Present:-
Mr. Justice Md. Riaz Uddin Khan
And
Ms. Justice Urmee Rahman

First Appeal No. 11 of 2008

Md. Habibur Rahman and others
...Plaintiffs-Appellants
-Versus-
Md. Abdur Rashid and others
...Defendants- Respondents

Mr. Md. Mozibur Rahman, Advocate
... For the Appellants
No one appeared
…For the Respondents

Judgment on 15th September, 2026

Urmee Rahman, J.

This First Appeal is directed against the judgment and decree dated 13.09.2007 (decree signed on 23.09.2007) passed by the learned Joint District Judge, First Court, Narayanganj in Title Suit No. 97 of 2003 dismissing the suit.

The case of the plaintiffs, as has been narrated in the plaint, in short, is that, the original C.S. recorded owner of the suit land was Feragazi; thereafter, the land was recorded in the name of his son Abbas Ali. Abbas Ali died leaving behind his 4 (four) sons, namely, Gaizuddin, Afiruddin, Montazuddin and Kudrat Ali as well as 2(two) daughters, namely, Kalai Bibi and Sonai Bibi. The R.S. Khatian had been rightly

recorded in the name of the heirs of Abbas Ali. While the 2(two) daughters of Abbas Ali were possessing 5(five) decimals of land by way of inheritance, they executed a Power of Attorney in the name of plaintiff No. 1 on 22.09.1994. The Power of Attorney Deed No. 3224 was registered in the Narayanganj Sub-registry Office and possession was delivered to him. Kudrat Ali, son of Abbas Ali, while possessing his share of land transferred $5\frac{1}{2}$ decimals of land in favour of the plaintiff No. 1 by executing a Power of Attorney Deed No. 4667 dated 31.12.1994. In this manner Habibur Rahman i.e. the plaintiff No. 1 became the owner of $10\frac{1}{2}$ decimals of land. By executing a Heba-bil-Ewaz Deed No. 4282 dated 30.09.1995 he transferred 10 decimals of land to the plaintiff Nos. 2 and 3 (his son and wife) and delivered possession thereof and he continued possessing the rest $\frac{1}{2}$ decimal of land. Montazuddin, another son of Abbas Ali, died leaving behind 2(two) sons, namely, Abul Miah and Fazal Karim as his legal heirs, who transferred the land to one Md. Sharifullah by executing a Power of Attorney Deed No. 3164 dated 17.07.1995. Afiruddin, another son of Abbas Ali, died leaving behind 3(three) sons namely Abdul Barek Miah,

Khalilur Rahman Miah and Abdul Jalaluddin, who transferred their shares of land to Md. Sharifullah by executing a Power of Attorney Deed No. 4187 dated 24.09.1995 and delivered possession to him. In this manner, Md. Sharifullah became owner of 11 decimals of land and transferred the same to his elder brother Md. Shah Alam Sarkar by executing a Heba-bil-Ewaz Deed No. 4633 dated 23.10.1995. The said Md. Shah Alam Sarkar while possessing the land transferred the said 11 decimals of land to the plaintiff No. 1 by executing a Power of Attorney Deed No. 1471 dated 25.04.1996. Plaintiff no. 1 Habibur Rahman by executing another Heba-bil-Ewaz Deed No. 1528 dated 07.05.1996 transferred the same to the plaintiff No. 3 and delivered possession. In this manner, the 3(three) plaintiffs became the owners of the suit land measuring 21·5 decimals of land in total and continued possessing the same by constructing houses thereon. While they were in possession of the suit land, the defendants dispossessed them forcefully therefrom on 20.05.1996 in an unlawful manner and constructed an wall and a tin shed house thereon. Plaintiffs tried to settle the dispute through the local elite members of the village but failed. Lastly on 05.04.1998 they requested the defendants for recovery of possession of the suit land, but without

any result. Hence, they were constrained to institute the present suit for declaration of title as well as for recovery of khas possession.

The suit was contested by the defendant Nos. 1-3 by filing a single written statement denying all the material allegations made in the plaint and stating inter alia that, they purchased the suit property from the successors of the original recorded owner by executing registered sale deeds and they have been possessing the suit land since 07.02.1981. Plaintiffs never acquired any title over the suit land neither they ever had any possession thereon. Hence, the suit is liable to be dismissed.

In order to prove their respective cases the plaintiffs examined as many as 4 (four) P.W.s and produced documentary evidence marked as Exhibit Nos. 1-11. On the other hand, the defendants examined as many as 3 (three) D.W.s and produced documentary evidence marked as Exhibit Nos. ka-Jha.

The learned Judge of the trial court after hearing the parties and perusing the material evidence on record was pleased to dismiss the suit by the judgment and decree dated 13.09.2007 (decree signed on 23.09.2007). The learned Joint District Judge dismissed the suit mainly

on the ground that the plaintiffs failed to prove their title over the suit land and they also failed to prove that they were in possession over the suit land prior to the dispossession. On the other hand, the defendants by producing series of documents of title as well as of possession have been able to prove their case.

Being aggrieved by the judgment and decree the plaintiffs as appellants preferred the instant First Appeal.

It appears from the order book that the learned Advocate for the respondents received a copy of the paper book on 06.02.2014 and the First Appeal was made ready for hearing on the same date but no step has ever been taken on behalf of either party to get the matter heard. Ultimately, the First Appeal was sent from the section before this Bench considering it a long pending matter and it was fixed for hearing on 16.08.2026 and has been appearing in the cause list ever since with the names of the learned Advocates for both the parties. However, no one appeared on behalf of either party in support of their respective cases. Since this is a long pending matter and the Lower Court Records (L.C.R.) and the paper books are available before us, we, on meticulous perusal of the evidence on record fixed this matter for judgment

following the provision of Order 41 Rule 30(2) of the Code of Civil Procedure for disposal of this First Appeal. However, on the very date of pronouncement of judgment learned Advocate Mr. Md. Mozibur Rahman appeared on behalf of the appellants and submitted before this Court that two important deeds of title have not been produced before the trial court on behalf of the plaintiffs by dint of which the plaintiff Nos. 2 and 3 claimed title over the suit land. Therefore, he tried to make out a case of remand of the case to the trial court in order to give the plaintiffs an opportunity to produce those 2(two) deeds and mark them as exhibits.

No one appeared for the respondents.

On perusal of the memo of appeal we find that, apart from making some formal grounds no substantial ground regarding the merit of the appeal has been taken therein. Learned Advocate for the appellants also could not make any verbal submission in support of his case.

It appears from the impugned judgment that learned Joint District Judge thoroughly discussed the evidence on record and arrived at the finding that the defendants have been able to prove their title and

possession over the suit land. It was further held that the suit land had been transferred by the said Gaizuddin, son of the C.S. recorded owner Abbas Uddin, in the year 1921 and therefore, any subsequent transfer, if made to the plaintiff, was not done in accordance with law inasmuch as the transferor did not have any transferable right over the said land.

The learned Judge of the trial court also pointed out an issue that, the plaintiffs by producing some Power of Attorney Deeds are claiming title over the suit land but did not make the executants parties to the suit. However, learned trial court failed to point out the very fundamental question of law that filing a suit for declaration of title on the basis of a Power of Attorney deed is beyond the scope of law. Power of Attorney is an authority given by one person to another to do the legal acts specifically mentioned in the deed on his or her behalf. It does not itself transfer any ownership or title of the property to the Attorney. It ordinarily creates an authority to act, subject to the terms and conditions of the authority conferred but in the plaint the plaintiff no. 1 neither mentioned himself as a constituted Attorney nor did he impleaded the original owners as the party to the suit. Hence, the plaintiffs' claim for

declaration of title over the suit land does not have any lawful basis at all.

Furthermore, plaintiff No. 1 claims that he transferred some land in favour of plaintiff Nos. 2 and 3, who are his wife and son, by dint of the power given by the deed of Power of Attorney. On perusal of the Power of Attorney deeds we find that although there is a stipulation giving the attorney an authority to execute a deed of gift but that does not mean that the attorney can make the gift as per his personal desire rather it means that the gift has to be done on behalf of the principal i.e. the executant of the Power of Attorney deed. The Attorney is not the owner rather he is merely exercising the executant's authority.

In support of their case plaintiffs produced certified copies of all the Power of Attorney deeds but in his deposition P.W. 1 did not say any reason why he failed to produce the original copy of the deeds.

On perusal of the Power of Attorney Deed (Exhibit No. 6) we find that, it was executed by Akimunnessa and Ful Banu, but the plaint was amended stating that 2(two) daughters of Abbas Ali namely Kalai Bibi and Sonai Bibi executed the Power of Attorney deed in favour of the

plaintiff No. 1. In his deposition P.W.-1 deposed that Abbas Ali's 2(two) daughters Halima Bibi and Sonai Bibi transferred their shares to their daughter Akimunnessa, who transferred the same to him by executing a Power of Attorney deed. Thus, the averments made in the plaint, the deposition made by the plaintiff No. 1 as p.w.-1 and the corresponding Exhibit No. 6 are contradictory to each other. Regarding the 2(two) title deeds in the name of plaintiff Nos. 2 and 3 it has been stated by the P.W. 1 that those 2(two) gift deeds have been executed by him by dint of a Power of Attorney, which he obtained from Md. Shah Alam Sarkar who got the land by a heba-bil-ewaz deed from Sharifulla i.e. the constituted attorney of the successors of the original C.S. recorded owner. We have already discussed hereinbefore that a constituted attorney has no authority to execute a gift deed to a person. Therefore, we hold that the very basis of the claim so made by the plaintiffs regarding the properties of plaintiff Nos. 2 and 3 has no lawful basis whatsoever.

Furthermore, in a suit for declaration of title and of recovery of khas possession a plaintiff has to prove his title as well as the prior possession before the date of dispossession. In the instant case plaintiffs have stated in the plaint that they were dispossessed from the suit land

on 20.05.1996 but in Exhibit-Ja, which is a petition of C. R. Case No. 439 of 1996 filed by the plaintiff No. 1 himself, he categorically mentioned that the date of dispossession was 22.09.1996. Hence, the date of dispossession mentioned by the plaintiff no. 1 himself found to be contradictory and therefore remained unproved.

Since the plaintiffs have failed to prove their title as well as their earlier possession and alleged dispossession from the suit land, we do not find any reason to interfere with the impugned judgment passed by the court below dismissing the suit.

In the result this First Appeal is dismissed with cost to the defendants-respondents.

Communicate a copy of the judgment to the Court concerned and send down the Lower Court Records (L.C.R.) at once.

Md. Riaz Uddin Khan, J.

I agree.

Helal/Abo