

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 2968 of 2014

In the matter of:

Shahida Akhter and others

... Plaintiffs-Respondents

petitioners

-Versus-

Md. Mokaruzzaman and others

.... Defendants-Appellants

Opposite parties

Mr Chanchal Kumar Biswas, with

Mr Sougata Guha, Advocate

.....For the Petitioner

Mr Md. Didar Ali Fakir, Advocate

...for the Opposite parties.

Date of Hearing: 24.06.2026 and 25.06.2026 A.D.

Date of Judgment: 28.06.2026 A.D., Sunday,

14 Ashhar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule at the instance of the petitioners has been issued under the authority of Section 115(1) of the Code of Civil Procedure, 1908, calling upon the Opposite parties 1 and 2 to show cause as to why the impugned judgment and decree dated 24.03.2014 passed by the learned District Judge, Magura in Civil Appeal No.103 of 2013 allowing the appeal in part and reversing those dated 19.05.2013 passed by the learned Joint District Judge, 1st Court, Magura in Title Suit No.1 of 2002, decreeing the suit for partition in preliminary form should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the same time, this Court passed an order directing the parties to maintain *status quo* with respect to the position and possession of the suit land, and the same order was extended from time to time.

The facts, in brief, are that the predecessor of the petitioners, as plaintiff, instituted Partition Suit No. 1 of 2002

before the Court of the Joint District Judge, 1st Court, Magura, seeking partition of the suit property. The plaintiff pleaded, *inter alia*, that the suit property originally belonged to Jagabandhu and was subsequently settled in favour of Julmat Khan by virtue of a Kabuliat dated 29.10.1937. It was further stated that Adeluddin purchased 28 decimals of the suit land from Julmat Khan on 21.03.1969 and thereafter transferred 13 decimals thereof to Akteruzzaman by two registered deeds dated 17.08.1988 and 02.12.1992. According to the plaintiff, Akteruzzaman subsequently gifted the said 13 decimals to the present petitioners by an unregistered deed of gift. The plaintiff also claimed that his dwelling house stands on the suit land and that, as the defendants denied his title and claim for partition, he was constrained to institute the suit.

Defendant Nos. 1 to 4 entered an appearance and contested the suit by filing a written statement denying the plaintiff's claim. They contended that Julmat Khan had sold 29 decimals of the suit property to the concerned School, over which the school's shops had been constructed. They further alleged that the plaintiff had illegally constructed his house on

a portion of the school's land without lawful authority or notice and, therefore, the suit was liable to dismissal.

Defendant No. 5 also filed a separate written statement stating that he originally owned 0.285 acres of the suit property, out of which he had transferred 0.13 acres to the plaintiff, 0.02 acres to Afzal, 0.03 acres to Nabir Hossain, 0.05 acres to Mofazzel, and 0.065 acres to one Afser, while retaining possession of the remaining 0.035 acres where his three tin-shed structures stand. He further contended that the plaintiff had failed to implead the other purchasers as necessary parties and admitted that the plaintiff was in possession of the 13 decimals used as his homestead. Accordingly, he prayed for dismissal of the suit.

Defendant Nos. 6 to 12 also contested the suit by filing a joint written statement. They asserted that Defendant Nos. 7 to 12 had purchased 0.03 acres of the suit property from Adeluddin by a registered deed dated 28.10.1985, while Defendant No. 6 had purchased 0.02 acres from the same vendor by two registered deeds dated 10.04.1986 and 08.11.1986. They claimed to be in possession of their

respective portions measuring 0.05 acres in total, over which their tin-shed houses had been erected, and prayed for allotment of their respective saham.

Defendant Nos. 13 and 14 separately contested the suit by filing written statements. Their case, in substance, was that Akteruzzaman had acquired 13 decimals of the suit property from Adeluddin through the aforesaid registered deeds and subsequently made an oral gift of 0.040 acres to his brother, Mokhtaruzzaman, Defendant No. 13, on 15.10.2004. They further stated that, upon the death of Akteruzzaman, he left behind his wife, four daughters, one full brother (Defendant No. 13), and one full sister (Defendant No. 14), by virtue of which Defendant Nos. 13 and 14 acquired an interest in 0.05 acres of the suit property. They claimed to be in joint possession with the plaintiff and asserted that the suit had been instituted on false allegations and was liable to be dismissed.

