

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

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 276 of 2013.

Most. Anar Haque Choudhury and others

...Appellants.

-Versus-

Most. Ruli Begum and another

....Respondents.

Mr. Md. Ataur Rahman, Advocate

... For the appellants

Mr. M.A Kader Molla, Advocate

... For the respondents.

**Heard on: 24.06.2026,29.06.2026,01.07.2026
and 28.07.2026.**

Judgment on: 02.08.2026.

Md. Badruzzaman, J:

This appeal is directed against the judgment and decree dated 5 September 2012, the decree having been signed on 11 September 2012, passed by the learned Joint District Judge, Second Court, Chapainawabganj, in Other Class Suit No. 17 of 2011, whereby the suit was decreed.

The facts relevant for the disposal of this appeal are that respondent Nos. 1 and 2 instituted the above-mentioned suit seeking a declaration that the registered Deed of Declaration of Heba No. 1889 dated 26 April 2009 was collusive, illegal, void, ineffective, and not binding upon the plaintiffs, contending, inter alia, that plaintiff No. 1 is the second wife of Saidul Haque Chowdhury. Plaintiff No. 2 was born out of the wedlock between plaintiff No. 1 and Saidul Haque

Chowdhury. The first wife of Saidul Haque Chowdhury was Defendant No. 1. He used to keep defendant No.1 and the son and daughter (defendant Nos. 2-3) born through her in a rented house in Rajshahi city, while he resided with his second wife (plaintiff No. 1) at a house constructed by him at Hujurapur under Gomastapur Police Station. Owing to the serious illness of Saidul Haque Chowdhury, the defendants took him to Rajshahi city for medical treatment. Taking advantage of his physical weakness, the defendants, in collusion with their relatives and other persons under their influence, procured the execution and registration of the impugned deed by showing fictitious land under Gomastapur Police Station while fraudulently including therein the land belonging to Saidul Haque Chowdhury situated under Shibganj and Nachole Police Stations. In 2008, Saidul Haque Chowdhury became afflicted with paralysis and various other complicated diseases, and he ultimately died on 6.3. 2011 at his residence in Rajshahi city. He was buried at Bajitpur, Shempur, under Shibganj Police Station. Thereafter, on 31 May 2011, the defendants announced that new sharecroppers (adhiars) and a new estate manager (dafadar) would have to be appointed in respect of the land, stating that if the existing sharecroppers and dafadar remained in charge, the plaintiffs would receive the crops. When the plaintiffs inquired into the reason for such a decision, they came to know about the existence of the impugned deed. On the very same date, upon making inquiries at the office of the Sub-Registrar, they traced the said deed. On 7.6.2011, after obtaining a certified copy of the impugned deed, the plaintiffs came to know for the first time that, by showing fictitious land under Gomastapur Police Station, the defendants had fraudulently procured the registration of land belonging to and possessed by Gulu Chowdhury (also known as

Saidul Haque Chowdhury) situated under Shibganj and Nachole Police Stations. If the impugned deed is allowed to remain in force, the plaintiffs will suffer irreparable loss and injury. Hence, the plaintiffs were constrained to institute the present suit.

The appellants, as defendants, contested the suit by filing a joint written statement, contending, inter alia, that the suit disclosed no cause of action, was barred by limitation, was not maintainable in law, and that the plaintiffs had no right, title, or interest in the suit property. Their positive case was that Saidul Haque Chowdhury had constructed a house in Rajshahi city, where he resided with his one son and one daughter, defendant Nos. 2 and 3, to facilitate their education. Subsequently, in 1996, he suddenly married plaintiff No. 1. For her residence, he also constructed a dwelling house at Rohonpur under Gomastapur Police Station. Despite this, plaintiff No. 1 behaved improperly towards her husband, Saidul Haque Chowdhury. Ultimately, at the instance of Plaintiff No. 1, on 31.3.1997, in the presence of witnesses, she received the entire amount of her dower (mahr) in cash and divorced Saidul Haque Chowdhury. Following the divorce, plaintiff No. 1 ceased to have any marital relationship with Saidul Haque Chowdhury. Thereafter, she resided either with this defendant or at her former residence and had no connection with Saidul Haque Chowdhury. Being dissatisfied with the conduct of plaintiff No. 1, Saidul Haque Chowdhury decided to transfer the suit property to the defendants. Accordingly, by a registered deed of gift (Heba Declaration) No. 1889 dated 26.04.2009, he validly gifted the suit property to the defendants and delivered possession thereof. Since then, the defendants have been possessing and enjoying the property, paying rent (land revenue) in their own names. The plaintiffs never had, and do not now have, any

