

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2881 OF 2015

Md. Shah Alam

----- Plaintiff-Respondent-Petitioner

-Versus-

Md. Saijuddin and others

----- Defendants-Appellants-Opposite Parties

Mr. Md. Shah Alam Sarker, Advocate

----- For the Petitioner

Mr. Kawser Ahmed Halim, Advocate

----- For the Opposite Parties

Heard on: 13.03.2018, 15.03.2018 and
18.03.2018

Judgment on: 28.03.2018

At the instance of the present plaintiff-respondent-petitioner, Md. Shah Alam, this Rule has been issued calling upon the opposite party Nos. 1-2 to show cause as to why the judgment and decree dated 27.05.2015 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Class Appeal No. 60 of 2010 allowing the appeal and reversing those dated 29.04.2010 passed by the learned Assistant Judge, Rowmari, Kurigram decreeing the Other Class Suit No. 38 of 2008 should not be set aside.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed the Other Class Suit No. 38 of

2008 in the court of learned Assistant Judge, Rowmari, Kurigrame for declaration that the sale deed No. 4307 dated 30.09.2004 was collusive, fraudulent and not binding upon the plaintiff. The plaint contains that the suit land originally belonged to the father of the plaintiff and the defendant namely Naburuddin who died leaving behind 6(six) sons, 3(three) daughters and Saijan Bewa as widow. The said Saijan Bewa was entitled to and in possession of 73 decimals of land and after her death the children were possessing as co-owners. The defendant Nos. 1 and 2 created a forged deed dated 30.09.2004 showing the said Saijan Bewa as vendor but Saijan Bewa never created such document and never received any money from them. The plaintiff came to know about the sale deed on 12.03.2008 and filed the present suit.

The suit was contested by the present opposite party Nos. 1 and 2 as the defendant Nos. 1 and 2 by filing a written statement by denying all the statements made in the plaint. It is further contended that Saijan Bewa as the mother of the present opposite party Nos. 1 and 2 needed cash money for certain purposes, therefore, she transferred the suit land in favour of the present opposite party Nos. 1 and 2 by a deed dated 30.09.2004 after receiving the consideration money. She executed and registered the said deed in order to sale entire her 73 decimals of land described in the plaint of the suit. However, there were some mistakes regarding the name of Edris Ali (present opposite party No. 2) and

Naburuddin (father of the petitioner and opposite parties) which were corrected and replaced after following the required formalities under the law.

After hearing the parties and considering the evidence submitted by the parties the learned trial court decreed the suit by passing the judgment and decree dated 29.04.2010. Being aggrieved the present opposite parties as the appellants preferred the Other Class Appeal No. 60 of 2010 in the court of the learned District Judge, Kurigram which was heard by the learned Joint District Judge, Court No. 1, Kuigram on transfer who by his judgment and decree dated 27.05.2015 allowed the appeal by reversing the judgment and decree passed by the learned trial court. This revisional application has been filed challenging the legality of the said impugned judgment passed by the learned appellate court below and the Rule was issued thereupon.

Mr. Md. Shah Alam Sarker, the learned Advocate appearing for the petitioner submits that the learned trial court after considering properly the documents adduced and produced by the parties decreed the suit but the learned appellate court below without controverting the findings of the trial court reversed and set aside the judgment of the trial court regarding title and possession of the present petitioner, therefore, came to a wrong decision, as such, this court should interfere upon the judgment of the appellate court below.

The learned Advocate also submits that their mother never excluded a sale deed for the land measuring 73 decimals at Tk. 500/- (Tk. Five) in the year of 2004 but the deed was shown to have executed by her on the basis of false personation in order to grab the property, as such, no hand writing expert was called in and DW1 Edris Ali deposed that defendant paid Tk. 115000/-(one lac fifteen thousand) to their mother as the consideration, as such, the learned trial court lawfully decreed the suit but the learned appellate court committed an error of law despite the above submissions therefore the Rule should be made absolute

The Rule has been opposed by the present opposite party Nos. 1 and 2.

Mr. Kawser Ahmed Halim, the learned Advocate appearing for the opposite parties submits that the learned trial court failed to consider that the defendant No. 1 and 2(opposite party Nos. 1 and 2) successfully proved execution of the disputed deed and after non-consideration the decree was passed properly; learned appellate court after consideration of the materials of the records correctly allowed the appeal and stated that execution and registration of the disputed deed was correct and consideration was passed properly, as such, the plaintiffs suit was not maintainable thus dismissed, as such, the Rule would be discharged for the ends of justice.

The learned Advocate also submits that Saijan Bewa died leaving behind 6 (six) sons and 3(three) daughters but only the present petitioner Md. Shah Alam and another brother Shakhawat Hossain filed the suit challenging the deed dated 30.09.2004 and also eventually Shakhawat Hossain withdraw himself from the suit, as such, the present petitioner alone filed this revisional application with a malafide intention but the learned trial court after misreading and non considering the evidence decreed the suit and the learned appellate court below considering the evidence by way of documentary and oral deposition of PWs and DWs allowed the appeal preferred by the present opposite parties lawfully, as such, this court should not interfere into the judgment of the appellate court below.

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 appellate court below and also perusing the materials in the lower court records, it appears to me that the present petitioner as the plaintiff filed the suit challenging the legality of the sale deed No. 4307 dated 30.09.2004 executed by the mother of both the petitioner and the opposite parties. The petitioner claimed that his mother never executed such deed which has been

created by practicing fraud, therefore, there were vital mistakes in the deed itself as well as in the document of the Registrar Office. On the other hand the present opposite parties as the defendant contended that the said deed was properly executed by their mother in favour of them after personally appearing in the Registration Office which has been proved by the DWs particularly DW4 Shahed Ali. It is also contended that there were some mistakes and over writings on the deed as well as record in the registration office but the present petitioner never sought for an expert opinion as to the handwriting of the mother who executed the deed, as such, the deed was properly executed in favour of the present opposite parties.

In view of the above conflicting factual aspects, this court has to take a decision as to the validity of the sale deed dated 30.09.2004 as well as the legality of the judgment and decree passed by the courts below. In order to take a decision, I have carefully examined the documents exhibited by the respective parties, in particular, the deed dated 30.09.2004 but it was not exhibited as the present opposite parties failed to produce the original of the said deed on the ground that the document was stolen / lost and there was a G.D. entry in the concern Police Station as stated by the DW1 Edris Ali. However, I could only examine the contents of the certified copy of the document and perused that there are some over writing and incorrect names of the parties

which was presented before the learned trial court for perusal. It means the present plaintiff petitioner did not take sufficient steps to prove the legality of the sale deed itself. The settled principle is that the plaintiff has to prove his own case on the standard of balance of probability. In the present case, the allegations of false personation and consideration money of Tk.500/-(five hundred) were properly controverted by the present opposite parties by adducing and producing sufficient evidence. But the leaned trial court on misreading and non consideration of the evidence decreed the suit, however, the learned appellate court below after considering evidence particularly the validity of the allege sale deed and contractual obligation between the parties of the said deed came to a lawful conclusion.

Regarding the consideration money mentioned in the sale deed itself amounting to Tk. 500/-(five hundred) and also the subsequent admission by the DW1 Edris Ali as payment of Tk. 1,15000/- (One lac fifteen thousand) to the mother was proved which was not an irregular transfer of property under the provisions of law by the deceased mother Saijan Bewa to the present opposite party Nos. 1 and 2.

Regarding the challenge of the deed by the present petitioner alone where there were other 6(six) sons and 3(there) daughters of Saijan Bewa who did not come forward to challenge the deed as illegal but only the present petitioner alone has been proceeding with the suit. In this

matter, certainly a question would arise why the other sons and daughters did not challenge the deed which was executed by their mother in favour of the present opposite parties. I made inquiries with the learned Advocates and I also tried to find out this question in the judgment and decree passed by the learned courts below but I could not get any acceptable answer to that. Which takes me to a conclusion that all other possible successors have admitted the transfer of the land measuring 73 decimals in favour of the present opposite parties.

Now, I am inclined to examine the judgment and decree of the courts below the learned trial court came to a wrongful conclusion to decree the suit filed by the present plaintiff petitioner challenging the deed dated 30.09.2004 on the basis of the following findings:

“স্বীকৃত ম-তই দাবী বিবাদীপ-ক্ষর মাতা তথা তর্কিত দলি-লর দাতা সায়জান বেওয়ার নালিশী জমি ছাড়া অন্য কোন জমি ছিল না এবং তিনি তাহার সকল সন্তা-নর প্রতি সম্ভষ্ট ছিল। ডি, ডব্লিউ-২ এর স্বীকৃত মতে পৈত্রিক বাড়িতে স্থান সংকুলান না হওয়ায় ভাই-য়রা আলাদা বসতবাড়ি ক-রন এবং মা সায়জান বেওয়ার প্রাপ্ত জমির উপ-রই বাদীর বসতবাড়ি বিদ্যমান। ফ-ল ইহা সুস্পষ্ট যে তর্কিত দলি-লর পূর্ব হই-তই বাদী নালিশী জমি-ত দখলকার বিদ্যমান এবং সায়জান বেওয়া তর্কিত দলিল মূ-ল নালিশী সম্পূর্ণ জমি ১/২ নং বিবাদীর নিকট আনুষ্ঠানিক ভা-ব হস্তান্তর ক-রন নাই। দখল হস্তান্তরিত না হওয়ায় এই কথা নির্দিধায় বলা যায় যে, তর্কিত দলিলখানা আ-দৌ এ্যাক-টড আপন বা কার্যকর হয় নাই।”

However, the learned appellate court below came to a lawful conclusion to allow the appeal by setting aside the judgment and decree passed by the learned trial court below on the basis of the following findings:

“ সং-শাধনীর বিষ-য় নোট দেওয়ার দায়িত্ব সাব রেজিষ্ট্রার অফিস-সর এই আপীল্যান্ট প-ক্ষর নয়। তাহাছাড়া দাতার স্বামী নাম নবুর আলীর স্হ-ল সবুর আলী হইলেও ইহা গুরুত্বর কোন ভুল নয়। কাজেই উক্ত আলোচনা থেকে দেখা যায় নালিশী দলিলটি যথাযথ ভাবে রেজিষ্ট্রি হইয়াছে এবং বালামভুক্ত হইয়াছে। রেজি-ষ্ট্রেশন আই-নর বিধান ম-ত রেজিষ্ট্রিকৃত কোন দলিল উপ-র উ-ল্লখিত ভূ-লর কা-রন বাতিল হই-ত পা-র না। দলি-ল কাটাকাটি যাহা অন্যায় ত-ব তার দায় কোন ভা-বই আপীল্যান্টপ-ক্ষর নয়। কেননা আপীল্যান্ট পক্ষ উক্ত দলিলের বাল-মর Custodian নন। এই বিষ-য় SR ও DR অফিস যথাযথ কর্তৃপক্ষ। তাহারা দলিলটি সঠিক ম-র্ম ব-ল-ছন। নথী-ত রক্ষিত কাগজপত্র ও নালিশী রায় পর্যা-লানায় বোঝা যায় যে, নালিশী দলি-লর বলা-ম কাটা কাটির বিষ-য় তদন্ত হয়। বিবাদী/ আপীল্যান্টপক্ষ দাবী ক-রন বাদী/রেসপন-ডন্ট পক্ষ নালিশী সম্পত্তি তাহার মায়ের অসুস্থতার সুযোগে বাড়ীতে কমিশন আনিয়া নালিশী জমি নিজ না-ম লিখিয়া নেন যাহা আপীল চলাকা-ল রেসপন-ডন্ট প-ক্ষর বিজ্ঞ আইনজীবী স্বীকার ক-রন। কা-জই বাদীপক্ষ যদি ম-ন ক-রন বিবাদী/আপীল্যান্ট-দর তাহার মা নালিশী দলিল সম্পাদন করিয়া দেননি বা False personation এর মাধ্যমে নালিশী দলিল তৈরী সেক্ষেত্রে উক্ত নালিশী দলি-লর থাম বহির দাতার টি-পর সহিত বাদী / রেসপন-ডন্ট প-ক্ষর অনুকূ-ল দেওয়া দলি-লর টি-পর সহিত বা স্বাক্ষ-রর সহিত expert করাই-ত পারি-তন।”

In view of the above discussions and on perusal of the judgment and decree passed by the learned courts below, I am of the opinion that the learned trial court committed an error of by decreeing the suit. Whereas, the learned appellate court below, came to a lawful conclusion by allowing the appeal and setting aside the judgment and decree passed by the learned trial court below and thereby committed no error of law. I am, therefore, not inclined to interfere into the judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The interim order of a direction to maintain status-quo in respect of position and possession of the suit land is hereby recalled and vacated.

The Section is directed to communicate this judgment and decree to the court concern and the Section is also directed to send down the lower courts records immediately.