

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1773 OF 2005

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Mrs. Abdur Rashid and others

--- Defendant-Respondent-Petitioners.

-Versus-

Momin Uddin Ahmed and others

--- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Abdul Haque, Advocate

---For the Defendant-Respondent-Petitioners.

Mrs. Salina Akter, Advocate with

Mr. Uzzal Kumar Bhowmick, Advocates

--- For the Plaintiff-Appellant- OPs.

Heard on: 17.12.2023, 18.02.2024,
19.02.2024, 20.02.2024, 22.02.2024,
28.02.2024 and 05.03.2024.

Judgment on: 07.03.2024.

At the instance of the present defendant-respondent-petitioners, Mrs. Abdur Rashid and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and decree dated 27.03.2005 passed by the learned Additional District

Judge, Court No. 7, Dhaka in the Title Appeal No. 315 of 1989 reversing the judgment and decree dated 31.10.1989 passed by the learned Assistant Judge, Additional Court, Dhaka in the Title Suit No. 72 of 1988 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-4 as the plaintiffs filed the Title Suit No. 72 of 1988 in the court of the learned Assistant Judge, Additional Court, Dhaka against the present defendant-respondent-petitioners for cancellation of the deed Nos. 4540 and 4541 dated 22.05.1954 and 27.05.1954 executed by one Rafi Uddin Ahmed. The predecessor of the said Rafi Uddin Ahmed along with his 3 brothers were the owners of the suit land and their common paternal residential house appertaining to Mouza-Khilgaon, C. S. Plot No. 340 and 629, Police Station- Sirajdi Khan, District- Munshigonj land measuring 33 decimals. The said Rafi Uddin Ahmed left Bangladesh to live in Barma but his 3 sons, a daughter and a wife were living in Bangladesh. Mr. Rafi Uddin Ahmed and his family used to live at Dilu Road, Mogbazar, Dhaka but his brother Tazul Islam used to reside at his paternal house situated at C. S. Plot No. 340 who died leaving behind his 4 sons, and 3 daughters. The said Tazul

Hossain's daughter-in-law Mrs Khush Nahar wife of Mokshed Alam used to live at the suit land. The plaint further contains that in August- 1985 there was a quarrel between the said Khush Nahar and one Nurul Haque Bhuiyan alias Badsha Miah in the course of an exchange of filthy words out of personal enmity. The said Nurul Haque Bhuiyan disclosed that the suit land was transferred by the said Rafi Uddin Ahmed in favour of one Abdur Rashid the predecessor of the defendants. On the basis of the said information, Mr. Ruhul Amin and Abu Bakar Siddique went to the Sub-Registry Office of Sirajdi Khan for searching deed of agreement but could not find any transfer deed. Then the plaintiffs searched in the Sub-Registry Office at Dhaka on 24.08.1985 and found 2 deeds being Deed Nos. 4540 dated 22.05.1954 and 4541 dated 27.05.1954 which were shown to have been executed by Rafi Uddin and these 2 deeds are challenged by the plaintiffs by filing the instant suit.

The present petitioners as the defendants contested the suit by filing a written statement denying the claims made by the plaintiffs contending that the suit is barred by limitation and liable to be rejected and there is no cause of action for filing the suit challenging the aforementioned 2 deeds. In the written

statement it is further contended that the petitioners have been possessing the suit land by paying rent (খাজনা) by recording in S.

A. Record of right.

The learned Assistant Judge, Additional Court, Dhaka heard the parties and obtained evidence adduced and produced by the parties and after hearing the respective parties dismissed the suit by the judgment and decree dated 31.10.1989. Being aggrieved the present plaintiff-opposite parties preferred the Title Appeal No. 315 of 1989 in the court of the learned District Judge, Dhaka which was transferred and finally heard by the learned Additional District Judge, Court No. 7, Dhaka who after hearing the parties allowed the appeal and thereby reversed the judgment and decree of the learned trial court by the impugned judgment and decree dated 27.03.2005.

This revisional application has been filed by the defendant-respondent-petitioners under section 115(1) of the Code of Civil Procedure challenging the legality and propriety of the impugned judgment and decree passed by the learned appellate court below and this Rule was issued thereupon.

Mr. Mohammad Abdul Haque, the learned Advocate, appearing for the defendant-respondent-petitioners submits that

the aforesaid deeds being Nos. 4540 and 4541 had been executed and registered on 22.05.1954 and 27.05.1954 respectively but the opposite parties instituted the suit by challenging the aforesaid deeds after expiry of 31 years and the learned appellate court below should have considered the presumption value of the 30 years old documents as contemplated under section 90 of the Evidence Act, as such, the learned appellate court below committed an error of law resulting in an error in the decision occasioning failure of justice.

He also submits that the suit land has been possessing by the defendant-respondent-petitioners peacefully and the record of right in S. A. Khatian was published in their names pursuant to the above-mentioned 2 deeds, as such, the Rule should be made absolute.

The Rule has been opposed by the present opposite party No. 4 and others.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocate, Mrs. Salina Akter, on behalf of the opposite party No. 4 and others, submits that the predecessor of the present plaintiff-opposite parties filed the instant suit challenging the legality of the sale deed dated

22.05.1954 being No. 4540 and also the sale deed dated 27.05.1954 being No. 4541 claiming that the predecessor of the present plaintiffs executed 2 aforesaid sale deeds in favour of the present defendant-petitioners were not properly and lawfully executed when the said Rafi Uddin Ahmed was in Mitford Hospital for the purpose of treatment which proved that the deeds were not executed with free-will and free-consent and the deeds were not acted upon by the present defendant-petitioners, thus, the present defendant-petitioners never disclosed about this until in the year 1985, as such, this Rule was obtained by misleading the court as to the said deeds which are under challenge as to the validity, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the present defendant-petitioners were the permissive possessors for storing potatoes in the suit land and the said deeds were not ever acted upon and the present plaintiff-opposite parties filed the suit after getting information as to the said deeds in the year 1985, thus, there is no violation of limitation period for filing the suit, as such, no entitlement has passed to the present defendant-petitioners, thus, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the defendant-respondent-petitioners 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 learned appellate court below and also perusing the relevant materials available in the lower court records, it appears to this court that the present plaintiff-opposite parties filed the title suit challenging the legality of the said 2 deeds claimed to have executed by the predecessor of the plaintiff-opposite parties, namely, Rafi Uddin Ahmed. The plaintiffs further claimed that the admitted fact is that these 2 deeds were executed while the said Rafi Uddin Ahmed was in Hospital for the purpose of his treatment and these were registered on commission and the said deeds were not known by the plaintiffs until 1985. It further appears that the present defendant-petitioners never disclosed as to the said deeds to anyone before 1985 and the present defendant-petitioners could not prove their possession pursuant to the said deeds until the year 1985. It further appears that the present defendant-

petitioners obtained possession of the suit land on the basis of the said 2 deeds.

In view of the above factual aspects which were considered by the learned courts below and came to conflicting decisions. The legal aspects of this case are that whether the sale deeds were executed by the predecessor of the plaintiff-opposite parties and whether the sale deeds were acted upon.

In order to answer the above matters the defendant-petitioners claimed that they were in possession pursuant to the above deeds, as such, the S. A. Record was published in their names. However, the defendants failed to produce sufficient evidence as to the possession other than S. A. Record of right. The present plaintiff-opposite parties claimed that the defendants were simply a permissive possessor for storing potatoes in the cold storage on the suit land, whereas, the plaintiff-opposite parties clearly proved by adducing and producing the documents as well as the oral evidence by way of depositions.

In view of the above conflicting claims and counterclaims by the parties as to the validity of the said 2 deeds the learned trial court dismissed the suit on the basis only as to the possession of the suit land instead of explaining as to the validity

of the said 2 deeds. However, the learned appellate court below reversed the judgment and decree of the learned trial court and came to a lawful conclusion to allow the appeal after examining the depositions of the PWs and Dws.

In this case, the important aspect is whether there was a transfer of the suit land by entering into a valid contract. For a contract or agreement, certain requirements are that whether there was an offer and acceptance, valid consideration, free will, or voluntary executants of an agreement among others. In the instant case, the plaintiffs challenged the validity of the deeds because there is no free will of the executant who was in the Hospital when the deeds were executed and there was no witness of the 2 deeds from the family of the executant Rafi Uddin Ahmed, as such, any one of the requirements for valid agreement the deed can be a valid contract/agreement and the substantial evidence is an important aspect of the execution of the deeds none of the parties put forward any evidence as to the manner of the health condition of the executant Rafi Uddin Ahmed. However, the family members of the said Rafi Uddin Ahmed were not aware as to the treatment of their predecessor but the defendants claimed that executant Rafi Uddin Ahmed executed

in the absence of other family members, thus, in this regard, the deeds were not executed by him. If the deeds were not valid then there cannot have transfer of the property in favour of the defendant-petitioners, as such, the petitioners cannot claim any transfer of property in their favour pursuant to the above deeds.

Now, I am going to examine the findings of the judgments and decrees passed by the learned courts below.

The learned trial court came to its conclusion for dismissing the suit filed by the present plaintiff-opposite parties on the basis of the following wrong findings:

...“পি. ডব্লিউ. ১ ও ২ জবান বন্দীতে উক্ত ঘরের কথা উল্লেখ ক-র নাই, ত-ব জেরায় স্বীকার করি-ত বাধ্য হইয়া-ছ। যদি নূরুল হক খোশ নেহারের অনুমতি নিয়া ঘর তৈরী করিত তাহা হইলে উক্ত ঘরের কথা আর্জি ও জবানবন্দী-ত অবশ্যই থাকিত। ইহা-ত প্রমাণিত হয় যে, নূরুল হক অনুমতি নিয়া কোন ঘর তৈরী ক-র নাই।

উপরোক্ত আলোচনার পরিপ্রেক্ষিতে আমি এই সিদ্ধান্ত গ্রহণ করিলাম যে, বাদীপক্ষ সাক্ষ্য ও দলিলাদি দ্বারা তাহাদের মোকদ্দমা প্রমাণ করিতে পারে নাই। নালিশী সম্পত্তিতে বাদীদের স্বত্ব, স্বার্থ ও দখল প্রমাণিত হয় নাই। যে-হতু, বাদীপক্ষ মামলা প্রমাণ করি-ত ব্যর্থ হইয়া-ছ সে-হতু, বর্তমান মামলায় বাদীপক্ষ কোন প্রতিকার পাই-ত পা-র না। এইভাবে একত্রে গ্রহণ করা বিচার্য বিষয় কয়টি বাদীদের বিপক্ষে গ্রহণ করা হইল।”...

However, the learned appellate court below came to a lawful conclusion to allow the appeal preferred by the plaintiff-appellant-opposite parties on the basis of the following findings:

...“-কননা স্বীকৃত ম-ত দেখা যায় যে, তর্কিত দলিল মীট-ফার্ড হাসপাতা-ল কমিশ-ন রেজিস্ট্রি হইয়া-ছ। ইহা হই-ত দেখা যায় যে, রফি উদ্দিন দলিল সম্পাদন কা-ল অসুস্থ ছি-লন এবং দলিলে তাহার স্ত্রী, পুত্র ও কন্যাগ-ণর কেহ সাক্ষী হয় নাই। ফ-ল দলিল দুইটি কি পরিস্থিতি-ত এবং কাহার নিকট হইতে কিভাবে করা হইয়াছে সে সম্পর্কে বিজ্ঞ নিম্ন আদালত কোন ফাইন্ডিংস প্রদান না করিবার কারণে বিজ্ঞ নিম্ন আদাল-তর ফাইন্ডিং-স ভ্রমাত্মক দৃষ্টি-ভঙ্গির প্রতিফলন দেখা যায়। বিজ্ঞ নিম্ন আদাল-তর ফাইন্ডিংস দৃষ্টে আরো দেখা যায় যে, বিজ্ঞ নিম্ন আদালত দলিল দুইটি জাল কি-না তৎম-র্ম সুনির্দিষ্ট পছায় না গিয়া দখ-লর উপর গুরুত্ব আরোপ করিয়া ভ্রমে নিপতিত হইয়াছেন। পাশাপাশি দখল সংক্রান্ত বিষ-য় আপীলকারী বাদীগ-ণর সাক্ষী অবিশ্বাস করিয়া ভ্র-ম নিপতিত হইয়া-ছেন। উপরোক্ত আলোচনার ভিত্তিতে দেখা যায় যে, বিজ্ঞ নিম্ন আদালত আপীলকারী বাদীপ-ক্ষর সাক্ষী-প্রমাণাদির ভিত্তিতে মোকদ্দমাটি প্রমাণ করা স-ত্ত্বও ১, ৪ ও ৫ নং বিচার্য বিষ-য়র সিদ্ধা-ন্তর ক্ষেত্রে ভ্রমে নিপতিত হইয়া-ছেন। কা-জই ১, ৪ ও ৫ নং বিচার্য বিষ-য়র সিদ্ধা-ন্ত রিভার্স করতঃ আপীলকারী বাদীপ-ক্ষর অনুকূ-ল স্থির করা হইল।”...

In view of the above conflicting findings by the learned courts below I consider that the learned trial court dismissed the suit only discussing the possessory right instead of the validity and legality of the deeds which are under-challenged by this

revisional application, whereas, the learned appellate court below concentrated its finding upon the validity of the deeds, therefore, 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.

In view of the above discussions as to the law that any deed executed without a free will which is not a valid deed for transferring any property.

I, therefore, consider that the learned trial court committed an error of law by dismissing the suit filed by the plaintiffs but the learned appellate court below came to a lawful conclusion rightly by findings that the deeds were not lawfully executed.

I am considering that this Rule does not require any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 27.03.2005 respectively passed by the learned Additional District Judge, Court No. 7, Dhaka in the Title Appeal No. 315 of 1989 allowing the appeal and thereby reversing and *setting aside* the judgment and decree dated 31.10.1989 respectively passed by the learned

Assistant Judge, Additional Court, Dhaka in the Title Suit No. 72 of 1988 dismissing the suit is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the impugned judgment and decree dated 27.03.2005 respectively passed by the learned Additional District Judge, Court No. 7, Dhaka in the Title Appeal No. 315 of 1989 for a period of 6 (six) months and subsequently the same was extended from time to time and lastly it was extended till disposal of the Rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.