

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 2054 of 2015

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Shamsul Islam @ Islam Uddin

..... Plaintiff-Petitioner

-Versus -

Md. Jalal Uddin

..... Defendant-Opposite Party

No one appears

..... For the petitioner

Mr. S.M. Jahangir Alam, Advocate

..... For the Opposite Party

**Heard on 22.08.2023 and
Judgment on 23.08.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 28.05.2015 (decree signed on 04.06.2015) passed by the learned Additional District Judge, 3rd Court, Sylhet dismissing the Title Appeal No. 136 of 2014 by affirming the judgment and decree dated 31.08.2015 (decree signed on 07.09.2014) passed by the learned Assistant Judge, Bianibazar, Sylhet, in

Title Suit No. 64 of 2013 rejecting the Title Suit on ex-parte should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the judgment and decree dated 28.05.2015 (decree signed on 04.06.2015) passed by the learned Additional District Judge, 3rd Court, Sylhet dismissing the Title Appeal No. 136 of 2014 by affirming the judgment and decree dated 31.08.2015 (decree signed on 07.09.2014) passed by the learned Assistant Judge, Bianibazar, Sylhet, in Title Suit No. 64 of 2013 rejecting the Title Suit on ex-parte for a period of 06 (six) months from date. The plaintiff filed the suit for declaration of title

Facts necessary for disposal of the Rule, in short, are that Siddique Ali was the original owner and possessor of the suit land including other land. On the death of Siddique Ali both the plaintiff and defendant have been owning and possessing the whole land of late Siddique Ali in equal portion and the plaintiff and defendant (Shamsul Islam @ Islam Uddin and Md. Jalal Uddin) are the legal heirs of late Siddique Ali and the plaintiff in the interest of his service, he is staying in the United Kingdom (UK) and their ancestral property is the joint and ejmali property. In the first part of 2006, the plaintiff-petitioner arrived at Bangladesh from United Kingdom and the defendant-opposite party, Md. Jalal Uddin offered to sell the disputed land to the plaintiff-petitioner. Before registration of deed, the defendant-opposite party completed mutation and other formalities and on 26.02.2006 the sale deed was completed and the deed was registered being deed No.380, dated 23.02.2006.

The defendant-opposite party completed mutation and other formalities such as rent, taxes. Before left Bangladesh, the plaintiff-petitioner made mutation in his name vide mutation Case No.129 of 2006-2007 and the plaintiff-petitioner paid rent and taxes from 1396 to 1413 Bangla Sal and received copy of receipt of rent and taxes on 05.09.2006. The neighboring people and local people are very much aware about the aforesaid sale Deed. Due to absence of plaintiff-petitioner in Bangladesh, the defendant-opposite party raised objection in the entrance of disputed property of the plaintiff-petitioner's Attorney and the whole matter transmitted to the petitioner through phone by the Attorney of petitioner (Md. Masuk Miah) and the Deed of Power of Attorney was made on 06.06.2007 and the said Deed of Power of Attorney was placed before the office of the Deputy Commissioner of Sylhet and the said Power of Attorney was proved through Case No.730 of 2007. The opposite party raised serious objection when the Attorney of petitioner is ready to work by entering into the disputed property and when the Attorney of petitioner observed that on 15.03.2008, the opposite party made arrangement to cut the valuable trees from the disputed land and in addition, the opposite party made a pre-plan to sell the disputed and controversial land which was mutated in the name of the petitioner as per his share through purchase and inheritance, in this way, the opposite party made his signature and left thumb impression in the said deed. The disputed land is the Land of registered deed and it was executed on 23.02.2006 and later on and there is no right, title and possession over the Suit land of the defendant-opposite party and when the defendant-opposite party is trying to enter into the

disputed land there is every possibility of deteriorated of Law and order of the country and that was not measured through money and there is an apprehension, that outsider may enter into the schedule property of the plaintiff.

At the time of trial, the plaintiff-petitioner produced Md. Masuk Miah, as PW1, to prove the case from the evidence of PW1. The plaintiff-petitioner able to prove his case through oral and documentary evidence. The defendant-opposite party filed written statement, but did not produced any DWs. The defendant prayed for opinion of Hand writing Expert about the signature of the defendant upon the impugned deed and Handwriting Expert report was submitted before the trial Court which goes against the plaintiff. The defendant depends on opinion of Handwriting Expert which was produced in the Trial Court and the plaintiff-petitioner raised serious objection against that opinion of handwriting expert and the learned trial Court kept the record of that objection as well as report of handwriting expert and subsequently the learned trial Court dismissed the case as ex-parte by his judgment and decree dated 31.08.2014.

Being aggrieved by and dissatisfied with the Judgment and Decree dated 31.08.2014 (decree signed on 07.09.2014), the plaintiff-petitioner filed Title Appeal No.136 of 2014 before the learned District Judge, Sylhet on 25.09.2014. Thereafter, the said Title Appeal was transferred to the Additional District Judge, 3rd Court, Sylhet for disposal. After hearing both the parties the learned Additional District Judge, 3rd Court, Sylhet dismissed the Title Appeal No.136 of 2014 and thereby affirmed the judgment and decree dated 31.08.2014 (decree signed on 07.09.2014)

passed by the learned Assistant Judge, Bianibazar, Sylhet in Title Suit No.64 of 2013 by his judgment and decree dated 28.05.2015 (decree signed on 04.06.2015).

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 28.05.2015 (decree signed on 04.06.2015) passed by the learned Additional District Judge, 3rd Court, Sylhet in Title Appeal No.136 of 2014 dismissing the Title Appeal, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

No one appears on behalf of the petitioner, when this matter was taken up for hearing, although it appears in the daily cause list several times.

Mr. S.M. Jahangir Alam, the learned Advocate appearing for the opposite party submits that the petitioner claimed that the opposite party gifted the suit land to the petitioner on 23.02.2006 by registered deed No.380 of 2006 and the petitioner has been possessing the said land, but the opposite party did not make the said deed and the signature of the opposite party in the said deed is examined by the handwriting expert. The claim of the opposite party regarding the signature in the impugned deed is supported by the report of the handwriting expert. The petitioner claimed the suit land through which deed is not produced before the concerned Court even the plaintiff did not examine any attesting witness of the impugned deed and did not show any cause for this. So, the Court below rightly passed the judgment and decree dismissing the Title Appeal, which

is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the opposite party, the papers and documents as available on the record.

It appears from the facts and circumstance and material on record that the plaintiff filed the suit for declaration of the title on the basis of purchase deed No. 380 dated 26.02.2006 But the P.W.1 in his deposition stated that the original owner of the suit land was Siddique Ali and others and the said Siddique Ali got the disputed land by compromise. He has also deposed that the said Siddique Ali gifted the disputed land along with others land to the to the opposite party on 22.04.2003 and the opposite party gifted the suit land to the plaintiff on 23.02.2006 by registered deed No.380 of 2006 and the plaintiff has been possessing the said land. Now, the question before the Court whether the petitioner got the disputed land by registered gift deed or registered sale deed. P.W.1 in his deposition deposed that the plaintiff acquires the suit land by registered gift deed No.380 of 2006. So, from the deposition of P.W.1 it is established that the petitioner admitted he got the suit land by gift deed. As per section 58 of the Evidence Act, 1872 admitted fact need not be proved. Besides, I have also gone through registered gift deed No.380 of 2006 being marked as exhibit-3A from the paragraph 14 of the deed it is clearly stated that the opposite party gifted the suit land to the petitioner. Even the petitioner did not call for the attesting witness of the said deed for proving his claim. It is the responsibility of the petitioner as per section 101 of the Evidence Act,

1872 that the said deed is a gift deed, he failed to do so thus it is clearly proved that the basis of the plaintiffs exhibit-3A is a gift deed and that is not a sale/ purchase deed which is the claims of the plaintiff. Thus, on the basis of the above discussion the Court is of the opinion that the plaintiff has failed to prove his case and therefore, the suit is liable to be dismissed.

Moreover on mere reading of the plaint, it is found that on 15.03.2008 the attorney entered into the suit land found that the defendant has cut down tress of the disputed land trying to sale the suit land which is the cause of action of this suit. The defendant did not claim the owner ship of the disputed land and merely trying to sale land to another do not castes aloud upon the title of the plaintiff. So according to the order 7 Rule 11(a) of the Code of Civil Procedure 1908, the plaint has not disclosed the cause of action.

In the light of the above discussion, I think that the learned Additional District Judge, 3rd Court, Sylhet rightly passed the judgment and decree dated 28.05.2015 (decree signed on 04.06.2015) in Title Appeal No.136 of 2014 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite party.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 28.05.2015 (decree signed on 04.06.2015) passed by the learned Additional District Judge, 3rd Court, Sylhet in Title Appeal No.136 of 2014 dismissing the Title Appeal and thereby affirming the judgment and decree dated 31.08.2014 (decree signed

on 07.09.2014) passed by the learned Assistant Judge, Bianibazar, Sylhet in Title Suit No.64 of 2013 rejecting the Title Suit on ex-parte is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.