

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 1581 OF 2001

In the matter of:

An application under Section 115 of the Code of Civil Procedure.

And

Musammat Sufia Begum @ Safia and others

... Petitioners

-Versus-

Mosammat Siriman Bewa being dead her heirs: Most. Luchi and others

... Opposite parties

Mr. Md. Alamgir Mostafizur Rahman, Advocate

... For the petitioners.

Mr. Aman Uddin, Advocate

... For the substituted opposite party

Nos.1-3.

Mr. Md. Shariful Islam, Advocate

... Added opposite party Lal

Mohammad Pramanic.

Heard and Judgment on 21.11.2022

This Rule arises out of the judgment and decree dated 17.08.2000 passed by the District Judge, Rajshahi, in Title Appeal No.216 of 1999, affirming the judgment and decree dated 31.05.1999, passed by the learned Assistant Judge, Mohanpur, Rajshahi, in Other Class Suit No.30 of 1997 decreeing the suit.

Facts in short are that now deceased Siriman Bewa predecessor of opposite parties as plaintiff instituted above suit for cancellation of registered kabala deed dated 03.11.1975 allegedly executed by her in favour of his son Nazim Uddin for 1.97 acres of land as stated in the schedule to the plaint.

It was alleged that above plaintiff was the rightful owner of above land and she possessed the same by cultivation. Now deceased Nazim

Uddin the predecessor of defendant Nos.1-4 was her only son and the plaintiff had three daughters. The plaintiff never sold above land to her son Nazim Uddin nor she received any consideration of money or went to the Sub-registry Office or delivered possession of above land. Above mentioned impugned kabla deed was obtained by false personation and the same is an ineffective and void document. The plaintiff had no knowledge about above kabala deed and on 13.02.1997 the plaintiff came to know for the first time about the above kabla deed.

Defendant Nos.1-4 contested the suit by filing a joint written statement wherein they have denied all material claims and allegations made in the plaint and alleged that the plaintiff willingly and voluntarily sold above land to his only son Nazim Uddin by registered kabala deed dated 03.11.1975 and delivered possession. Nazim Uddin possessed above land by cultivation and after his demise defendants have inherited above land and are possessing the same. Plaintiff has filed this false case at the instigation of others which is liable to be dismissed.

At trial plaintiff examined three witnesses and the defendants examined five witnesses. Documents produced and proved by the plaintiff was marked as Exhibit-'1' and that of defendants was marked as Exhibit-'Ka'.

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

Being aggrieved by above judgment and decree defendant preferred Title Appeal No.216 of 1999 to the learned District Judge, Rajshahi who on consideration of submissions of the learned Advocates for the respective parties and materials on record dismissed the appeal.

Being aggrieved by above judgment and decree the appellants as petitioners moved to this Court and obtained this Rule. At this stage plaintiff Siriman Bewa died and her three daughters were substituted as opposite parties in this revision who submitted a solenama admitting

the claim of the petitioners over the disputed land and accordingly, the Rule was made absolute.

A third party namely Lal Mohammad Pramanik who is the brother of deceased plaintiff Siriman Bewa moved to the Appellate Division with a Civil Petition for Leave to Appeal No.1202 of 20 challenging the legality and propriety of above judgment and order of the High Court Division. The Appellate Division set aside the judgment and decree of the High Court Division and directed this Court for addition of above Lal Mohammad Pramanik as an opposite party and dispose of the revision on merit.

Mr. Md. Shariful Islam (1), learned Advocate for added opposite party namely Lal Mohammad Pramanik submits that this opposite party purchased 1.27 decimals land from now deceased plaintiff Siriman Bewa by two registered kabala deeds dated 18.07.1999 and 05.02.2001. The opposite party is in possession of above land but concealing above fact the petitioner and opposite party Nos.1-3 submitted a false solenama and obtained a decree by practicing fraud upon this Court. The learned Advocate submits that the impugned judgment and decree passed by the Court below may be set aside and the suit may be remanded back to the trial Court for retrial after giving this party an opportunity to submit a written statement and adduce evidence to substantiate his claim.

Mr. Md. Alamgir Mostafizur Rahman, learned Advocate for the petitioners submits that the above mentioned kabala deeds of the added opposite party was never acted upon and those were obtained by fraud and false personation and Siriman Bewa never executed above registered kabala deeds nor she delivered possession of the disputed land in favour of the added opposite party.

Md. Aman Uddin, learned Advocate for opposite party Nos.1-3 the daughters of now deceased plaintiff Siriman Bewa adopted above submissions of the learned Advocate of the opposite parties and

submitted that Siriman Bewa rightly executed the kabla deed in favour of his son Nazim Uddin and the defendants are in possession of the above land. The learned Advocate further submits that the case may be remanded back to the Trial Court for retrial after setting aside the impugned judgment and decree so, that the question whether now deceased Nazim Uddin obtained impugned registered kabala deed by false personation or not and whether now deceased plaintiff Siriman Bewa transferred 1.27 acres land to the added opposite party Lal Mohammad Pramanik by registered kabla deed may be determined on the basis of evidence.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined the impugned judgment and decree passed by the learned District Judge and all other materials on record.

It is admitted that disputed 1.97 acres land belonged to now deceased plaintiff Siriman Bewa and now deceased Nazim Uddin who is the predecessor of the defendants was her only son.

Now deceased Plaintiff Sirima was an illiterate village woman of above 70 years of age. She herself filed this suit as plaintiff and gave evidence as PW1 at trial. On Oath as PW1 Siriman Bewa gave evidence supporting the claims she made in the Plaint. She stated that she did not sale the disputed land to her son Nazim Uddin nor she received any consideration money or she executed and registered the impugned kabla deed dated 03.11.1975. As far as possession of above land is concerned she stated that she never handed over possession of above land to Nazim Uddin and she is still in possessing of above land by cultivation. As far as filing of the suit long after 25 years of execution of the impugned kabala deed is concerned she stated that she came to know about above document only a couple of years back.

In view of above consistent and credence inspiring evidence of PW1 Siriman Bewa the onus shifted upon the defendant to prove the

due execution and registration of the kabala deed dated 03.11.1975 by PW1 on receipt of valuable consideration.

But on consideration of evidence on record both the courts below have concurrently held that the defendant could not prove the payment of consideration money to the plaintiff or the due execution of above kabala deed dated 03.11.1975 by the plaintiff or delivery of possession of the disputed land to Nazim Uddin by legal evidence.

The learned Advocate for the petitioners submits that PW1 Siriman Bewa claimed that above kabala deed was obtained by false personation. But no endeavor was made by the plaintiff to prove above claim which could be done by examination of the LTI of the executant of above document by hand writing expert.

As mentioned above in view of the evidence of PW1 Siriman Bewa the onus shifted upon the defendants and they could submit a petition to the trial court for obtaining expert opinion on the LTI of the plaintiff in the disputed kabala deed but the defendants did not take any such initiative.

Above findings of the courts below are based on evidence on record and there is no allegation of misreading or non consideration of any part of the legal evidence on record. As such this Court refrains from interfering into above concurrent findings of facts arrived at by both the Courts below.

As mentioned above after demise of the plaintiff her three daughters namely Most. Luchi, Most. Jhukimon and Most. Ojhiman as her heirs were substituted in this case as opposite parties and they executed a solenama admitting the claims of the defendants. But at the instance of a third party namely Lal Mohammad Pramanic the Appellate Division has set aside above judgment of this Court on the ground of collusion and suppression of materials facts. Above third party has been added as an opposite party and he has claimed to have

purchased disputed 1.29 acres land from plaintiff Siriman Bewa by two registered kabala deeds dated 18.07.1999 and 05.02.2001.

The petitioners and the opposite party Nos.1-3 both have claimed that above two kabala deeds are forged documents which were never acted upon. The plaintiff did not receive any consideration money for above kabala deeds nor delivered possession of the above land.

Above conflicting questions of facts cannot be settled by this Court in its revisional jurisdiction. Above facts have to be determined by the trial Court after receipt and consideration of evidence on above points to be adduced by the added opposite party and the petitioners and opposite parties No.1-3. The added opposite party did not file any written statement nor adduced any evidence or cross examined the witnesses of the plaintiff and defendants. Similarly the petitioners and opposite party No.1-3 did not have any opportunity to encounter the claim of the added opposite party.

In view of above facts and circumstances of the case and materials on record I find substance in the submissions of the learned Advocates for all three parties that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded back to the trial Court for retrial.

I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute. The impugned judgment and decree dated 17.08.2000 passed by the District Judge, Rajshahi, in Title Appeal No.216 of 1999, affirming the judgment and decree dated 31.05.1999, passed by the learned Assistant Judge, Mohanpur, Rajshahi, in Other Class Suit No.30 of 1997 is hereby set aside. Above suit is remanded back to the Trial Court for retrial after giving the parties an opportunity to file written statement or amend pleadings and adduce further evidence if any in accordance with law.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Md. Masudur Rahman
Bench Officer