

District-Chattogram.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3313 of 2005.

Sultan Ahmed being dead his legal heirs Rokeya
Begum and others

----- Defendant-Petitioner.

-Versus-

Jafar Ahmed being dead his legal heirs Sakina
Khatun and others.

----- Plaintiff-Opposite Parties.

Mr. S.M. Salim, Advocate with
Mr. Md. Azizur Rahman, Advocate

----- For the Defendant-Petitioner.

Mr. Md. Rafiqul Islam Faruk, Advocate with
Mr. Mohammed Enam, Advocate and
Mr. Md. Mamun, Advocate

----- For the Plaintiff -Opposite Parties.

Heard On: 29.07.2025.

And

Judgment Delivered On: 30.07.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 30.04.2005 passed by the learned Additional District Judge and Dewlia Court, Chattogram in Other Appeal No. 304 of 2003, allowing the appeal and reversing the judgment and decree dated 13.05.2003 passed by the learned Joint District Judge, Pariya, Chattogram in Other Suit No. 59 of 2002,

should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The opposite party No. 1 as plaintiff instituted Other Class Suit No. 59 of 2002 seeking a declaration that the registered deed (Deed No. 5641 dated 13.09.1991), revoking an earlier deed of gift/hiba dated 20.02.1986, and the sale deed (Deed No. 5655 dated 13.09.1991) executed in favour of defendant No. 1, are forged, fabricated, void, illegal, and inoperative.

The plaintiff's case, in essence, is that one Mrs. Islam Khatun, the original owner of the suit land, being issueless, executed a registered deed of gift (Deed No. 1254 dated 20.02.1986) in favour of her nephew, the plaintiff, on condition that possession would remain with her during her lifetime and would be handed over to the donee (plaintiff) after her death. However, before her death, she allegedly executed a deed of revocation (Deed No. 5641 dated 13.09.1991) cancelling the gift, and on the same day, executed another deed of sale (Deed No. 5655 dated 13.09.1991) transferring the suit land to defendant No. 1, Sultan Ahmed, her foster son. The plaintiff, through the present suit, challenged both deeds as forged, void, and legally ineffective.

The defendant No. 1 contested the suit by filing a written statement denying all material allegations and claimed that the plaintiff never possessed the land. He asserted that he obtained the suit property lawfully from the original owner through the disputed sale deed. He further contended that the plaintiff had deceived Islam Khatun into executing the gift deed, failed to maintain her as promised, and therefore she revoked the gift deed and transferred the land to him.

Defendant No. 1 examined four witnesses to support his case, while the plaintiff produced two witnesses. Upon hearing both parties, the trial court framed four issues and ultimately dismissed the suit, holding that the plaintiff failed to prove the date of Islam Khatun's death. The plaintiff claimed she died on 11.09.1991, whereas the defendant produced a death certificate issued by the local Union Parishad showing her date of death as 20.10.1991. The trial court found that this inconsistency undermined the plaintiff's claim.

Aggrieved, the plaintiff preferred Other Appeal No. 304 of 2003. The appellate court, by the impugned judgment, reversed the findings of the trial court and decreed the suit in favour of the plaintiff. The defendant No. 1, being dissatisfied, moved this Court in revision and obtained the present Rule, which is now taken up for final disposal.

Mr. Md. Azizur Rahman, learned Advocate appearing on behalf of the defendant No. 1-petitioner, submits that the appellate court committed an error in reversing the trial court's findings, particularly when the plaintiff failed to prove the exact date of Islam Khatun's death. He argues that the death certificate showing 20.10.1991 directly contradicts the plaintiff's claim of 11.09.1991, and that this discrepancy is material since the deeds in question were executed on 13.09.1991.

Mr. Rahman further contends that no possession was ever handed over to the plaintiff, and as such, the essential requirement for a valid gift under Muslim law, delivery of possession was absent. Therefore, the deed of gift was never completed or effective.

Per contra, Mr. Rafiqul Islam Faruk, appearing with Mr. Mohammed Enam and Mr. Md. Mamun, learned Advocates for the plaintiff-opposite party No. 1, submits that under settled principles of law, a registered deed of gift cannot be revoked unilaterally by a subsequent deed of revocation. Once a gift is validly made and possession is delivered, actual or constructive, the donor loses all right, title, and interest in the property.

He argues that the death of Islam Khatun is immaterial in this case, as the essential issue is whether the gift made in 1986 was valid and

complete. Relying on the decision reported in 12 MLR (AD) 166, para 10, Mr. Faruk submits that a registered deed can only be cancelled by a competent court, and the trial court erred in dismissing the suit merely based on a dispute over the date of death.

Having heard the learned Advocates for both parties, and upon perusal of the impugned judgment and decrees, the testimonies of the witnesses, and the materials on record, this Court proceeds to examine the merits.

This Court finds that the learned appellate court rightly reversed the decision of the trial court and decreed the suit in favour of the plaintiff, based on a sound appreciation of the evidence and a correct application of the settled principles governing gifts under Muslim personal law. The central issue before this Court is whether the deed of gift executed by Islam Khatun in 1986 was valid, complete, and legally operative, and whether her purported revocation and subsequent sale of the property in 1991 carried any legal effect.

Under Mahomedan law, as codified in Mulla's *Principles of Mahomedan Law*, a valid *hiba* requires three essential elements: (i) a clear declaration of gift by the donor, (ii) acceptance of the gift by the donee, and (iii) delivery of possession, either actual or constructive.

Once these elements are fulfilled, the gift becomes irrevocable and the donor is divested of all rights over the property.

In the present case, the plaintiff clearly stated in the plaint that “*the said Islam Khatun, apprehending that she might face difficulties during her lifetime, imposed a condition while making the gift that the gifted land would remain in her possession until her death; however, since she was under the care of the plaintiff, it was the plaintiff who, on her behalf, maintained and possessed the scheduled land.*” This averment is significant as it speaks to the nature of possession after the gift and the donor’s intent to retain occupancy during her life. The defendants did not effectively challenge this claim through any credible oral or documentary evidence. Nor did they cross-examine the plaintiff or his witnesses to discredit the narrative. Accordingly, in the absence of effective challenge, this portion of the plaintiff’s case stands unrebutted and is accepted as true.

The plaintiff, being the donor’s nephew and a longstanding resident of the same homestead, adduced consistent oral and documentary evidence to show that he lived with the donor, maintained her, and accepted the gift. The attesting witness (PW-2) corroborated the plaintiff’s testimony (PW-1), confirming the execution of the gift, its acceptance, and possession by the plaintiff. Although there was no formal partition or mutation during the donor’s lifetime, the plaintiff’s

uncontroverted claim of co-residence and active maintenance of the donor sufficiently establishes constructive possession, particularly in the context of their close familial relationship and the nature of the residential property.

Even assuming, arguendo, that physical delivery of possession was not effected, Mahomedan law does not require actual ouster of the donor in situations where donor and donee reside together or where the nature of the relationship renders exclusive possession impractical. In such cases, courts have consistently held that constructive possession—namely, the donee’s ability to exercise dominion or control over the property, is sufficient to complete the gift.

The clause in the plaint suggesting that the donor postponed delivery of possession until her death does not negate the validity of the gift. Paragraph 164 of Mulla clearly states: *“Where a gift is made subject to a condition which derogates from the completeness of the grant, the condition is void, and the gift will take effect as if no such condition were attached.”* Therefore, any stipulation seeking to defer possession or reserve revocation rights cannot defeat a completed gift under Muslim law.

This Court has considered the legal implications of the deferred-possession clause. While Paragraph 162 of Mulla emphasizes delivery

of possession as essential, Paragraphs 163 and 164 clarify that constructive possession suffices in appropriate circumstances, especially where the donor and donee reside together in a familial setup. In such cases, exclusive possession by the donee is not mandatory if the donor's continued residence is permissive and the donee exercises effective control.

In the present case, Islam Khatun was the plaintiff's maternal aunt. Evidence on record shows that the plaintiff cared for her, maintained the gifted property, and lived with her. Her continued residence was clearly permissive. This satisfies the requirement of possession as per Paragraph 165 of Mulla, which holds that even if the donor remains in possession after making the gift, the gift is valid if the donee is in possession and the donor's residence is merely by leave and license. The Court must focus on the intention and conduct of the parties, both of which point to a completed, irrevocable gift in this case.

The trial court erred in dismissing the suit on the ground that the plaintiff failed to prove the exact date of Islam Khatun's death. This Court finds that such consideration is irrelevant. The critical legal issue is not when the donor died but whether the gift was validly completed during her lifetime. Once the gift was completed in law, the donor lost all authority over the property. Any subsequent revocation or transfer by her was legally void.

It is also well settled, as affirmed by the Appellate Division in *12 MLR (AD) 166*, that a registered deed cannot be cancelled or invalidated unilaterally by the executant; only a competent court may do so. Thus, the revocation deed of 1991, executed by Islam Khatun without court sanction, is a nullity. Consequently, the sale deed executed on the basis of such revocation also fails to convey any title.

This court is of considered view that once a registered deed has been lawfully executed and acted upon, it cannot be revoked or cancelled unilaterally by the executant. Permitting such unilateral revocation would undermine the certainty, finality, and sanctity of registered instruments, and would jeopardize the title and legal interest already passed to the recipient of the deed. To maintain the integrity of conveyancing and protect vested rights, any challenge to or cancellation of a registered deed must be brought before, and adjudicated by, a competent court of law.

The defendant's claim, which is based solely on the sale deed executed by Islam Khatun in 1991, is unsustainable. By that time, the donor had already parted with her title through a valid and complete gift. Moreover, the defendant, being a foster son, is not a legal heir under Muslim law. His claim is derived from a void act of revocation, and thus he acquired no title. His possession, if any, is unauthorized and incapable of defeating the plaintiff's lawful title.

For the above reasons, this Court finds that the learned appellate court correctly held that the gift in favour of the plaintiff was valid and operative, and that the subsequent deeds of revocation and sale were ineffective and void. The appellate court's judgment is firmly grounded in the facts and well-established legal principles under Mahomedan law. In contrast, the trial court's reliance on an immaterial issue led to a manifest miscarriage of justice.

Accordingly, **the Rule is discharged.**

The judgment and decree passed by the learned Additional District Judge in Other Appeal No. 304 of 2003 is hereby upheld

There shall be no order as to costs.

Let the Lower Court Records be transmitted to the Court below along with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

Asrhaf/A.B.O.