

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

Present:-

Mr. Justice Faysal Hasan Arif

Civil Revision No. 3244 of 2017

Golam Maizbhanderi and others
..... Petitioners

-Versus-

Syed Montu and others
..... Opposite-Parties

No one appears

... For the Petitioners

Ms. Saffat Hodayra, Advocate

Mr. Syed Asifur Rahman, Advocate

For the Opposite Parties

Judgment on 12.03.2026

On an application under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon opposite party Nos. 1-10 to show cause as to why judgment and decree dated 25.05.2017 (decree signed on 28.05.2017) passed by learned Additional District Judge, Shariatpur in Title Appeal No. 61 of 2014 disallowing the appeal and affirming judgment and decree dated 29.06.2014 (decree signed on 02.07.2014) passed by learned Senior Assistant Judge, Damodra, Shariatpur in Title Suit No. 52 of 2010 decreeing the suit should not be set aside.

At the time of issuance of Rule, operation of the impugned judgment and decree was stayed and the parties were directed to maintain *status quo* in respect of possession and position of the suit land for a period of 6 (six) months which was subsequently extended till disposal of the Rule.

Facts, relevant for disposal of this Rule, are that the predecessor of the opposite parties Golam Gaus as plaintiff filed Title Suit No. 52 of 2010 before the learned Senior Assistant Judge, Damudya, Shariatpur for a decree of declaration of title to and partition of 1.32 acre suit land claiming .67 acre land in his saham contending, *inter alia*, that A. Rahman Fakir and Azimuddin Fakir were owners of 1.32 acre land in equal share. Azimuddin Fakir being owner of .66 acre land died leaving behind two sons namely A. Aziz and A. Sattar who got .33 acre of land each. A. Aziz and A. Sattar sold out .19 acre land of Plot No. 32 by a registered deed of Sale No. 1905 dated 25.03.1927 to Taher Munsif alias Farazi who got his name recorded in R.S. Khatian No. 13. Thereafter, A. Sattar died leaving behind one daughter and one brother A. Aziz Fakir. A. Aziz Fakir sold out .3525 acre land of Plot No. 32 by a registered deed of sale No. 473 dated 12.03.1932 to the plaintiff Golam Gaus. A. Rahman died leaving behind

two sons Moulvi A. Kader and Moulvi Farid Uddin and one daughter Champabati. A. Kader being the owner of 26.20 decimal land died leaving behind one wife Nurjahan, four sons namely Golam Gaus, Golam Mostafa, Golam Moula and Golam Rahman and two daughters namely Golsan Gaus and Marjan Gaus. Thereafter, Nurjahan died leaving behind four sons and two daughters and accordingly, Golam Gaus obtained .0525 acre land by inheritance. Farid Uddin transferred .2650 acre land by oral gift to the plaintiff Golam Gaus and thereafter on 12.03.1932 he purchased another .3525 acre land from Abdul Aziz. Thus, the plaintiff Golam Gaus became the owner of .67 acre land. The plaintiff has been in possession over the said .67 acre land by erecting houses and living therein. The plaintiff demanded for partition of the suit land on 16.12.2005 to the defendants but they refused. Hence, he constrained to institute the suit. During pendency of the suit Golam Gaus died and his heirs were substituted, who are opposite parties in this Rule.

Defendant Nos. 1 and 2 contested the suit by filing written statement contending, *inter alia*, that 1.32 acre suit land originally belonged to A. Rahman Fakir and Alimaddin Fakir in equal share. A. Rahman Fakir gave pattan of .19 acre land to A. Aziz Akon who orally

sold out the same to Taher Munsif. Thereafter A. Rahman died leaving behind two sons Moulvi A. Kader and Moulvi Farid Uddin and daughter Champabati and Alimuddin Fakir died leaving two sons A. Sattar and A. Aziz who got .33 acre land each. A. Kader Fakir purchased .41 acre land by registered deed of sale dated 12.03.1932 from A. Aziz in the benam of the plaintiff. A. Kader Fakir purchased another .41 acre land from A. Sattar Fakir by registered deed of sale dated 25.04.1932 in the benam of his another son Golam Mostafa (defendant No. 2) . A. Kader Fakir acquired title to .33 acre land. Thus, A. Kader Fakir being owner in possession of .66 acre and .1865 acre land transferred .77 acre land to his wife Nurjahan by oral gift. Accordingly, R.S. and S.A. khatians were correctly prepared in her name. Farid Uddin and Champabati sold out their portion for a consideration of Tk. 99/- to A. Kader Fakir who died leaving behind one wife Nurjahan, four sons the plaintiff, defendant 1-2 and Golam Moula and two daughters defendant No. 3 and Golshan Gaus. Nurjahan Bibi being owner in possession of .8130 acre land died leaving behind the said four sons and two daughters. Thus, the plaintiff got .2250 decimal land and accordingly, defendant Nos. 1 and 2 and Golam Moula got .2250 acre land each and defendant No. 3 and Golshan Gaus got 11.25

decimal land each. Thus, defendant Nos. 1 to 23 got .9040 acre land and they are in possession over the said land. The claim of .67 acre land by the plaintiff is false. Hence, the suit is liable to be dismissed.

In the suit the trial Court framed issues as follows:

- i. Whether the suit is maintainable in its present form.
- ii. Whether the suit is bad or defect of parties.
- iii. Whether the suit is bad for defect of hotchpotch.
- iv. Whether the plaintiff has right, title and interest in the suit land.
- v. Whether the plaintiffs are entitled to get decree as prayed for.

During trial, the substituted plaintiffs adduced three P.W.s and amongst them, plaintiff No. 1(ka) himself deposed as P.W.-1 and he produced documentary evidence which were marked as Exhibit Nos. 1, 2, 2(ka), 3, 3(ka), 3(kha), 4, 5, 5(ka), 6, 7, 7(ka), 8, 9, 9(ka), 10 and defendants adduced two D.W.s and defendant No. 1 deposed as D.W. 1 and he produced documentary evidence which were marked as exhibit Nos. Ka, Kha, Ga, Gha, Gha(1), Gha(2), Uma, Uma(1), Uma(2), Cha, Cha(1)-Cha(7). Upon considering the evidence of the parties, the trial

Court decreed the suit in preliminary form vide judgment and decree dated 29.06.2014 (decree signed on 02.07.2014) allotting .67 acre land in the saham of the plaintiff.

Being aggrieved by and dissatisfied with the judgment and decree dated 29.06.2014 (decree signed on 02.07.2014) the contesting defendants filed Title Appeal No. 61 of 2014 before learned District Judge, Shariatpur. The appeal was subsequently transferred to the learned Additional District Judge, Shariatpur for adjudication. The Appellate Court after hearing the parties and perusing the evidence on record disallowed the appeal vide judgment and decree dated 25.05.2017 (decree signed on 28.05.2017) and thereby affirmed the judgment and decree of the trial Court. Being aggrieved, contesting defendants as petitioners filed the instant civil revision against the judgment and decree of the appellate Court and obtained the instant Rule.

At the time of hearing none appears on behalf of the petitioners.

Ms. Saffat Hodayra with Mr. Syed Asifur Rahman learned Advocates appearing on behalf the opposite parties submits that the successors of C.S. recorded tenants Abdul Aziz and Abdus Sattar

transferred .19 acre land to one Taher Munsil alias Farazi via registered kabala deed No. 1905 dated 25.03.1927. The plaintiff proved the said fact by producing the said deed (exhibit-5(Ka)). Thereafter Addus Sattar died leaving behind his only daughter Kanchon Bibi and one full brother Abdul Aziz to inherit the residue property proportionately. Though Abdul Aziz sold .41 acre land by sale deed No. 473 dated 12.03.1932 (exhibit -5) to Golum Gaus but he had transferable right over .3525 acre. Learned Advocate further submits that the plaintiff by evidence proved that he got .2825 acre land via oral gift from his paternal uncle Farid Uddin and that the successors of Farid Uddin as defendants reached to a compromise with the plaintiff by admitting the said oral gift. She further submits that the genealogy of succession of the parties was admitted by both sides and there is no specific plea as to defect of party or hotch potch and the joint possession of the jote was also admitted. Learned Advocate finally submits that after shifting the evidence of the parties the trial Court decreed the suit and the Court of appeal upon proper evaluation of the evidence came to its findings and rightly affirmed the judgment and decree of the trial Court, and accordingly interference is not called for by this Court.

I have heard the learned Advocate for the opposite parties, gone through the revisional application, plaint, evidence both oral and documentary, judgments and decrees of the courts below and other materials available on record. On perusal of the record it appears that the defendant-appellants contested the suit asserting that, CS recorded tenant Abdur Rahman settled .19 acre land to his nephew Abdul Aziz. Abdul Kadir (predecessor of the plaintiffs as well as contesting defendants), bought .33 acre land via kabla deed No. 473 dated 12.03.1932 (exhibit-5) in the benam of his son Golam Gaus (the plaintiff) and another .33 acre land in the benam of his another son Golam Mostafa by another deed, and thereafter said Abdul Kadir transferred .77 acre land to his wife via oral gift. It has further contended that Farid Uddin and his sister Champaboti sold their portion of the land to Kadir but the sale deed was not registered since the consideration was less than 100 taka. The contesting defendants did not produce any evidence at all to prove the settlement mentioned above and they did not even mention the date or time when the settlement was made. Accordingly, the appellate Court properly affirmed the finding of the trial Court that there was no such settlement at all. Contesting defendants also claimed that Abdul Kadir got .66 acre land via two vide

two sale deeds in the benami of his two sons including the plaintiff but it appears that the defendants did not take any recourse to prove the said transactions as benami. On the other hand, the plaintiff contended that at the time of the transaction he was major and he himself paid the consideration of the sale (exhibit-5) and to prove this fact, his heirs as substituted plaintiffs produced the birth certificate of Golaam Gous (exhibit.10). The certificate suggests that at the time of the transfer he was 22 years old. The defendants failed to rebut the said claim. No document has been produced from the defendants to prove that Abdul Kadir paid the consideration. From exhibit-5 it is found that the vendor had received the consideration from Golaam Gaus. Section 92 of the Evidence Act mandated that no oral evidence shall be allowed to contradict the contents of documentary evidence. The evidences also suggest that the defendants failed to discharge any of the conditions described above. Thus, the Court of appeal rightly affirmed the finding of the trial Court that the transaction via deed No. 473 dated 12.03.1932 (exhibit-5) was not in fact a benami transaction.

The trial Court also held that since Abdul Kadir did not have right to transfer .77 acre land, there could not be any such transfer of the said

land to his wife by oral gift. The date and time of said oral gift was also not mentioned in the written statement. DW-1 in his cross examination admitted that he had no firsthand knowledge about the so called oral gift. Thus, Court of appeal rightly affirmed the finding of the trial Court that since the contesting defendants could not mention the date on which the so-called oral gift was taken place and produce any neutral witness to prove the transfer, there was actually no such transfer at all.

Upon perusal of the impugned judgment and considering the evidence on record, I am of the view that the impugned judgment is based on sound reasoning and appreciation of relevant laws and legal provisions. The learned Judge of the appellate Court upon proper consideration and discussion of the evidence of the parties rightly came to his findings and decision and that the appellants could not take any ground to show that there is any misreading or non-consideration of any evidence which caused miscarriage of justice which calls for any interference by this Court.

In view of the above, I find no merit in this Rule.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay and status quo granted at the time of issuance of the Rule stands vacated.

Send down the LCR along with a copy of the judgment to the Court concerned at once.

Md. Akteruzzaman Khan (B.O)