

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 4123 of 2000**

Sree Sunil Kumar Dev

..... Plaintiff-petitioner

-Versus-

Sreemati Parul Rani Chowdhury being dead  
her heirs Ashish Kumar Chowdhury alias  
Chandu and others

.... Defendant-opposite parties

Mr. Md. Ziaul Haque, Advocate

..... For the plaintiff-petitioner

Mr. Rafiqul Islam Sohel, Advocate

... For the defendant-opposite parties

**Heard on: 24.10.2024, 20.11.2024,**  
**21.11.2024 and 01.12.2024**  
**Judgment on: 02.12.2024**

The plaintiff is Sree Sunil Kumar Dev. The defendant No. 1 is Sreemati Parul Rani Chowdhury (since deceased).

The plaintiff filed the suit for declaration of title in respect of land measuring 66 decimals (part of which is vested and non-resident property) appertaining to R.S. Khatian Nos. 604 and 1006/2, Plot Nos. 306, 307, 296, 297, 299 and 301 of mouza Dhorola, P.S. Boalkhali, District-Chattogram and to evict the defendant No. 1 from the suit land and to restore the possession of the same to the plaintiff. The plaintiff further prayed for a declaration that the registered

compromise deed dated 06.05.1977 (ext. 9) (the actual date of compromise deed is 07.05.1977) in respect of the said 66 decimals of land entered into between the plaintiff and the defendant No. 1 Parul Rani is void and not binding upon the plaintiff.

The case has a long history. In the first round, the plaintiff filed Other Suit No. 79 of 1980 in the Court of the then First Munsif, Patia, Chattogram. The suit was decreed on 29.03.1984. The appellate Court below set aside the decree on 05.06.1990 and sent back the case on remand to the trial Court. In the second round, the suit was renumbered as Other Suit No. 69 of 1983. On remand, the trial Court *i.e.* Assistant Judge, Boalkhali, Chattogram heard the parties again and some documents were tendered in evidence by the parties. This time, the suit was dismissed on contest against the defendant Nos. 1 and 5-6 on 31.07.1991 (decree signed on 06.08.1991). Other Appeal No. 6 of 1992 filed by the plaintiff was also dismissed on 13.03.2000 by the learned Additional District Judge, Chattogram. The plaintiff preferred Civil Revision No. 4123 of 2000. The Rule was made absolute by the High Court Division on 08.09.2015. Meanwhile, the defendant No. 1 died. Her legal heirs and others preferred Civil Petition For Leave To Appeal No. 1788 of 2016. The apex Court by judgment and order dated 08.10.2017 set aside the judgment and order of the High Court Division, sent back the revision to this Division for hearing afresh for disposal in accordance with law considering the

evidence on record. In the third round, this Court heard the Civil Revision afresh.

The case of the plaintiff, in short, is that the suit land *i.e.* 66 decimals of land and other lands were owned by Mohendra, Monindra (defendant No. 2), Shachindra and Horiprosonna (defendant No. 3) in equal shares recorded in R.S. khatian Nos. 604, 1006/2 (ext.1). Mohendra, Monindra and Shachindra are full brothers. Mohendra had only one daughter Tilottoma who died during his life time. Monindra and Horiprosonno (defendant Nos. 2 and 3) by an amicable arrangement gave their respective shares in the properties to Shachindra and left the country for India. Thus, Shachindra became the sole owner of the entire property. On his death, his son Sukumar inherited the entire share of his father's property. He sold the suit land (*i.e.* 66 decimals of land) and other lands to the plaintiff by a registered sale deed dated 09.09.1976 (ext. 3) and the plaintiff obtained the possession of the lands.

The defendant No. 1 Parul Rani told the plaintiff that Tilottoma (daughter of Mohendra) died leaving Parul Rani and her brother Bisendu. Bisendu inherited the entire share of Mohendra's property. Dispute arose between the parties. In order to settle the dispute they entered into a settlement and a registered compromise deed dated 06.05.1977 (ext. 9) was executed by the plaintiff and defendant No. 1 Parul Rani. By the said compromise, the plaintiff relinquished his

claim in respect of 66 decimals of land which is the suit land and surrendered the possession of the same in favour of Parul Rani.

The further case of plaintiff is that it was revealed later on that by a deed executed on 06.01.1940 and registered on 09.01.1940 (ext. 10) Mohendra gifted his share in the land in favour of his brother Monindra (defendant No. 2). However, at the time of entering into the compromise deed dated 06.05.1977 (ext. 9) the plaintiff and the defendant No. 1 Parul Rani were not aware of the gift deed dated 09.01.1940 (ext. 10). It is stated in the plaint that the gift deed dated 09.01.1940 was acted upon and as such, Mohendra's grandson Bisendu (son of Tilottoma) did not inherit any property of Mohendra. As a result, Bisendu had no title in the suit land to make the gift in favour of his sister *i.e.*, the defendant No. 1 Parul Rani.

The case of the defendant No. 1 Parul Rani as stated in the written statements is that the registered gift deed dated 09.01.1940 was never acted upon and thus, Mohendra's share in the property remained intact. Bisendu (brother of defendant No. 1) inherited the share of Mohendra's property. Since defendant No. 1 Parul Rani was in possession of the suit land for more than 12 years, in order to protect her interest in the suit land, which she had acquired by adverse possession, Bisendu gifted the suit land in her favour by a registered deed dated 27.10.1976 (ext. A).

The further case of the defendant No. 1 is that when she came to know about the purchase of the suit land and other lands by the

plaintiff, she filed Other Suit No. 162 of 1976 in the Court of 2<sup>nd</sup> Sub-Judge, Chattogram for declaration of title in the suit land and other lands purchased by the plaintiff and for further declaration that part of the suit land which was declared vested and non-resident property was not so vested and non-resident property. During pendency of the Other Suit No. 162 of 1976, the parties entered into registered amicable compromise at the intervention of local elites and the Union Parishad. Accordingly, the compromise deed dated 07.05.1977 (the date was wrongly mentioned in the plaint as 06.05.1977) was executed by the parties. Thereafter, the defendant No. 1 withdrew Other Suit No. 162 of 1976. The specific case of the defendant No. 1 is that all the parties were aware of the gift deed dated 09.01.1940 (ext. 10).

The defendant Nos. 5 and 6 contested the suit by filing a joint written statement. Their case is that the defendant No. 5 was employed by the defendant No. 1 since September 1981 and the defendant No. 6 is a bargadar under the defendant No. 1. They supported the case of the defendant No. 1.

The plaintiff examined two witnesses including the plaintiff as PW1. The defendant examined two witnesses. DW1 is the son of defendant No. 1. DW2 was not a party to the suit.

The parties also adduced documentary evidence. The list of documents exhibited by the plaintiff is as follows:

1. R.S. khatian No. 604 and 1006/2-ext. 1 series.

2. P.S. khatian No. 1052/1- ext. 2.
3. Registered sale deed dated 09.09.1976 by which plaintiff purchased the suit land and other lands from Sukumar- ext. 3.
4. Certificate dated 23.07.1976 issued by Sadharan Bima Corporation that Sukumar is a permanent employee of the Corporation and is a Bangladeshi by birth- ext. 4.
5. Nationality Certificate dated 15.10.1977 issued by the concerned Union Parishad, Chattogram in respect of Sukumar- ext. 5.
6. Tax receipts dated 16.02.1976 and 06.02.1981 issued by the concerned Union Parishad- ext. 6 series.
7. Letter dated 28.09.1977 written by Sukumar to the plaintiff- ext. 7 series.
8. Rent receipts- ext. 8 series.
9. Registered compromise deed dated 07.05.1977 between the plaintiff and the defendant No. 1- ext. 9.
10. Registered gift deed dated 09.01.1940 made by Mohendra- ext. 10.
11. Agreement of licence between the Government and the plaintiff in respect of the vested and non-resident property- ext. 11 series.
12. B.S. khatian Nos. 538 and 109- ext. 12 series.
13. B.S. khatian No. 1389- ext. 13.

14.D.C.R. in respect of payment of rent for the vested and non-resident property- ext. 14 series.

15.Rent receipts- ext. 15 series.

16.Correspondence regarding death of the husband of the defendant No. 1- ext. 16 series.

17.Information slip dated 18.07.1991 regarding mutation of land purchased by the plaintiff from Sukumar- ext. 17.

List of documents exhibited by the contesting defendants:

1. Registered gift deed dated 28.10.1976 donor being Bisendu and donee being defendant No. 1- ext. A.
2. R.S. khatian No. 604 and 1006/2- ext. B series.
3. P.S. khatian- ext. C series.
4. Plaint and orders passed in Other Suit No. 162 of 1976- ext. D series.
5. Death certificate of the husband of the defendant No. 1- ext. E series.
6. Rent receipts and tax receipts- ext. F series.
7. Tax receipts- ext. G series.
8. Supporting document signed by the local residents regarding confirmation of possession of the suit land by the defendant No. 1 and members of her family- ext. H.

Admittedly, Mohendra's daughter Tilottoma died leaving behind the defendant No. 1 Parul Rani and his brother Bisendu. The defendants admitted that Mohendra executed the registered gift deed

dated 09.01.1940 (ext. 10) but their case is that the said gift was not acted upon and thus, it was an invalid gift. Therefore, it is obvious that if the gift deed dated 09.01.1940 by which Mohendra gifted his share in the land to his brother Monindra was not acted upon, Bisendu inherited the share of Mohendra's property *i.e.*, the suit land. Bisendu gifted his share to the defendant No. 1 on 28.10.1976 (ext. A). The validity of the subsequent gift (ext. A) is subject to invalidation of the earlier gift deed dated 09.01.1940. The plaintiff purchased the suit land and other lands from Sukumar on 09.09.1976 which includes share of Mohendra's property including the suit land. In order to resolve the dispute, the plaintiff and the defendant No. 1 entered into the registered compromise deed on 07.05.1977 by which the plaintiff relinquished his right, title and interest in the suit land in favour of the defendant No. 1. At the time of the purchase of the suit land and executing the compromise deed in 1977 the plaintiff was not aware of the gift deed dated 09.01.1940. Later on, the plaintiff learnt about the gift deed dated 09.01.1940 and filed the instant suit. His specific case is that had he been aware of the gift deed dated 09.01.1940 he would not have executed the compromise deed in 1977 with the defendant No. 1. Therefore, the first question to address is whether the compromise deed dated 07.05.1977 (ext. 9) is void or voidable.

What is the legal implication of a compromise? Is it a contract? This question arose in *Trigge vs. Lavallee*, (1862) 15 Moo P C 271 = 1 N R 451 = 11 WR 404. It was held, "*A compromise is an agreement*

*to put an end to disputes and terminate or avoid litigation; and in such case the consideration which each party receives is not the sacrifice of a right but abandonment of a claim". In **Helan Dasi vs. Durga Das Mundal**, (1906) 4 C L J 323, it was held that if parties settle a dispute, such settlement would not be set aside on the ground that it gave to one of the parties more than what he might possibly have recovered if he had taken the judgment of the Court upon the matters then in difference between them. The above-mentioned cases were referred to in **Srimati Sabitri Thakurain vs. Mrs. F.A. Savi and others**, AIR 1933 Patna 306 at pp. 396, 397 with approval. It was held, "No doubt, a family arrangement may be set aside as was laid down by Mookerjee, J., in the case of **Satya Kumar v. Satya Kirpal**, (1909) 3 IC 247 on the ground of mistake in equality of position, or undue influence, coercion, fraud or any other similar ground, but that any such allegation must be clearly established".*

Section 2 of the Contract Act, 1872 provides interpretation of some words and expressions. Clauses (d), (e) and (f) of Section 2 are relevant in the instant case. They are reproduced below:

"2...

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;...”

The learned Advocate appearing for the plaintiff-petitioner refers to the case of *Ramachandra Reddy (dead) vs. Ramulu Ammal (dead)* decided by the Supreme Court of India in Civil Appeal No. 3034 of 2012, date of judgment: 14.11.2024 (neutral citation: 2024 INSC 868) and submits that the meaning of ‘consideration’ is wide and is not confined to monetary consideration only. In *Ramachandra Reddy*, the dispute hinged on whether the deed in question was a gift deed or a settlement deed. The Madras High Court took a constricted view of ‘consideration’ and held that the deed executed was a gift deed. The Indian Supreme Court held that transfer of property in favour of the transferee in recognition of the fact that she had been taking care of the transferors and would continue to do so while using the same to carry out charitable work was a good consideration which need not always be in monetary terms and it can be in other forms as well. Be it mentioned that clauses (d), (e) and (f) of Section 2 of the Contract Act were discussed in the decided case.

In the instant case, the plaintiff entered into the compromise deed on 07.05.1977 (ext. 9) with the defendant No. 1 Parul Rani to put an end to the dispute with her and also to get rid of Other Suit No. 162 of 1976 filed by Parul Rani in respect of the suit land. Under the compromise, the plaintiff abandoned his right, title and interest in the suit land. The case laws discussed earlier have already settled the

proposition of law that abandonment of claim is a valid consideration. Accordingly, the compromise deed (ext. 9) is a contract under the Contract Act.

In the instant suit the plaintiff has prayed for a declaration that the compromise deed (ext. 9) is void. It is stated in the plaint that at the time of execution of the compromise deed in 1977 (ext. 9), the parties were not aware of the gift deed dated 09.01.1940 (ext. 10). The plaintiff came to know about the gift deed later on and then filed the instant suit. It is stated in the written statements that the parties were aware of the gift deed at the time of entering into the compromise deed (ext. 9).

PW1 (plaintiff) deposed that he was not aware of the gift deed dated 09.01.1940. He denied the suggestion that at the time of execution of the compromise deed in 1977 he was shown the said gift deed of 1940. DW1 (son of defendant Parul Rani) stated in cross-examination, *“On the date of salish (pursuant to which the compromise deed was entered into), I heard about the deed of gift of 1940. Nothing about deed of gift of 1940 is mentioned in the partition deed (referring to the compromise deed)”*.

It appears from the plaint, written statements and evidence, both oral and documentary, that at the time of execution of the compromise deed with the defendant Parul Rani the plaintiff was not aware of the

gift deed dated 09.01.1940 (ext. 10) but defendant No. 1 Parul Rani was aware of the same.

The trial Court observed that the gift deed dated 09.01.1940 was not essential to the compromise deed dated 07.05.1977 and as such, unilateral mistake of the defendant as to the omission to mention the earlier gift deed in the subsequent compromise deed is irrelevant and has no bearing upon the compromise deed. Admittedly, the gift deed was not referred to in the compromise deed.

The plaintiff entered into the compromise deed for two reasons. Firstly, he was under the belief that the defendant Parul Rani got title in the suit land through gift deed dated 27.10.1976 made by her brother (grandson of Mohendra) who had inherited Mohendra's property and as such, Sukumar, who is the only son and the legal heir of Monindra (Mohendra's brother), from whom the plaintiff purchased the suit land and other lands, had no right, title and interest to sell the suit land which was owned by Mohendra. Secondly, the plaintiff purchased the lands on 09.09.1976. Soon after, the defendant filed Other Suit No. 162 of 1976 claiming title in the suit land and other lands. The registered gift deed dated 09.01.1940 was not mentioned in the plaint of the said suit. In order to avoid litigation, the plaintiff executed the compromise deed on 07.05.1977. Other Suit No. 162 of 1976 was dismissed for non-prosecution on 27.05.1978. Accordingly, I have no hesitation to hold that the registered gift deed

dated 09.01.1940 was essentially a matter of fact or a substance touching upon the subject matter of the compromise deed dated 07.05.1977. Had the plaintiff been aware of the registered gift deed dated 09.01.1940 he would not have executed the compromise deed. The defendant was aware of the same but she did not mention about gift deed of 1940 to the plaintiff.

Section 18 of the Contract Act has defined misrepresentation.

Section 18 runs as follows:

“18. “Misrepresentation” means and includes–

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement”.

Under Section 19 of the Contract Act, when consent to an agreement is caused by misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. The instant case, in my view, squarely falls within the definition of misrepresentation and as such, the compromise deed dated 07.05.1977 is voidable at the option of the plaintiff. The issue can also be addressed from a different perspective. The plaintiff was not aware of the gift deed dated 09.01.1940, but the defendant Parul Rani was aware of the same and she knew that the earlier gift deed of 1940

would invalidate her title in the suit land. Therefore, there was no meeting of the mind of the parties at the time of entering into the compromise deed on 07.05.1977.

The next question is whether the registered gift deed dated 09.01.1940 (ext. 10), the donor being Mohendra, the donee being Monindra, was acted upon. If the same was not acted upon the plaintiff shall not get any relief inasmuch as the plaintiff's chain of title in the suit land originates from the donee Monindra, on the other hand, that of the defendant Parul Rani is essentially linked to the donor Mohendra.

In order to prove that the gift deed dated 09.01.1940 was acted upon, the plaintiff has to prove that the donor handed over the possession of the property in question in favour of the donee. This can only be done by showing that the donee or his successor-in-interest is in possession of the gifted land *i.e.*, the suit land. Section 59 of the Evidence Act states that all facts, except the contents of documents, may be proved by oral evidence. In respect of possession of the suit land, both parties produced documentary evidence along with the oral evidence. The plaintiff tendered in evidence tax receipts (ext. 6 series), rent receipts (ext. 8 series and ext. 15 series), information slip dated 18.07.1991 regarding mutation of land purchased by the plaintiff from Sukumar (ext. 17) and B.S. khatian (exts. 12 and 13) to prove the possession.

The defendant, on the other hand, produced rent receipts and tax receipts (exts. F series and G series) in support of possession of the suit land by the defendant No. 1. Section 144A of the State Acquisition and Tenancy Act, 1950 states that every entry in a record-of-rights prepared or revised under Section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

The B.S. khatians (ext. 12 and 13) were prepared in the name of Sukumar who is the son of Shachindra (another brother of Mohendra). The plaintiff purchased the suit land and other lands from the B.S. recorded owner Sukumar. In order to rebut the presumption of correctness of the B.S. khatian, the rent receipts (ext. F series) were produced by the defendants. In those rent receipts the owner of the land is mentioned as Mohendra and others *i.e.* the R.S. recorded owners. On the other hand, in the rent receipts ext. 15 series exhibited by the plaintiff the name of the owner is written as Sunil Kumar Dev *i.e.* the plaintiff. Therefore, the rent receipts (ext. 15 series), the information slip (ext. 17) and B.S. khatian (ext. 12 series and 13) suggest that the gift deed 09.01.1940 was acted upon in that the possession of land owned by Mohendra (donor) was handed over to the donee Monindra. It is settled principle of law that the record-of-rights (here the B.S. khatians) establishes rebuttable evidence of possession. The plaintiff succeeded in establishing the possession of his vendor by exhibiting B.S. khatians and the rent receipts. Had the

gift of 1940 not been acted upon there would have been some documents showing that Bisendu (son of Tilottoma who is daughter of Mohendra) inherited Mohendra's property. Bisendu gifted the suit land to his sister defendant Parul Rani on 27.10.1976 by a registered gift deed (ext. A). In the absence of any documentary evidence to rebut the presumption of correctness of the B.S. khatians prepared in the name of the vendor of the plaintiff as per provision of Section 144A of the State Acquisition and Tenancy Act it can be safely concluded that the registered gift deed dated 09.01.1940 was acted upon and as such, the plaintiff's vendor Sukumar had title in the suit land which he transferred to the plaintiff along with other lands by the registered sale deed dated 09.09.1976 (ext. 3). The finding of the Courts below that the registered gift deed dated 09.01.1940 was not acted upon is wrong. Bisendu had no title in the suit land and as such, the gift deed dated 27.10.1976 (ext. A) in favour of his sister defendant No. 1 is not valid in the eye of law.

The appellate Court below observed that the plaintiff did not produce any S.A. khatian to show that S.A. khatian was recorded in the name of Monindra who got the suit land by way of registered gift dated 09.01.1940 (ext. 10) executed by Mohendra. The learned Advocate appearing for the defendant-opposite parties submits that the P.S. khatian (ext. 2 and ext. C series) was recorded in the name Mohendra which suggests that the gift deed (ext. 10) was not acted upon. In the text book 'Understanding The Fundamentals of Land

Laws In Bangladesh' by Mr. Naser Alam, 2023, it is observed at page 481 that there is no S.A. khatian in Chattogram. The P.S. khatian is regarded as the S.A. khatian of Chattogram. The presumption of correctness of the P.S. khatian was discussed in *Ahmed Meah Mistry vs. Abdyl Majid*, 1985 5 BLD 47 which negates the submission of the learned Advocate. It was held in the reported case:

“The P.S. Khatian was prepared under chapter IV of the State Acquisition and Tenancy Act and sub-section (3) of section 19 provides that final publication of a record of right under section 19 shall be conclusive evidence that the record has been duly prepared or revised under that Chapter. Sub-section (3) does not provide that record of right prepared under Chapter IV shall have any presumption as to the correctness of the entries made therein. ... The presumption of correctness that has been attached to an entry in a record of right prepared or revised under section 144 has not been attached to an entry in a record of right prepared or revised under Chapter IV. To say that the entry in a record of right prepared under Chapter IV has a presumption of correctness is to read something into the statute which is not there in it and this, the Court cannot do. ... I am therefore unable to find fault with the judgment of the learned lower appellate court if it has after considering the P.S. Khatian ext.1 in the light of the other evidence on record has come to a conclusion that ext. 1 is incorrect. In doing so, the learned lower appellate court has not committed any illegality”.

The learned Advocate appearing for the defendant draws my attention to exhibit-11 series and submits that those exhibits establish that the gift deed of 1940 was not acted upon. I have considered exhibit-11 series. The plaintiff purchased the suit land and other lands on 09.09.1976. Meanwhile, portion of the purchased lands became

vested and non-resident property. The plaintiff applied to the concerned authority to get licence to cultivate those lands. Accordingly, Enemy Property Misc. Case No. 366/76-77 was initiated. Thereafter, on 29.10.1976 the concerned authority and the plaintiff entered into an agreement of licence to let out the said vested lands to the plaintiff for one year upon payment of rent specified in the agreement. On expiry of the tenure of the agreement of licence, the plaintiff entered into a new licence agreement in the aforementioned Misc. Case No. 366/76-77. The plaintiff tendered four agreement of licence (year-to-year) in evidence (ext. 11 series). In the schedule of each agreements, the name of the owners of the lands, now vested in the government, are written as Mohendra Lal Kanungo, Manindra Lal and Hari Prasanna. It is the contention of the learned Advocate that the mention of Mohendra's name in the agreement as co-owner bears the testimony that the gift deed 1940 executed by Mohendra was not acted upon. I am unable to accept the argument for the reason that the licence agreements (ext. 11 series) mentioning Mohendra's name as co-owner of the lands cannot be considered as a reliable piece of evidence to disprove the plaintiff's case that the gift deed of 1940 executed by Mohendra was acted upon.

The upshot of the above discussions is that the registered gift deed dated 09.01.1940 (ext. 10) was acted upon. The plaintiff's vendor had valid title in the suit land. He was in possession of the same. The plaintiff acquired valid title in the suit land. The registered

gift deed dated 28.10.1976 (ext. A) by which the defendant No. 1 Parul Rani claimed title in suit was an invalid gift inasmuch as the donor (Parul Rani's full brother) had no title in the property. The compromise deed dated 07.05.1977 (ext. 9) entered into between the plaintiff and the defendant Parul Rani is a voidable contract and the same is declared void. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The judgments and decrees passed by the Courts below dismissing the suit are set aside. The suit is allowed and decreed accordingly. No order as to costs.

Send down the L.C.R.