

**Present:-*****Mr. Justice Mahmudul Hoque*****Civil Revision No.4704 of 2004**

Md. Torab Ali being dead his legal heirs;  
 1(a) Surjaban Bibi and others

... Petitioners

-Versus-

Md. Sharafat Ali

... Opposite- party

Mr. A.S.M. Rahmatullah with  
 Mr. Khaled Saifullah, Advocates

...For the petitioners

Mr. Md. Azizul Bashar, Advocate

...For the opposite-party No.1.

**Judgment on 2<sup>nd</sup> June, 2025.**

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 14.09.2004 passed by the learned Joint District Judge, Cumilla in Title Appeal No.179 of 1999 allowing the appeal and thereby reversing the judgment and decree dated 28.07.1999 passed by the learned Senior Assistant Judge, Debidwar, Cumilla in Title Suit No.22 of 1998 dismissing the suit 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 relevant for disposal of this Rule, in short, are that the opposite party, as plaintiff, filed Title Suit No.22 of 1998 in the Court

of Assistant Judge, Debidwar, Cumilla for cancellation of deed of exchange registered on 13.03.1988 in Debidwar Sub-registry office between the plaintiff and defendant stating that the land in Plot No.911 measuring 27 sataks owned by the plaintiff by purchase and is in his possession. On the other hand, 20 sataks of land in Plot No.890 belonged to the defendant. Both the plaintiff and the defendant agreed to exchange the aforesaid two plots of land between them. The talk of exchange was made final in the house of the plaintiff and thereafter on 13.03.1988 corresponding to Falgun 29 of 1394 B.S. they went to Debidwar S.R. Office, the defendant purchased stamps, the deed was written by A. Latif known to the defendant. The plaintiff was in the belief that the exchange deed was written according to talk exchanging Plot No.890 with Plot No.911 and executed the deed and registered the same. After registration of the deed in question the plaintiff handed over possession of Plot No.911 to the defendant, but the defendant informed the plaintiff, that Plot No.890 is under kot mortgage with a third person and will deliver possession to the plaintiff soon after release from mortgage. The plaintiff put reliance on the assurance of the defendant in good faith but ultimately, the

defendant failed to hand over possession of Plot No.890 to the plaintiff and disclosed the fact saying that he exchanged .06 sataks land out of .31 sataks of Plot No.1281. The plaintiff knowing the said fact become surprised and obtained certified copy of the exchange deed on 01.06.1997 corresponding to 18<sup>th</sup> Jaistha 1404 B.S. and came to learn that the defendant taking advantage of trust upon him very cunningly included Plot No.1281 measuring .06 sataks instead of Plot No.890 measuring 20 sataks in the deed of exchange in connivance with the deed writer. There was no talk with the defendant for exchanging Plot No.1281 measuring .06 sataks with Plot No.911 measuring .27 sataks and there was no earthly reason for exchanging .27 sataks of land owned by the plaintiff with .06 sataks of land owned by the defendant. The defendant did not deliver possession of the property to the plaintiff. Moreover, Plot No.1281 owned by maternal grandfather of the defendant named Khowaz Ali by purchase vide deed dated 27.01.1970 who by a registered Wasiatnama dated 02.02.1977 transferred the same to his daughter (mother of the defendant) named Jamila Khatun who is in possession of the same. The defendant had no title in Plot No.1281 to exchange the same with

the plaintiff. The deed of exchange is a product of fraud, never acted upon by delivery of possession to the plaintiff. The deed of exchange created cloud in the title of the plaintiff, hence the present suit.

The defendant contested the suit by filing written statement contending that Plot No.1281 measuring an area of .31 acre were in possession of Ali Akbar and others on the basis of a Power of Attorney dated 01.01.1976. On 28.05.1977, Ali Akbar and his wife Johorernesa sold the same to Hafizuddin. The defendant by a deed of exchange dated 06.10.1983 got the Suit Plot No.1281 from Hafizuddin. Ali Akbar and others had no right to sell the property in Plot No.1286 to Khoaz Ali vide deed dated 27.01.1970 as they got power on 01.01.1976. The alleged Wasiatnama dated 02.01.1977 is fabricated and not acted upon. The defendant exchanged .06 acre land of Plot No.1281 with .27 acre of Plot No.911 having same value. Subsequently, while in possession, the plaintiff sold the said .06 sataks land to the defendant at a consideration of Tk.24,000/- and delivered possession.

The trial court framed 4(four) issues for determination of the dispute. In course of hearing the plaintiff examined 2(two) witnesses

as P.Ws and the defendant examined 3(three) witnesses as D.Ws. Both the parties submitted some documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing decreed the suit by its judgment and decree dated 28.07.1999.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court the plaintiff preferred Title Appeal No.179 of 1999 before the learned District Judge, Cumilla. Eventually, the appeal was transferred to the Court of learned Joint District Judge, Cumilla for hearing and disposal, who after hearing by the impugned judgment and decree dated 14.09.2004 allowed the appeal and thereby reversing the judgment and decree of the trial court. At this juncture, the defendant-petitioner moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. A.S.M. Rahmatullah, learned Advocate appearing for the petitioners submits that admittedly a deed of exchange was executed and registered in between the plaintiff and defendant on 13.03.1988, exchanging Plot No.911 measuring .27 decimal owned by the plaintiff

and Plot No.1281 measuring .6 decimal owned by the defendant in suit. After exchange, the plaintiff delivered possession of Plot No.911 measuring .27 decimals to the defendant and the defendant also delivered possession of Plot No.1281 measuring .6 decimals land to the plaintiff. Subsequently, the plaintiff proposed the defendant that though he exchanged the property of defendant measuring .6 decimals under Plot No.1281 he wants to sell the same to the defendant. Accordingly, price of the property has been settled at Tk.24,000/-. The defendant paid the said amount to the plaintiff with the assurance that he will execute and register the sale deed in favour of the defendant at a convenient time and day. But ultimately, he did not come forward to execute the sale deed and register the same on different plea. When the defendant demanded sale deed from the plaintiff, the plaintiff instead of executing and registering sale deed, filed the instant suit very cunningly alleging that the deed in question was executed and registered by practicing fraud and the same has not been acted upon till today.

