

District-Satkhira.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2680 of 2014.

Md. Rafiqul Islam Sheikh and others

----- Plaintiffs-Respondents-Petitioners.

-Versus-

Ashutosh Karmaker and others

----- Defendants-Appellants-Opposite Parties.

Mr. M. A. Azim Khair, Senior Advocate, with

Mr. Mohammad Hossain, Advocate and

Mr. Md. Sultan Uddin, Advocate

----- For the Plaintiffs-Respondents-Petitioners.

Mr. Sachchidananda Ballav, Advocate

---For the Defendants-Appellants-Opposite Parties.

Heard On: 10.08.2025&19.08.2025.

And

Judgment Delivered On: 24.08.2025.

Md. Toufiq Inam, J.

By issuance of this Rule, the defendant-opposite parties were called upon to show cause as to why the judgment and decree dated 15.06.2014 and 18.06.2014 respectively, passed by the learned Additional District Judge, 2nd Court, Satkhira in Title Appeal No. 100 of 2012 allowing the appeal and thereby reversing the judgment and decree dated 24.09.2012 and 27.09.2012 passed by the learned Senior Assistant Judge, Tala, Satkhira in Title Suit No. 99 of 2009 decreeing the suit, should not be set aside and/or such other order as this Court may deem fit and proper should not be passed.

The plaintiffs filed the suit for cancellation of Exchange Deed No.2893 dated 25.05.1995, executed between the parties. It is contended that the plaintiffs' father, Abu Baker Sheikh, was the

lawful owner of 19 decimals of land in S.A. Khatian No.1099 of Mouza-Rajendrapur, acquired through inheritance, purchase, and mutation. He had constructed three pucca shops and conducted business, including renting out portions to various parties, including the defendants. The plaintiffs allege that the defendants were owners of land in S.A. Khatian No.241 of Mouza-Khalishkhali and were their father's tenants. The plaintiffs claim that the deed of exchange purportedly involving the homestead of the defendants in plot no.3584 was fraudulent, collusive, and inactive. They assert that the land exchange was inequitable, did not involve actual possession transfer, and was executed while the father was seriously ill, to deny rent and threaten dispossession.

The defendants denied the plaintiffs' allegations and asserted lawful ownership of the lands through inheritance and valid sale deeds. They contended that Thakur Das Datta, Dulal Krishna, Chittaranjon Datta, and ShibpadaKarmaker had transferred the lands legally, and that Abu Baker Sheikh had already acquired portions of land through lawful sales. They further asserted that the Exchange Deed No.2893 dated 25.05.1995 was valid, effective, and executed without fraud, collusion, or misrepresentation, and that the plaintiffs' allegations of deprivation of rent and possession are baseless.

The trial Court found that the defendants continued to pay land revenue in the name of Abu Baker Sheikh until Bengali year 1419. It further observed that although the defendants sought to justify the exchange on grounds of professional and business convenience, the plaintiffs' evidence revealed that the deed did not reflect any genuine element of mutual benefit or equivalence in value. On such findings, the trial Court decreed the suit in favour of the plaintiffs, holding the deed of exchange to be void and inoperative.

The appellate Court, however, allowed the appeal preferred by the defendants and reversed the decree of the trial Court, upholding the exchange deed as valid. It recorded that the plaintiff had instituted Section 30 objection proceedings on 03.11.2004 to have the disputed land recorded in his name, in which the defendants asserted ownership under the impugned Exchange Deed. The objection was disposed of on 06.12.2004. The appellate Court held that, since the suit for cancellation was filed on 12.10.2009, it was beyond the three-year limitation period reckoned from the date of knowledge, and hence barred by limitation. The appellate Court further observed that the Exchange Deed had not been acted upon.

This revision has been filed by the plaintiff challenging the appellate judgment and decree as being contrary to evidence and law. The Rule was issued and has now been taken up for adjudication.

Mr. M.A. Azim Khair, learned Senior Advocate appearing on behalf of the plaintiffs-petitioners, refers to Section 118 of the Transfer of Property Act and submits that, in light of the Advocate Commissioner's report as well as the concurrent findings of the courts below, it stands established that the defendants have continued to retain possession of their portion of the alleged exchanged property. According to him, this fact alone demonstrates that the Exchange Deed No. 2893 dated 25.05.1995 was never truly acted upon in respect of the plaintiffs' portion of the property, thereby rendering the transaction inequitable and incomplete.