The predecessor-in-interest of the present petitioners, as plaintiff, instituted the suit seeking partition of the suit property by claiming his lawful share measuring 0.13 acres.

Upon completion of the pleadings, framing of issues, recording of oral and documentary evidence, and after hearing the parties at length, the learned trial Court, by judgment and preliminary decree dated 19.05.2013 (the decree having been drawn up on 21.05.2013), decreed the suit in part by allotting 0.13 acres of land to the plaintiff in accordance with his established share.

Being dissatisfied with the said judgment and preliminary decree, defendant Nos. 13 and 14 preferred Civil Appeal No. 103 of 2013 before the learned District Judge, Magura. Upon hearing the parties and reappreciating the evidence on record, the learned appellate Court, by judgment and decree dated 24.03.2014 (the decree having been drawn up on 25.03.2014), allowed the appeal in part and modified the judgment and decree passed by the trial Court.

Thereafter, being aggrieved by and dissatisfied with the said appellate judgment and decree, the present petitioners have invoked the revisional jurisdiction of this Court under the relevant provisions of law.

Mr Chanchal Kumar Biswas, learned Counsel, appearing together with Mr Sougata Guha on behalf of the petitioners, submitted that the learned appellate Court failed to appreciate the materials on record in their proper perspective and thereby committed serious errors of law resulting in an erroneous decision occasioning failure of justice.

Learned Counsel contended that the original plaintiff, namely Akteruzzaman Mridha, instituted the suit claiming partition of his admitted share measuring 0.13 acres of land. According to him, the entitlement of the original plaintiff to the said extent of land was never disputed by defendant Nos. 13 and 14. During the pendency of the suit, the original plaintiff died, whereupon his widow and four daughters were substituted as his legal heirs. The substituted plaintiffs asserted that before his death, the original plaintiff had made a valid oral gift (Heba) of the entire 0.13 acres in their favour and that the said oral gift was subsequently reduced into writing by a document dated 03.06.2005, which was written in the handwriting of the donor himself, attested by two witnesses, and marked as Exhibit-7. It is submitted that the

plaintiffs duly proved the execution, genuineness and authenticity of the said document by leading cogent oral and documentary evidence.

Learned Counsel further submitted that although defendant Nos. 13 and 14 attempted to resist the plaintiffs' claim by alleging that the original plaintiff had orally gifted 0.04 acres of land in their favour, they utterly failed to adduce any reliable or convincing evidence in support of such a plea. In the absence of any satisfactory proof of the alleged oral gift in favour of defendant Nos. 13 and 14, the learned appellate Court acted illegally in interfering with the well-reasoned findings of the trial Court. Consequently, the plaintiffs, being the lawful donees under the oral gift made by the original plaintiff, are legally entitled to the entire 0.13 acres as claimed in the plaint.

Learned Counsel next submitted that the learned appellate Court overlooked the undisputed fact that the original plaintiff had remained in exclusive possession of the suit land measuring 0.13 acres during his lifetime and that, following his demise, possession of the said land has

continuously remained with his widow and four daughters. Such uninterrupted possession, according to the learned Counsel, constitutes a significant circumstance corroborating the completion of the oral gift through delivery and acceptance of possession, which are essential ingredients of a valid Heba under Mohammedan Law. The appellate Court, however, failed to appreciate the legal effect of such possession and thus reached an erroneous conclusion.

It is further argued that the learned appellate Court failed to construe Exhibit-7 in its proper legal perspective. According to the learned Counsel, the said document, when read as a whole, unmistakably manifests the unequivocal intention of the original plaintiff to transfer his entire share in favour of his wife and four daughters by way of oral gift. The document merely records a transaction that had already been completed and therefore does not itself create or extinguish any right in immovable property that requires compulsory registration. As such, the appellate Court committed an error of law in treating the document otherwise and in discarding its evidentiary value.

