

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1226 OF 2007

In the matter of:

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

And

Md. Munser Ali being dead his heirs- Most. Rabia Begum and others

.... Petitioners

-Versus-

Md. Mohsin Ali being dead his heirs- Md. Lehaj Uddin and others

.... Opposite parties

Mr. Mohammad Mehedi Hasan Chowdhury, Advocate

.... For the petitioners.

Mr. Alal Uddin with

Mr. Jalal Uddin Ahmed

Mr. Rabeya Sultana, Advocates

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

Heard on 07.07.2025 and 23.07.2025.

Judgment on 24.07.2025.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 11.09.2006 passed by the learned Additional District Judge, 1st Court, Gazipur allowing the Title Appeal No.212 of 2005 by setting aside the judgment and decree dated 30.06.2005 passed by the learned First Assistant Judge, Gazipur Sadar, Gazipur in Title suit No.203 of 2002 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that the deed of exchange dated 19.08.1990 executed by Basatunnessa and defendant for disputed 26.50 decimal land is forged, unlawful, ineffective and not binding upon the plaintiff.

It was alleged that Basatunnessa was the owner and possessor of above 26.50 decimal land and she transferred above land to the plaintiff and defendant No.3 by registered deed of Heba-bil-ewaz dated 19.08.1990 and delivered possession. Plaintiff and defendant No.3 are in possession in above land. Defendant No.1 obtained above forged and ineffective deed of exchange by false personation and claimed title on the basis of above fraudulent document.

Defendant No.1 contested above suit by filing written statement alleging that Basatunnessa while owning and possessing above land exchanged above 26.50 decimal land with 73 decimal land of defendant No.1 by a registered deed of exchange dated 19.08.1990 and delivered possession. The deed of Heba-bil-ewaz of the plaintiff is a forged and ineffective document.

At trial plaintiff examined 5 witnesses and defendant examined 4. Documents of the plaintiff were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.1-2.

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

Being aggrieved by above judgment and decree of the trial Court defendant No.1 as appellant preferred Civil Appeal No.212 of 2005 to

the District Judge, Gazipur which was heard by the learned Additional District Judge, 1st Court who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court with this Civil Revisional application under Section 151(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Mohammad Mehedi Hassan Chowdhury, learned Advocate for the petitioner submits that the deed of Heba-bil-ewaz dated 19.02.1990 of the plaintiff was earlier in point of time than the disputed deed of exchange of defendant No.1 and since Bahatunnessa transferred above 26.50 decimal land to plaintiff and defendant No.3 she did not have any subsisting interest in above land and defendant No.1 did not acquire any title and possession in above land by impugned deed of exchange. On consideration of above materials on record the learned Judge of the trial Court rightly decreed above suit but the learned District Judge without an independent assessment of materials on record and without reversing any material findings of the trial Court most illegally allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

On the other Mr. Alal Uddin, learned Advocate for opposite party No.1 submits that above deed of Heba-bil-ewaz dated 19.02.1990 is a forged document which was never acted upon and a recipient of above

deed defendant No.3 has admitted above facts and he did not claim title on the basis of above forged document. The plaintiff has claimed to have mutated his name and paid rent to the Government on the basis of above deed of Heba-bil-ewaz but he could not produce any evidence oral or documentary in support of above claim. As such above suit was not tenable in law in the absence of any declaration for title of the plaintiff in the above land.

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

It is admitted that Basatunnessa was the owner and possessor of disputed 26.50 decimal land and plaintiff is her full brother and defendant No.3 is her nephew and defendant No.1 is a third person not related with above Basatunnessa.

Plaintiff has claimed that above Basatunnessa transferred above land to plaintiff and defendant No.3 by registered deed of Heba-bil-ewaz dated 19.02.1990. Defendant No.3 a recipient of above deed of Heba-bil-ewaz claims that above Heba-bil-ewaz deed was a forged and ineffective document and he did not claim title on the basis of above deed.

Plaintiff gave evidence as PW1 and produced a certified copy of above deed of Heba-bil-ewaz dated 19.03.1975 which was marked as Exhibit No.2. But no explanation has been provided by the plaintiff either in the plaint or in his evidence as to non-production of the original document.

It turns out from Exhibit No.2 that the document has been designated as a deed of Heba-bil-ewaz and contains all ingredients of a deed of Heba-bil-ewaz. But both in the plaint and his evidence as PW1 the plaintiff has claimed that above document was in fact a deed of sale.

In the absence of any allegation of error or fraud the plaintiff being a party to above deed of Heba-bil-ewaz cannot make above claim nor he can give evidence against any terms of above registered document. Above claim of PW1 on the contrary of terms of above deed proves that in fact there was no declaration of Heba and delivery of possession.

Plaintiff has claimed that pursuant to above deed of Heba-bil-ewaz the plaintiff mutated his name and possesses above land by paying rent to the Government. But no mutated khatian or rent receipt was produced by the plaintiff at trial in support of above plaint.

On the other hand while giving evidence as DW1 defendant No.1 Mohshin produced his original deed of exchange as (Exhibit No."K") which shows that Basatunnessa transferred above land to defendant No.1 in exchange of his 16 decimal land.

A deed of exchange becomes effective as soon as the parties get possession of their respective land. There is no allegation that the land of defendant No.1 in above deed of exchange was fictitious or Basatunnessa did not get possession of above land.

A recipient of above Heba-bil-ewaz deed and nephew of the plaintiff gave evidence as DW4 and stated that Basatunnessa

transferred above land to defendant No.1 by above deed of exchange which was an effective document.

On consideration of above facts and circumstances 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 liable to be discharged.

In the result, this Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER