

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3792 of 2015

Md. Khadem @ Md. Khadem Ali being dead
his legal heirs: 1(a) Md. Habibur Rahman @
Habib and others.

..... Petitioners

-Versus-

Md. Khalilur Rahman and others

..... Opposite-Parties

Mr. Kamal Hossain, Advocate

... For the Petitioners

Mr. M. Sadekur Rahman, Advocate with

Mr. Mahabub-Ule-Islam, Advocate

... For the Opposite Parties

Judgment on 07.08.2025

In this revision Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 12.07.2015 passed by the learned Additional District Judge, Jamalpur in Other Class Appeal No. 251 of 2011 dismissing the appeal and affirming the judgment and decree dated 31.10.2011 passed by the learned Senior Assistant Judge, 1st Court, Jamalpur in Other Class Suit No. 89 of 2000 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioners, as plaintiffs, instituted Other Class Suit No. 89 of 2000 for cancellation of the registered 'heba' deed bearing No. 18697 dated 30.05.1975 in the Court of the learned Senior Assistant Judge, Jamalpur, stating inter alia, that the property mentioned in the schedule to the plaint originally belonged to the predecessor of the plaintiffs and the defendants. The plaintiffs have been possessing the property by erecting dwelling house thereon. Before the death of the plaintiff's father the defendants manufactured a forged deed of heba concerning the schedule property showing mother of the defendants as done and father of the plaintiffs as donor. Defendants concealed the deed. During construction of a road nearby to the plaintiff's house, the defendants disclosed the deed. Having obtained certified copy, the plaintiffs learnt of the deed in details. By dint of the alleged deed as aforesaid, defendants got no possession of the land in question, the impugned deed was not acted upon and hence the present suit.

Defendant Nos. 1 and 2 contested the suit by filing written statement denying the material allegations made in the plaint, contending inter alia, that along with other land, the land in question belonged to

Abdul Goni Khalifa. He had been in enjoyment and possession of the suit property by erecting dwelling huts thereon. He died leaving behind 02 sons, Abdul Haq and another, 04 daughters and 02 wives Delemon and Johura Bibi. During the lifetime of Abdul Goni, the marital ties of his 2nd daughter Sokhina got dissolved with her husband, consequently, she along with her 03 issues used to live in her parent's house. Having taken into account of their helpless condition and future and also being satisfied with their services, Abdul Goni made gift of .03 acres of land by a registered deed of heba No. 18697, dated 30.05.1975 and built a tin shed house for them. Since 1975, they had been in enjoyment and possession of the same. After the demise of Sokhina, defendant Nos. 1 and 2 got the land mutated in their names. Within the knowledge of the plaintiffs, the BRS record of the property had been prepared in the name of their predecessor. There were 02 tin shed houses, 01 kitchen, 01 tube well and a latrine in the land in dispute. Plaintiffs entered in the false litigation which is liable to be dismissed.

The trial court framed three issues for determination of the dispute. In course of hearing, the plaintiff examined 3 witnesses as P.Ws and the contesting defendant opposite parties also examined 3 witnesses as D.Ws.

Both the parties filed some documents in respect of their claim in the suit properties which were duly marked as exhibits. The trial court after hearing and considering evidences on record dismissed the suit by the judgment and decree dated 31.10.2011 .

Against the aforesaid judgment and decree dated 31.10.2011, the plaintiff petitioner and others preferred Other Class Appeal No. 251 of 2011 before the learned District Judge, Jamalpur. Eventually, the learned Additional District Judge, Jamalpur, heard the appeal and after hearing dismissed the appeal by the impugned judgment and decree dated 12.07.2015. At this juncture, the plaintiff-petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status quo.

Mr. Kamal Hossain, learned Advocate appearing for the petitioners submits that the trial court while dismissing the suit failed to appreciate oral evidences adduced on behalf of the plaintiff as P.Ws. 1-3 who clearly proved that father of the plaintiffs did not execute any deed of gift in favour of his daughter and also failed to appreciate the evidences of D.Ws. 2-3 in its true perspective and misdirected himself ignoring provisions of Section 102 and 103 of the Evidence Act. The appellate

court also failed to appreciate the evidences on record and without appreciating case of the plaintiff, unfortunately disallowed the appeal affirming judgment and decree of the trial court, as such, both the courts below have committed illegality and error of law in the decision occasioning failure of justice.

Mr. M. Sadekur Rahman with Mr. Mahabub-Ule-Islam, learned Advocates appearing for the opposite parties submits that when the plaintiffs challenged a deed of gift executed by their father in favour of daughter i.e. predecessor of the opposite party, it was incumbent upon them to prove that the deed of gift was not executed and registered by their father in favour of the predecessor of the opposite parties.

It is submitted that, the plaintiffs at one stage tried to prove that the gift was forged and fabricated by sending the signature of the executants named Abdul Goni Khalifa to the handwriting expert for comparison with other admitted deed executed by Abdul Gani Khalifa. Handwriting expert furnished report finding that the signature of Abdul Goni Khalifa contain in the disputed deed and other deed executed by him are same. The plaintiffs did not challenge the report, even cited the handwriting expert as witness to disprove the report furnished by him. When the plaintiffs

utterly failed to prove that the deed of gift No. 18697 dated 30.05.1975 executed by Abdul Goni Khalifa in favour of Most. Sokhina Khatun is forged and fabricated, there left nothing for the plaintiff to agitate the matter before the appellate court as well as before this Court by filing this revision.

The trial court while dismissing the suit, rightly held that Sokhina Khatun after acquiring property by way of gift from her father got her name mutated in the khatian and paid rents to the government. After her death the opposite parties as heirs inherited the same and possessing the suit property with the knowledge of the plaintiffs.

In the absence of any contrary evidence adversed to the deed of gift, there was no earthly reason to decree the suit. The appellate court also held that apart from failure of the plaintiff to prove that the deed of gift is forged one, moreover, the deed came before the court in original which is more than 30 (thirty) years old and as per section 90 of the Evidence Act, the execution of said deed are not required to be formally proved and presumption lies in favour of the defendants and held that the impugned deed of gift was duly executed and registered by the father of

plaintiffs and the same has become acted upon and concurring with the findings and observations of the trial court, rightly dismissed the appeal.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement evidence both oral and documentary and impugned judgment and decree of both the courts below.

It is admitted by both the parties that the property in question belonged to Abdul Goni Khalifa. The plaintiffs and mother of the defendants are happened to be step brother and sister. After divorce by husband of Most. Sokhina Khatun, her father Abdul Goni Khalifa, to make her residence, felt necessary to donate some property to her daughter Sokhina Khatun, resultantly, by the impugned deed of gift dated 30.05.1975 gifted a small piece of land to his daughter, wherein, she used to live with her children. After obtaining gift from her father, she mutated her name in the khatian and paid rents to the government and had been possessing the same till her death leaving the opposite parties. After a long time in the year 2000, the plaintiffs all of a sudden filed the instant suit praying for a declaration to the effect that the deed of gift dated

30.05.1975 executed by Abdul Goni Khalifa in favour of Most. Sokhina Begum is liable to be cancelled and to communicate the judgment of the Court to the concern Sub-Registry Office without any prayer for declaration of title and also recovery of possession. Mere a declaration to the effect that any deed is illegal, void, forged and fabricated and liable to be cancelled without declaration of title and if the plaintiffs found not in possession without prayer for recovery of possession is not maintainable under proviso to Section 42 of the Specific Relief Act.

Admittedly, the deed of gift in question is dated 30.05.1975, the suit has been filed after 25 years of the deed in question, claiming that they came to know about the deed on 08.02.2000, when the defendants disclosed the fact of making gift by Abdul Goni Khalifa. To get a decree for cancellation of a deed of gift, the plaintiff is to prove that the deed of gift was not executed by the donor and the signature contain on the deed is forged one or the deed was obtained by practicing fraud. In the instant case from plain reading of the plaint and the evidences led by the plaintiffs, I find all those ingredients are totally absent. Moreover, the plaintiffs tried to prove the same is forged one, not executed by Abdul Goni Khalifa and to that effect by filing application sent the impugned

deed of gift to the handwriting expert for opinion along with some other sale deeds, admittedly executed by Abdul Goni Khalifa. The handwriting expert after receipt of order of the court got the impugned deed of gift examined with other sale deeds executed by Abdul Goni Khalifa and furnished report on 17.05.2007 finding that the signature and thumb impression contain on the deed in question and other sale deeds sent to him are of the same person, consequently, the plaintiffs themselves refrained from citing the handwriting expert as witness before the trial court. Moreover, they did not file any objection to get the report undone, consequently, in the absence of any objection and citing the handwriting expert as witness before the trial court, as per law, the report has legal value. The report proved that the deed of gift dated 30.05.1975 was executed and registered by Abdul Goni Khalifa in favour of Sokhina Begum. Since, the plaintiffs failed to prove the deed of gift was obtained by practicing fraud or created by forging signature of Abdul Goni Khalifa or the said deed has not been acted upon, the trial court rightly dismissed the suit and the appellate court rightly disallowed the appeal.

Both the courts below discussed all the evidences led by P.Ws and D.W. coupled with the document in question and considered handwriting

expert report which was not challenged by the plaintiff. In the absence of any contrary evidence adversed to the deed of gift dated 30.05.1975 and handwriting expert report dated 17.05.2007 the trial court had no other option or scope to disbelieve the deed of gift, consequently, dismissed the suit. The appellate court also observed that the plaintiffs miserably failed to prove their case and could not bring any evidence to prove that the deed of gift dated 30.05.1975 was not executed by Abdul Goni Khalifa or the signature contained therein is forged one. Rather expert report established that Abdul Goni Khalifa executed and registered the deed of gift in favour of his daughter Sokhina Begum, as such, I find no illegality or error of law in both the judgment passed by the trial court as well as by the appellate court.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the leaned Advocate for the petitioner calling for interference.

In the result, the Rule is discharged, however, without any order as to costs.

The order of status quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and
sent down the lower court judgment at once.

Md. Akteruzzaman Khan (B.O)