He submits that the trial court rightly held that the disputed deed of exchange was executed and registered on 13.03.1988. But the

plaintiff filed the suit for cancelation of the same in the year 1998 after about 10 years which is unusual and there was no earthly reason to find out fraud by the plaintiff during 10 years and as such, dismissed the suit on the ground of limitation. But the appellate court failed to appreciate the fact and most unfortunately allowed the appeal and decreed the suit ignoring important question of law of limitation, as such, committed an error of law in the decision occasioning failure of justice.

Mr. Md. Azizul Bashar, learned Advocate appearing for the opposite party No.1 submits that the trial court while dismissing the suit rightly held and observed that the deed in question was obtained by practicing fraud and against such observations and findings of the trial court, the defendant did not prefer any appeal before the appellate court, meaning thereby, the defendant without any hesitation conceded that the deed of exchange is a product of fraud which has not been acted upon as claimed by the plaintiff. He submits that the plaintiff did not deny execution and registration of the deed, exchanging property of the plaintiff covered by Plot No.911 measuring .27 sataks with the defendant. But it was agreed upon

between the parties that the defendant will give 20 sataks of land under Plot No.890 belonging to him. But taking advantage of trust upon him the defendant practicing fraud included Plot No.1281 measuring 6 decimals in place of Plot No.890 measuring 20 sataks. He submits that the defendant though exchanged the property with the plaintiff, and took delivery of Plot No.911 measuring 27 sataks from the plaintiff, but did not deliver possession of exchanged property to the plaintiff on the plea of placing the same as mortgage with the other persons and assured the plaintiff that he will deliver possession as and when he got the property released from mortgage. On that assurance the plaintiff was waiting to have possession of the property exchanged, but the defendant did not deliver possession of the exchanged property, though demanded by the plaintiff. Because of such behavior the plaintiff obtained the true copy of the exchange deed from concerned Sub-registry office and came to know that the defendant by practicing fraud included Plot No.1281 measuring 6 sataks instead of giving Plot No.890 measuring 20 sataks land to the plaintiff, as such, he filed the instant suit for cancellation of the exchanged deed.



He submits that though the trial court found the deed obtained by fraud, but on misconception of law of limitation found the suit is barred by limitation and dismissed the suit. But the appellate court decreed the suit rightly holding that fraud vitiates everything and in case of fraud limitation should be counted from the date of knowledge not from the date of execution and registration of any deed, as such, it has not committed an error in law in the decision occasioning failure of justice.

Heard the learned Advocates for both the sides, have gone through the revisional application, plaint in suit, written statement, evidences both oral and documentary and the impugned judgment and decree of both the courts below.

There is no dispute that the plaintiff was owner of Plot No.911 measuring 27 sataks and the defendant is owner of Plot No. 1281 measuring 6 sataks and Plot No.890 measuring 20 sataks. The plaintiff claimed that he exchanged his property in exchange of Plot No.890 measuring 20 sataks. But the defendant taking advantage of preparing deed, purchasing required stamp papers and engaging deed writer, most cunningly included Plot No.1281 measuring 6 sataks in place of

Plot No.890 measuring 20 sataks. But said fact of fraud kept suppressed and refrained himself from making delivery of possession on the plea of mortgage of the property with other person. When he demanded delivery of possession the defendant was killing time on this and that plea. Consequently, after obtaining true copy of the exchange deed from the concern registry office the plaintiff came to know that the defendant instead of giving Plot No.890 measuring 20 sataks included Plot No.1281 measuring 6 sataks. The plaintiff has become highly astounded to see that the plot agreed upon has not been included. It is also a ground that for what reason the plaintiff in exchange of 27 sataks under Plot No.911 will exchange and take only 6 sataks of land under Plot No.1281 from defendant No.1. It is reasonable to believe that the plaintiff exchanged 20 sataks of land under Plot No.890 belonged to the defendant as the quantum of land of the plaintiff and quantum of land of the defendant more or less nearer to each other. But exchange of 27 sataks of plaintiff's land with only 6 sataks of defendant's land is really unusual. On that reason and ground the trial court rightly found and held that the deed was obtained by practicing fraud.

Apart from this the defendant while deposing before the court as D.W.1, unequivocally admitted that Plot No.1281 measuring 6 decimal is still under his possession and stated that he again purchased the property from the plaintiff, but in support of his such contention he could not even produce a single paper to show that the plaintiff received Tk.24,000/- from him as consideration for the said land. Moreover, while the trial court found that the deed was obtained by practicing fraud the defendant did not prefer any appeal against that findings and observations of the trial court, meaning thereby, he has admitted the fraud and conceded validity of the judgment passed by the trial court. The appellate court while decreeing the suit observed that limitation starts in a case of fraud from the date of knowledge not from the date of execution and registration of the deed which has support of law, as such, I find that the appellate court while allowing the appeal and decreeing the suit rightly held that the deed in question was obtained by fraud and it has not been acted upon till today because of non delivery of exchanged property by the defendant himself and failure of the defendant to prove that he delivered possession to the plaintiff after exchange and purchased the property

later on from the plaintiff at a consideration of Tk.24,000/- and paid the consideration money. Therefore, I find no illegality and error of law in the decision of the learned appellate court calling for interference.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.