

District-Pabna.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4948 of 2014.

Mosammat Peyara Khatun.

----- Plaintiff-Appellant- Petitioner.

-Versus-

Al Mahmud Sordar, being dead his legal heirs Most
Jorina Khatun and other.

----- Defendants-Respondents-Opposite Parties.

Mr. Kawser Ahmed, Advocate with

Mr. Md. Asadujjaman, Advocate and

Mr. K.I.M. Manzur-E-Mawla, Advocate

----- For the Plaintiff-Appellant-Petitioner.

Mr. Sk. Golam Hafiz, Advocate

----For the Defendants-Respondents-Opposite Parties.

Heard On: 30.06.2025., 01.07.2025 and 02.07.2025.

And

Date of Judgment: 10th Day of July 2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon Opposite Parties Nos. 1 and 2 to show cause as to why the Judgment and Decree dated 24.03.2014 and 30.03.2014 respectively passed by the learned Additional District Judge, 1st Court, Pabna in Other Class Appeal No. 243 of 2012 affirming the Judgment and Decree dated 17.05.2012 and 22.05.2012 respectively passed by the learned Assistant Judge, Bera, Pabna in Other Class Suit No. 57 of 2010, dismissing the suit for cancellation of registered deed No. 456 dated 25.02.2009, should not be set aside.

The case of the plaintiff-petitioner, in short, is that she is the rightful owner and possessor of the suit land, measuring 0.1238 acres, originally inherited from her parents. She alleged that the Opposite

Parties Nos. 1 and 2, under the pretext of executing a partition deed, fraudulently obtained her signature on blank papers, which were subsequently misused to fabricate the registered gift deed No. 456 dated 25.02.2009. The plaintiff denied ever having voluntarily executed or registered the said deed or transferred possession in any manner.

The defendants-opposite parties, on the other hand, asserted that the plaintiff voluntarily executed the said gift deed out of love and affection and after reading and understanding its contents. They further contended that possession of the suit land was delivered to them upon execution of the deed, and that they have been in occupation since then.

The learned trial court dismissed the suit mainly on three grounds: first, that the plaintiff failed to examine her thumb impression recorded in the Sub-Registry Office thumb book through any handwriting or fingerprint expert; second, that she did not produce the original deed dated 09.07.2009 (Deed No. 1685) for comparison; and third, that she failed to lodge any General Diary (GD) with the police after discovering the alleged fraud. The trial court held that these omissions significantly undermined the plaintiff's credibility.

Aggrieved by the judgment and decree of dismissal, the plaintiff, as appellant, preferred Other Class Appeal No. 243 of 2012 before the learned Additional District Judge, 1st Court, Pabna, challenging the decision of the trial court rendered in Other Class Suit No. 57 of 2010. The appellate court identified the following points for determination: (i) whether the learned trial court committed any legal or factual error in delivering the impugned judgment and decree; (ii) whether the said judgment and decree were liable to be set aside; and (iii) whether the appellant was entitled to the reliefs sought.

Upon analysis, the appellate court found that Moslem Uddin Sardar and Zarina Khatun were the original owners of 0.145 acres out of 0.160 acres of land, which included the suit land. Following Moslem Uddin's death, the land devolved upon his heirs, including the plaintiff and defendant Nos. 1 and 2. It was undisputed that by a registered Heba-bil-Ewaz deed dated 02.11.1994, the suit land was gifted to the plaintiff. Later, on 09.07.2009, the plaintiff transferred a portion to her mother, Zarina Khatun, who subsequently re-gifted the land back to the plaintiff by another registered deed dated 15.10.2009.

According to the plaintiff, the defendant Nos. 1 and 2, taking advantage of her illiteracy and trust, procured her signature on blank papers by falsely stating they were preparing a partition deed. These signed blank papers were subsequently used to fraudulently fabricate the impugned registered gift deed bearing No. 456 dated 25.02.2009. The defence repeated their assertion that the deed was lawfully executed by the plaintiff after understanding its contents and that they received possession thereunder.

