

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1602 of 2002.

In the matter of:

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

And

Surobala Nath

...Petitioner

-Versus-

1(a) Norattam Deb Nath and
others

...opposite parties

Mr. M. A. Jabber, Advocate

...For the petitioner

No one appears

...For the opposite parties

Heard & Judgment on 06.11.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 03.02.2002 of the learned Joint District Judge and Artha Rin Adalat, Sylhet in Title Appeal No.93 of 1996 reversing those dated 20.05.1996 of the learned Senior Assistant Judge, Balaganj, Sylhet in Title Suit No.43 of 1994 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 opposite parties as plaintiffs instituted above suit for declaration

of title in respect of 74 decimal land as described in the schedule to the plaint by adverse possession and on the basis of registered deed of Nadabipatra executed by Kingkor Nath on 16.06.1981.

It was alleged that Kingkor Nath was the owner and possessor of the above land and he was living in the dwelling house situated in the disputed land. Plaintiff was the wife of the nephew of above Kingkor Nath namely Monoranjan and Kingkor Nath was issueless and plaintiff used to take care of him and above Kingkor Nath being satisfied with the care and service of the plaintiff orally gifted above property to the plaintiff and in support of above oral gift executed and registered a Nadabipatra on 16.06.1981.

About 10-12 years before execution of above Nadabipatra plaintiff was in possession in above property on the basis of above oral gift and she is continuing above possession as the owner of above property to the knowledge of all concerned and recorded above property in her name notwithstanding the objection of the defendant and thereby she acquired title by adverse possession.

Defendant No.1 contested the suit by filing a written statement alleging that Kingkor Nath was the owner and possessor of the disputed land and he died leaving Monoranjan.

The husband of the plaintiff and the defendant No.1 as his nephews and heirs who accordingly inherited above property and possessing the same. Kingkor Nath never transferred above property to the plaintiff by oral gift nor he executed and registered any Nadabipatra in favour of the plaintiff. The alleged Nadabipatra of the plaintiff dated 16.06.1981 is a forged and collusive document which was never acted upon.

At trial plaintiff examined five witnesses and documents produced and proved by the plaintiff were marked as Exhibit No.1-6 series. Defendant examined three witnesses and the documents of the defendant were marked as Exhibit No.Ka-Gha.

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

Being aggrieved by above judgment and decree of the learned Senior Assistant Judge defendant preferred Title Appeal No.93 of 1996 to the

District Judge, Sylhet which was heard by the learned Joint District Judge who allowed the appeal and set aside the judgment and decree of the trial court and decreed the suit.

Being aggrieved by above judgment and decree of the court of appeal below above respondent as petitioner moved to this court with this petition and obtained this rule.

Mr. M. A. Jabber learned Advocate for the petitioner submits that undisputedly Kingkor Nath was the owner and possessor of the disputed land which includes his dwelling house. Above Kingkor was issueless and the plaintiff who was the wife of his nephew Monoranjan used to take care of above Kingkor Nath and being satisfied with her care and service above Kingkor transferred the disputed property to the plaintiff by oral gift and in support of above oral gift executed and registered a deed of Nadabipatra on 16.06.1981 (Exhibit No.3).

The plaintiff is in possession in the above land from long before the execution of above Nadabipatra and thereby acquired good title by adverse possession and relevant record of above land has been prepared in her name and she is paying rent to the government. On correct

appreciation on facts and circumstances of the case and evidence on record the learned Judge of the trial court has rightly decreed the suit but the learned Judge of the court of appeal below without reversing any material findings of the trial court most illegally allowed the appeal and dismissed the suit which is not tenable in law.

No one appears on behalf of the opposite party at the time of hearing of this revision although the matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that disputed property which includes a dwelling house belonged to Kingkor Nath who died issueless leaving defendant No.1 and the husband of the plaintiff, namely, Monoranjan as his heirs.

Plaintiff is the wife of nephew of above Kingkor Nath namely Monoranjan. Plaintiff claims title on the basis of oral gift by Kingkor Nath. It is well settled that the Hindu Dayavaga law does not recognize transfer of property by oral gift. It has been alleged by the learned Advocate for the petitioner that in order to avoid above

legal hurdle above Kingkor Nath executed and registered a Nadabipatra to substantiate above oral gift.

A gift oral or written comprises a formal offer by the donor and acceptance by the donee which must be followed by delivery of possession. In the plaint or in her evidence as P.W.1 the plaintiff did not mention where and on what date and in presence of which persons Kingkor Nath made above gift and when the possession of the disputed property was delivered. In fact no evidence oral and documentary has been produced to substantiate the claim of gift by Kingkor Nath to the plaintiff.

The plaintiff while giving evidence as P.W.1 has produced and proved a certified copy of a Nadabipatra allegedly executed by Kingkor Nath on 16.06.1981 which was marked as Exhibit No.3. It turns out from above document that there are two recipients of above document and the name of the plaintiff stands at serial No.2. The first recipient is the brother of the plaintiff Jotindra Nath. In the recital of above deed there is no mention of oral gift of the disputed property by Kingkor Nath. It is well settled that a deed of Nadabipatra is not a deed of transfer

of title in land and such a document does not create title in the land.

The learned Judge of the court of appeal below rightly pointed out that the plaintiff did not provide any explanation as to non production of the original Nadabipatra. The learned Advocate for the petitioner submits that the original Nadabipatra was in the custody of the brother of the plaintiff but there is no explanation as to why above Jotindra Nath did not give evidence in this suit.

The claim of title by adverse possession is the wildest method of acquisition of title in the immovable property which requires strict proves to get endorsement of law.

In order to substantiate such a claim the plaintiff must mention in the plaint the date of his entry into the possession of the disputed property and the date when above possession became adverse against the true owner and to further prove that before institution of this suit above adverse possession has been matured into title by lapse of time.

But neither in the plaint nor in her evidence as P.W.1 the plaintiff has mentioned the date of her entry into the possession of the disputed

land or when above possession became adverse against Kingkor Nath and how above adverse possession matured into title.

In above view of the facts and circumstances of the case and materials on record I hold that the learned Judge of the court of appeal below has rightly held that the plaintiff could not prove her claim of lawful title in the disputed land by legal evidence and accordingly allowed the appeal, set aside the flawed judgment and decree of the trial court and dismissed the suit which calls for on interference.

I am unable to find any substance in this petition under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

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

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.