

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.559 OF 2002

In the matter of:

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

And

Md. Emdadul Huq Bepari and others
... Petitioners

-Versus-

Tofazzel Hossain Bepari being dead his legal heirs-
Lalmon Begum and others

... Opposite parties

Mr. Biplab Goswami, Advocate

...For the petitioner Nos.1 and 2.

Mr. Zainul Abedin, Advocate

... For the opposite party Nos.1(a) -
1(e).

Heard on 14.01.2025 and 09.02.2025.

Judgment on 10.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 15.11.2001 passed by the learned Joint District Judge, 2nd Court, Pirojpur in Title Appeal No.126 of 1999 reversing those dated 28.09.1999 passed by the learned Senior Assistant Judge, Sadar, Pirojpur in Title Suit No.85 of 1996 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration that three deed of heba dated 11.07.1979

registered by the District Registrar, Bakergonj for "Ka" schedule land are forged, illegal, without jurisdiction and not binding upon the plaintiffs.

It was alleged that Hurmot Ali was the rightful owner and possessor of "Ka" schedule land who had two wives and plaintiff and defendant No.4 were two sons of above Hurmot Ali by his first wife and defendant Nos.3 was the second wife of Hurmot Ali and defendant Nos.1 and 2 were daughter and son of Hurmot Ali by his second wife. Hurmot Ali became sick and bed ridden due to old age ailments before 8-9 years of his death and the plaintiff and his wife used to take care of sick Hurmot Ali. On 07.11.1995 after returning to his home the plaintiff came to know that defendant No.4 as plaintiff filed Title Suit No.222 of 1991 for cancellation of above three registered deeds of gift allegedly executed by Hurmot Ali in favour of defendant Nos.1-3 and plaintiff was defendant No.4 in above suit. The plaintiff and defendant Nos.1-3 of above suit falsely filed a vokalatnama and written statement in the name of defendant No.4 forging the signature of this plaintiff. In fact this plaintiffs as defendant No.4 did not appear in above suit nor filed any written statement. He did not appoint Advocate Tapon Kumar Chakrabarty as his Advocate in above suit. The plaintiff and defendants No.1 of above suit made a compromise and accordingly above suit was dismissed. Defendant Nos.1-3 created above forged registered heba deeds by personation and Hurmot Ali was not aware above forged documents. The property of above three documents were within the

territorial jurisdiction of Pirojpur Sub-registry Office but those were illegally registered in the Office of District Registrar, Bakergonj. Hurmot Ali did not deliver possession of above land and after the demise of Hurmot Ali above property is being possessed by all his legal heirs.

Defendant Nos.1-3 contested the suit by filing a joint written statement alleging that Hurmot Ali during his life time purchased huge land in the name of defendant No.4 and the plaintiff since they were his elder sons and he made a gift of disputed 11.92 acres land to defendant Nos.1-3 and in support of above oral gift executed three registered gift deeds in the office of Registrar, Bakergonj. The defendant filed C.R. Case No.491 of 1991 against the plaintiff and other two persons for creating a forged deed of heba dated 07.10.1971. In above case plaintiff executed a solenama admitting the correctness and genuinity of above three registered heba deeds of the defendants. Defendant No.4 as plaintiff instituted Title Suit No.222 of 1992 for cancellation of above three registered heba deeds of the defendants and the plaintiff was defendant No.4 in above suit and he entered appearance in above suit and appointed Advocate Tapon Kumar Chakrabarty as his Advocate who submitted a written statement in above suit. In above written statement this plaintiff admitting that their father asked him and defendant No.4 to transfer some land which he had purchased in their names to defendant Nos.1 and 3. But they refused to do so and advised their father to transfer his own property to above defendants and

accordingly his father executed and registered above three deeds of heba in favour of defendant Nos.1-3. Plaintiff and defendant No.4 of above suit had admitted the correctness and genuinity of above registered deeds of gift and the plaintiff is still bound by above his admission.

At trial plaintiffs examined four witnesses and documents of the plaintiff were marked as Exhibit Nos.1 series - 5. On the other hand defendants examined eight witnesses and documents of the defendants were marked as Exhibit Nos.Ka - Cha.

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

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Title Appeal No.126 of 1999 to learned District Judge, Pirojpur which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with this petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Biplab Goshwami, learned Advocate for the petitioner Nos.1 and 2 submits that admittedly disputed 10.58 acres land belonged to Hurmat Ali who had two wives and plaintiff and defendant No.4 were

his two sons by his first wife and defendant No.3 was his second wife and defendant Nos.1 and 2 were son and daughter respectively of Hurmot Ali by his second wife. Since above Hurmot Ali purchased huge quantity of land in the names of the plaintiff and defendant No.4 his elder sons of Rustom Ali by first wife he made a gift of disputed 10.58 acres land to defendant Nos.1-3 and executed and registered three deeds of gifts on 11.07.1979. Above three gift deeds were registered in the Officer of Registrar, Bakergonj due to lack of security in the Sub-registry Office at Pirojpur. On the basis of above registered gift deeds defendants got their names mutated and paid rents to the Government and possessing above land. Defendant No.4 as plaintiff instituted Title Suit No.222 of 1991 for cancellation of above three registered gift deeds and plaintiff was defendant No.4 in above suit who entered appearance in above suit and submitted a written statement by Advocate Tapon Kumar Chakrabarty admitting the genuinity and effectiveness of above deeds of gifts. Above Title Suit No.222 of 1991 was dismissed and the plaintiff as defendant No.4 having admitted above gift deeds this second suit of the plaintiff for the same relief is not tenable in law.

