

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 5312 OF 2001

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Forak Ahamed {died leaving behind his legal
heirs: 1(a)-1(q)}.

--- Defendant-Respondent-Petitioner(s).

-Versus-

Ahmed Rahim alias Emdad Meah (Minor)
and others

---Plaintiff-appellant-Opposite Parties.

Mr. Md. Morshed Mir, Advocate

--- For the Defendant-Respondent-
Petitioner(s).

Mr. Abdus Salam Mamun, Senior Advocate
with

Ms. Marry Akter, Advocate

---For the Plaintiff-Appellant-O. P. No. 3.

**Heard on: 25.01.2024, 15.02.2024,
29.02.2024, 10.03.2024 and 14.03.2024.**

Judgment on: 14.03.2024.

At the instance of the present defendant-respondent-
petitioner, Forak Ahamed (now deceased and substituted), 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. 1-3 to show cause as to why the judgment and decree

dated 18.07.2001 passed by the then learned Subordinate Judge, Court No. 2, Chattagram in the Other Class Appeal No. 204 of 1998 allowing the appeal and thereby reversing the judgment and decree dated 30.06.1998 passed by the learned Senior Assistant Judge, Fatikchari, Chattagram in the Other Class Suit No. 09 of 1996 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-3 as the plaintiffs filed the Other Class Suit No. 09 of 1996 in the court of the learned Senior Assistant Judge, Fatikchari, Chattagram against the present petitioner and the proforma opposite party. The plaint contains that the suit land as described in the schedule of the plaint originally belonged to one Nazir Ahmed as the recorded owner in R. S. Khatian who transferred 28 decimals of land by the 2 (two) sale deeds dated 02.10.1939 and 30.05.1932 in favour of Abdul Karim Sawdagar who was the grandfather of the plaintiff-opposite parties. The said Nazir Ahmed also transferred the rest of the land to Abdul Karim Sawdagar and his brother Abdur Rashid by a sale deed dated 22.11.1943. The plaint also contains that a deed of partition was executed by the owners among their interest by way of partition deed and the defendant

No. 1 lost his superior interest by the promulgation of the State Acquisition and Tenancy Act, 1950 and Abdul Karim became the owner in possession of the entire suit schedule land and thereafter on 31.12.1986 he gifted the same to the plaintiffs and delivered possession of the suit land. Defendant No. 1 was the stepbrother of the father of the plaintiff No. 1 and 2 but the record of rights was wrongly prepared in the names of Abul Khair and Forak Ahamed in equal shares according to the instruction of the defendant No. 1. The plaintiffs called for the execution of a Muktinama (মুক্তিনামা) from the defendant No. 1 but he refused whereupon the plaintiffs filed the suit praying for the reliefs.

The defendant No. 1- as the petitioner contested the suit by filing a written statement denying all the material allegations made in the plaint. When Abdul Karim Sawdagar- the father of the defendant No. 1, Abdul Rashid, the defendant No. 1 and Ful Meah were in a joint family and they executed a deed of partition by allocating sahams (সাহাম) by an amicable partition on 27.10.1954 for their future peaceful adjustment appertaining to the Rayoti (রায়তী) land of R. S. Dag Nos. 4984 and 4986 regarding the land measuring 16 decimals. The plaint further

contains that there was an exchange deed executed by both Abdur Rashid and Abdul Karim on 15.12.1968. Accordingly, the operation of the State Acquisition and Tenancy Act of 1950 Abdul Karim got absolute possession upon all the land including the present 61 decimals land. He thereafter executed a gift on 31.12.1986 in favour of the present plaintiff-opposite parties by handing over the possession of the suit land. However, the present plaintiff-opposite parties were minors, thus, Abdul Karim got legal guardianship and who acted on their behalf. The defendant-petitioner Forak Ahamed was the stepbrother of the father of the plaintiff No. 1 and 2. The P. S. and B. S. Khatians were published wrongly in both the names of Abul Khair and Forak Ahmed as per instruction of the present plaintiff-opposite parties in equal shares. The plaintiffs called for the execution of a “Muktinama” (মুক্তিনামা) from the defendant-petitioner but he refused to execute the same which caused them to file the present suit. The written statement further contended that admittedly the suit land was originally belonged to one Nazir Ahamed and there was a partition deed dated 20.10.1954 between the said Abdul Karim, Abdur Rashid, Forak Ahmed and Ful Meah who thereafter purchased the land jointly and a deed of partition was

executed on 27.10.1954 by and between all the parties. It is further contended that by virtue of the said partition deed Abdul Karim got 16 decimals of land out of 44 decimals from the Dag Nos. 5025 and 5026 under Khatian No. 944 and the present defendant-petitioner got land measuring 1.90 acres of land in Plot Nos. 5166, 5168, 5181, 5149 and 2054 under R. S. Khatian No. 943 and 28 decimals of land in R. S. Plot Nos. 5025 and 5026 under R. S. Khatian No. 944 in total 2.18 acres of land by executing the aforesaid partitioned quantum land was not partitioned which was wrongly shown in R. S. Record of rights as “Projabil” (প্রজাবিল) land in the deed of partition which claims to have done wrongly because the present defendant-petitioner did not claim any right or interest in R. S. Plot Numbers, thus, the did of gift mentioned in the plaint is false and fabricated and contending that the plaintiffs never possessed the suit land. The defendant-petitioner further contended that the plaintiffs did not have the possession of the suit land at any point of time as their shops thereof. It is also an oral gift by and between the parties and handed over the title and possession upon the suit land. He also contended that he possessed the land by recording in R. S. Record being Dag Nos. 5025 and 5026 by constructing dwelling

houses and shops. Abdur Rashid was in possession of the suit land being R. S. Dag Nos. 4984 and 4986, therefore, the plaintiffs did not have any title and possession in the suit land by virtue of the deed of gift.

After receiving the suit filed by the plaintiffs the learned Senior Assistant Judge, Fatikchari, Chattagram dismissed the suit by his judgment and decree dated 30.06.1998. Being aggrieved by the said judgment and decree the plaintiffs preferred the Other Class Appeal No. 204 of 1998 before the learned District Judge, Chattagram who transferred the same to the then learned Subordinate Judge, Court No. 2, Chattagram to hear the matter and after hearing the parties allowed the appeal and thereby setting aside the judgment and decree of the learned trial court by his judgment and decree dated 18.07.2001. Being aggrieved by the said judgment and decree passed by the learned appellate court below this revisional application has been filed by the defendant-petitioner against the said impugned judgment passed by the learned appellate court below under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. Morshed Mir, the learned Advocate, appearing for the defendant- petitioner submits that the learned appellate court

below ought to have pondered that writing is not essential to the validity of a gift and the alleged deed of gift executed by Abdul Karim is neither legal nor proper due to absence of the essentials of a gift and found that the plaintiffs never acquired title in the suit schedule land comprising R. S. Plot Nos. 5025 and 5026 by virtue of a false, fraudulent, fabricated, void and illegal deed of gift and by not finding so the learned Subordinate Judge, Court No. 2, Chattagram erred in law in reversing the judgment of the learned trial court, thus, committed an error of law resulting in the decision occasioning failure of justice, so, the Rule should be made absolute.

The Rule has been opposed by the present plaintiff-opposite party No. 3, namely, Abdul Nabi.

Mr. Abdus Salam Mamun, the learned Senior Advocate, appearing along with the learned Advocate, Ms. Marry Akter, on behalf of the plaintiff-opposite party No. 3 submits that the learned trial court considered all the evidence adduced and produced by the parties by way of documentary evidence and by way of oral depositions committed an error of law by dismissing the suit filed by the plaintiff No. 1 and others. However, the learned appellate court below came to a lawful conclusion by

allowing the appeal by reversing the judgment and decree of the learned trial court on the ground that the plaintiff-opposite party No. 1 and others are entitled to get 61 decimals of land by way of gift deed No. 3873 dated 31.12.1986 and by way of exchange deed dated 15.12.1968 and partition deed executed on 27.10.1954, as such, this court should not interfere upon the impugned judgment and decree passed by the learned appellate court below, thus, the Rule is liable to be discharged.

The learned Advocate also submits that the documents adduced and produced by the defendant-petitioner were properly examined and decided that the deed of gift executed by and between the parties regarding the suit land which has been exhibited as Exhibit- 1(Kha) did not transfer any property in favour of the plaintiffs, as such, the learned appellate court below declared that the deed of gift has properly transferred the land measuring 61 decimals in favour of the plaintiff-opposite parties and lawfully transferred the suit land, as such, the learned appellate court below came to a lawful conclusion by setting aside the judgment and decree of the learned trial court.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also

considering the revisional application filed by the present defendant No. 1 as the petitioner 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 by allowing the appeal and thereby *setting aside* the judgment and decree of the learned trial court as well as perusing the essential documents available in the lower courts records and also considering the supplementary affidavit and counter affidavit filed by the parties, it appears to this court that the plaintiffs filed the title suit claiming entitlement upon the suit land measuring 61 decimals described in the schedule of the plaint. The suit was contested by the present defendant-petitioner by filing a written statement.

In this Rule, there are some admitted positions between or among the parties as to the ownership of the suit land originally belonged to Nazir Ahamed by obtaining a statement given by the Superior Landlord by way of পাউ. However, subsequently, there were sale deeds and a partition deed among the parties as well as oral gift in order to transfer the land obtained from the said Nazir Ahamed by one Abdul Karim and Abdur Rashid and the defendant-petitioner and the successors of Forak Ahamed who

now deceased and substituted. On the other hand, the present defendant-petitioner obtained the land from his father Abdul Karim Sawdagar but it was wrongly recorded. On the other hand, the present defendant-petitioner claimed that the learned trial court examined the documents and lawfully dismissed the suit filed by the present plaintiff-opposite parties by finding that the plaintiffs failed to prove their own case as to the entitlement and measurement 61 decimals of land.

In view of the above conflicting factual aspects, the learned trial court came to a conclusion to dismiss the suit on the basis of the following findings:

...“সুতরাং নালিশী ৫০২৬ নং দা-গ পি. ডব্লিউ. ১ আবুল খায়ের এর স্বীকৃত মতেই অত্র মামলার বাদী-বিবাদী ব্যতীত ফুল মিয়া নামক ব্যক্তির দোকান আছে। উল্লখ্য যে নালিশী জমির অংশ বি-শ-ষ দোকান থাকার কথা বাদীপক্ষ তাহা-দর আর্জি-ত কিছুই ব-লন নাই। আর্জির বক্তব্য অনুসারে নালিশী জমি বাদীদের পিতা তাহা-দর প-ক্ষ দখল ক-র। কিন্তু পি. ডবিউ. ১ আবুল খা-য়-রর সাক্ষ্য অনুসা-র তিনি একই বাদীপ-ক্ষ নালিশী জমি দখল করার কথা উ-ল্লখ ক-রন। পি. ডব্লিউ. ৩ ফুল মিয়া নালিশী জমি বাদীগণ দখল ক-র বলিয়া জবানবন্দী-ত উ-ল্লখ ক-রন। তিনি তাহার জেরায় নালিশী জমি তিনজন

বাদীই নি-জরা দখল এবং চাষাবাদ ক-র বলিয়া উ-ল্লখ ক-রন। অথচ পি. ডব্লিউ. ১ এর সাক্ষ্য ও জেরার বক্তব্য অনুসারে নালিশী জমি বাদীগণ নি-জরা চাষাবাদ ও দখল ক-র না বরং তাহ-দর প-ক্ষ পি. ডব্লিউ. ১ তাহা ক-রন।”...

The learned appellate court below allowed the appeal by reversing the judgment and decree of the learned trial court on the basis of the following findings:

...“উক্তরূপ ভাবে আঃ করি-মর জমির পরিমাণ দাঁড়ায় $৬১\frac{1}{2}$

শতক জমি। উক্ত জমি আঃ করিম এই বাদীপক্ষ বরাবর রেজিস্ট্রিকৃত দানপত্র দলিল মূলে হস্তান্তর করেন। বাদীপক্ষ উক্ত দলিলটি আদালতে দাখিল করিয়া-ছেন যাহা প্রদঃ চি-হু চিহ্নিত করা হইয়া-ছ। বাদীপ-ক্ষর প্রদর্শিত উক্ত রেজিস্ট্রিকৃত দলিলাদি ইতিমধ্যে কোথাও চলেঞ্জ হইয়াছে কিনা কিংবা তাহা বাতিল হইয়া-ছ কিনা তৎম-র্ম কোন প্রমাণাদি বিবাদীপক্ষ দাখিল ক-রন নাই। অতএব বাদীপ-ক্ষর প্রদর্শিত সকল দলিলাদি ও তাহার ভাষ্য অবিশ্বাস করার কোন অবকাশ নাই।”...

In view of the above conflicting decisions by the learned courts below I consider that the learned trial court without examining the documents regarding the suit land measuring 61

decimals came to a wrongful decision and conclusion by dismissing the suit as there are several transfers of land measurement of the suit quantum the present Rule was issued for ascertaining but the measurement of land. However, the learned appellate court below came to a lawful conclusion to allow the quantum of land but without describing the measurement of land.

In the above given factual and legal aspects I am inclined to modify the measurement of land on the basis of the deed of gift being Exhibit- 1 as a valid document as to the land measuring 28 decimals to the petitioner as described in the deed of gift No. 3873 dated 31.12.1986.

In view of the above, I am inclined to interfere upon the impugned judgment passed by the learned appellate court below, thus, the Rule should be disposed of by modifying the measurement of land claimed by the present opposite parties.

Accordingly, the Rule should be disposed of on the basis of the documents for transferring the entitlement by and between the parties.

In the result, the Rule is disposed of as to the claimed measurement of land being 28 decimals as per the deed of gift dated 31.12.1986.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree dated 18.07.2001 passed by the then learned Subordinate Judge (now Joint District Judge), Court No. 2, Chattagram in the Other Appeal No. 204 of 1998 is hereby recalled and vacated.

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