

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

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 4837 of 2003

IN THE MATTER OF

An application under section 115(1) of the
Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Petitioner No. 2 Mohammad Harun-or
Rashid, being dead, his heirs: 2(a) Siddique
Ara Begum and others

... Petitioners

-Versus-

Fazle Rashid Chowdhury and others

... Opposite Parties

Mr. Sk. Zulfiquar Bulbul Chowdhury,
Advocate

.....For the petitioners

No one appears

.....For the Opposite Parties

Heard on 22.07.2026 and 17.08.2026.

Judgment on: 19.08.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 17 to show cause as to why the impugned judgment and decree dated 18.08.2003 passed by Additional District Judge, Court No.6, Chattogram in Other Appeal No. 75 of 2002, reversing those dated 15.01.2002 passed by Senior Assistant Judge, Anwara, Chattogram in Other Suit No. 55 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.

The plaint case, in a nutshell, is that Musammat Shajeda Chowdhury, mother of the opposite party Nos. 1 to 8, as plaintiffs instituted Other Suit No. 55 of 1994 in the Court of Assistant Judge, Anwara, Chattogram for declaration of title and confirmation of possession stating that the suit land described in the schedule Nos. 1 and 2 belonged to Foizunnessa and R.S. Khatian No. 67, Dag No. 1352 in respect of 33 decimals of land and RS Khatian No. 1207, Dag No. 1353 in respect of 10

decimals of land was recorded in her name. Foizunnessa died intestate, leaving behind her son Kabir Ahmed Chowdhury and three daughters, Tamanna Khatun, Maleka Khatun and Abjan Ara Begum. Maleka Khatun died without any issue. Kabir Ahmed Chowdhury died intestate, leaving behind the defendant No. 10 and the plaintiffs as his heirs. Tamanna Khatun died intestate, leaving behind Monir Ahmed and defendant No. 7, Sheikh Enayetur Rahman. Monir Ahmed died intestate, leaving behind defendant Nos. 1 to 6 as his heirs. Abjan Ara Begum died intestate, leaving behind defendant Nos. 8 and 9. After the death of both Foizunnessa and her husband Amir Ali, the plaintiffs got the suit land in an amicable partition between the heirs of Foizunnessa and Amir Ali, and the defendant Nos. 1 to 10 got the other land. The predecessor of the defendant Nos. 1 to 7 was the aunt's husband of the plaintiff, and there was a fiduciary relationship between them. The defendants paid the rent through him. After the death of Jahir Uddin, husband of Tamanna Khatun, her son Monir Ahammed acted on behalf of the plaintiffs, but in connivance with the concerned staff of the office, illegally prepared the P.S. Khatian regarding the suit land in the name of Tamanna Begum. Thereafter, the B.S. Khatian was also illegally recorded in the name of Monir Ahmed and Enayetur Rahman. The plaintiffs obtained the certified copy of the B.S. and P.S. Khatian of the suit land on 25.09.1994 and 26.09.1996, respectively. The plaintiffs are possessing the suit land.

The defendant Nos. 1 to 7 contested the suit by filing written statement denying the assertions made in the plaint, stating that the suit suffers from a defect of parties and is barred by limitation and not maintainable in law in its present form. Foizunnessa, the R.S. recorded tenant, gifted the suit land to her daughter Tamanna Khatun by gift deed dated 28.01.1931 and following the said gift, P.S. Khatian was recorded in her name. Tamanna Khatun @ Tahmina Begum died intestate, leaving behind her sons, Monir Ahmed and Enayetur Rahman. Monir Ahmed died intestate, leaving behind his heirs, defendant Nos. 1 to 6 and Sheikh Mujahar Uddin Ahmed, who sold 23.5 decimals of land to defendant No. 14 Kabir Ahmed Shah, by deed dated 17.6.1991, and defendant No. 7 sold 23.5

decimals of land to defendant No. 14 by deed dated 24.03.1991, who is now possessing the suit land. The plaintiffs and the pro forma defendant Nos. 1 to 10 had no right, title, and possession of the suit land. No amicable partition took place between the heirs of Foizunnessa. The statement made in the plaint that Sheikh Jahir Uddin Ahmed, husband of Tamanna Khatun, and subsequently his son Monir Ahmed acted on behalf of the plaintiffs or they supervised the suit land on their behalf, or Sheikh Johir Uddin Ahmed betrayed her, or P.S. and B.S. Khatian are wrong and baseless is not correct.