The learned Advocate further submits that the plaintiff created a forged deed of gift showing Hurmot Ali as executant and against above deed defendant No.1 as complainant filed C.R. Case No.419 of 1991 under Sections under Sections 463, 464 and 34 of the Penal Code. In above case plaintiff relinquished his claim over above forged gift deed and admitted the genuinity and effectiveness of above three deeds of

gifts of the defendants. As DW7 Advocate Tapon Kumar Chakroborty gave evidence in support of submission of written statement for the plaintiff in Title Suit No.222 of 1991. The defendants produced three original gift deeds dated 11.07.1979 and as DW2 Jalil Fakir a scribe of above documents gave evidence in support of due execution of above gift deeds. In view of above evidence the onus shifted upon the plaintiffs to prove that above documents were forged but the plaintiffs could not prove that by legal evidence. As far as possession of above property is concerned PW5 Emdad has given evidence in support of defendants possession in above land and produced and proved certified copies of two mutation cases and a bunch of Government rent receipts. On consideration of above materials on record the learned Judge of the trial Court rightly dismissed the suit but the learned Judge of the Court of Appeal below without reversing any material findings of the trial most illegally allowed the appeal and set aside the judgment and decree of the trial Court and decreed the suit which is not tenable in law.

On the other hand Mr. Zainul Abedin, learned Advocate for the opposite party Nos.1(a)-1(e) submits that the plaintiff a son and heir of Hurmat Ali has challenged the legality and propriety of above three registered deeds of gift dated 11.07.1979 alleging that on above date Hurmat Ali was bed ridden and above documents were registered in Barishal instead of Pirojpur without any reasonable cause. The defendants could not mention the date of declaration of the gift and

delivery of possession to the defendants. The defendants did not take any initiative to prove that the Left Thumb Impressions on the disputed gift deeds were actually of Hurmot Ali by obtaining expert opinion. The plaintiff was defendant No.4 of Title Suit No.222 of 1991 filed by his brother defendant No.4 of this Suit. But the plaintiff did not appoint Mr. Tapon Kumar Chakrabarty as his Advocate nor he filed any written statement in above suit. Above written statement was created by the defendants to deprive the plaintiff from his lawful right. As far as the solenama executed by the plaintiff in C. R. Case No.419 of 1991 is concerned above solenama of a Criminal Case cannot be used as an evidence in this civil proceedings. On consideration of above facts and circumstances of the case and evidence of the record the learned Judge of the Court of Appeal below has rightly allowed the appeal, set aside the unlawful judgment and decree of the trial Court and decreed the suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that Hurmot Ali was the rightful owner and possessor of above 10.58 acres land and he had two wives and the plaintiff and defendant No.1 were his two sons by first wife and defendant No.3 was his second wife and defendant No.1 and 2 were son and daughter respectively by defendant No.3.

Plaintiff has instituted this suit on 02.07.1996 for declaration that three registered deeds of gift dated 17.11.1979 of the defendants by Hurmot Ali are unlawful, fraudulent and not binding upon the plaintiffs. The plaintiff did not specifically challenge the declaration of heba by above Hurmot Ali or delivery of possession. It has been alleged that at the time of registration of above gift deeds Hurmot Ali was bed ridden and unable to travel to the Officer of the Registrar in Bakergonj. But no specific mention was made that above Hurmat Ali was suffering from any life threatening decease which made him fully incapable to travel. Plaintiff has examined three witnesses namely PW2 Asmat Kha, PW3 Mokbul Ali and PW4 Rashid Fakir who stated that Hurmot died at the age of 72/75 and before 8-9 years of his death he was bed ridden. Above witnesses did not mention that Hurmot Ali was fully unable or unfit to undertake a travel. Nor any medical document was produced to show that Hurmot Ali was totally incapable to walk or undertake a travel.

It is true that above three Heba deeds were registered by the Registrar of Bakergonj instead of Sub-registrar of Pirojpur. But Section 30 of the Registration Act, 1925 gives legal competence to the District Registrar to register any document which could be registered lawfully by any Sub-registrar under his jurisdiction. As such there is no illegality in the registration of above three heba deeds by the Registrar of Bakergonj.

