

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.5212 OF 2003**

In the matter of:

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

And

Abdul Mannan Akon

.... Petitioner

-Versus-

Md. Sekander Ali Hawlader being dead his heirs-  
Shahida and others

.... Opposite parties

Mr. Ahmed Nowshed Jamil with

Ms. Shawkat Ara, Advocates

.... For the petitioner.

Mr. S.M. Obaidul Haque, Advocate

.... For the opposite parties.

**Heard and Judgment on 18.07.2023**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Noa.1(Ka)-2 to show cause as to why the judgment and decree dated 26.06.2003 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Bagerhat in Title Appeal No.158 of 1992, affirming those dated 30.04.1992 passed by the learned Assistant Judge, Sharankhola, Bagerhat, in Title Suit No.26 of 1990 should not be set aside and or such

other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that registered kabala deed No.9243 dated 04.11.1961 executed by Iman Uddin to Mukter Hossain Miah and registered kabala deed No.4915 dated 24.04.1966 executed by Iman Uddin to Sekander Ali Howlader and registered kabala deed dated 20.04.1986 executed by three daughters of above Iman Uddin namely Surjoban, Kohinor and Nur Jahan are fraudulent, illegal, not acted upon and not binding upon the plaintiff.

It was alleged that Iman Uddin Akon acquired 3 acres of land from the Government by Settlement Case No.521/B/60 on 08.09.1961 and was in possession by constructing his dwelling house and excavating tank. It was stipulated in above settlement document that Imam Uddin would not transfer above land to anyone in the next ten years. Now it has been revealed that in violation of above condition Imam Uddin transferred to the defendants same land which is unlawful, illegal and not binding upon the plaintiff.

Above Iman Uddin died leaving two sons Muslem Ali Akon and Abdul Latif and four daughters namely Chanburu, Surjobur, Nurjahan and Kohinor as his heirs. Since the plaintiff alone has lawful title and

possession in above 3 acres land others heirs of Iman Uddin are not impleaded in this suit.

Defendant Nos.1 and 2 contested the suit by filing a joint written statement alleging that Imam Uddin while owning and possessing 3 acres land on the basis of settlement from the Government transferred 1 acre land to Mukter Hossain by registered kabala deed dated 03.11.1961 who in his turn transferred the same to the defendant Nos.2-3 by registered kabala deed dated 02.02.1963. Above Iman Uddin again transferred 66 decimal land to defendant No.1 by registered kabala deed dated 20.04.1966. After demise of Iman Uddin his three daughters namely Koninor, Surjoban and Nurjahan again transferred 16.50 decimals land to defendant No.3. Thus the defendants are owning and possessing 1.99 acres land and remaining 1.0 acres land is possessed by plaintiff and other heirs of Iman Uddin.

At trial plaintiff and defendants examined 4 witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos.'K' series-'Cha' series.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree plaintiff preferred Title Appeal No.158 of 1992 to the District Judge, Bagerhat which was heard by learned Joint District, Second Court, Bagernat dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below the appellant as petitioner moved to this Court and obtained this Rule.

Ms. Shawkat Ara, learned Advocate for the petitioner submits that disputed two kabala deeds allegedly executed by Muslem Ali Akon were in breach of the conditions of the settlement and for above reason those were void and unlawful documentz. As far as the two kabala deeds executed by three daughters of Muslim Ali Akon namely Kohinor, Nur Jhan and Surjoban are concerned they had no right and title in above property since plaintiff alone is owning and possessing the same and for above reason those documents are illegal and void. But the learned Judge of Court of appe4al below has failed to appreciate above evidence on record and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the Trial Court which is not tenable in law.

Mr. S.M. Obaidul Haque, learned Advocate for the opposite parties submits that the opposite parties have purchased 1.66 acres land

by 2 registered kabala deeds from Iman Uddin on 20.04.1966 and 03.11.1961 and they are in peaceful possession in above land. Defendants produced and proved above two registered deed of sale of more 30 years old and those were marked as Exhibit Nos. 'Kha' and 'Ga' respectively. The plaintiff could not prove that above documents were without any consideration, or forged or not acted upon by legal evidence. The defendants purchased 33 decimals land by two registered kabala deeds from 3 daughters of Iman Uddin on 20.04.1986. On consideration of above legal evidence on record the learned Judges of both the Courts below have rightly found that the registered kabala deeds of the documents were valid and lawful documents and accordingly, the learned Joint District Judge dismissed the appeal and affirmed the judgment and decree of the Trial Court which calls for no interference.

We have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that Iman Uddin was the owner and possessed of 3 acres land by taking settlement from the Government in 1961 and above Iman Uddin died leaving two sons namely plaintiff and Abdul Latif and four daughters namely Chanburu, Surjoburu, Nur Jahan and Kohinor as his heirs.

In his evidence as PW1 the plaintiff stated that the Government gave settlement of disputed 3 acres land to his father by Case No.521/B/60 and his father died after making payment of four installments of the salami and after his demise he paid the remaining installments.

It appears from above evidence of PW1 Muslem Ali Akon that during his life time Iman Uddin could not make full payment of the salami of above settlement and the Government did not execute and register a settlement of kabuliyat deed in favour of Iman Uddin. There is nothing on record to show that the Government had ever executed and registered any deed of kabuliyat in favour of the plaintiff. The plaintiff could not produce and prove any such deed of kabuliyat granted by the Government in favour of Iman Uddin or to the plaintiff.

Plaintiff has filed this case challenging the legality of two registered sale deeds dated 03.11.1961 and 20.04.1966 (Exhibit Nos. 'Kha' and 'Ga' respectively) alleging that those documents were executed and registered by his father violating the terms and conditions of the settlement deed not to transfer above land within next 10 years. The plaintiff could not produce and prove any deed of settlement showing the existence of above conditions prohibiting the transfer of the land within 10 years. Even if there was such a condition in above settlement

deed of Iman Uddin and he violated the same that would make the deed of settlement void or voidable at the option of the Government. Since a person cannot take benefit of his own fraud. Iman Uddin or his heirs cannot challenge above a registered sale deeds on the ground of violation of terms of the settlement deed.

In his evidence as PW1 plaintiff has stated in his cross examination that his three brothers and three sisters and mother are all alive and they all are heirs of his father. There is no claim that the plaintiff purchased the shares of his brothers and three sisters or mother or they have authorised him to institute this case on their behalf. As such the suit is bad for defect of parties for not impleading another son, wife and three daughters of deceased Imam Uddin as plaintiffs or defendants. The defendants have produced and proved above mentioned two registered kobla deeds dated 03.11.1961 and 20.04.1966 executed by Iman Uddin in favour of the defendants in original which of more than 30 years old . The plaintiff did not make any endeavor to prove that no consideration was paid for above two documents or those documents were prepared by false personation or those documents were not acted upon. In his evidence as PW1 plaintiff did not bring any of above allegations against above two registered documents (Exhibit 'Kha' and 'Ga'. PW2 Shahjahan, PW3 Parimol and PW4 Fazlul gave

evidence as to the possession of the plaintiff in the disputed land. They did not say anything about the forgery or cheating committed by the defendants in obtaining above mentioned two registered kabala deeds.

Plaintiff does not make any claim in the plaint or in his evidence that in any way he acquired the land of his three sisters namely Kohinor, Nur Jahan and Surjoban after demise of his father. As such the plaintiff does not have any locus standi to challenge the legality of the registered sale deed dated 20.04.1986 executed by three daughters of Iman Uddin namely Kohinor, Nur Jhan and Surjoban.

It is not disputed that the plaintiff and his brother and sisters acquired 1.01 acres land as heirs of his father Iman Uddin and after above transfer by three daughters of Iman Uddin remaining land is being owned and possessed by plaintiff and other heirs of Iman Uddin.

In above view of the materials on record I am unable to find in illegality in the concurrent findings of the Courts below that the impugned kabala deeds are valid and lawful documents and the defendants acquired valid title on the basis of above deeds.

This Civil Revision is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is discharged.



The order of status-quo granted at the time of issuance of the Rule is hereby recalled and vacated.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*