The learned Counsel also submitted that only defendant Nos. 13 and 14 preferred the appeal against the judgment of the trial Court, whereas the remaining defendants accepted the decree and did not challenge the findings recorded therein. It is further submitted that defendant Nos. 13 and 14 entered the proceedings only after the death of the original plaintiff by getting themselves impleaded as defendants rather than seeking substitution as co-plaintiffs, and their conduct throughout the litigation substantially supports the case advanced by the present plaintiffs. The appellate Court, however, failed to appreciate these significant aspects while reversing the findings of the trial Court.

Accordingly, learned Counsel submitted that the impugned judgment and decree passed by the appellate Court suffer from misreading and non-reading of the evidence, misconstruction of the relevant provisions of law, and erroneous appreciation of the facts, thereby occasioning a manifest failure of justice warranting interference by this Court in the exercise of its revisional jurisdiction.

Conversely, opposite party Nos. 1 and 2 entered appearance by filing Vakalatnama in the instant Rule. However, they neither filed any affidavit-in-opposition to controvert the assertions made in the revisional application nor contested the Rule at the time of the hearing. On the date fixed for hearing, none appeared for the opposite parties despite due notice.

I have carefully considered the submissions advanced by the learned Counsel for the petitioners, perused the revisional application together with the annexures appended thereto, examined the judgments and decrees of both the Courts below, and meticulously gone through the entire evidence available on the record.

From the materials on record, it appears that the original ownership of the suit property is undisputed. It is equally admitted by both parties that the original plaintiff, Akteruzzaman Mridha, was the owner of 0.13 acres of the suit land. Therefore, the only controversy requiring determination is whether the original plaintiff had validly made an oral gift of the entire 0.13 acres in favour of his wife and four daughters,

as asserted by the plaintiffs, or whether, as claimed by defendant Nos. 13 and 14, he had instead gifted 0.04 acres of the said land in their favour.

On perusal of the judgment passed by the learned Trial Court, it is found that the Court has analyzed the facts in the following ways:

“About the execution of the demy ext "7", the PW-5 Sahida Begum the wife of Akhtaruzzaman has stated at the time of her cross examination as follows that the unregistered gift deed ext "7" had beenwritten by Akhtaruzzaman at approximately 6.00 pm after Magrib Prayer in presence of Nurul Islam and Abdul Malek on Friday 20th Jaistha 1412 BS. She has further stated that her husband expressed the matter of gift to Fulmia and Ali Akber while she was present. Witness Fulmia learnt about the suit gift and after one day Witness Ali Akbar learnt about the suit gift while Ali Akber and her husband was taking their meal in their dining room. PW-6 Md Ali Akbar has stated at the time of his cross examination as follows that he and Fulmia went to the house of Akhtaruzzaman and then Akhtaruzaman told about the suit gift while they were in the drawing room of

Akhtaruzzaman. PW-7 Nurul Islam has stated at the time of cross examination as follows that Akhtaruzzaman himself wrote the suit gift deed ext "7" in his presence by sitting the house of Akhtaruzzaman at 4.30/5.00 pm before Magrib while he his sister. Akhtaruzzaman and the daughters of Akhtaruzzaman were present."

The learned Trial Court finally observed that,

"On discussion above, I found a discrepancy regarding the time of writing the suit gift deed "7" in between the statements of the PW-5 and PW-7. It was an incident of 8 years ago. So the actual time can be forgotten by the witnesses. But as the gift deed had been written by Akhtaruzzaman himself and the PW-7 identified his signature in the gift deed by supporting that gift deed and its writing so the above discrepancy regarding the actual time of writing the gift deed ext "7" is not considerable as contradiction and that silly discrepancy is not so fatal for believing the suit gift deed ext "7".

However, upon careful scrutiny of the oral and documentary evidence adduced before the trial Court, it appears that the plaintiffs succeeded in proving the essential

ingredients of the alleged oral gift by reliable evidence. The trial Court rightly accepted the written contents of the oral gift dated 03.06.2005, which was marked as Exhibit-7 without any objection from the defendants at the time of its exhibition. Significantly, the defendants neither challenged the document's admissibility at the relevant stage nor specifically denied its execution in their written statement. Such omission assumes considerable significance while appreciating the evidentiary value of Exhibit-7.

On sifting the judgment passed by the learned Appellate Court, Magura, it is perceived that the Appellate Court observed the facts in its own version, which is as under:

“The claim of the plaintiff-respondent nos. 1(KA)-1(UMA) regarding oral gift dated 03.06.2005 by their ascendant Akteruzzaman in their favour is also not believable. Because, on oral gift is executed in presence of witnesses. According to the provision of Muslim Law there is no need of written or registered deed in case of oral gift. (But, whenever a written paper is used in proving a verbal gift, then there must have a registered deed. Otherwise, the written-

unregistered deed will not be admissible as evidence. The said written paper has been marked as Exbt. No, which has got no legal and evidential value."

The Appellate Court further opined that-

"Akteruzzaman has given his evidence in this suit as the P.W-1. During his giving deposition he never articulated any statement that he had given his .13 acre of land to his wife & daughters or his brother, the appellant-defendant no. 13. Thus, the claims of both the appellant and the respondent are disproved."

From the above comparative discussions upon judgment of both the Courts, it appears that the learned trial Court meticulously analysed the testimony of the witnesses together with Exhibit-7 and recorded a reasoned finding that the oral gift had been duly established. The appellate Court, however, reversed the said finding without effectively dislodging the reasons assigned by the trial Court and without properly discussing the evidence on which those findings were founded.

It is now well settled that prior to the amendment of the relevant law of registration with effect from 01.07.2005, a written memorandum merely recording a completed oral gift under Mohammedan Law did not require compulsory registration, provided that the oral gift itself was proved by satisfactory evidence establishing declaration, acceptance and delivery of possession. Therefore, the primary obligation of the party relying upon such a document was to prove the transaction by adducing credible oral and documentary evidence rather than to establish its registration. In the instant case, the plaintiffs have successfully discharged that burden by examining competent witnesses and proving Exhibit-7 in accordance with law.

The learned appellate Court, however, completely overlooked this settled principle of law while assessing the evidentiary value of Exhibit-7, and caused misreading mentioning that the PW1 Akteruzzaman never articulated any statement that he had given his .13 acre of land to his wife & daughters or his brother, the appellant-defendant no. 13. But the record reveals that his deposition recorded by the Court on

23.05.2000, whereas, the oral gift subsequently has been solemnized on 03.06.2005. The appellate Court also failed to assign convincing reasons for disagreeing with the findings of the trial Court, which had the advantage of observing the demeanour of the witnesses and evaluating the evidence firsthand. Consequently, the impugned judgment suffers from misreading and non-reading of the evidence, erroneous application of the governing legal principles, and failure to consider material evidence on record, thereby resulting in a substantial miscarriage of justice.

In view of the discussions made hereinabove and having regard to the facts and circumstances of the case, the evidence available on record, and the settled principles of law applicable thereto, I am of the considered view that the impugned judgment and decree passed by the learned appellate Court cannot be sustained in law. The learned appellate Court committed errors of law in reversing the well-reasoned findings of the trial Court without proper appreciation of the evidence and the applicable legal principles.

Accordingly, the Rule is made absolute without any order as to costs.

The judgment and decree passed by the learned appellate Court are hereby set aside, and those passed by the learned trial Court are restored.

However, considering that the instant suit is a partition suit, the defendants may obtain saham from the trial Court or the Execution Court before the preliminary decree becomes a final decree by depositing the required Court fees as per law, without affecting the plaintiff's share.

The earlier *status quo* order granted by this Court stands recalled and vacated.

Let the Subordinate Court's records be transmitted to the Courts concerned forthwith.

(*Abdur Rahman, J*)