

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2794 OF 2013

In the matter of:

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

And

Md. Asaduzzaman (Khoka)

... Petitioners

-Versus-

Md. Ruhul Amin and other

... Opposite parties

Mr. Ismail Hossain Bhuiyan, Advocate

....For the petitioners

Mr. Sanjoy Kumr Kundu, Advocate

.... For the opposite party No.1.

Heard and Judgment on 29.04.2025

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 impugned judgment and decree dated 20.05.2013 passed by the Additional District Judge, Netrokona in Other Class Appeal No.64 of 2011 arising out of judgment and decree dated 07.11.2010 passed by the Kendua Assistant Judge Court, Netrokona in Other Class Suit No.101 of 2007 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for rectification of registered kabla deed dated 04.06.1998 executed by defendant No.1 in favor of the plaintiffs for 8.5 decimal land alleging

that defendant No.1 did not have any subsisting interest in above land of Plot Nos.160 and 161. Above property belonged to the father of the defendant namely Akram Hossain who transferred the same by kabla deeds to others including the father of the plaintiff. Defendant was lawful owner and possessor of 8.5 decimal land of Plot No.159 as described in schedule No.3 and he agreed to sale above land to the plaintiff and on receipt of consideration money defendant No.1 executed and registered above kabla deed to the plaintiff. But due to error of the deed writer or conspiracy of defendant No.1 in above kobla deed instead of 8.5 decimal land of Plot No.159 and erroneously Plot Nos.160 and 161 were written. Plaintiff was in possession in the land of Plot No.159 and he had no knowledge about above error in above kabla deed. In Boishak 1414 B. S. above defendant attempted to dispossess the plaintiff from above land disclosing above error in her kabla deed.

Defendant No.1 contested the suit by filing a written statement alleging that his father was the owner of 38 decimal land of Plot No.159 and he died leaving five sons including the plaintiff and plaintiff transferred 4 decimal land to the wife of the plaintiff and not $8\frac{1}{2}$ decimal land.

At trial plaintiffs examined 3 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-7 and defendant examined 1 witness but no document was produced by the defendants.

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

Being aggrieved by above judgment and decree of the Court of Appeal below above defendant as appellants preferred Other Class Appeal No.64 of 2011 to the District Judge, Netrakona which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed above suit.

Being aggrieved by above judgment and decree of the Court of appeal below above respondents as petitioners moved to this Court and obtained this Rule.

Mr. Ismail Hossain Bhuiyan, learned Advocate for the petitioners submits that Plot Nos.160 and 161 comprising 45 decimal land was recorded in the name of Jamat Ali the father of the plaintiff and Akram Hossain father of the defendant in equal shares and Akram Hossain had 22.5 decimal land in above two plots which he had transferred earlier by registered kabla deeds and the defendant did not inherit any land from his father out of Plot Nos.160 and 161. Defendant No.1 had title and possession in 8.5 decimal land of Plot No.159 and he contracted to sale above land to the plaintiff and executed and registered impugned kabla deed on 04.06.1998 and delivered possession. But in the month of Boishak 1414 B. S. above defendant attempted to dispossess the plaintiff from above land disclosing that by above kabla deed land of Plot Nos.160 ad 161 were transferred. The

defendants did not have any subsisting interest in the land of Plot Nos.160 and 161 and in support of above claim the plaintiffs have produced as many as 6 registered kabla deeds which were marked Exhibit Nos.1-6. Besides plaintiff has examined 3 competent witnesses who has given evidence in support of plaintiffs possession in the land of Plot No.159 on the basis of above kabla deed dated 04.06.1998 (Exhibit No.7).

On consideration of above facts and circumstance of the case and above evidence on record the learned Assistant Judge rightly decreed above suit but the learned Additional District Judge without reversing any material findings of the trial Court most illegally allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

On the other hand Mr. Sanjoy Kumar Kundu, learned Advocate for the opposite party No.1 submits that defendants had rightful ownership and possession in 8.5 decimal land of Plot Nos.160 and 161 and he transferred above land to the plaintiff by registered kabla deed dated 04.06.1998 and delivered possession. Plaintiff said not sale 8.5 decimal land of Plot No.159. It is not true that the father of the defendant transferred his total land of Plot Nos.160 and 161 and the defendant did not acquire any land from above two plots and the plaintiff has failed to prove above claim by legal evidence. Impugned kabla deed was executed and registered on 04.06.1998 and this suit for

rectification of above deed was filed on 03.10.2007 after long delay of about 10 years.

On consideration of above facts and circumstance of the case and evidence on record the learned Judge of the Court of Appeal below rightly held that the plaintiff could not prove his claim of error or fraud in mentioning the Khatian Number and Plot Number of the land transferred by above kabla deed dated 04.06.1998 and accordingly allowed the appeal and set aside the unlawful judgment and decree of the trial Court which is not tenable in law.

I have considered the submissions of the learned advocates for respective parties and carefully examined all materials on record.

It is admitted that defendant No.1 executed and registered kabla deed dated 04.06.1998 to the plaintiff for 8.5 decimal land of Plot Nos.160 and 161 and the plaintiff instituted above suit for rectification of Plot Number of above land on 03.10.2007.

It has been alleged that the plaintiff and defendant No.1 agreed to sale 8.5 decimal of Plot No.159 but in above kabla deed either erroneously or due to collusion Plot Nos.160 and 161 were erroneously written. Husband of the plaintiff gave evidence as PW1 and in cross examination he stated that he did not know at the time of execution of the impugned registered kabla deed dated 04.06.1998 (Exhibit No.7) that the father of defendant No.1 transferred his total land from plot Nos.160 and 161. The plaintiff did not examine the scribe of above kabla deed dated 04.06.1998 (Exhibit No.7) or any other person

who were present in the talk of sale of above land to establish that the plaintiff and defendant No.1 agreed to sale land of Plot Nos.159 and not that of Plot Nos.160 and 161. PW1 has reiterated in his evidence the claim made in the plaint that father of defendant No.1 had no subsisting interest in the land of Plot Nos.160 and 161. But there is no mention either in the plaint or in the evidence of PWs as to what was the quantity of land of the father of defendant No.1 and to whom he transferred the same and by which documents. It is admitted that plot Nos.160 and 161 comprises 45 decimal land which has been rightly recorded in Khatian No.137 in the name of the father of plaintiff and defendant No.1 in equal shares. As such father of the plaintiffs Akram had title and possession in 22.5 decimal land of above two plots. PW1 has produced registered kabla deed No.4528 dated 09.03.1956 executed by Akram Hossain to father of the plaintiff (Exhibit No.4) which shows that father of the defendant transferred 10 decimal land out of Plot Nos.160 and 161 to the father of the plaintiff. As such Akram Hossain has subsisting interest in remaining of 12.5 decimal of Plot Nos.160 and 161 defendants has claimed to have inherited above land from his father and transferred 8.5 decimal land to the plaintiff by impugned kabla deed dated 04.06.1998 (Exhibit No.7).

On consideration of above materials on record I hold that the plaintiff has utterly failed to proved that father of the defendant No.1 namely Akram Hossain has no subsisting interest in the land of plot Nos.160 and 161 and the defendant did not inherit any land from his

father in above two plots. PW2 Syed Babul Miah stated in his cross examination that the defendant was given possession from the north side of the boundary wall and Plot Nos.160 and 161 is situated on the northern side of boundary wall. Above evidence of PW2 shows that the plaintiff was inducted into possession of the land of Plot Nos.160 and 161 by the defendant pursuant to above Kabla deed dated 04.06.1998 (Exhibit No.4).

In above view of the facts and circumstance of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Additional District Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER