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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3184 OF 2001

IN THE MATTER OF:

An application under section 115(1) of the Code of Civil Procedure.

-And-

IN THE MATTER OF:

Md. Khabir Uddin and others

--- Defendant-Appellant-Petitioners.

-Versus-

Mowlana Abdul Wahab {died leaving behind his legal heirs: 1(a)-1(v)}and others

--- Plaintiff-Respondent-Opposite Parties.

Mr. Shihab Uddin Mahmood, Advocate

--- For the Petitioners.

Mr. Mohammad Mizanur Rahman @ Sihab, Advocate

--- For the Opposite Parties.

Heard on: 27.08.2023, 16.10.2023, 18.10.2023, 29.10.2023 and 30.10.2023.
Judgment on: 08.11.2023.

At the instance of the present defendant-appellant-petitioner, Md. Khabir Uddin and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree of affirmance dated 07.02.2001 passed by the learned Additional District

Judge, Court No. 2, Noakhali in the Title Appeal No. 61 of 2000 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite parties as the plaintiffs filed the Title Suit No. 123 of 1997 in the court of the learned Senior Assistant Judge, Sadar, Noakhali for a declaration that the 2 (two) deeds of the gift being Heba No. 1704 dated 27.03.1982 executed in favour of his brother Abdul Gani for the land measuring $0.41\frac{1}{2}$ acres of land and also claiming that another deed of the gift being No. 1705 executed same date in favour of the present defendant-opposite parties are forged, fraudulent, without any consideration, void and not binding upon the plaintiffs. The plaint also contains that the transfer by executed above 2 (two) deeds in favour of the full-brother of the executants are created and manufactured in favour of brothers of vendor or transferee of the 2 (two) lands were created without possession of the suit land was given. Further claims of the plaintiffs are that the plaintiffs were not aware of the above 2 (two) deeds but when they could know about the said deeds on 20.02.1995, the suit was filed in a limitation period from the date of cause of action.

The present defendant opposite parties contested the suit by filing a written statement denying all the claims/prayers in the plaint and it is further contended that the transfer was the serious ill motive in 1982 and his brothers looked after him for his treatment and looked after by them to be transferred, thus, he executed deeds of gift and deed of Heba in favour of the defendants were voluntarily made. After executing the said deeds handed over the possession. The defendant-petitioners further contended that a compromise deed was executed after obtaining certified copy on 05.03.1998 by the plaintiff-opposite party No. 1 and the defendant No. 1 which was false and fabricated. In the meantime, defendant No. 1 died and the original documents were stolen from custody of the present defendant-petitioner No. 1.

Upon receipt of the said suit both the parties adduced and produced PWs and DWs before the court of the learned Senior Assistant Judge, Sadar, Noakhali in support of their respective cases.

During the pendency of the said suit the present defendant-petitioners sought an expert opinion as to the thumb impression upon the said deeds should be obtained of plaintiff No. 1, Mowlana Abdul Wahab but the learned trial court passed an

order on 01.03.1999 but eventually the application for thumb impression from an expert opinion as to the thumb impression was rejected by his order dated 24.08.1999. After hearing the parties considering the evidence adduced and produced by the respective parties the learned trial court decreed the suit in favour of the present defendant-opposite parties by his judgment and decree dated 09.03.2000 declaring the deeds have been created by practicing fraud and fraudulent, as such, the said deeds are not operative against the plaintiff-opposite parties. Being aggrieved the present defendant-petitioners preferred the Title Appeal No. 61 of 2000 challenging the legality and propriety of the learned trial court's judgment. The present appellant-petitioners filed an application for an expert opinion as to the thumb impression upon the deeds and the learned appellant court below rejected the said application by the order dated. 10.07.2000. On the basis of the evidence adduced and produced by the respective parties the learned appellate court below disallowed the appeal by his judgment and decree dated 07.02.2001 thereby affirming the judgment and decree dated 13.03.2000 passed by the learned trial court.

This revisional application has been filed by the present defendant-petitioners under section 115(1) of the Code of Civil Procedure challenging the legality of the impugned judgment passed by the learned lower appellate court and this Rule was issued thereupon.

Mr. Shihab Uddin Mahmood, the learned Advocate appearing on behalf of the defendant-appellant-petitioners submits that the strenuous efforts of the petitioners to bring into evidence the thumb impression register in respect of the disputed documents having turned down and the scope of having thumb impression purported to be of the plaintiff-opposite parties in thumb impression register examined and compared with the specimen or admitted thumb impression of the plaintiff-opposite partis being consistently denied and the petitioners were highly prejudiced in their defense leading to the denial of justice to them.

The learned Advocate also submits that recording of the suit land in the name of the vendees and the evidence of DW Nos. 1-3 did warrant a finding that the suit land had been in possession of the petitioners, as such, the suit for declaration simplicity was not maintainable.

The present Rule has been opposed by the present opposite parties.

Mr. Mohammad Mizanur Rahman, the learned Advocate, appearing for the present opposite parties submits that upon consideration of the entire facts and evidence on record both the courts below rightly held that both the deeds being Heba Deed No. 1704 and Gift Deed No. 1705 both dated 27.03.1982 were forged, fraudulent, without any consideration, null and void and not binding against the present opposite parties, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the learned Senior Assistant Judge, Sadar, Noakhali considered the evidence presented by the parties and came to a conclusion to the suit and the learned appellate court below also considered the evidence and came to a lawful conclusion by disallowing the appeal and affirming the judgment of the learned trial court, as such, this court should not interfere upon the impunged judgment and the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1)

of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the important documents adduced and produced by the respective parties by way of depositions as PWs and DWs in the learned courts below which have been included in the lower courts records, it appears to this court that the present plaintiff-opposite parties filed a title suit praying for a declaration that the deeds purported and executed by the plaintiff No. 1, Mowlana Abdul Wahab (now deceased) registered Heba Deed being No. 1704 and the deed of gift No. 1705 both the dated 27.03.1982 are false, fabricated and not binding upon the plaintiff-opposite parties. It further appears that the plaintiffs filed the title suit for obtaining a decree that the deeds were created by the defendant-petitioners in order to grab the suit land on the basis of bearing cost of treatment of the plaintiff No. 1 and the defendant-petitioners could not produce the above mentioned 2 original deeds upon which the defendant-petitioners claimed to have in possession and the record of right was published in their names. In the trial the parties adduced evidence but the plaintiff-opposite parties could produce evidence that there was no necessity for executing the above 2

deeds in favour of the brother and others claimed to have executed voluntarily in their favour.

There are some admitted positions between the parties that the defendants and the plaintiffs are brothers/nephews whereas the plaintiff No. 1, Mowlana Abdul Wahab (now deceased) could prove that there is no circumstance to execute the deeds and the plaintiff No. 1 denied depositions that such kind of deeds/documents executed by him. Most importantly, the executant PW-1, Mowlana Abdul Wahab in his depositions filed the suit along with the other plaintiffs for a declaration that the deeds were created by the defendants in order to grab the lands. The learned trial court decreed the suit as the plaintiffs proved its own case on the basis of the evidence, in particular, the thumb impressions upon the deeds could not be proved as genuine because the learned trial court and the learned appellate court below rejected the application for expert opinion upon the thumb impressions. The present defendant-petitioners could not produce the original deeds in support of their claim and the deeds were stolen from their custody but there was no evidence that the defendant-petitioners had taken any steps when those documents claimed to have been stolen.

In view of the above, I consider that the learned trial and the learned appellate court below did not commit any error of law by passing the decree which the learned appellate court below affirmed, as such, this is not a proper case of interference from this court.

Now I am examining the judgment and decree passed by the learned courts below.

The learned trial court came to a conclusion to decree the suit had been forged, fraudulent, null and void, and not binding upon the plaintiffs and found that the plaintiffs could prove their own case and decreed the suit on the basis of the following findings which reads as follows:

> ...“এমতাবস্থায় অত্র মোকদ্দমার পারিপার্শ্বিক অবস্থার প্রেক্ষিতে তর্কিত দলিল দ্ব-য়র ‘‘কাস্টডিয়ান’’ বিবাদীপক্ষ হওয়া স্ব-ত্বও তর্কিত দলিল দ্বয়ের মূল দলিল দ্বয় আদালতে দাখিল পূর্বক উক্ত দলিলের সম্পাদন সঠিকভা-ব প্রমাণ করি-ত ব্যর্থ হওয়ায় এবং বাদী নি-জ তর্কিত দলিল দ্বয় সম্পাদন করে নাই মর্মে দাবী করায় এবং সর্বোপরি তর্কিত দানপত্র দলিলের অন্যতম গ্রহিতা মৃত ১ নং বিবাদী মৃত্যুর পূ-র্বই বাদীর সং-গ ছো-ল সম্পাদন পূর্বক তর্কিত দানপত্রকে জাল, ভুয়া ম-র্ম স্বীকার করায় আমার নিকট এই বিশ্বাস জন্মাইয়া-ছ যে, প্রকৃতপ-ক্ষই বাদী আব্দুল ওহাব কর্তৃক তর্কিত ১৭০৪ নং ও ১৭০৫ নং হেবা ও দানপত্র দলিল সম্পাদন করা হয় নাই। যদিও ইহা আই-নর নীতিমালায় বাদীকেই তাহার স্বীয় মোকদ্দমা প্রমাণের

দ্বারা বিজয়ী হইতে হইবে কিন্তু অত্র মোকদ্দমার সার্বিক অবস্থার আলোকে মহামান্য উচ্চ আদাল-তর নি-ম্নোক্ত সিদ্দান্তটি সামঞ্জস্যপূর্ণ বলিয়া আমার নিকট প্রতিয়মান হয়।''...

The learned appellate court below concurrently found in favour of the present plaintiff- opposite parties on the basis of the following findings which reads as follows:

...''উক্ত দলিল দ্বয় কোন তারিখে বিবাদীর ঘর হই-ত চুরি হইয়া-ছ তাহার কোন সঠিক তারিখ বিবাদীপক্ষ উ-ল্লখ করি-ত-ছ না। এবং স্বাভাবিক ভা-বই কোন দলিল চুরি হই-ল ইহার প্রকৃত তারিখ উ-ল্লখ পূর্বক থানায় জি. ডি. এন্ট্রি থাকি-ব। স্থানীয়ভা-ব -লাকজ-নর ম-ধ্য বিষয়টি জানা-জানি হই-ব। নিম্ন আদাল-ত বিবাদীর সাক্ষী-দর জবানবন্দি পর্যা-লাচনায় দেখা যায় যে, অনুরূপ কোন প্রমাণ বা জি. ডি. এন্ট্রি হয় নাই। ইহা দ্বারা স্বাভাবিকভাবে ধারণা জন্মে যে, কোন প্রকার ত্রুটিপূর্ণ দলিল বিবাদীপক্ষ আদাল-ত উপস্থাপন করি-ল ফৌজদারী মামলায় জড়াইয়া পড়ি-ত পা-র এ-হন অবস্থার কার-ণ তাহারা হয়-তা মূল দলিলসমূহ আদাল-ত উপস্থিত করি-ত-ছ না। জাল দলিল বাতি-লর প্র-য়াজন নাইশ ইহা জাল দলিল হিসাবে ঘোষণাজনিত প্রতিকারই যথার্থ। ইহাছাড়া, অত্র মামলায় শুনানীকালে ইহা প্রমানিত যে, রেসঃ বাদী আঃ ওহা-বর নি-জর ছে-ল-মে-য় রহিয়া-ছ। নি-জর ছে-ল-মেয়ে থাকিতে কোন ব্যক্তি কোন অবস্থায়ই স্বীয় সম্পত্তি তৎ ভাই বা ভ্রাতুস্পুত্র এর না-ম দান বা হেবা করি-ব না। বাদীর ছে-ল--ম-য়গণ বাদীর অবাধ্য বা দশ্চরিত্র, তেমন কোন প্রমাণও আদালতের নিকট আসে নাই। বাদী অসুস্থ থাকায় বিবাদীগ-ণর নিকট হই-ত চিকিৎসার জন্য টাকা গ্রহণ অনুরূপ কোন প্রমাণপত্রও আদালতের নিকট আসে নাই।''...

In view of the above concurrent findings by the learned courts below and in view of the discussions made above, I consider that the learned appellate court below did not commit any error of law by dismissing the appeal and thereby affirming the judgment and decree passed by the learned trial court.

In view of the above, I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below by affirming the judgment of the learned trial court concurrently.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 07.02.2001 passed by the learned Additional District Judge, Court No. 2, Noakhali in the Title Appeal No. 61 of 2000 dismissing the appeal and thereby affirming the judgment and decree of the learned trial court dated 09.03.2000 is hereby upheld.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree dated 07.02.2001 passed by the learned Additional District Judge, Court No. 2, Noakhali in the Title Appeal No. 61 of 2000 is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.