

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.15 of 2013

Mesbahun Nahar @ Rezaun Nahar (Mali) and others

...Appellants

-Versus-

Mosammat Saima Parvin Rekha and others

... respondents

Mr. Md. Rabiul Ahsan Habib, Advocate

... For the appellant No.1.

Mr. Md. Kamruzzaman (Kachi), Advocate

... For the respondents.

Heard on 03.02.2026 and Judgment on 08.02.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 25.09.2012 passed by the learned Joint District Judge, 1st Court, Kurigarm in Other Suit No.04 of 2010 dismissing the suit.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration that the registered deed of Heba No.2436 dated 04.07.2007 of Kurigram Sadar Sub-registry Office allegedly executed by plaintiff Mst. Maleka Rahman is illegal, fraudulent, not effective and not binding upon the plaintiffs alleging that Matiur Rahman was the lawful owner and possessor of disputed 2.04 acre land

who died leaving behind one wife Mst. Maleka Rahman and three daughters namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman as heirs. Above three daughters of Matiur Rahman appointed their mother as constituted attorney for management and transfer of above property by sale, mortgage or any other means. Above Most. Maleka Rahman being a resident of United Kingdom she wanted to appoint her niece and her husband defendant Nos.1 and 2 respectively as her constituted attorney for management of above property who by cheating obtained above registered deed of gift. Plaintiffs did not make above gift nor she delivered possession of above land to the defendants but on the basis of above deed of gift defendants denied plaintiff's title in above property.

Defendant Nos.1 and 2 contested above suit by filing a joint written statement alleging that Matiur Rahman was an expatriate Bangladeshi who lived and worked in United Kingdom and died leaving wife Mst. Maleka Rahman and three daughters namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman and above three daughters appointed their mother as their constituted attorney for management and transfer of above property who transferred above land to defendant Nos.1 and 2 by registered deed of gift dated 04.07.2007 and delivered possession. Defendants are owning and possessing above land on the strength of above deed of gift and plaintiffs do not have any subsisting interest in above property.

At trial plaintiffs examined five witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-4. Defendants examined four witnesses and documents of the defendants were marked as Exhibit No.A.

On consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Rabiul Ahsah Habib, learned Advocate for the appellant No.1 submits that admittedly three daughters and one wife of Matiur Rahman namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman and Mst. Maleka Rahman were lawful owner and possessor of above 2.04 acres land. Above three daughters appointed their mother as their attorney for management and transfer of above property by sale, mortgage, lease or any other form in lieu of valuable consideration. Above three daughters did not authorize their mother to transfer above land by gift without any valuable consideration. In fact Mst. Maleka Rahman did not have any cause to transfer above valuable property to defendant Nos.1 and 2 out of love or affection by a deed of gift. The defendants could not show any valid cause for plaintiff Mst. Maleka Rahman to transfer above land by gift. On consideration of above facts

and circumstances of the case and materials on record the learned Joint District Judge should have decreed above suit but the learned Judge utterly failed to appreciate above materials on record and most illegally dismissed above suit which is not tenable in law.

Mr. Mr. Kamruzzaman (Kachi), learned Advocate for the respondents submits that Mst. Maleka Rahman was authorized by her three daughters namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman to transfer above property and she being an well educated woman working and living in the United Kindom willingly and voluntarily transferred above property to defendant Nos.1 and 2 out of love and affection and executed and registered deed of gift No.2436 dated 04.07.2007 and delivered possession. Defendant Nos.1 and 2 are owning and possessing above 2.04 acres lad on the strength of above deed of gift and the learned Judge of the trial Court on correct appreciation of above materials on record rightly dismissed above suit which calls for no interference.