It has been alleged that defendant No.4 the elder son of Hurmot Ali was mighty man in the locality and due to lack of security they moved to Bakergonj for registration of above gift deeds. Above explanation has been supported by DW3 Advocate Majedur Rahman who stated that on security grounds he advised the defendants to get above heba deeds registered from the Registrar of Bakergonj.

As far as the execution and registration of above three deeds are concerned defendant No.1 while giving evidence as DW1 has produced above three registered deeds of gift dated 17.01.1979 which were marked as Exhibit No."Ka" series. A scribe of above gift deeds Jalil Fakir gave evidence as PW2 in support of due preparation, execution and registration of above three deeds of gifts.

In view of above evidence the onus shifted upon the plaintiff to prove by legal evidence that the Left Thumb Impressions on above three deeds of gifts were not of Hurmot Ali but those were forged by obtaining expert opinion or by oral evidence of competent witness. But the plaintiff did not take any initiative to disprove due execution of above deeds. The plaintiff while giving evidence as PW1 stated that Hurmot Ali did not deliver possession of above land to the defendants and all heirs of Hurmot Ali are in possession of above land. But in support of above claim of possession the plaintiff did not produce any oral or documentary evidence. On the contrary DW5 Emdad has corroborated the claim of DW1 that pursuant to above deed defendants are in possession in above land. DW1 has further claimed that pursuant

to above gifts their names were mutated and they paid rent to the Government and in support of above claims the defendants have produced the order of mutations of their names and rent receipts. In this regard PW1 stated in his cross examination that he did not see if the defendants had got their names mutated pursuant to above gift deeds and they were in possession of above land.

It is admitted that defendant No.4 the full brother of the plaintiff instituted Title Suit No.222 of 1991 as plaintiff for cancellation of above three deeds of gifts and plaintiff of this suit was defendant No.4 in above suit. As DW7 Advocate Tapon Kumar Chakrabarty stated that he receipt vokatnama from defendant No.4 and submitted a written statement in above suit. Above written statement and vokatnama were produced at trial and marked as Exhibit No."Ga". In above written statement defendant No.4 stated that their father Hurmot Ali asked them to transfer some land which he purchased in their names to defendant Nos.1-3 but the plaintiff refused to do so and advised his father to transfer property which still stands in his name to defendant Nos.1-3 and pursuant to above advise his father executed and registered above three gifts deeds to the defendant. In his cross examination the plaintiff as PW1 stated that the signature on the vokatnama dated 13.11.1995 of Title Suit No.222 of 1991 did not belong to him. But the signature in the verification part of the petition dated 13.11.1995 of above suit belongs to him. In view of above evidence on record it is not believable that the plaintiff of Title Suit

No.222 of 1991 who was full brother of defendant No.4 of above suit conspired with the defendant Nos.1-3 of above suit against this plaintiff and created forged vokalatnama and written statement for defendant No.4 of above suit.

It is not disputed by the plaintiff that defendant No.1 as complainant filed C.R. Case No.419 of 1991 and this plaintiff was the sole accused of above case. In above case it and was alleged that above accused of forged a deed of gift showing Hurmot Ali as executants of executed above deed of 10.07.1971. On an enquiry above deed was found to be forged and above case was dismissed on the basis of solenama executed by the complainant and above accused. In his cross examination PW1 stated that defendant No.1 filed a Criminal Case against him for creation of a forged gift deed but he did not raise any claim on the basis of above gift deed dated 07.10.1991. It is not true that he was put to Hazat in connection of above case. In above case a report was submitted on 03.11.1991 and he did not submit any narazi petition. In above case he filed a petition for compromise on 26.04.1992 stating that the three gift deeds executed by his father on 17.11.1979 to the complainant were genuine. The defendant has produced certified copy of above petition of compromise and order of the Court on above compromise petition which were marked as Exhibit No."Kha" series.

The learned Advocate for the petitioner submits that the materials of above Criminal Case is not admissible in this civil proceeding. It is not necessary to take into account the certified copies of the complaint,

inquiry report, compromise petition and order of C.R. Case No.419 of 1991 since in cross examination PW1 has admitted that on 26.04.1992 he submitted a petition for compromise in above case admitting that the impugned three registered heba deeds were genuine. Above admission of PW1 can be used against the plaintiff.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned Judge of the trial Court on correct appreciation of materials on record rightly dismissed the suit but the learned Judge of the Court of Appeal below utterly failed to appreciate the facts and circumstances of the case and evidence on record and without reversing any material findings of the trial Court most illegally allowed the appeal, set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

In above view of the materials on record I find that the impugned judgment and decree of the Court of appeal below suffers from serious illegality and I find any substance in this revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 15.11.2001 passed by the learned Joint District Judge, 2nd Court, Pirojpur in Title Appeal No.126 of 1999 is set aside and the judgment and decree dated

28.09.1999 passed by the learned Senior Assistant Judge, Sadar, Pirojpur in Title Suit No.85 of 1996 is restored.

However, there will be no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER