

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1142 OF 2007

In the matter of:

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

And

Abdul Mazid

.... Petitioner

-Versus-

Abu Taher and others

.... Opposite parties

Mr. Mohammad Anis Ahmed, Advocate

.... For the petitioner.

Mr. Md. Shahed Razmul Bari, Advocate

.... For the opposite party

Nos.62, 63, 65 and 89.

Heard and Judgment on 28.05.2025.

This Rule was issued calling upon the opposite party Nos.24, 30, 32, 34 and 60 to show cause as to why the impugned judgment and decree dated 16.10.2006 passed by the learned Joint District Judge and Assistant Sessions Judge, 2nd Court, Bhola in Title Appeal No.04 of 2002 dismissed the appeal affirming the judgment and decree dated 19.11.2001 passed by the learned Senior Assistant Judge, Sadar, Bhola in Title Suit No.98 of 1993 decreeing the suit in part 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 partition of property of C.S. Khatian Nos.117 and 525 seeking a saham for 105 acres land alleging that Dula Miah was owner and possessor of 5.77 acres land of above khatians who raised Sekandar Miah predecessor of the plaintiff from his childhood who worked for him. After attaining majority Dula Miah gave him marriage and being satisfied with his long and cordial service Dula Miah transferred 80 decimal land from above khatians to Sekandar by registered deed of gift dated 4 Falgun 1336 B.S. Above Dula Miah died leaving only son Nezamul Hoque predecessor of the defendants who separated above Sekandar who erecting dwelling huts started to reside in above land with his family. Above Sekandar joined the British Indian Army and went abroad to participate in the second world war and after end of above war returned back to above home and died leaving plaintiffs as his heirs. Above Nezamul transferred 16 decimal land to plaintiff No.1 by a registered deed of patta dated 17.06.1946. The plaintiffs also purchased 4 decimal land from Nuru Miah and Idris Miah by registered kabala deed dated 28 Agrahyon 1381 B.S. Thus by purchase and inheritance plaintiffs acquired 1.03 acres land. Above land has not been rightly recorded in the relevant R.S. and S.A. Khatian nor partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.30, 32, 34 and 37 contested above suit by filing a joint written statement alleging that Dula Miah did not transfer 80

decimal land to Sekandar by registered deed of gift. Plaintiff No.1 obtained settlement of 16 decimal land from Nezamul Hoque predecessor of the defendants by a registered deed of patta dated 17.06.46 and above land has been rightly recorded in the name of the plaintiff No.1 in relevant R.S. and S.A. Khatian. Dula Miah died before execution and registration of above deed of gift dated 03.03.1930. Dula Miah transferred above 80 decimal to his wife Maya Jan Bibi by a deed of gift. After demise of Nezamul these defendants as his successive heirs were owning and possessing above land and they have transferred some land by registered kabla deeds to other defendants who are in possession in above land and in their names relevant R.S. and S.A. Khatians were rightly prepared.

At trial plaintiff and defendant examined three witnesses each. Documents of the plaintiff were marked as Exhibit Nos.1-6 and those of the defendants were marked as Exhibit Nos."Ka" to "Uma" series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit in part and allotted separate saham to the plaintiffs for 18 decimal land.

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Title Appeal No.4 of 2002 to the District Judge, Bhola which was heard by the learned Joint District Judge, 2nd Court who dismissed above appeal but reduced the saham of the plaintiffs to 16 decimal land.

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

Mr. Mohammad Anis Ahmed, learned Advocate for the petitioner submits that admittedly Dula Miah was the rightful owner and possessor of 5.77 decimal land appertaining to C.S. Khatian Nos.117 and 525 and he died leaving one son Nezamul and wife Maya Jan Bibi and defendants are heirs of above Nezamul and plaintiffs are heirs of Sekandar Miah.

Plaintiffs claim that above Sekandar Miah was raised by Dula Miah from his childhood and he worked for Dula Miah. When Sekandar became adult Dula Mia arranged his marriage and being satisfied with his long service transferred 80 decimal land to Sekandar by registered deed of gift dated 03.03.1030 The plaintiff submitted original deed of gift in the trial Court but above deed was lost from the trial Court and the plaintiffs submitted a certified copy above document which was marked as Exhibit No.1.

Defendants have in the written statement denied the execution of above deed of gift by Dula Miah but did not deny that Sekandar was raised by Dula Miah from childhood who worked for Dula Miah and Dula Miah gave marriage of Sekander and Sekander joined the British Indian Army during world war two and went outside of the country.

Nor it has been denied by the defendant that above Sekander returned from war and lived and died in his dwelling huts in the disputed land.

The claim of the defendants that Dula Miah died before the execution and registration of above deed of gift has not been proved by legal evidence. Defendant No.30 Mostafa gave evidence as DW1. He is the son of Nezamul and grandson of Dula Miah. In his evidence he did not say that Sekander was not raised by Dula Miah from his childhood or after marriage Sekander did not erect his dwelling huts and lived there with his family nor he denied that during second world war Sekandar Joined British Indian Army and went abroad.

Defendants have stated that on the basis of settlement of 16 decimal land from Nezamul plaintiff No.1 Mojib constructed dwelling house in the disputed land. But the defendants did not mention where was the residence of Sekandar after marriage or before plaintiff No.1 was born or where Sekandar died and was buried. All above facts and circumstance of the case and evidence on record show that Dula Miah gifted above 80 decimal land by above registered deed of gift to Sekander who constructed his dwelling huts in above land and he resided there and he died there and above deed of gift was acted upon.

Defendants do not dispute plaintiffs title in 18 decimal land on the basis of settlement from Nezamul and purchase from Nuru Miah and Idris Miah by registered kabla deed. But the learned Judge of the Court of Appeal below most illegally reduced the saham of the plaintiffs to 16 decimal from 18 decimal which is not tenable in law.

On the other hand Mr. Md. Shahed Razmul Bari, learned Advocate for the opposite party Nos.62, 63, 65 and 89 submits that the plaintiffs have claimed title from the land of two C. S. Khatians being Nos.117 and 525 but they did not bring all the land of above two C. S. Khatians into the hotchpotch of this suit nor they have impleaded all the co-sharers of above Khatians as defendants in this suit. The plaintiffs did not mention the share of Dula Miah in above two Khatians or the total land of Dula Miah in above two khatians. The plaintiffs did not make any endeavor to prove the declaration of heba and delivery of possession by Dula Miah to Sekandar by legal evidence. Before execution and registration of above deed of gift dated 03.03.1930 Dula Miah transferred above land to his wife Maya Jan Bibi by a registered deed of sale dated 28.07.2016. Since Dula Miah had no right, title and interest in above 80 decimal land he had no cause or reason to transfer the same to Sekandar by gift. Plaintiffs have miserably failed to prove transfer of above 80 decimal land by Dula Miah to Sekandar by gift and delivery of possession. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below concurrently held that the plaintiff could not prove that Dula Miah transferred 80 decimal land to Sekandar by registered deed of gift dated 03.03.1930. The learned Judge of the Court of appeal below rightly allowed above appeal in part and decreed the suit for 16 decimal land which calls for no interference.

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

It is admitted that Dula Miah predecessor of the defendants was the owner and possessor of land of C. S. Khatian No.117 and 525 including disputed 80 decimal land and Nezamul was his son and heir and plaintiffs are heirs of Sekander. It is also admitted that plaintiff No.1 acquired 16 decimal land by way of settlement by registered deed of patta dated 11 Jaistha 1353 B.S. (Exhibit No.4) from Nezamul Haque the son and heirs of Dula Miah.

Plaintiffs claim that Dula Miah transferred above 80 decimal land to Sekander by registered deed of gift dated 03.03.1930 (Exhibit No.4) and delivered possession. Admittedly Sekander was not a relative of Dula Miah and Dula Miah had a son and wife. As such why would Dula Miah make a gift of 80 decimal land to Sekander ? While giving evidence as PW1 plaintiff No.1 has reiterated the statements made in the plaint as to the relationship of above Dula Miah with Sekandar. He stated that Dula Miah raised Sekandar from his childhood who worked for Dula Miah and after Sekandar attained majority Dula Miah gave him marriage and being satisfied with his selfless and long service Dula Miah transferred 80 decimal land to Sekandar by above deed of gift (Exhibit No.4). After demise of Dula Miah his son Nezamul Hoque separated Sekandar who erected dwelling huts in above land and lived there. Above Sekandar joined the British Indian Army and went abroad to participate in the world war two. After above war he came

back to above dwelling house and died there leaving plaintiff Nos.1-5 as heirs.

Defendant No.30 Mostafa is the son of above Nezamul Hoque and grandson of Dula Mia who gave evidence as DW1. But in his evidence he did not deny all above claims. DW1 Mostafa did not say that Dula Miah did not raise Sekandar from his childhood nor above Sekandar rendered endless and good services to Dula Miah or Dula mlah did not arrange marriage of Sekander or Sekander did not erect dwelling huts in above land. In cross examination he merely stated that it was not true that his father Nezamul Hoque raised Sekandar. It is not the case of the plaintiff that Nezamul Haque raised Sekandar or Sekandar worked for Nezamul.

DW1 Mostafa was not born when Dula Mlah executed and registered impugned deed of gift dated 30.03.1930. DW1 Mostafa has admitted in cross examination that 13 decimal land has been recorded in the name of Sekander. At Paragraph No.10 of the written statement above defendant has reiterated above admission stating that 13 decimal land of R. S. Khatian No.980 and Plot No.1093 has been recorded in the name of Sekandar. Above R.S. Khatian No.980 corresponds to disputed C. S. Khatian No.525 which belonged to Dula Miah. The defendants did not have any case that Selamdar acquired any land of C. S. Khatian No.117 or 525 in any way other than above deed of gift.

The plaintiffs have produced a certified copy of above deed of gift dated 30.03.1930 which was marked as Exhibit No.4. Plaintiffs have

provided an explanation for not exhibiting of the original deed of gift. It was stated that above original deed was submitted in the trial Court and was lost from above Court. Above explanation of the plaintiffs remains uncontrovered DW1 Mostafa merely stated that it was not a fact that Dula Miah transferred 80 decimal land by above deed of heba to the father of the plaintiffs. In the next breath he stated that above heba deed was not acted upon. Above witness did not mention that before execution and registration of above deed of gift Dula Miah had died.

DW1 stated that in 1916 Dula Miah transferred all his land including disputed 80 decimal land of C. S. Khatian Nos.117 and 525 by a registered deed of sale to his wife Maya Jan Bibi. A deed of sale of land between a husband and his wife is seem with grave suspicion when the same owner transfers the same land to an outsider third person. The defendant could not adduce any evidence in support of payment of consideration of above deed or delivery of possession of above 80 decimal land.

DW1 Mostfa did not say anything as to the claim of the plaintiffs that after marriage Sekander erected dwelling huts in above land and he died in above home. In cross examination DW1 Mostafa stated that he could not mention the plot or khatian number of the house of the plaintiffs.

The learned Advocate for the opposite parties concedes that Sekander died in the dwelling huts in the disputed property but above

property was acquired by plaintiff No.1 by registered deed of patta from Nezamul. But there is no explanation as to where Sekandar lived after marriage and before plaintiff No.1 was born. It is not denied by DW1 Mostafa that after his marriage Sekander was separated by Nezamul Haque and Sekandar lived and died in his own dwelling huts.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned Judges of both the Courts below miserably failed to appreciate that the plaintiff succeeded to prove that since childhood Sekander lived with and worked for Dula Miah who gave him marriage and gave disputed 80 decimal land by execution and registration of deed of gift dated 03.03.1930 (Exhibit No.4) and in above land Sekandar erected his dwelling huts and started living there with his wife after separ. As such the plaintiffs are entitled to get separate sahama for above 80 decimal land and 16 decimal land which was transferred by Nezamul to plaintiff No.1 by registered deed of patta dated 11 Jaistha 1353 B.S.

In above view of the facts and circumstances of the case and evidence on record I find substance in this Civil Revisional application under Section 115(1) 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 16.10.2006 passed by the learned Joint District Judge, 2nd Court, Bhola in Title Appeal No.04 of 2002 dismissing the appeal and affirming the judgment and decree dated 19.11.2991

passed by the learned Senior Assistant Judge, Sadar, Bhola in Title Suit No.98 of 1993 decreeing the suit in part is set aside and above suit is decreed in part and plaintiffs are allotted a separate saham for 96 decimal land. Defendants are directed to effect partition of above land amicably with 60 days from the date of receipt of this order in default plaintiffs shall get the same through Court.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.