Present:-
Mr. Justice Mahmudul Hoque

Civil Revision No. 576 of 2007

Gujori Khatun being dead her legal heirs:
1(a) Munsur Khamaru and another
... Petitioners
-Versus-
Md. Mukul Hossain Sarker and others
...Opposite-parties
Mr. Nikhil Kumar Saha, Senior Advocate
...For the petitioners
Mr. Shasti Sarker, Advocate
...For the opposite-party Nos. 1-7.

Heard on 11.03.24, 12.03.24, 23.04.24, 24.04.24, 28.04.2024, 29.04.2024 and

Judgment on 30th April, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party Nos. 1-6 to show cause as to why the impugned judgment and order No. 19 dated 14.09.2006 passed by the learned Special District Judge-1, Rajshahi in Miscellaneous Case No. 06 of 2004 rejecting the same 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 relevant for disposal of this Rule, in short, are that the present petitioner, as plaintiff, filed Other Class Suit No. 89 of 1993

in the Court of Joint District Judge, 1st Court, Rajshahi against the opposite-parties, as defendant, for declaration of title as well as for a declaration to the effect that the registered Sale Deed Nos. 3529 dated 03.03.1965 and 19960 dated 11.05.1974 are forged fabricated and manufactured by the defendants claiming that the suit property under lot No. 1 appertaining to C.S. Khatian No. 89 belonged to Kali Mondal and Somir Mondal having equal share. C.S. record duly published in their names and thereafter ·12 decimals of land under C.S. Plot No. 504 and ·33 decimals under C.S. Plot No. 1107 fell in the saham of Kali Mondal who possessed the same for more than 12 years on payment of rents and died leaving 4 sons, Ismail Mondal, Elahi Mondal, Tamir Hossain and Kalu Kha. They possessed in ejmali and on amicable partition Ismail Mondal got the suit land under lot No. 1 and accordingly, S.A. Khatian No. 107 was prepared in his name. Ismail Mondal died leaving only daughter Gujri Khatun, the plaintiff and the predecessor of defendant Nos. 14-22 and they have been possessing the same in ejmali.

The suit property under lot Nos. 2-4 of 'Ka' schedule was taken pattan by the father of the plaintiff, Ismail Mondal 50 years

ago and possessed the same for more than 12 years peacefully. S.A. Khatian Nos. 107, 118, 119, 125 were prepared in the name of Ismail Mondal and he died leaving only daughter, the plaintiff who got 8 annas share and rest 8 annas share devolved upon Kalu Kha, the predecessor of defendant Nos. 18-23 and Elahi Box predecessor of the defendant Nos. 14-15 and Tamir Mondal predecessor of defendant Nos. 16-17 and they possessed the same in ejmali. Tamir Mondal, the uncle of the plaintiff transferred $\cdot 77\frac{1}{2}$ decimals of land in favour of plaintiff by registered Deed No. 4254 dated 07.03.1964 and the plaintiff has been possessing the same including the property acquired by inheritance.

The property in ‘Kha’ schedule land appertaining to C.S. Khatian No. 488 originally belonged to Samir Mondal, his sister Nisu Bibi and Kali Mondal. Samir Mondal died leaving sister Nisu Bibi who inherited entire share of Samir Mondal and thus acquired 8 annas share in the jote and share of Nisu Bibi develoved upon the plaintiff and the 8 annas share of Kali Mondal developed upon his 4 sons namely, Tamir Mondal, Kalu Mondal, Ismail and Elahi Mondal. S.A. khatian stands recorded accordingly. After the death of father of

the plaintiff, the plaintiff got one anna share and thus plaintiff got 9 annas share in total in the ‘Kha’ schedule land and has been possessing in ejmali with the proforma-defendants. The main defendants have had no manner of interest in the suit property and they managed to prepare R.S. record in their names collusively. R.S. record in the name of principal-defendants is quite erroneous. The defendants claimed their title on the basis of R.S. record on 01.05.1993, hence the present suit for declaration of title to the extent of 8 annas measuring $\cdot 77\frac{1}{2}$ decimals from ‘Ka’ schedule land and 9 annas from ‘Kha’ schedule land and by amendment of plaint sought for declaration that the Deed Nos. 3529 dated 03.03.1965 and 1960 dated 11.05.1974 are created by false personification and without consideration.

Defendant Nos. 4-6 appeared and filed written statement contending inter alia that the plaintiff did not inherit 8 annas share in the ‘Ka’ schedule land and plaintiff herself transferred ·52 decimals of land under ‘Ka’ schedule property to Wahed Box, the predecessor of the defendants by registered Deed No. 3529 dated 03.03.1965 and since then the defendants are in possession of the said land since

their predecessor. Property under lot Nos. 2-4 under 'Ka' schedule belonged to Ismail Mondal. Said Ismail Mondal died leaving daughter, the plaintiff, who transferred ·52 decimals of land in favour of the predecessor of the defendants in whose names R.S. record stands. Stepmother of the plaintiff Rabeya Khatun also executed Deed No. 3529 dated 03.03.1965. Wahed Box Sarker himself during his life time transferred the said ·52 decimals land in favour of the defendants vide Deed dated 09.02.1983 and the defendants are in ejmali possession of the suit land under 'Ka' schedule. The plaintiff filed the suit on the fictitious ground.

Defendant No.10-Government of Bangladesh also filed a written statement and contested the suit claiming that the suit property was non-retainable property of the ex-Jamindar and in pursuance of the provision of law it was vested in the government.

Defendant Nos. 11, 13 and 14 also filed separate written statement and contested the suit contending inter alia that the 'Ka' schedule land belonged to Samir Mondal and 7 others and the property under lot No. 2 belonged to the tenants in whose names C.S. khatian duly published and the tenants possessed the same on

payment of rents to the ex-landlord. The property belonged to 'Kha' schedule land under C.S. Khatian No. 488 actually belonged to Samir Mondal, Nisu Bibi and Kali Mondal. The defendant Nos. 13 purchased ·40 decimals of land vide Kabala Deed No. 1345 dated 19.01.1967 and Ismail Mondal, father of the plaintiff also transferred ·07 decimals of land vide Deed No. 14383 dated 24.11.1962 in favour of Ataur Rahman Mondal and Arjan Bewa transferred $\cdot 14\frac{1}{2}$ decimals of land to the defendant Nos. 11/14 vide Deed No. 16607 dated 15.12.1964. Rabeya Bewa and plaintiff transferred some land in favour of defendant Nos.11/14 vide Deed No. 3838 dated 08.05.1965. Tamir Mondal transferred ·16 decimals of land in favour of defendant Nos. 11/14 vide Deed No. 15 dated 05.12.1965 and the plaintiff herself transferred ·16 decimals of land to Tamir Mondal vide Deed No. 17206 dated 28.12.1964. The plaintiff also transferred ·17 decimal of land in favour of defendant No. 11 vide Deed No. 4788 dated 25.02.1967 and ·24 decimals of land to Ataur Rahman vide Deed No. 2568 dated 09.02.1972. Taher Mondal transferred ·07 decimals of land in favour of defendant Nos. 11/14 and one Majdar Rahman vide Deed No. 42534 dated 30.10.1974.

Lukmuddin transferred ·04 decimals of land in favour of defendant Nos. 11/14 vide Deed No. 39504 dated 05.10.1974 and Taher Mondal and Tahaj Uddin transferred $\cdot 20\frac{4}{3}$ decimals land in favour of defendant Nos. 11/14 and one Lokman. Lokman again transferred $\cdot 01\frac{4}{3}$ in favour of defendant Nos. 11/14. Taher and others transferred $1\cdot 08\frac{4}{3}$ decimals of land to defendant No. 14 and one Majdar Rahman vide Deed No. 19960 dated 25.05.1974 and Bikash Krishna Sarkar transferred ·88 decimals of land in favour of defendant No. 11 and Lokman Mondal and Rahela Bewa transferred $\cdot 03\frac{1}{4}$ decimals of land to defendant Nos. 11/14 vide deed dated 06.102.1983. The plaintiff filed the suit on the false and factitious ground and the suit is liable to be dismissed.

The trial court framed 6(six) issues for determination of the dispute between the parties. Both the parties adduced evidences both oral and documentary in support of their respective case. The trial court after hearing by judgment and decree dated 20.02.2002 dismissed the suit. Thereafter, the plaintiff preferred Title Appeal

No. 100 of 2002 in the Court of District Judge, Rajshahi which was subsequently, transferred to the Court of Special District Judge-1, Rajshahi for hearing and disposal who by its judgment and decree dated 11.05.2004 disallowed the appeal affirming the judgment and decree passed by the trial court. The plaintiff-appellant did not move before this Court against the judgment and decree of the trial court as well as the appellate court, but filed Miscellaneous Case No. 06 of 2004 under Order 47 Rule 1 of the Code of Civil Procedure, seeking review of the judgment passed by the appellate court on 11.05.2004.

The miscellaneous case was contested by defendant-respondent by filing written objection. The appellate court by its judgment and order dated 14.09.2006 rejected the miscellaneous case.

Being aggrieved by and dissatisfied with the judgment and order of the appellate court. The petitioner, moved this Court by filing this revisional application and obtained the present Rule.

Mr. Nikhil Kumar Saha, learned Senior Advocate appearing for the petitioners submits that the petitioner, as plaintiff, at the first

instance field Other Class Suit No. 89 of 1993 praying for a declaration in the following terms;

> *"নালিশী 'ক' তফসীল সম্পত্তিতে বাদিনী তাহার প্রাপ্য ৮ আনা এবং দান সূত্রে .৭৭$\frac{১}{২}$ শতাংশ এবং 'খ' তফশীল সম্পত্তিতে বাদিনীর ৯ আনা অংশে স্বত্ত্ব থাকা মর্মে এক বিজ্ঞাপনী ডিক্রী পান।"*

Subsequently, the plaintiff got the plaint amended on 24.05.1996 and 27.07.1996 and added a prayer in the following terms;

> *"বাদিনী এবং তাহার মাতা রাবেয়া খাতুন কর্ত্তৃক ৪ হইতে ৬নং বিবাদীদের পূর্বাধিকারী ওয়াহেদ বক্স সরকার এর অনুকূলে বিগত ০৩/০৩/১৯৬৫ ইংরাজী তারিখের ৩৫২৯নং রেজিষ্ট্রী দলিল ভূয়া, যোগ সাজসী, পনবিহীন ও তঞ্চকমূলক এবং false personification মূলে সৃজিত মর্মে বাদী এক বিজ্ঞাপনী ডিক্রি পান।"*

And after incorporation of such prayer in the plaint by the plaintiff it was incumbent upon the trial court as well as the appellate court to adjudicate the matter in dispute whether alleged deed of defendant Nos. 4-6 were executed by plaintiff and her mother by sending the same to the Hand Writing Expert and after obtaining report, but both the courts below utterly failed to determine the question raised by the plaintiff in not sending the disputed document to the Hand Writing Expert for opinion. He further submits that the Heba-bil-Ewaz Deed No. 4254 dated 07.03.1964 was filed in original before the trial court duly marked as Exhibit No. 2 is a 30 years old document was not required to be formally proved under

Section 90 of the Evidence Act, but both the courts below wrongly held that the plaintiff could not prove the Heba-bil-Ewaz deed by producing any evidence before the trial court.

He finally submits that both the courts below wrongly held that the plaintiff for further declaration did not pay requisite court fee, but failed to appreciate that no court fee was required to be paid by the plaintiff for such declaration. It is also argued that the defendants in suit were under obligation to prove their sale deeds by evidence as the same have been challenged by the plaintiff. He argued that when from the face of the judgment, it appears that there has been wrong observation of fact and regarding law, the court has ample power to review the judgment on the prayer of aggrieved person. But in the instant case, the appellate court below did not even appreciated the law referred by the petitioner and rejected the review application and has committed an error of law in the decision occasioning failure of justice, as such, he prayed for sending the matter on remand to the appellate court for further hearing and proper decision of the appellate court.

Mr. Shasti Sarker, learned Advocate appearing for the opposite-party Nos. 1-7 submits that the review application filed by the petitioner before the appellate court was not maintainable in law, as the petitioner preferred an appeal against the judgment and decree of the trial court. The review is maintainable only where no appeal has been preferred and no appeal is allowed, but in the instant case, the petitioner preferred an appeal against the judgment and decree of the trial court and the appeal was dismissed. He further submits that a review application is maintainable if from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or any mistake or error apparent on the face of the record, but in the instant case no such situations are present. The case was disposed of on evidences both oral and documentary, no new fact or evidence subsequently, recovered by the petitioner to seek review of the judgment. Both the courts below concurrently found that the plaintiff could not prove her case in accordance with law and did not take any step to prove that deed of the defendant Nos. 4-6 under challenge are

forged and fabricated by examining her signature through Hand Writing Expert. He submits that it was incumbent upon the plaintiff to get her case proved by evidence on her own initiative, for laches and negligence of the plaintiff to take proper step to prove her case there is no provision in the Code of Civil Procedure for review of any judgment passed by the courts below, as such, the appellate court rightly rejected the review application.

Heard the learned Advocates of both the parties, have gone through the revisional application, plaint in suit, written statement and the impugned judgment and decree passed by both the courts below, application seeking review and the impugned judgment and order passed by the appellate court.

The plaintiff in suit prayed for declaration of title and declaration to the effect that the Sale Deed Nos. 3529 dated 03.03.1965 and 19960 dated 11.05.1974 are forged and fabricated under Section 42 of the Specific Relief Act. Admittedly, the plaintiff is a party to the deed as executant, but to prove the execution of said deed other than the plaintiff she did not take any step either by

producing any witness or by sending the deeds to the Hand Writing Expert for opinion.

Apart from this the plaintiff in her plaint stated that she acquired 8 annas share in schedule ‘Ka’ land comprising 8 plots measuring 1·56 sataks and 9 annas share in ‘Kha’ schedule land comprising 8 plots measuring 2·3 sataks land. But the plaint discloses the fact of acquiring title inconsistent with the claim of the plaintiff. To seek a declaration of title the plaint must disclose a clear picture of acquiring title by plaintiff in suit. Further prayer added by the plaintiff is relating to sale deeds of defendant Nos. 4-6 are forged and fabricated. It is now settled that the person who claims that a deed or an instrument is forged and fabricated, duty and responsibility cast upon him to prove such allegation by taking recourse to provisions of law, but in the instant case, no effective step was taken by the plaintiff to get her claim proved by evidence. It was not the business of the court to shoulder the responsibility of any party to the suit on its own initiative to get the case of the plaintiff proved by sending the disputed deeds to the Hand Writing Expert for opinion. It was the duty of the plaintiff to pray before the trial court

even after filing appeal before the appellate court to get a report from Hand Writing Expert by sending the deeds under challenge for opinion. The trial court in its judgment clearly spelt out the fact that the plaintiff did not take any step to prove her case. Thereafter, the learned Advocate for the plaintiff ought to have taken effective step before the appellate court to that effect, but before both the courts below the plaintiff did not take any step as observed by the courts below.

It is true that the deed of Heba-bil-Ewaz dated 07.03.1964 (Exhibit-2) is a deed of 30 years old which is not required to be formally proved under Section 90 of the Evidence Act, but the deed under challenge allegedly executed by plaintiff Gujori Khatun and her mother on 03.03.1965 after acquiring the property by plaintiff in the year 1964. Unless the plaintiff could prove that the Deed No. 3529 dated 03.03.1965 is forged and fabricated one, the deed of Heba-bil-Ewaz is not sufficient to get a decree of declaration of title in the suit property. However, if the trial court as well as the appellate court committed any error of law in the decision the plaintiff-appellant had ample scope to move before this Court against

both the judgments of the trial court and the appellate court in revision. So that, this court could have examined the evidences both oral and documentary, could send the suit on remand for taking further evidence and could examine whether there is any error of law in the decision occasioning failure of justice. But the plaintiff-appellant did not take recourse by filing a civil revision before this Court, but filed an application under Order 47 Rule 1 of the Code seeking review of the judgment.

Now, the question before this Court whether the judgment and decree passed by both the courts below are liable to be reviewed by the court who passed the same. To appreciate the question raised, provisions of Order 47 Rule 1 may be looked into which run thus;

> *"(1) Any person considering himself aggrieved-*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
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> *(b) by a decree or order from which no appeal is allowed , or*
>
> *(c) by a decision on a reference from a Court of Small Causes,*
>
> *and who, from the discovery of new and important matter or evidence which, after the exercise of due*

> *diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*"

From perusal of the provisions quoted above, I find that in the application for review no important matter or evidence which, after exercise of due diligence newly discovered or was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or any mistake or error apparent on the face of the record, as such, the petitioner cannot apply for a review of judgment of the Court which passed the decree or made the order.

From perusal of review application this Court finds that the applicant could not show any error on the face of the record, or any important matter discovered after the exercise of due diligence. Non-appreciation of evidences and fact of the case and a point of law is not an error on the face of the record, or a new and important matter or evidence which, after the exercise of due diligence could not be

produced at the time of passing decree. Scope for review of a judgment is very limited. Under the garb of review of a judgment the aggrieved person cannot take advantage of rehearing of an appeal on the ground of dissatisfaction with the decision of the court. Now, it is settled that review is not an appeal nor a rehearing merely on the ground that a party himself conceives to be dissatisfied with the decision sought to be reviewed unless a prayer for review is based on the grounds mentioned above (Rule 1 Order 47 of the Code) court will not sit on the matter again for a rehearing or further hearing which is already concluded by the decision even that be erroneous.

This Court finds that the court below only failed to appreciate that Heba-bil-Ewaz deed dated 07.03.1964 is a 30 years old document not required to be formally proved under Section 90 of the Evidence Act, but from perusal of judgments of both the courts below in their entirety, I find that both the courts below dismissed the suit not only on the ground of non-proof of deed of Heba-bil-Ewaz. In the event of considering the Heba-bil-Ewaz deed of the plaintiff the court below had no scope to decree the suit unless the 2 deeds of defendant Nos. 4-6 are proved to be forged and fabricated.

The plaintiff utterly failed to prove that the deed of the year 1965 executed and registered by plaintiff herself and her mother Rabiya Khatun in favour of the defendant Nos. 4-6 are forged and fabricated. In the absence of proving such allegation the plaintiff is not at all entitled to get a decree as prayed for as first prayer of declaration of title depends on the 2nd prayer of declaration.

Therefore, I find that the appellate court committed no error of law in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is discharged, however, without any order as to costs.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.

Helal-ABO