On a thorough review of the oral evidence, the appellate court noted that the plaintiff (PW-1) categorically denied executing or registering the impugned deed and affirmed her uninterrupted possession over the suit land, which included her homestead. She clearly stated that she never went to the Sub-Registry Office. Her version was corroborated consistently by PW-2 to PW-5, who confirmed that the plaintiff was in continuous possession and that the defendants were never in occupation. By contrast, DW-3, the only witness produced by the defence regarding possession, failed to identify the suit land and could not specify the extent of the alleged possession. His testimony was vague and lacked corroboration.

As regards the deed in question (Exhibit-'Cha'), the appellate court pointed out that none of the attesting witnesses were examined. The

defence also failed to produce or examine the deed writer Md. Tayez Uddin Sarkar or witnesses Md. Matiur Rahman and Md. Shahinur Rahman. No attempt was made to establish the three essential requirements of a valid gift under Muslim law: declaration, acceptance, and delivery of possession. Consequently, the appellate court concluded that the deed was neither voluntarily executed nor followed by delivery of possession and was created by fraudulent misuse of blank signed papers.

Despite reaching clear findings in favour of the plaintiff, the appellate court surprisingly affirmed the trial court's dismissal of the suit. This inconsistency between factual findings and legal conclusions creates an apparent contradiction and renders the judgment susceptible to judicial interference.

In assailing the concurrent decisions, Mr. Kawser Ahmed, learned Advocate for the petitioner, argues that the trial court's finding regarding the non-examination of the thumb impression is legally flawed. He submits that although the plaintiff did not engage an expert, the court had the authority and discretion under section 73 of the Evidence Act to compare the thumb impression suo motu if it found the authenticity of the document to be a central issue. This authority, particularly relevant where fraud is alleged, was not exercised. Hence, the burden was improperly shifted upon the plaintiff.

Furthermore, Mr. Ahmed submits that although the plaintiff did not produce the original of Deed No. 1685 dated 09.07.2009, the defendants themselves produced a certified copy of the same, marked as Exhibit-D. Therefore, the adverse inference drawn against the plaintiff on this ground is wholly untenable and unsupported by the record.

He further contends that the appellate court correctly found the defence version unsubstantiated, particularly as the attesting witnesses were not examined and no proof of valid gift or possession was shown. Yet, despite such strong findings, the appellate court committed serious legal error in upholding the dismissal. This internal inconsistency between reasoning and conclusion is not only irrational but results in a grave miscarriage of justice.

Mr. Sk. Golam Hafiz, learned Advocate appearing for the Defendants–Opposite Parties Nos. 1 and 2, opposes the Rule and supports the concurrent findings of the courts below. He contends that the suit was rightly dismissed by the learned trial court, and the dismissal was justifiably affirmed by the appellate court. He submits that the plaintiff failed to discharge the initial burden of proof necessary to substantiate her claim of fraud and forgery.

He argues that a registered document carries a presumption of validity and due execution under the law, and the onus lies heavily upon the person challenging its genuineness. In the present case, although the plaintiff alleged fraud and fabrication, she did not produce any expert report on the thumb impression recorded in the Sub-Registry Office thumb book nor did she initiate any inquiry or lodge a General Diary entry with the police immediately upon learning of the alleged forgery.

Regarding possession, Mr. Hafiz contends that physical possession is not always decisive in cases involving gifts between close family members. Even if the plaintiff continued to reside on the land, the gift could still be valid if accompanied by an intention to transfer title and subsequent acceptance by the donees. Accordingly, he prays for discharge of the Rule.

Having heard the learned counsels for both sides and upon perusal of the judgments and orders of the courts below, as well as the evidence on record, this Court proceeds to render its decision.

From the evidence on record, it clearly transpires that all five of the plaintiff's witnesses (PW-1 to PW-5) consistently testified that the plaintiff has been in continuous possession of the suit land, where she resides and maintains two homestead structures. On the contrary, the defence witnesses failed to specify any clear extent of possession and could not identify the land at issue. DW-3 candidly admitted during cross-examination that he could not say exactly how much land the defendants possessed.

The evidentiary requirements for a valid gift under Muslim law are well established: (i) declaration of gift by the donor, (ii) acceptance by the donee, and (iii) delivery of possession. In this case, not only were the attesting witnesses not examined, but there is also a total absence of evidence on acceptance or delivery of possession. These cumulative deficiencies fatally undermine the claim of the defence. The defence assertion that the plaintiff voluntarily executed the deed is also contradicted by her unshaken testimony that she never attended the Sub-Registry Office and was misled into signing blank papers. The absence of expert opinion or a GD entry, while relevant, cannot override the overwhelming and corroborated oral evidence on record, particularly when the burden to prove valid execution and possession rests entirely upon the defendants once the deed is challenged.

Additionally, the sequence of deeds, Deed No. 1685 dated 09.07.2009 and Deed No. 2562 dated 15.10.2009, demonstrates continued ownership and dominion of the plaintiff over the suit land, which casts further doubt on the authenticity of the alleged earlier gift deed dated 25.02.2009.

This Court is of the view that the trial court erred in law by heavily relying on the absence of expert opinion and GD entry without considering its own powers under Section 73 of the Evidence Act. The court could have, in the interest of justice, compared the admitted thumb impression and the alleged one itself, especially where the plaintiff denied execution, and where fraud was a central issue. The failure to do so, coupled with the appellate court's contradictory conclusion, amounts to legal misdirection and perverse appreciation of evidence.

The appellate court decided all the points of determination in favour of the plaintiff and concluded that the trial court had rightly decreed the suit on contest. It further observed that there was no reason to uphold the impugned deed of gift, as it was liable to be declared forged, fraudulent, collusive, void, illegal, and ineffective. However, in the operative part of the judgment, the appellate court erroneously affirmed the decree of the trial court, despite the fact that the trial court had actually dismissed the suit. This highlights a crucial error in the appellate court's judgment, while its reasoning supports the plaintiff, it mistakenly affirms a decree of dismissal, which contradicts its own findings. The appellate judgment misstates the result of the trial court. The judgment should be set aside due to this apparent contradiction.

As no further evidence is necessary to resolve the issue at hand, remanding the case would serve no useful purpose and would only cause undue delay in the final disposal of the matter, which has already been pending since 2010. It is well-settled that where the record is complete and no additional evidence is required, the revisional court is competent to finally decide the matter rather than remanding it. A remand should be avoided when it would result in unnecessary prolongation of litigation, especially in cases like the present one which has remained unresolved for over a decade. The

interest of justice and the principle of expeditious disposal favour a final adjudication by this Court under its revisional jurisdiction.

Upon comprehensive assessment, this Court finds that the plaintiff did not voluntarily execute the deed nor did she transfer possession of the suit land. Rather, the defendants appear to have fabricated the deed by fraudulent use of blank signed papers. The consistent and credible testimony of plaintiff's witnesses, combined with the absence of legal proof of possession or attestation by the defendants, leaves no doubt that the deed in question is forged and ineffective in law.

In view of the above, **the Rule is made absolute.**

The appellate Judgment and Decree dated 24.03.2014 and 30.03.2014, respectively, passed by the learned Additional District Judge, 1st Court, Pabna, in Other Class Appeal No. 243 of 2012, **and the trial court Judgment and Decree dated 17.05.2012 and 22.05.2012**, respectively, passed by the learned Assistant Judge, Bera, Pabna, in Other Class Suit No. 57 of 2010, **are hereby set aside.**

The suit is hereby decreed.

It is hereby declared that the registered **deed of gift being Deed No. 456 dated 25.02.2009**, described in Schedule "Kha" to the plaint (in respect of the property described in Schedule "Ka"), is **forged, fraudulent, collusive, void, and illegal**, and as such, is **ineffective in law and stands cancelled.**

There will be no order as to costs.

Let the lower court records be sent back together with this judgment at once.

(Justice Md. Toufiq Inam)