Defendant No. 14 contested the suit by filing written statement denying the statement made in the plaint stating that the Sharifunnessa and Abdul Gani was the CS recorded tenant of the suit land who sold the suit land to Foizunnessa by deed dated 16.03.1918 and handed over possession of the suit land to Foizunnessa, who subsequently gifted 46 decimals of land to her daughter Tamanna Khatun Chowdhury @ Tamanna Begum by an unregistered deed of gift dated 28.1.1931 and handed over the possession to her. After purchase, the suit land was recorded in RS Khatian in the name of Foizunnessa. Since Foizunnessa gifted the entire land to Tamanna Khatun, her heirs did not inherit any land in R.S. Khatian Nos. 67 and 1207. After the said gift, the SA Khatian Nos. 72/1243 were prepared in the name of Tamanna Khatun. Tamanna Khatun died intestate, leaving behind her sons Monir Ahmed and Sheikh Enayetur Rahman. After the death of Tamanna Khatun, the suit land was recorded in B.S. Khatian in the name of her sons Monir Ahmed and Sheikh Enayetur Rahman. Monir Ahmed died intestate, leaving behind his heirs (defendant Nos. 1 to 6), and Sheikh Mujahar Uddin Ahmed, who sold 23.5 decimals of land to defendant No. 14 by deed dated 17.6.1991, and another son of Monir Ahmed, Sheikh Enayetur Rahman, sold 23.5 decimals of land to defendant No. 14 by deed dated 24.03.1991. Thus, defendant No. 14 acquired title to 46 decimals of the suit land of R.S. Khatian Nos. 67 and 1207. The defendant No. 14 is now possessing the suit land, paying rents regularly, and the plaintiffs have no title and possession of the suit land. It has been asserted that since Foizunnessa gifted her entire land of Khatian Nos. 67 and 1207, her heirs did not inherit any property of the said Khatians.

During trial, the plaintiff examined 3 P.Ws., and the defendant examined 3 DWs. After concluding the trial, the trial court, by judgment and decree dated 15.01.2002 (decree signed on 16.01.2002), dismissed the suit, against which the plaintiffs prepared Other Appeal No. 75 of 2002 in the Court of District Judge, Chattogram. The Additional District Judge, Court No. 6, Chattogram heard the appeal and, by impugned judgment and decree, reversed the judgment and decree passed by the trial court, against which the heirs of defendant No. 14 obtained the Rule.

The learned Advocate Mr. Sk. Zulfiquar Bulbul Chowdhury appearing on behalf of the defendant-petitioners submits that admittedly Foizunnessa is the RS recorded tenant of RS Khatian No. 67 and 1207 and she gifted 33 decimals of land of RS Khatian No. 67, Dag No. 1352 and 10 decimals of land of RS Khatian No. 1207, Dag No. 1352 by an unregistered deed dated 28.01.1931(exhibit-Kha) to her daughter Tamanna Khatun and following the said deed of gift, P.S. (S.A.) Khatian No. 72 and 1243 (exhibits-Ga and Ga/1) were recorded in the name of Tamanna Khatun. He further submits that since Foizunnessa gifted her entire land of RS Khatian No. 67 and 1207, the other heirs of Foizunnessa did not inherit any property of the said Khatians and after death of Tamanna Khatun, the suit land was recorded in B.S. Khatian No. 1395 in the name of her son Monir Ahmed and Sheikh Enayatur Rahman and defendant Nos. 1 to 6, Sheikh Muzahar Uddin Ahmed, another son of Monir Ahmed, by deed No. 1901 dated 17.6.1991 sold 23.5 decimals of land to defendant No. 14 and Sheikh Enayetur Rahman sold 23.5 decimals of land by deed No. 1151 dated 24.3.1991 to defendant No. 14 who possessing the suit land paying rent to the government. After gift of the suit land by unregistered deed dated 28.01.1931, no title passed to heirs of the Foizunnessa. Having drawn the attention of this Court to the plaint and the evidence of prosecution witnesses, learned Advocate submits that the plaintiff neither denied the deed dated 28.01.1931 nor prayed for cancelation of the said deed, and the appellate court, without considering the deed dated 28.01.1931, illegally passed the impugned judgment and decree. He also submits that the deed dated 28.01.1931 is an old deed of 65 years and the witnesses, deed writer

and the Foizunnessa have already died, and there is a presumption under section 90 of the Evidence Act as to the correct execution of the said deed by Foizunnessa, and the appellate court below most illegally held that the deed dated 21.01.1931 was not legally proved, although the said deed was exhibited without any objection of the plaintiffs. Finally, he submits that the impugned judgment and decree passed by the appellate court suffer from misreading and non-reading of the material evidence of both the parties and thereby the appellate court below committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the rule absolute by setting aside the impugned judgment and decree passed by the appellate court.

No one appears on behalf of the plaintiff opposite party Nos. 1 to 17.

I have considered the submission of the learned Advocate Mr. Sk. Zulfiquar Bulbul Chowdhury, who appeared on behalf of the petitioner, perused the plaint, written statement, evidence adduced by the parties, the impugned judgment and decree passed by the courts below, and the records.

At the very outset, it is noted that during pendency of the Rule, the petitioner No. 1, Most. Mohsena Begum died without any heirs, and this Court, by order dated 07.05.2015, struck out the name of the petitioner No. 1, and the petitioner No. 2, Mohammad Haru-ur-Rashid also died, and his heirs were substituted as petitioner Nos. 2(a) to 2(f).

On perusal of the evidence, it reveals that admittedly Foizunnessa is the RS recorded owner of 33 decimals of land of RS Khatian No. 67, Dag No. 1352 and 10 decimals of land of RS Khatian No. 1207, Dag No. 1353. Foizunnessa gifted the said land by an unregistered deed dated 28.01.1931 (Exhibit-Kha) in favour of her daughter Tamanna Khatun, and following the said deed, PS (SA) Khatian Nos. 72 and 1243 (Exhibit-Ga and Ga/1) or 3 and 3(Ka) were recorded in the name of Tamanna Khatun. After the death of Tamanna Khatun, B.S. Khatian No. 1395, Dag Nos. 545 and 546 (Exhibit-Umo) were recorded in the name of her sons Monir Ahmed and Enayetur Rahman. Subsequently, Sheikh Enayetur Rahman sold 23.5 decimals of land by deed No. 1151 dated 24.03.1991 (Exhibit-nya), and the defendant Nos. 1 to 6 and Sk. Mujahar Uddin Ahmed, another son of Manir

Ahmed, sold 23.5 decimals of land by deed Nos. 1901 dated 17.06.1991(exhibit-nya/1) to the defendant No. 14. After that, the defendant No. 14 is paying the rent of the suit land. The defendant No. 14 proved the rent receipts as Exhibit-Cha to Cha/14.

On scrutiny of the evidence adduced by both the parties reveals that the plaintiffs did not deny the execution of the gift deed dated 28.01.1931 (Exhibit-Kha) by Foizunnessa in favour of her daughter Tamanna Khatun. Therefore, after the death of Foizannesa, the heirs of Foizannesa did not inherit the land of RS Khatian Nos. 67 and 1207. I am of the view that, considering the evidence of both the parties, the trial court legally held that the suit filed under Section 42 of the Specific Relief Act is not maintainable in law.

The deed dated 28.01.1931 is an old deed. It is found that defendant No. 14 (D.W. 2) proved the deed dated 28.01.1931 as Exhibit-Kha from his custody and no objection has been raised by the plaintiff. I am of the view that the deed dated 28.01.1931 is proved from proper custody. At the time of filing the suit in 1994, deed dated 28.01.1931(Exhibit-Kha) was an old deed of 61 years, and at the time of trial, Foizunnessa, the deed writer, and the witnesses of the said deed were not alive. Therefore, it was not possible on the part of the defendants to prove the execution of the said deed by Foizunnessa. Since no objection was raised by the plaintiffs at the time of marking the deed dated 28.01.1931 as exhibit, the plaintiffs were not entitled to raise objection as to the execution of the said deed at the appellate stage. There is a presumption under Section 90 of the Evidence Act, 1872 that the deed dated 28.01.1931 (Exhibit-4) was executed by the Foizunnessa. The findings of the appellate court below that the deed dated 28.01.1931 was not legally proved and that P.S. and B.S. records were wrongly recorded are hereby set aside.

The trial court found that after the gift of the suit land by Foizunnessa, the possession was handed over to Tamanna Khatun and subsequently to the defendant No. 14 after selling the suit land by the heirs of Tamanna Khatun, but the appellate court below did not arrive at any finding regarding possession of the plaintiff by setting aside the findings of

the trial court as to the possession of the defendant No. 14 in the suit land. Although the appellate court found that the findings of the trial court regarding maintainability of the suit under Section 42 of the Specific Relief Act are not legal, no reason has been assigned by the appellate court as to the maintainability of the suit. Therefore, the findings of the appellate court to that effect are hereby set aside.

The defendant No. 14 (D.W.2) proved the rent receipt paid by Tamanna Khatun as exhibit-Cha/1 and Cha/3 to Cha-14 and the rent receipt paid by defendant No. 14 as exhibit-Cha and Cha/2. It further reveals that after the death of Foizunnessa, Khatian Nos. 72 and 1243(Exhibits- Ga and G/a) were prepared in the name of Tamanna Khatun and subsequently B.S. Khatian Nos. 1395 and 1235(Umo) were recorded in the name of the heirs of Tamanna Khatun. No Khatian was prepared in the name of other heirs of Faizunnessa, which clearly proved that the deed dated 28.01.1931 (Exhibit-Kha) was acted upon and title of the suit land passed to Tamanna Khatun by deed dated 28.01.1931. Therefore, the heirs of Foizunnessa did not inherit any land of RS Khatian Nos. 67 and 1207. I am of the view that R.S., P.S. and B.S. Khatian were correctly recorded.

Since the defendant No. 14 purchased 23.5 decimals of land by deed No. 1931 dated 16.6.1991 (exhibit-nya/1) from defendant Nos. 1 to 6 and Sheikh Mujahar Uddin Ahmed, heirs of Tamanna Khatun and 23.5 decimals of land by deed No. 1151 dated 24.03.1991(exhibit-nya) from Sheikh Enayetur Rahman, son of Tamanna Khatun, I am of the view that defendant No. 14 legally acquired title on the suit land based on ExhibitsNo.nya and nya/1. The Khatians are not the basis of title, but there is presumptive value of the Khatians as to the possession of the parties. It is found that the Foizunnessa, her daughter Tamanna Khatun, and subsequently her heirs and the defendant No. 14 have been continuously paying the rent of the suit land. Therefore, I am of the view that the defendant No. 14 is possessing the suit land. The plaintiffs failed to rebut the presumption of Khatians as to possession of the defendant No. 14 in the suit land by adducing evidence.

The finding arrived at by the trial court as to possession of the defendant No. 14 is not set aside by the appellate court. No rent receipt was

proved by the plaintiffs. In view of the above evidence, findings, observations, and the proposition, I am of the view that the impugned judgment and decree passed by the appellate court below suffer from misreading and non-reading of the material evidence, and the appellate court committed an error of law resulting in an error in the decision in reversing the judgment and decree passed by the trial court, occasioning failure of justice.

I find merit in the rule.

In the result, the rule is made absolute.

The impugned judgment and decree passed by the appellate court below is hereby set aside.

The judgment and decree dated 15.01.2002 passed in Other Suit No. 55 of 1994 by the trial court are hereby affirmed.

However, there will be no order as to costs.

Send down the LCR at once