

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 1230 of 2007**

**In the matter of:**

Hafeza Khatoon

Plaintiff-appellant-petitioner

-Versus-

Md. Abdur Rahim alias Abdur Rahman

Opposite party

Mr. Moqbul Ahmed, Advocate

...For the petitioner

Mr. Serder Abul Hossain, with  
Mr. Md. Saidur Rahman, Advocates

... For the opposite parties

Heard on: 28.11.2024, 05.03.2025, 24.04.2025, 04.05.2025,  
07.05.2025, 14.05.2025 and 25.06.2025

Judgment on: 07.07.2025

The instant Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 30.10.2006 (decree signed on 06.11.2006) passed by the Joint District Judge, 3<sup>rd</sup> Court, Cumilla dismissing the Title Appeal No. 87 of 2006 (heard analogous with Title Appeal No. 88 of 2006) and thereby affirming the judgment and decree dated 02.03.2006 (decree signed on

09.03.2006) passed by the Senior Assistant Judge, Chauddagam, Cumilla dismissing the Title Suit No. 89 of 2002.

The Rule has been contested by the sole defendant-opposite party.

The present petitioner as plaintiff filed Title Suit No. 89 of 2002 praying for declaration of title and recovery of Khas possession.

The plaintiff's case, in brief, is that the suit land appertaining to former C.R. Khatian No. 68, present khatian No. 285 consisting of .09 acres and other lands were owned by Ashraf Ali. After his death, his son Sekendar Ali inherited the suit land and other lands. R.S. Khatian was recorded in the name of Sekendar Ali in respect of the suit land and other lands. Sekendar Ali gifted 68½ decimals of land including the suit land (.09 acres) to one of his daughters namely, Jorifa Khatun by a registered deed of hiba-bil-ewaz executed on 07.01.1982 and registered on 20.04.1982.

Sekender Ali also gifted 68½ decimals of land to his grandsons namely, Hafez Abdul Monnan and Harun-Ur-Rashid, sons of his another daughter Hafeza Khatun by a registered deed of hiba-bil-ewaz on 07.01.1982, registered on 20.04.1982.

After transfer of lands, vide two hiba-bil-ewaz deeds, Sekendar Ali had .04 acres of land in his ownership. Sekendar Ali died leaving behind two daughters, namely Jorifa Khatun and Hafeza Khatun, who

inherited their father's properties. Jorifa Khatun gifted .37 ½ acres of land to her daughter Ayesha Akter Ranu by a registered deed of hiba-bil-ewaz on 20.01.1986. Recent Khatian was recorded in the name of Ayesha Akter in respect of .37 ½ acres of lands. Ayesha Akter sold .09 acres of land (suit land) by a Kabala dated 16.07.1992. The deed writer mistakenly wrote the amount of properties as .12 acres in place of .09 acres. Abdur Rahim (defendant) used to cultivate .09 acres of lands (suit land) as bargadar under Ayesha Akter. After purchase of the suit land, Abdur Rahim remained bargadar under the plaintiff. The plaintiff owned and possessed the suit land through her bargadar Abdur Rahim. Subsequently, Abdur Rahim claimed title to the suit land. The plaintiff asked the defendant to vacate the possession of the suit land. He refused to vacate the possession of the suit land and reiterated his claim as to title in the same. Hence, the suit for declaration of title and recovery of khas possession.

The sole defendant did not contest the suit. The plaintiff examined two witnesses.

Be it mentioned that the plaintiff also filed another suit being Title Suit No. 108 of 2002 in the same Court which tried the instant suit. In the said suit, the plaintiff prayed for a declaration that the *ex parte* decree dated 06.09.2001 passed in Title Suit No. 37 of 2001 is null and void and not binding upon the plaintiff. Rahima Khatun and others were impleaded as defendants in Title Suit No. 108 of 2002.

The plaintiff's case may be recalled. Her case is that Sekendar Ali transferred 68½ decimals of land to one of his daughters Jorifa Khatun through a hiba-bil-ewaz deed executed on 07.01.1982 and registered on 20.04.1982. Jorifa Khatun gifted 37 ½ decimals of land to her daughter Ayesha Akter. The plaintiff purchased 9 decimals of land (suit land) from Ayesha Akter. The hiba-bil-ewaz deed executed on 07.01.1982 and registered on 20.04.1982 was declared null and void in Title Suit No. 37 of 2001. The *ex parte* decree passed in Title Suit No. 37 of 2001 was challenged in Title Suit No. 108 of 2002 by the present plaintiff. The same Court, which tried the instant suit, dismissed the Title Suit No. 108 of 2002 on 02.03.2006 on contest.

The trial Court rightly held that since the hiba-bil-ewaz deed executed in favour of Jorifa Khatun was declared null and void, she had no title in the property which she gifted to her daughter from whom the plaintiff purchased the suit land. Conclusion is that the plaintiff purchased the suit land from a person who had no title in the same and as such, she did not acquire any title in the suit land.

The trial Court further observed that the plaintiff's kabala mentioned the quantity of land as 12 decimals instead of 9 decimals and the kabala also wrongly mentioned the C.R. Khatian No. 70 instead of C.R. Khatian No. 68. The plaintiff did not pray for any relief for rectification of the kabala.

The appellate Court below being the last Court of facts considered the case of the plaintiff and evidence on record. The appellate Court below dismissed the appeal and upheld the judgment and decree of the trial Court.

I have heard the learned Advocates of both sides and perused the materials on record. Learned Advocate appearing for the plaintiff-petitioner could not show any evidence on record in support of his arguments that the findings of the Courts below are based on surmise and conjecture or that this is a case of misreading or non-consideration of material evidence or that there was any error of law resulting in an error in the impugned judgment and decree occasioning failure of justice. I find that both the Courts below dismissed the suit on proper appreciation of evidence on record and the applicable law. Hence, I find no merit in the Rule.

In the result, the Rule is discharged.

Send down the L.C.R.