right, title, or possession in respect of the suit property; that the impugned deed is genuine, valid, and lawful; that the plaintiffs have no *locus standi* to institute the present suit; and that, accordingly, the suit is liable to be dismissed with costs.

During the trial, the plaintiffs adduced six oral witnesses, whereas the defendants adduced five oral witnesses. Both parties also produced documentary evidence in support of their respective cases, which were marked as exhibits. Upon consideration of the evidence and other materials on record, the trial Court, by the impugned judgment and decree, decreed the suit. Being aggrieved thereby, the defendants have preferred the instant appeal.

At the time of hearing of the appeal, the respondents filed an application, accompanied by a supplementary affidavit, praying for leave to adduce additional evidence. In the said application, they contended, *inter alia*, that during the trial they had produced an information slip dated 21.08.2011, but the same was inadvertently not marked as an exhibit at the time the evidence was recorded. Thereafter, on 4.9.2012, the plaintiffs filed an application before the trial Court praying that the said document be marked as an exhibit. Although the trial Court kept the application on record, it did not pass any formal order thereon. However, while delivering the judgment, the trial Court marked the information slip as Exhibit-4 and relied upon the same as evidence. The respondents further contended that, since the information slip had not been exhibited in accordance with law, this Court should formally receive the said document as additional evidence in the interest of justice.

The appellants neither filed any counter-affidavit opposing the application nor raised any objection at the time of its hearing.

Accordingly, the application was kept on record for consideration at the time of disposal of the appeal.

Mr. Md. Aatur Rahman, the learned Advocate appearing on behalf of the appellants, submitted that the trial Court, upon misreading and non-consideration of the evidence on record and misconception of the law, erroneously passed the impugned judgment and decree.

The learned Advocate further submitted that the plaintiffs failed to adduce any cogent or reliable evidence to establish that the deed included any fictitious land situated within Gomastapur Police Station. Nevertheless, the trial Court erroneously concluded that, since the impugned deed had been registered at the Gomastapur Sub-Registry Office by showing fictitious land under Gomastapur Police Station while including land situated under Shibganj and Nachole Police Stations, the deed was illegal and void.

The learned Advocate also submits that plaintiff No. 1 divorced her husband, Saidul Haque Chowdhury prior to the execution and registration of the impugned deed, but the trial Court failed to consider the legal effect of such divorce.

He further contends that, although the plaintiffs produced an information slip during the trial, the same was never proved in accordance with law through admissible evidence. Nevertheless, at the time of delivering the judgment, the trial Court marked the information slip as an exhibit and placed reliance thereon, which was wholly impermissible in law.

Finally, the learned Advocate submits that the impugned judgment and decree suffer from both factual and legal infirmities and, therefore, call for interference by this Court.

Mr. M.A Kader Molla, the learned Advocate appearing on behalf of the respondents, submits that the trial Court, upon proper appreciation of the oral and documentary evidence and the materials on record, rightly passed the impugned judgment and decree.

The learned Advocate further submits that the information slip produced by the plaintiffs to establish that there was no land situated within Gomastapur Upazila was never specifically denied or disputed by the defendants. He further contends that, during the pendency of the appeal, the respondents filed an application praying that the said document be taken into evidence, but the defendant-appellants did not file any counter-affidavit controverting the authenticity or admissibility of the document. In such circumstances, according to the learned Advocate, this Court may legitimately treat the document as an exhibit and rely upon it as evidence.

Finally, the learned Advocate submits that, although the defendants asserted that plaintiff No. 1 divorced her husband prior to the execution and registration of the impugned deed, they failed to adduce any reliable evidence in support of that plea. Accordingly, he prays that the appeal be dismissed.

We have heard the learned Advocates appearing for the respective parties, perused the pleadings, the oral and documentary evidence adduced by the parties, the impugned judgment and decree, the application for taking additional evidence, and the other materials available on record.

Before entering into the merits of the appeal, we consider it appropriate to dispose of the application for taking additional evidence.

It appears that during the recording of evidence, the plaintiffs produced an information slip with a prayer that it be admitted into

evidence. However, the trial Court did not formally mark the document as an exhibit at that stage. Thereafter, on 4.9.2012, the plaintiffs filed an application praying that the said information slip be marked as an exhibit. The defendants did not file any written objection to the said application. Although the trial Court kept the application on record without passing any formal order thereon, at the time of pronouncement of the judgment it marked the information slip as Exhibit-4 and relied upon the same while deciding the suit.

It appears from Exhibit-4 that it was provided in a prescribed form by the office of the Deputy Commissioner, Chapainawabganj on 21.08.2011. The said information slip stated that no R.S. Khatian No. 103 of Mouza Patharmanbila under Gomastapur Police Station had been recorded in the relevant volume maintained for R.S. Khatians.

Since, during the trial, the defendants neither filed any written objection to the application filed by the plaintiffs praying for marking the information slip as an exhibit nor challenged the authenticity or disputed the genuineness of the information slip issued by the office of the Deputy Commissioner, Chapainawabganj, by filing any counter-affidavit against the application for taking additional evidence before this Court, we are of the view that the trial Court rightly marked the said information slip as an exhibit. Consequently, we find no necessity to receive Exhibit-4 as additional evidence under Order XLI, Rule 27 of the Code of Civil Procedure.

Having dealt with the preliminary issues, we now proceed to examine the case on its merits.

The original impugned deed was produced by the defendants and marked as Exhibit 'Ka' from which it appears that it was registered before the Sub-Registrar, Gomastapur, Chapainawabganj. According to

the deed, the executant, Md. Syedul Haque Chowdhury alias Bulu Chowdhury, purported to transfer, along with other properties, 4.70 acres of land situated in Mouza Patharmanbila, Gomastapur appertaining to R.S. Plot No. 207 under R.S. Khatian No. 103. The specific case of the plaintiffs is that, although no land falling within the territorial jurisdiction of the Gomastapur Sub-Registry Office was included in the transaction, the defendants fraudulently inserted the aforesaid land solely to create jurisdiction for registration before the said Sub-Registrar. According to the plaintiffs, taking advantage of the illness and physical weakness of Md. Syedul Haque Chowdhury, the defendants procured the execution and registration of the impugned deed in collusion with one another, with the object of depriving the plaintiffs—the 2nd wife and her son—and conferring the property exclusively upon his 1st wife and her son and daughter, thereby excluding the plaintiffs from their lawful inheritance.

On the other hand, the defendants contended that plaintiff No. 1 was the divorced wife of Md. Syedul Haque Chowdhury and that, following the divorce, he voluntarily executed and registered the impugned deed in their favour.

Section 28(1) of the Registration Act, 1908 provides that, subject to the exceptions contained in the Act, every document affecting immovable property registrable must be presented for registration before the Sub-Registrar within whose sub-district the whole or the major portion of the property is situated. If the major portion is not situated within a single sub-district, the document may be presented before the Sub-Registrar of any sub-district in which a portion of the property is situated.

Section 28(2) further provides that, once a document has been registered, its registration cannot be challenged merely because the property relied upon to confer jurisdiction on the Sub-Registrar was non-existent, fictitious, or insignificant. However, where registration was secured by including a non-existent, fictitious, or insignificant item of property, such registration does not prejudice the rights of a person who was not a party to the document and who acquired rights in the property without notice of the transaction.

In *Syed Kausar Ali v. Gahar Kazi and others*, 37 DLR (AD) 177, our Appellate Division followed the view of the Privy Council in *Harendra Lal Chowdhury v. Haridashi Devi*, 41 IA 110, and held that where an entry is intentionally made by the parties for the purpose of obtaining registration in a district where no part of the property actually intended to be transferred or affected by the document is situated, such conduct constitutes a fraud upon the Registration Law, and any registration obtained by such means is invalid.

The cardinal principle embodied in Section 28 of the Registration Act, 1908, as well as the law settled by our Apex Court in *Syed Kausar Ali v. Gahar Kazi and others*, 37 DLR (AD) 177, is that every document affecting immovable property must be registered in the office of the Sub-Registrar having territorial jurisdiction over the property. Where registration is procured by the inclusion of a non-existent, fictitious, or insignificant parcel of land solely for the purpose of creating territorial jurisdiction, such registration cannot prejudice the rights of a person who was not a party to the document and who acquired rights in the property without notice of the transaction. Such conduct constitutes a fraud upon the Registration Act, and any registration obtained by such means is void and of no legal effect.

From Exhibit-4, the Information Slip dated 21.08.2011, it appears that no R.S. Khatian No. 103 exists in the relevant volume of the record-of-rights. Although the defendants asserted that Md. Syedul Haque Chowdhury owned land within Gomastapur Upazila and had transferred the same by the impugned deed, they failed to produce any documentary or other reliable evidence to establish either his title to such land or the existence of the land allegedly transferred within the territorial jurisdiction of the Gomastapur Sub-Registry Office. Accordingly, it has been conclusively established that the defendants deliberately incorporated a non-existent and fictitious parcel of land in the impugned deed solely to create territorial jurisdiction for its registration before the Gomastapur Sub-Registry Office.

It further appears that Md. Syedul Haque Chowdhury, the executant of the impugned deed, neither owned nor possessed any land within the territorial jurisdiction of the Gomastapur Sub-Registry Office. Nevertheless, the defendants deliberately described a purported 4.70 acres of land in Mouza Patharmanbila, Gomastapur, in the impugned deed with the sole object of conferring territorial jurisdiction upon the Sub-Registrar, Gomastapur, for its execution and registration. Such inclusion, being wholly fictitious and intended only to circumvent the mandatory provisions of Section 28 of the Registration Act, 1908, vitiates the registration itself. Consequently, the impugned deed is void, inoperative, and of no legal effect, and is not binding upon the plaintiffs.

On the other hand, although the defendants contended that plaintiff No. 1 divorced her husband Md. Syedul Haque Chowdhury, they failed to adduce any oral or documentary evidence in support of that contention.

It further appears from the evidence on record that Md. Syedul Haque Chowdhury suffered a brain stroke and remained in that condition until his death, approximately three and a half years. During that period, the impugned deed was executed. The surrounding circumstances indicate that, while he was under the care and control of the defendants and in a physically vulnerable condition, he was induced to execute the impugned deed.

On a careful perusal of the impugned judgment, it appears that the trial court, upon proper appreciation of the oral and documentary evidence on record, arrived at the correct findings of fact and law and rightly decreed the suit. We find no infirmity, illegality, or perversity in the impugned judgment warranting interference by this Court.

Accordingly, we find no merit in the appeal.

In the result, the appeal is dismissed. However, there shall be no order as to costs. The impugned judgment and decree passed by the trial Court are hereby affirmed.

The order of status quo granted earlier stands vacated.

Let the Lower Court Records (L.C.R.) be sent down to the court below forthwith along with a copy of this judgment.

(Justice Md. Badruzzaman)

I agree:

(Justice Aynun Nahar Siddiqua)