

Bench:
Mr. Justice Bishmadev Chakraborty
And
Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 22 of 2015

Mahmuda Khatun dead her legal heirs Mohammad
Hossain Chowdhury and others

..... Appellants

-Versus-

Belal Hossain and others

..... Respondents

with

Civil Rule No.327 (F) of 2015

Mahmuda Khatun dead her legal heirs Mohammad
Hossain Chowdhury and others

..... Petitioners

-Versus-

Belal Hossain and others

..... Opposite parties

Mr. Abul Kalam Chowdhury with
Mr. Iqbal Kalam Chowdhury, Advocates

..... For the appellants

Mr. Purnindu Bikash Das with
Mr. Dipayan Saha, Advocates

..... For respondent No.1

Judgment on 03.11.2025

Murad-A-Mowla Sohel, J:

Since the Civil Rule has arisen out of the appeal and the parties thereto are same, both have been heard together and disposed of by this judgment.

The appeal is directed against the judgment and decree dated 12.11.2014 passed by the learned Joint District Judge, 2nd Court, Feni in Title Suit No. 32 of 2011 dismissing the suit.

Plaintiff's case, in brief, is that plaintiff is the owner of total 100 decimals of land in schedule B under schedule A by will (*wasiyat*) and

inheritance from her husband. Plaintiff's son defendant No. 1 on 24.08.2011, Wednesday proposed to take the plaintiff to look her village home to attend the Milad ceremony with defendant No. 1. The plaintiff agreed to the proposal. The next day after observing Milad ceremony on 25.08.2011 defendant No. 1 took the plaintiff by rickshaw to Porshuram and in presence two police man, asked the plaintiff to put her thumb impression on some stamp papers. Under the instruction and fear of police plaintiff put her thumb impressions on all stamp papers. In response to the plaintiff's queries, defendant No. 1 informed her that the plaintiff's signature/ thumb impressions had been taken for his passport and police verification for going abroad. Defendant No. 1 mislead the plaintiff, an elderly, uneducated and rural women of 80 years, presented her at the Sub-registry Office with the aid of police and without her consent and illegally executed and registered the deed of declaration of heba (gift). The witnesses and identifiers to the said deed are brother-in-law and wife's nephew of defendant No. 1. The wife of defendant No. 1 at first disclosed about the disputed deed on 07.11.2001 and after obtaining certified copy of the impugned deed on 16.11.2001, the plaintiff came to know the details regarding the aforesaid deed and filed the suit for cancellation of the heba deed in respect of the schedule land measuring 100 decimals on the ground of obtaining the same by practicing fraud.

Defendant Nos. 2-9 the other sons and daughters of the plaintiff filed a solenama to compromise the case with the plaintiff.

Defendant No. 1 contested the suit. He filed written statement and denied all material allegations made in the plaint contending, *inter alia*,

that he during his employment in Saudi Arabia from 1992 onwards, gave his entire earnings to his parents and brother. With that money, his parents beared the entire expenses of their join family for many years. Due to the aforementioned reasons plaintiff made an oral gift to defendant No. 1 on 05.01.2005 and gave him possession of the property. Subsequently, when the government enacted new provision of law, the plaintiff executed the declaration of heba deed no. 1425 dated 25.08.2011 in favour of the defendant No. 1 and in presence of his other sons registered it in the Sub-registry Office. Taking advantage of defendant No. 1 being abroad defendant Nos. 2-9 misled the plaintiff and filed this suit and as such the suit would be liable to be dismissed with cost.

After considering the pleadings, the trial Court framed 3 (three) issues:

- 1) Whether the suit is maintainable in its present form and framing?
- 2) Whether the registered declaration of heba deed no. 1425 dated 25.08.2011 obtained through fraud by the defendant no. 1 from the plaintiff?
- 3) Whether the plaintiff is entitled to get a decree as prayed for?

During trial plaintiff examined 3 witnesses and produced the impugned document as exhibit-1, defendant nos. 2-9 examined 1 witness in support of the solenama. On the other hand contesting defendant No. 1 examined 3 witnesses and exhibited the impugned deed and other documents in support of his service in Saudi Arabia and advises of sending money to his parents and brothers exhibits Ka, Kha series and Ga.

After considering the entire evidence advanced by the parties, the trial Court dismissed the suit. Being aggrieved by and dissatisfied with the judgment and decree of the trial Court the plaintiff as appellant preferred this appeal.

Mr. Abul Kalam Chowdhury, learned Advocate for the appellants submits that defendant No. 1 informed the plaintiff that her thumb impression was required for his passport and police verification for going abroad. Through showing fear of policeman defendant no. 1 obtained thumb impression of the plaintiff on the impugned deed. Mr. Chowdhury refers to the provisions of section 149 and 150 of Sir D. F. Mulla's Principles of Mahomedan Law and submits that three essential elements must be present for a valid gift (heba) under Muslim Law, these are: (1) Declaration of heba by the donor, (2) Acceptance by donee and (3) Delivery of possession. In the present case these three elements, particularly delivery of possession is absent. He further submits that defendant No. 1 stated in the written statement that before execution of the impugned declaration of heba deed the plaintiff transfer the land mentioned in the schedule of the deed in favour of the defendant No. 1 through oral gift on 05.01.2004, but on that day plaintiff's husband was alive and plaintiff was not the owner of the said land. Therefore, the oral gift is found to have been invalid.

Mr. Chowdhury lastly submits that plaintiff was a *pardanashin* illiterate women of 80 years, therefore, the burden of proof of genuineness of the impugned declaration of heba lies upon defendant No. 1. In support of his submission he refers to the case of Rokeya Khatun Vs Alijan

reported in 34 DLR (AD) 266 and Siddique Ahmed Vs Gani Ahmed reported in 33 DLR (AD) 1. But defendant No. 1 failed to adduce any evidence to prove genuineness of the declaration of heba. Without considering the aforesaid vital aspect of the case the trial Court wrongfully dismissed the suit. Hence, the judgment of the trial Court would be set aside and the appeal be allowed.

Mr. Purnindu Bikash Das, learned Advocate on behalf of respondent No. 1 submits that the plaintiff willfully executed the impugned heba deed in favor of his son defendant No. 1 and delivered possession of the land to him. The possession of defendant No. 1 has been confirmed in the cross-examination of the plaintiff's witnesses. Mr. Das refers to the provisions of section 43 and 123 of the Transfer of Property Act, 1882, section 115 of the Evidence Act, 1872 and section 48 of the Registration Act, 1908 and submits that for the purpose of making a gift of immovable property, the transfer must be effected by a registered deed by the donor and attested by two witnesses. Transfer by unauthorized person subsequently acquired interest in the property cannot deny the transaction, because it is barred by doctrine of feeding the grant by estoppel under section 43 of the Transfer of Property Act. The plaintiff examined 3 witnesses but they failed to prove that defendant No. 1 fraudulently obtained thumb impression on the impugned deed. The thumb impression of the impugned deed is admitted by the plaintiff. He refers to case of Golzar Ali Pramanik Vs Yakub Ali reported in the 9 BLT (AD) 66 and submits that there may be thousands of defects in the defense case but it does not entitle the plaintiff to get a decree in the suit.

Mr. Das further submits that plaintiff claims that she is a *pardanashin* lady but her demeanor do not fall under the definition of *pardanashin* lady because she went to Sub-registry Office to register the impugned deed, again she came to the Court to depose to support the plaint case. If she is really a *pardanashin* lady she would do this same by commission. The learned trial Judge considering the materials on record correctly dismissed the suit. The appeal, therefore, would be dismissed.

We have considered the submissions of the learned Advocates for both sides and perused the materials on record. In support of the plaintiff's case, plaintiff examined 3 witnesses and exhibited the impugned deed as exhibit-1 on the other hand contesting defendant No. 1 examined 3 witnesses and exhibited papers marked as exhibits- Ka, Kha series and Ga. Defendant No. 2 deposed in support of the solenama filed by defendant Nos. 2-9. Plaintiff Mahmduda Khatun deposed as PW1 to support the plaint case. PW2 Rafiqur Rahman and PW3 Latu Miah supported PW1.

In cross-examination PW1 Mahmduda Khatun stated “২/৩ বছর আগে আমার ছেলেরা আলাদা হয়েছে, আমার নালিশী দলিলের সম্পত্তি নিয়ে বিরোধ। ঐ সম্পত্তি সকল ছেলে চায়। তাই মামলা করেছি। আমার মামলা খরচ ২-৯ নং বিবাদী সবাই দিতেছে।” She also stated in cross-examination, “আমাকে সিএনজি করে নেয়। আমার সাথে আমার পুত্র মনির আহমদ যায়। আর কেহ যায়নি। আমার ছেলে মনির আহমদ বা মীর হোসেন দুইজনেই আমার স্বাক্ষর নিয়েছে। সম্ভবত দলিলে স্বাক্ষর দেবার পর বেলালের স্ত্রী আমাকে মনিরের বাসায় নিয়ে যায়।” PW2 Rafiqur Rahman admitted his cross-examination, “বেলাল কিছু কিছু সম্পত্তি ভোগ করিতেছে। বেলালের খরিদা এবং দানসূত্রের সম্পত্তি তার দখলে। মৌরশী সম্পত্তি তাদের এজমাল দখলে।” It may be stated here that Monir Ahmed is defendant No. 4,

Mir Hossain is defendant No. 3 and Belal Hossain is defendant No. 1 the donne of the heba. On scanning the cross-examination of PW1 and PW2 it is found that the impugned deed was executed and registered in presence of plaintiff and her 2 other sons and possession was also handed over to the defendant No. 1. PW1 also admitted in cross-examination that defendant No. 1 Belal Hossain worked in the Saudi Arabia and he gave his entire earning to his parents and brothers and with that money his parents beared the expenses of their join family. PW2 and PW3 admitted in cross-examination that defendant Nos. 2-9 brought them to the Court to depose. The evidence as advanced by plaintiff-appellant does not prove that defendant No. 1 obtained the thumb impression of the plaintiff in the impugned deed by committing fraud or coercion or threat.

The learned Advocate for the appellants submits that in the written statement defendant No. 1 claimed that transfer of the property through oral gift was on 05.01.2004 but the plaintiff's husband Zulfu Miah died on 27.03.2005, therefore, on 05.01.2004 the plaintiff was not owner of the property, so she had no right to transfer the same to defendant No. 1. On perusal of the impugned deed exhibit-1 and exhibit-Ga, it appears that the date of oral gift was not mentioned therein. This date was inserted in the written statement through amendment after the amendment of the plaint by the plaintiff. If for the sake of argument it is considered that on 05.01.2004 the plaintiff was not owner of the land of the deed but subsequently after the death of her husband she acquired title over the land. The plaintiff now cannot deny the transfer through the impugned deed and she is barred by the doctrine of feeding the grant by estoppel

under section 43 of the Transfer of Property Act and estoppel under section 115 of the Evidence Act. In case of any conflict between the oral gift and registered heba the latter shall prevail. The learned Advocate for the appellant has submitted that the plaintiff was a *pardanashin* lady of 80 years age, so the genuineness of the impugned deed must be proved by defendant No. 1. In support of his submission he refers to the cases reported in the 34 DLR (AD) 266 and 33 DLR (AD) 1. On perusal of the case record it appears that plaintiff went to the Sub-registry Office to execute and register the deed and was also present before the trial Court to depose in support of her case. If she was really a *pardanashin* lady she would do the same in commission. So the submissions that the plaintiff was a *pardanashin* lady bears no substance.

In view of the above premises, we find that the Court below discussed every four corners of this case and passed the judgment. We find no illegality or legal infirmity in the judgment of the trial Court.

In the result, the appeal is dismissed. No order as to costs. The judgment and decree passed by the trial Court is hereby upheld.

Consequently, the Rule issued in Civil Rule No. 327 (F) of 2015 is disposed of and the interim order of injunction is hereby vacated.

Communicate this judgment and send down the lower Court records.

Bhishmadev Chakraborty, J.

I agree.