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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 1228 of 2007

In the matter of:

Hafaza Khatoon

Plaintiff-appellant-petitioner

-Versus-

Most. Rahima Begum and others

Opposite parties

Mr. Moqbul Ahmed, Advocate

...For the petitioner

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

... For the opposite party No. 1

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 No. 1 to show cause as to why the judgment and decree dated 30.10.2006 (decree signed on 06.11.2006) passed by the learned Joint District Judge, 3rd Court, Cumilla dismissing the Title Appeal No. 88 of 2006 (heard analogous with Title Appeal No. 87 of 2006) and thereby affirming the judgment and decree dated 02.03.2006 (decree signed

on 09.03.2006) passed by the learned Senior Assistant Judge, Chauddagram, Cumilla dismissing the Title Suit No. 108 of 2002.

The present petitioner as plaintiff filed Title Suit No. 108 of 2002 praying for declaration that the *ex parte* decree dated 06.09.2001 passed in Title Suit No. 37 of 2001 is fraudulent, void *ab initio* and not binding upon the plaintiff.

The plaintiff's case, in brief, is that the suit land (9 decimals) and other lands appertaining to the C.R. Khatian No. 68 were owned by Ashraf Ali. After his death, his son Sekendar Ali inherited the suit land and other lands in whose name the R.S. Khatian was recorded. Sekendar Ali gifted the properties described in schedule No. 1 to the plaint 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 acres of land to his grandsons, namely Hafez Abdul Monnan and Harun-Ur-Rashid, sons of another daughter Hafeza Khatun by a registered deed of Hiba-Bil-Ewaz on that date.

Being the owner in possession of the rest .04 acres of land, Sekendar Ali died leaving behind two daughters, namely Jorifa Khatun and Hafeza Khatun who inherited their father's properties. Subsequently, Jorifa Khatun gifted .37½ 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 .37½ acres of lands. Ayesha Akter sold .09 acres of land (schedule No. 2 to the plaint) (suit land) to the plaintiff by a Kabala dated 16.07.1992. The deed writer mistakenly wrote the amount of properties as .12 acres in place of .09 acres and also mistakenly wrote the Khatian No. 70 in place of 68.

One Abdur Rahim used to cultivate the suit land as bargadar under Ayesha Kahtun. Subsequently, on request of Abdur Rahim, the plaintiff permitted him to use the suit land as bargadar under her. The plaintiff owned and possessed the suit land through her bargadar Abdur Rahim. Later on, Abdur Rahim claimed title to the suit land. The plaintiff filed Title Suit No. 89 of 2002 against Abdur Rahim for declaration of title and recovery of khass possession.

The defendant No. 1 and her husband claimed that they got the suit land by dint of a decree of the Court. The plaintiff obtained certified copy of the *ex parte* decree passed in Title Suit No. 37 of 2001 on 25.07.2002 and came to know that the defendant No. 1 filed the suit on 18.04.2001 challenging the deed of Hiba-bil-Ewaz No. 5265 dated 07.01.1982 executed in favour of Jorifa Khatun impleading her as defendant who was not alive at that time. The plaintiff was not impleaded in that suit and thus, the defendants, by practicing fraud upon the Court, obtained the *ex parte* decree on 06.09.2001 which is liable to be set aside.

The defendant No. 1 contested the suit. Her case is that the suit land and other lands were owned by Ashraf Ali. After his death, his son Sekendanr Ali became the owner and possessor of the suit land and other lands and S.A. Khatian was recorded in his name. Sekendar Ali died leaving behind two daughters, namely Jorifa Khatun and Hafeza Khatun. After the death of first husband, Hafeza Khtaun married Siddique Mia. Hafeza Khatun had one son from her first husband and one daughter (defendant No. 1) from her second husband. Abdul Mannan and Harun were two sons of Hafeza Khatun.

Sekendar Ali gifted .11 acres of lands including the suit land as described in schedule No. 2 to the plaint to the defendant No. 1 and also gifted other lands to Jorifa Khatun and her three brothers by three registered gift deeds on 15.02.1982. The defendant No. 1 got .10 acres of lands (out of.19 acres) in the northern side of plot No. 946. Her three brothers got the rest .09 acres of lands of plot No. 946.

Jorifa Khatun's husband Abdul Mojid was a shrewd person. In the first week of Chaitra 1407 B.S., the defendant No. 1 came to know that Jorifa Khatun and her husband Abdul Mojid fabricated a deed on 07.01.1982 in respect of lands mentioned in the deed No. 1015 dated 15.02.1982. The defendant No. 1 filed Title Suit No. 37 of 2001 challenging the said false deed and obtained e*x parte* decree in her favour on 06.09.2001. Thereafter, the heirs of Jorifa Khatun dispossessed the defendant No. 1 from the properties on 08.10.2001.

The defendant No. 1 was constrained to file another suit being Title Suit No. 72 of 2002 on 01.07.2002 for recovery of possession. After filing of that suit, Abdur Rahim and the plaintiff's husband handed over possession of the suit properties to the defendant No. 1. The defendant No. 1 did not pursue the Title Suit No. 72 of 2002 which was dismissed for default. The instant suit is liable to be dismissed.

The plaintiff examined 3 witnesses and the defendant No. 1 examined 2 witnesses. Both the parties exhibited documents to prove their respective cases. Upon hearing the parties the trial Court dismissed the suit. The plaintiff filed appeal against that judgment which was also dismissed by the impugned judgment and decree.

In respect of the *ex parte* judgment and decree dated 06.09.2001 passed in Title Suit No. 37 of 2001 in favour of the defendant No. 1 declaring the Heba-Bil-Ewaz deed dated 07.01.1982 in the name of Jorifa Khatun as being fraudulent and void, the trial Court found that the present plaintiff was not an heir of Jorifa Khatun and that she was not a party to the suit. Therefore, no question arises regarding service of summons upon her in the said suit. The trial Court further observed that the legal heirs of Jorifa Khatun did not prefer any appeal challenging the judgment and decree passed in Title Suit No. 37 of 2001 and that the said decree still stood valid.

The trial Court further found that by the Heba-Bil-Ewaz deed Nos. 1015 and 1016 dated 15.02.1992. Sekendar Ali transferred .10 acres of land of suit plot No. 946 to the defendant No. 1 (daughter of Hazera Khatun) and .09 acres of the same plot to three sons of Hazera Khatun. Thus, by those two deeds Sekendar Ali transferred the entire properties of the suit plot to the defendant No. 1 and her three brothers and no land was left in the suit plot to transfer. The trial Court observed that the plaintiff failed to prove her case that Sekendar Ali transferred .09 acres of land of suit plot No. 946 to Jorifa Khatun through Hiba-Bil-Ewaz deed No. 5365 on 07.01.1982 which was registered on 20.04.1982. Therefore, the plaintiff, who purchased .09 acres of the suit land of plot No. 946 from Ayesha Akter daughter of Jorifa Khatun, did not acquire any title in the suit land.

In respect of possession, the trial Court observed that the plaintiff had filed another suit being Title Suit No. 89 of 2002 for declaration of title and recovery of possession which was then pending. Filing of the Title Suit No. 89 of 2002 shows that the plaintiff was not in possession of the suit land.

The trial Court concluded that the plaintiff had no *locus standi* to file the instant suit.

The lower appellate court concurrently found that "বাদির আরজির বর্ণিত ১৬.০৭.৯২ ইং তারিখের সাফ কবলা দলিল পর্যালোচনায় প্রতিয়মান হয় উক্ত দলিলের

তপছিলে সাবেক ৭০ নং খতিয়ান হাল ২৮৫ নং খতিয়ান হিসাবে উল্লেখ করা হয়েছে। কিন্তু আরজিতে সাবেক ৬৮৯ নং খতিয়ানের ভূমি ২য় তপছিল বর্ণিত ভূমির অন্তর্গত। তাছাড়া বাদির খরিদা দলিলে সাবেক ৩৫৬ ও হালে ৮১৯ দাগের ৬ শতক ভূমি সাবেক ৩৫৭, হাল ৮১৮ দাগের ৪ শতক ভূমি এবং সাবেক ৩৭২ হাল ৮২০ দাগের ২ শতক ভূমি একুনে ১২ শতক ভুমি খরিদ করা হয়েছে। কিন্তু আরজির ২য় তপছিল বর্ণিত মতে চৌদ্দগ্রাম থানার রামচন্দ্রপুর মৌজার সি, আর ৬৮ নং খতিয়ানের ৯৪৬ দাগের ১৯ শতক ভূমি অন্দরে ১০ শতক ভূমি বাদিনী খরিদ করেছিলেন। কিন্তু আরজির বর্ণিত তপছিলের সংগে বাদীর খরিদা দলিলের তপছিলের সম্পূর্ণ ভিন্ন খতিয়ান ও দাগের অন্তর্গত ভূমি হওয়ায় আরজির বর্ণিত ভূমিতে বাদীর খরিদা স্বত্ব প্রমাণিত হয় না। তাছাড়া বাদির আরজির বর্ণিত মতে জরিফা খাতুনের নামে ০৭.০১.১৯৮২ ইং তারিখের সম্পাদিত ও ২০.০৪.১৯৮২ ইং তারিখের রেজিস্ট্রিকৃত দান দলিল মূলে সিকান্দার আলি থেকে অর্জিত ভুমি পরবর্তিতে জরিফা, আয়শা আক্তার রানু নামীয় ব্যক্তির নিকট ২০.০১.১৯৮৬ ইং তারিখের হেবানামা মুলে দখল অর্পনে হস্তান্তর করেন। কিন্তু উক্ত ০৭.০১.১৯৮২ ইং তারিখে সম্পাদিত ও ২০.০৪.১৯৮২ ইং তারিখে রেজিস্ট্রিকৃত হেবা নামা দলিল ৩৭/০১ নং মামলায় দোতরফা সুত্রে বিচার নিস্পত্তি হয়ে বর্ণিত দলিলটি ভুয়া তঞ্চকী মর্মে সাব্যস্ত হয়। উক্ত রায় ডিক্রি অদ্যাবধি বহাল আছে। বাদি উক্ত রায় ডিক্রিকে ১০৮/০২ নং মামলায় চ্যালেঞ্জ করিলেও পুর্বেই উল্লেখ করা হয়েছে যে, ৩৭/০১ নং মামলায় সিদ্ধান্তকৃত দান দলিলের ভুমিতে বাদি তার খরিদা দলিল মূলে আদৌ কোন স্বত্ব স্বার্থ কিংবা অধিকার অর্জন করেনি। কাজেই ৩৭/০১ নং মামলায় বাদির কোন আবশ্যকীয় পক্ষ ছিলেন না কারন উক্ত মামলায় চ্যালেঞ্জকৃত দলিলের ভূমিতে বাদির কোন স্বত্ব স্বার্থ নেই।"

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.

Arif, ABO