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

It is admitted that Matiur Rahman was the lawful owner and possessor of disputed 2.04 acres land who died leaving wife plaintiff No.4 Mst. Maleka Rahman and three daughters plaintiff Nos.1-3 namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman as heirs. It is not disputed that above three daughters of Matiur Rahman

namely Mesbahun Nahar, Mahfuza Rahman and Mahbuba Rahman appointed their mother plaintiff Mst. Maleka Rahman as their constituted attorney on 25.07.2006 (Exhibit No.2). It turns out from above document that above three daughters of Matiur Rahman authorized their mother to manage above property or to transfer the same by mortgage, charge, sale lease or otherwise. Above deed of power of attorney did not explicitly authorize Mst. Maleka Rahman to transfer above land of three daughters of Matiur Rahman by Heba or gift. Heba or Gift is a mode of transfer of property where an owner of property transfers his property to another person out of love and affection not in lieu of money. This type of transfer can be effected by the owner of the property alone since personal love and affection is the consideration of transfer.

It has been stated in the plaint it has been claimed that Ms. Maleka Rahman did not willingly and voluntarily transfer above property to defendant Nos.1 and 2 by heba and impugned deed of gift dated 04.07.2004 (Exhibit No."Ka") was obtained by cheating. She wanted to appoint defendant Nos.1 and 2 as her attorney for management of above property. But the defendants have fraudulently obtained above deed of gift without her knowledge. While giving evidence as PW5 above Maleka Rahman reiterated above claims in her evidence as set out in the plaint. She stated that she wanted to execute and register a deed of power of attorney authorizing defendant Nos.1

and 2 for management of above property. PW5 Mst. Maleka Rahman was extensively cross examined by the defendants but her above evidence remained consistent and free from without any material contradiction.

While making a gift under the Mohammedan Personal Law there was no necessity of execution and registration of a deed of gift before 2005. The indispensable ingredients of such a transfer of property is the declaration of heba by the owner of the property and acceptance of the heba by its recipient and most importantly delivery of possession. In their written statement defendant Nos.1 and 2 did not make specific mention as to when and in whose presence Mst. Maleka Rahman declared above heba and when she deliver possession to defendant Nos.1 and 2.

Defendant No.2 while giving evidence as DW1 stated that Mst. Maleka Rahman authorized them for management of above property. They decided to transfer above land by gift and on 04.07.2007 a deed of gift was executed and registered and possession was delivered. Above witness did not mention the date, time and venue of declaration of heba by Mst. Maleka Rahman to defendant Nos.1 and 2 or the date of delivery of possession. There is no mention of the names of the witnesses who were present at the time of making of above gift or delivery of possession. No cause or reason has been assigned by DW1 as to why Mst. Maleka Rahman transferred above property to

defendant Nos.1 and 2 by gift. DW2 Md. Abdul Jabber and DW3 Golam Rabbani gave evidence as to possession of above land. DW4 Md. Nuruzzaman (Naya) is a witness to impugned registered deed of gift No.2436 dated 04.07.2007. Above DW Nos.2-4 did not say anything about the declaration of heba by Mst. Maleka Rahman, acceptance of heba by defendant Nos.1 and 2 or delivery of possession.

On consideration of facts and circumstances of the case and evidence on record we hold that the plaintiffs have succeeded to prove that they had no intension or cause to transfer above 2.40 acres land to defendant Nos.1 and 2 by heba nor they transferred possession of above land to defendant Nos.1 and 2 and PW5 Mst. Maleka Rahman wanted to execute and registered a deed of power of attorney to authorize defendant Nos.1 and 2 to manage above property but they have fraudulently created above deed of gift which is an unlawful and ineffective document. The learned Judge of the trial Court utterly failed to appreciate above materials on record and most illegally dismissed above suit which is not tenable in law.

In above view of the facts and circumstances of the case and materials on record we find substances in this First Appeal which deserves to the allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 25.09.2012 passed by the learned Joint District Judge, 1st Court, Kurigarm in Other Suit No.04

of 2010 is set aside and above suit is decreed on contest against defendant Nos.1 and 2 and ex-parte against the rest.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER