of 2001 to the District Judge, Rajshahi which was heard by the learned Additional District Judge, Rajshahi who on consideration of submissions of the learned Advocate for respective parties and materials on record dismissed the appeal and affirmed the judgment and decree of the Trial Court.

No one appears on behalf of the petitioner or the opposite parties when the Civil Revision was taken up for hearing although it appeared in the list for hearing today.

It is admitted that disputed 2.67 acre land belonged to Khabir Uddin Dewan who died leaving two daughters namely Patujan Bibi and Shaban Bibi and one nephew as his heirs and defendant Nos.3-7 are heirs of above nephew. It is also admitted that the plaintiff is the son of elder daughter of Khabir Uddin Dewan namely Patujan Bibi.

In this case the plaintiff himself has given evidence as PW1 and stated in his examination in chief that Khabir Uddin Dewan transferred disputed 2.67 acres of land to him by impugned registered kabala deed dated 19.06.1981 and on the same date he executed a registered return deed (Ekrarnama) providing for return of the disputed land to Khabir Uddin Dewan if he returns Taka 2,000/- the consideration money of above kabala deed. He produced and proved the impugned registered kabala deed No.5419 dated 12.06.1981 executed by Khabir Uddin Dewan and registered Ekrarnama deed No.4520 executed by him on the

same date providing for return of above land to Khabir Uddin Dewan on his refund of Tk.2,000/- and those were marked as Exhibit No.1 and 2 respectively.

It is crystal clear from above evidence of PW1 Md. Akbar Ali Pramanik and above two original registered documents as Exhibit No.1 and 2 that on 12.06.1981 Khabir Uddin Dewan executed a registered kabala deed in favour of the plaintiff for disputed 2.67 acres of land on receipt of Tk.2,000/- and the plaintiff executed a registered deed of Ekrarnama on the same date promising to return above land to Khabir Uddin Dewan on his refund of Tk.2,000/-.

It has been alleged by the plaintiff that Shaban Bibi is an insane woman but PW3 Shomser Ali stated that there was no medical document to show that Shaban Bibi was a lunatic. He has further stated that in 1981 the value of each decimal of the disputed property was Tk.500/-. According to this witness at the time of the execution of the impugned kabala deed the value of the disputed 2.67 was Tk.1,33,500/- but above land was allegedly sold to the plaintiff only for Tk.2,000/-. PW2 Nazir Ali has stated in cross examination that there were two deeds between the plaintiff and Khabir Uddin Dewan on the same date and one was a sale deed and the another one was an Ekrarnama deed.

Above oral and documentary evidence clearly prove that the impugned registered kabala deed dated 12.06.1981 (Exhibit-1) was not an out and out sale deed but the same was a deed of usufractory mortgage.

As such the Additional Divisional Commissioner, Rajshahi has rightly passed the impugned judgment and order for redemption of above usufractory mortgage and direction for the delivery of possession of above land to the defendants which calls for no interference.

In above view of the materials on record we are unable to find any illegality in the impugned judgment and order passed by the learned Additional District Judge, Second Court, Rajshahi and this

petition under Section 115(1) of the Code of Civil Procedure is devoid of any substance.

In the result, the Rule is discharged.

The impugned judgment and decree dated 13.07.2003 passed by the learned Additional District Judge, Second Court, Rajshahi in Title Appeal No.109 of 2001 is hereby affirmed.

However, there is no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER