Present:

MR. JUSTICE MD. SALIM

CIVIL REVISION NO.4413 OF 2017.

Muhibur Rahman and another
..... Defendant-Petitioners.

-VERSUS-

Mst. Rasheda Akhter and another
..... Plaintiff-Opposite parties.

Ms. Urmee Rahman, Advocate
--------For the petitioners.

Mr. Md. Zakir Hossain, Senior advocate with
Mr. Syed Ridwan Husain, Advocate
..... For the opposite parties.

Heard on 28.04.2025, 14.05.2025, 20.05.2025 and 28.05.2025.

Judgment on 02.06.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 20.10.2016 passed by the learned Joint District Judge, 2nd Court, Moulvibazar in Title Appeal No.78 of 2010, dismissing the appeal in affirming the Judgment and decree dated 29.07.2010 passed by the learned Assistant

Judge, Kamalgonj, Moulvibazar in Title Suit No.34 of 2000 decreeing 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.

The facts in brief for the disposal of Rule are that opposite Party No.1, herein as the sole plaintiff, filed the Title Suit No. 34 of 2000 before the Assistant Judge, Kamalgonj, Moulvibazar impleading the present Petitioners as defendants and praying for declaration of title and for a declaration that the deed no. 2496 of 90 dated 14.01.1990 is forged for obtaining a saham of 40.50 decimals of land upon the partition of the suit land by metes and bounds, and for recovery of possession of her share of the land, as well as for a permanent injunction over that land contending inter-alia that the defendant No.1, the father of the plaintiff was the owner of the suit land. Defendant No. 1 married the mother of the plaintiff, Sahar Banu, and at the time of the marriage, he executed a registered deed. 1562 of 1949 and transferred the suit land in her favor against her prompt dower money and said Sahar Banu had been owning and possessing the scheduled land through

her husband, defendant no.1, that the land of serial no.4 of the First Tafsil of the Plaint was obtained by Sahar Banu by way of exchange from one Zobeda Khatun. Subsequently, there was a difference of opinion between Sahar Banu and defendant No. 1. As a result, she left the house of defendant No. 1 with her baby daughter and resided in her paternal home. In this manner, while owning and possessing the land, Sahar Banu died, leaving behind the plaintiff and defendant No. 1 as her legal heirs. Consequently, the plaintiff is now the owner and possessor of her share of the land inherited from her mother. On 10th Boishak, 1407, defendant No. 1 obstructed the Bargadar of the plaintiff, and in that manner, the plaintiff was dispossessed of the suit land. Subsequently, the plaintiff, upon inquiry, came to know that during the last S.A. operation, the disputed land was recorded in the name of defendant No.1 despite the existence of a deed in favor of Sahar Banu and the Plaintiff requested the defendant No.1 to make partition and deliver possession of the plaintiff's share which was denied and as such there has been cloud created by wrong recording of the suit land in the name of

the defendant no.1. That the Deed No. 2476/90 dated 12.06.90 allegedly executed by Sharbanu in favor of the defendant nos. 3-5 is collusive, false, and forged, and that deed also created a cloud in the title of the plaintiff, and as such, the cause of action arose and hence this suit.

Defendants Nos. 1 and 2, although they filed written statements, did not contest the suit, and as such, the suit proceeded ex parte against them.

Defendants Nos. 3-4 contested the suit by filing a joint written statement, contending, inter alia, that the suit land, although transferred by their father in favor of Sahar Banu, the possession of the land remained with the defendants. As such, the S.A. record was prepared in the name of defendant No. 1 correctly. Sahar Banu transferred the suit land in favor of defendant No. 3-5 by registered deed No. 2476 dated April 11, 1990. After attaining a majority, defendants Nos. 3-5 mutated their names in mutation case no. 567 of 1999-2000 and got a separate khatian.

The learned Senior Assistant Judge, Kamalgonj, Moulvibazar, framed necessary issues to determine the dispute involved between the parties.

Subsequently, the learned Assistant Judge, Kamalgonj, Moulvibazar, by the Judgment and decree dated 29.07.2010, decreed the suit.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants-petitioners, as appellants, preferred Title Appeal No. 78 of 2010 before the learned District Judge, Moulvibazar. Eventually, the learned Joint District Judge, 2nd Court, Moulvibazar, by the Judgment and decree dated 20.10.2016, dismissed the appeal and thereby affirmed those passed by the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants-petitioners preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of stay extended from time to time.

Ms. Urmee Rahman, the learned advocate appearing on behalf of the petitioners, submits that the plaintiff

totally failed to discharge her burden of proof and to prove her case; in a suit for recovery of possession, the plaintiff is bound to prove her prior possession followed by the subsequent dispossession, but in this case, the plaintiff did not produce any documentary or oral evidence in order to prove her plaint case of possession and dispossession; mere statement in the plaint cannot be the basis of a decree; the appellate court below as a final court of fact ought to have considered this vital fact. However, the learned Judge of the Courts below referred a decision reported in 42 DLR 499 and shifted the burden of proof to the defendants, but the facts and circumstances of that case are clearly distinguishable from the facts and circumstances of the instant case and thereby the decision taken in consideration of that case by the appellate court is not sustainable in the eye of law. She then submits that the concurrent finding of fact arrived at by the courts below can be interfered with in Civil Revisional jurisdiction if there is an error of law, misreading, or non-consideration of evidence on record.

Mr. Md. Zakir Hossain, the learned Senior advocate appearing on behalf of the plaintiff-opposite party, opposes the contention so made by the learned advocate for the petitioners and submits that though the defendants-petitioners claimed that the deed No.2476 of 90 dated 12.06.1990 was a sale deed in exchange of valuable consideration but they failed to prove that deed was valid instrument executed by Sahar Banu and there was any consideration against the alleged sale deed; the trial court and the appellate courts have correctly considered the evidence on record found that in joint possession of the property, anyone co-sharers possession in the property be treated as possession of the other co-sharers in the property; there is no misreading and non-consideration of evidence for which concurrent findings of facts by both courts cannot be interfered with in revisional jurisdiction by the instant court.

I have anxiously considered the submissions advanced by the Bar, peruse the Judgment of the courts below, as well as oral and documentary evidence on the record. It is an admitted fact that defendant No. 1, Jahir

Rahman, at the time of marriage with Shahar Banu, executed a registered deed No. 1562/49 and transferred the suit land in favor of Sahar Banu as dower money. The said Sahar Banu was the owner and possessor of the suit land. After her death, the plaintiff and defendant No. 1 became the owners and possessors of the suit land as her legal heirs. On the other hand, defendants Nos. 3-5 claimed that Sahar Banu, during her lifetime, executed Sale Deed No. 2476 of 1990 in their favor. Here, the moot question is whether Sahar Banu executed Sale Deed No. 2476 of 90 dated 12.06.1990 in favor of defendant Nos. 3-5 or not.

It appears that the plaintiff had to prove her case, examine as many as three witnesses, and exhibit the necessary documents. On the other hand, the defendants had to prove their case, examining as many as three witnesses and exhibiting the relevant documents.

I have carefully scrutinized each deposition and cross-examination of witnesses, as well as the documents presented by the respective parties. The defendants claimed that Deed No. 2476 of 1990, dated 12.06.1990, was a sale deed executed in

exchange for valuable consideration. However, the defendants failed to prove that consideration money was paid to Sahar Banu. Furthermore, it appears that the main basis of the case against the defendants Nos. 3-5 is that Shahar Banu transferred the suit land, vide deed No. 2476 of 1990, in favor of defendants Nos. 3-5. The defendant argues that the plaintiffs bear the burden of proof to establish their case and must prove that Deed No. 2376 of 1990 is forged. In this regard, the learned Judge of the trial Court has rightly, quoting the case of Amirun Nesa and Ors vs. Golam Kashem and Ors, reported in 42 DLR 499, where it is held that:-

> "where the initial onus discharged by the plaintiff by giving slight evidence, the burden shifts to the defendants to prove the contrary."

After perusing the record it appears that the plaintiff, by adducing its witnesses, successfully discharged its duty and was able to prove that deed No. 2476 of 1990 is forged, specially P.W.2-Abdul Monnaf, who is allegedly the attesting witness of deed No. 2476 of 1990 has clearly acknowledgment that he has not signed in the deed No.2476 of 1990 as a witness. Additionally, based on the circumstantial evidence discussed above, the plaintiffs have been able to prove that Deed No. 2476

of 1990 is, in fact, a forged deed. Subsequently, it was up to the defendants to prove that the said deed was a valid instrument; however, they miserably failed to prove that the alleged deed was valid. This view gets support from the case of Momtajur Rahman V. Mokbul Hossain, and Ors reported in 1985 BLD 18 where it has been held that:-

> "Onus in a suit for declaring a Heba-bil-ewaz deed in favour of the defendant was forged, and without consideration, the initial onus was upon the plaintiff. The plaintiff, having discharged that onus, is shifted on the defendant to prove that there was the intention of making the heba-bil-ewaz and that the consideration was paid. The onus of proving the formalities in connection with the deed is upon the person who upholds the transaction".

A similar view has taken in the case of Anwar Hossain and others vs. Abul Hossain Molla, and others reported in 44 DLR (1992) 79 where it was held that:-

> "The defence side wants the courts to believe that the sale deed Ext.2, the basis of Ext. A is a bonafide document for valuable consideration, but no

evidence in this regard having been adduced, the said Ext. cannot be allowed to stand".

Further, it appears from the records that defendants Nos. 3-5 did not produce the alleged original deed No. 2476 of 1990; they have only submitted a certified copy of the alleged deed. However, to overcome this shortcoming as a defense, the defendants have mentioned that in the Mutation Case No. 569-99-2000, they submitted the original copy of Deed No. 2476 of 1990, which the plaintiff had unlawfully withdrawn from the AC Land office. However, to prove this alibi, no documentary or oral evidence has been submitted by the defendants. Therefore, the trial court has reasonably pointed out that it is not at all believable and even possible for the defendant-opposite party of that Mutation case to withdraw the said deed from a court of law.

Further, it is not possible to compare the signature or thumb impression of the said deed as there is no existence of the original deed. Moreover, in this particular case, the defendants have also failed to prove, by adducing evidence, that Deed No. 2476 of 1990 is a bona fide document for valuable consideration. P.W.2-Abul Monnaf, clearly mentioned in his deposition that he had not signed the alleged deed No. 2476 of

1990 as a witness. Moreover, at one point, it was the defendants' case that Sahar Banu's alleged transfer, vide deed No. 2476 of 1990, was made for valuable consideration. However, during their cross-examination, they suggested that it was a gift from their stepmother, which was made without consideration. Thus, it is found that the trial court below, after proper scrutiny of the evidence, made the finding that Sahar Banu did not execute the said deed and that it was a forged instrument for which no consideration was paid. On the other hand, the appellate court below, having evaluated the evidence on record and judiciously considered the trial court's Judgment, affirmed the trial court's findings.

Ms. Urmee Rahman submits that both the courts below failed to consider that the plaintiff has not proved her prior possession and date of dispossession before being dispossessed of the suit land. It is evident from the Judgments of the courts below that both courts have judiciously addressed this issue in their Judgments, stating that when the nature of the property is Ejmali in possession, anyone co-sharer possession in the property will be treated as the possession of all, considering that the possession of one co-sharer is considered the possession of all. This principle

gets support from the case of Probir Kumar Rakshit –Vs- Abdus Sabur reported in 14 B L C (AD) 29 wherein it has been held that:-

> "..... It is in conformity with the well settled principle of law that possession of one co-sharer is in point of law the possession of all co-sharers."

Therefore, both the courts below judiciously found that the other co-sharer of the suit property is in possession of the suit land, and also the plaintiff, by adducing witnesses, successfully proved that she was dispossessed, on 10th Baishakh, 1407 Bangla year, by the defendants. Ms. Urmee Rahman further contended that P.W. 2 Abul Monnaf is not a credible witness, as discrepancies were noted in his deposition regarding his relationship with Sahar Banu. It is the settled proposition of law that a minor discrepancy in the deposition of a witness in an irrelevant point should not impact the trustworthiness of the witness. In the instant case, P W 2 's mistake in describing a relationship is not at all connected with the significant subject matter of the case. The main issue in the case is whether he signed the deed in question as a witness. He clearly stated in his deposition that

he did not sign the deed as a witness. The minor discrepancy in his deposition, which is an irrelevant point, has not impacted the trustworthiness of the witness. Therefore, the courts below did not commit any error of law, having considered the evidence of P W 2 as a trustworthy witness. Thus, the contention so made by Ms. Urmee Rahman is not sustained.

Considering the above facts, circumstances of the case, and discussions made herein, I am of the firm view that both the courts below judiciously pointed out that deed No. 2476 of 1990 is a forged instrument, and the plaintiff is entitled to get the reliefs as prayed for. The defendant-petitioner could not show any misreading or non-consideration of shreds of evidence. Consequently, it appears to me that the impugned Judgment and decree does not suffer from any legal infirmity, so the impugned Judgment is well founded in accordance with law and based on the materials on records, which cannot be interfered with by this court exercising revisional power under Section 115 (1) of the Code.

Resultantly, the Rule is Discharged.

Order of stay passed by this court is hereby vacated.

Communicate the Judgment and send down the Lower Court Records at once.

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(MD. SALIM, J).

Kabir/BO