He draws a critical distinction between "void or not acted upon" deeds and "voidable but operative" deeds. His submission is that where a deed is void ab initio, such as when it is fraudulent, executed without lawful consideration, or never accompanied by delivery of possession, the law does not oblige the plaintiff to seek cancellation under Section 39 of the Specific Relief Act. In such cases, a simple declaration of

nullity is sufficient to safeguard the plaintiff's rights. He further emphasizes that, since the plaintiffs have already paid the ad valorem court fees, this Division is fully empowered to mould the relief and grant an appropriate declaratory decree.

With respect to limitation, he contends that for declaratory relief concerning a void deed, the applicable period is six years under Article 120 of the Limitation Act. The shorter three-year period under Articles 91 or 113 applies only to suits seeking cancellation of operative deeds that are voidable in nature. In support, he places reliance on the case of *Shamshad Ali Shah vs. Hassan Shah*, 16 DLR (SC) (1964) 330, para 31, where it was held that if a deed of gift is a void transaction, no question of cancellation or setting aside would arise, and Article 91 of the Limitation Act applies exclusively to voidable transactions.

To reinforce his argument, Mr. Khair cites the authoritative precedent of *Sufia Khatun vs. Faizun Nesa*, 39 DLR (AD) (1987) 46, wherein it was categorically held that a document void ab initio does not require cancellation. A declaratory decree declaring such document void and of no legal effect, coupled with a finding that the plaintiffs' rights remain unaffected thereby, affords complete relief. He accordingly submits that the impugned appellate judgment, which erroneously treated the exchange deed as valid, is contrary to law and evidence and thus calls for interference by this Court.

Lastly, Mr. Khair contends that although the plaintiffs initially paid the requisite ad valorem court fees for a cancellation suit, they now seek only a declaration that the deed is void. In such circumstances, the earlier payment of ad valorem fees is more than sufficient. Consequently, the applicable limitation is not the three-year period prescribed for cancellation of operative deeds under Articles 91/113

of the Limitation Act, but the six-year period under Article 120 governing declaratory relief.

Per Contra, Mr. Sachchidananda Ballav, learned Advocate appearing for the defendants-opposite parties, opposes the Rule and fully supports the impugned appellate judgment and decree. Placing reliance on the case of *Hajarilal Mondal vs. MozafforBepari*, 8 BLC (AD) 77, he submits that the appellate court, being the final court of fact, has independently reassessed the evidence and, with well-founded reasoning, reversed the finding of the trial court. Such a decision, he argues, should not be interfered with in revision.

He contends that Exchange Deed No. 2893 dated 25.05.1995 was lawfully executed by the plaintiffs' father with full knowledge, consent, and free will, and that the deed was duly acted upon. According to him, the allegations of fraud, collusion, or serious illness of the plaintiffs' father at the time of execution are mere afterthoughts, wholly lacking in credible or corroborative evidence.

He further asserts that, pursuant to the execution of the deed, possession was delivered to both parties in accordance with the terms of the exchange. However, the plaintiffs themselves voluntarily refrained from taking possession of the property allotted to them under the arrangement. Having consciously chosen not to accept possession, while at the same time having enjoyed the benefits of the exchange, the plaintiffs are now estopped from disputing the validity of the deed.

This Court, having heard the learned counsels for both parties, examined the judgments of the courts below, considered the evidence on record, and reviewed the relevant provisions of law. The principal question for determination is whether Exchange Deed No. 2893 dated 25.05.1995 was ever acted upon by delivery of possession and, if not,

whether the plaintiffs are entitled to a declaration that the deed is void ab initio, independently of Section 39 of the Specific Relief Act, and whether the suit is within limitation.

The plaintiffs contend that the deed was fraudulent, collusive, and never given effect. The Advocate Commissioner's report, corroborated by the depositions of DW-1 and DW-5, establishes that the defendants remained in uninterrupted possession of their land in Khalishkhali Mouza. The evidence further shows that the defendants were tenants under the plaintiffs in the Rajendrapur land, thereby confirming that possession of the exchanged property was never delivered to the plaintiffs. Both courts below, therefore, rightly found that the deed was never acted upon.

Under Section 118 of the Transfer of Property Act (TPA), an exchange of immovable property is essentially a sale without monetary consideration, and delivery of possession is an indispensable condition. Section 120 TPA further entitles a party who has not received possession in exchange to reclaim the property transferred. In the absence of such delivery, no right, title, or interest passes, and the instrument remains wholly inoperative.

A clear distinction exists between a void and a voidable deed. A void deed has no legal effect from inception and does not require cancellation, whereas a voidable deed remains operative until set aside under Section 39 of the Specific Relief Act. Where a deed is void ab initio, a simple declaration under Section 42 suffices. This principle was reaffirmed by the Appellate Division in *Sufia Khatun vs. Faizun Nesa*, 39 DLR (AD) 46, which held that a void instrument does not require cancellation and that a declaratory decree adequately protects the plaintiff's rights. Similarly, if a deed is void and never acted upon, it cannot cloud title and may be declared ineffective without formal cancellation. The three-year limitation under Articles 91/113 of the

Limitation Act applies only to cancellation of operative deeds, not to declaratory suits relating to void instruments, which are governed by Article 120.

In the present case, possession under the purported exchange was never delivered, and consequently, the deed never became operative. The alleged transaction was inherently unequal and lacked reciprocity, with lucrative, income-generating pucca shops in Rajendrapur purportedly exchanged for a modest residential homestead at Khalishkhali, highlighting its implausibility and collusive character. The improbability of the transaction is further reinforced by the surrounding circumstances: the parties had known each other only briefly prior to execution of the deed, and at the relevant time, the plaintiffs' father was seriously ill and vulnerable. No possession was ever delivered pursuant to the alleged exchange, confirming that the deed was never acted upon. Taken together, these factors decisively demonstrate that the inequities in the alleged exchange are manifest and that the transaction was not a genuine bargain but a fraudulent device, orchestrated to deprive the plaintiffs' father of rental income and to cloud their rightful title.

On the issue of limitation, the defendants' plea of bar under Articles 91/113 of the Limitation Act is wholly misconceived. Those provisions govern suits seeking cancellation of operative deeds that are voidable in nature. In the present case, the deed in question is void ab initio; hence, only a declaratory relief under Section 42 of the Specific Relief Act is necessary. Such relief is governed by Article 120 of the Limitation Act, which prescribes a six-year limitation from the date the void or fraudulent nature of the deed is discovered.

Since the plaintiffs initially paid the required ad valorem court fees for a suit of cancellation, and later confined their claim to a declaration that the deed is void, the earlier payment is more than sufficient, as a

declaratory relief requires a lesser fee than cancellation. Consequently, the applicable limitation is not the three years prescribed under Articles 91/113 for cancellation of operative deeds, but the six years provided under Article 120 for declaratory relief. In the instant case, the plaintiffs instituted the suit on 01.10.2009 upon first becoming aware of the fraudulent nature of the deed. As the suit was filed within six years from the date of such first knowledge, it is manifestly within time and maintainable.

Where an exchange deed of immovable property is executed but never acted upon by delivery of possession, no right, title, or interest passes under Section 118 of the Transfer of Property Act. Such a deed is void ab initio, being wholly inoperative in law, and does not require cancellation under Section 39 of the Specific Relief Act.

Upon appraisal of the materials on record, it is evident that Exchange Deed No. 2893 dated 25.05.1995 was never acted upon in so far as the plaintiffs' portion of land is concerned, as the defendants continued in possession of their own property and no delivery of possession was effected in favour of the plaintiffs. Both the courts below also concurrently found that the deed was never acted upon. Such circumstances render the transaction inequitable, incomplete, and void in law. Following the principle laid down in *Sufia Khatun vs. Faizun Nesa*, 39 DLR (AD) 46, this Court holds that a deed which is void ab initio does not require cancellation under Section 39 of the Specific Relief Act; rather, a declaratory decree under Section 42 is sufficient to protect the rights of the plaintiffs. Accordingly, there is no necessity for remand or amendment of the plaint, and this Court is competent in its revisional jurisdiction to mould the relief and declare the deed in question void and inoperative.

Accordingly, this Court holds:

- (i) Exchange Deed No. 2893 dated 25.05.1995, never having been acted upon by transfer of possession, is void ab initio, fraudulent, and inoperative in law;
- (ii) Cancellation under Section 39 SRA was unnecessary; a declaratory decree under Section 42 suffices;
- (iii) The suit is well within limitation under Article 120 of the Limitation Act; and
- (iv) Exercising the Court's declaratory jurisdiction under Section 42 of the Specific Relief Act, read with Section 118 of the Transfer of Property Act, and invoking its revisional power under Section 115(1) of the Code of Civil Procedure to correct an erroneous decree or order and to pass such order as may be just and proper, this Court is fully competent to declare the deed in question null and void.

In the result, **the Rule is made absolute.**

The appellate court's judgment and decree dated 15.06.2014 and 18.06.2014 in Title Appeal No. 100 of 2012 are set aside. Exchange Deed No. 2893 dated 25.05.1995 is declared fraudulent, collusive, void ab initio and inoperative in law.

The decree of the trial court is modified to the extent that it shall operate as a declaratory decree declaring the Deed No. 2893 dated 25.05.1995 null and void.

The interim order of *status-quo* is hereby recalled and vacated.

There will be no order as to costs.

Let the Lower Court Records be transmitted back along with a copy of this judgment at once.

(Justice Md. Toufiq Inam)