

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

CIVIL REVISION NO. 412 OF 2010

In the matter of:

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

AND

In the matter of:

A. Wahab Mia and others

.... Petitioners

-Versus-

Mostak Bepari and another

....Opposite-parties

Mr. Ranjan Chakravorty, Advocate

... For the petitioners

Mr. Md. Mizanul Hoque, Advocate

....For the opposite party no. 1

Heard on 27.01.2025, 02.02.2025, 04.02.2025

and Judgment on 04.02.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant nos. 1, 3 and 4 of Title Suit No. 8 of 2005 and that of the appellants in Title Appeal No. 147 of 2008, this rule was issued calling upon the opposite-parties to show cause as to why the judgment and decree dated 30.07.2009 passed by the learned Additional District Judge, 1st court, Faridpur in that Title Appeal dismissing the appeal and thereby affirming the judgment and decree dated 27.10.2008 passed by

the learned Joint District Judge, 2nd court, Faridput in Title Suit No. 8 of 2005 decreeing the suit should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

It is worthwhile to note here that, though the instant Civil Revision is a single bench matter but as the parties to the revision are same and the Title Appeal No. 147 of 2008 was heard simultaneously with Title Appeal No. 141 of 2008 and those of Title Suit No. 03 of 2005 with the instant Title Suit No. 08 of 2005, we thus vide order dated 07.01.2025 allowed the application of the opposite party no. 1 to hear Civil Revision No. 351 of 2010 with this Civil Revision No. 412 of 2010 simultaneously and hence, we take it up for disposal.

At the time of issuance of the rule dated 31.01.2010, this court also directed to maintain status quo in respect of possession of the suit land.

The short facts leading to issuance of the instant rule are:

The present opposite party no. 1 as plaintiff originally filed a suit being Title Suit No. 03 of 2001 which was on successive transfers first renumbered as Title Suit No. 03 of 2001 and then Title Suit No. 59 of 2002 and finally Title Suit No. 08 of 2005 in the court of Joint District Judge, 2nd court, Faridpur for declaration of title in the suit land and cancellation of the deed of exchange bearing No. 3090 dated 15.11.1995 made in respect of schedule 'ka' (ক) to 'ga' (গ) so mentioned in schedule 'gha' (ঘ) to the plaintiff being illegal, fraudulent, collusive, inoperative *and* also for declaration to the effect that deed nos. 1481 and 1482 allegedly executed and registered by defendant no. 1 in favour of the defendant nos. 3 and 4 both dated 05.05.2003 so described in schedule 'kha' (খ)-1 to that plaintiff is illegal, collusive and not binding upon to the plaintiff.

The case of the plaintiff, in short, is that, the land under RS khatian No. 134 appertaining to plot No. 38 of Mouza No. *Char Rahsi* (চার রশি) measuring 64 decimals of land originally belonged to one, Abdur Rab, out of which an area of 52½ decimals of land was purchased by one, Moulavi Jaker Hossain, the father of the plaintiff and defendant no. 2 (the defendant no. 2 subsequently transposed from plaintiff no. 2 to defendant no. 2 vide order dated 25.08.2022.) Subsequently, plaintiff purchased 26 ½ decimals of land from his brother, the defendant no. 2 and became owner of 52 ½ decimals of land out of 64 decimals of land of RS plot no. 38 appertaining to RS khatian no. 134 as mentioned in 'ka' schedule to the plaint. That 52 decimals of land described in 'kha' schedule to the plaint out of SA plat No. 66 of khatian no. 100 belonged to one, Abdur Rab out of which he exchanged 16 decimals of land each to the plaintiff, Mostak Bepari and defendant no. 1, Abdul Wahab Mia. Out of that 16 decimals of land, 08 decimals of land of **Shataro rashi** (স রা রশি) mouza and 10½ decimals of land of RS plot no. 38 as describe totaling 18½ decimals so mentioned in schedule 'ka' and 'kha' to the plaint alleged to have exchanged with 18½ decimals of the defendant no. 1 under SA plot no. 6281 of SA khatian No. 73 of Mulamer Dangi (মোলা mouja mentioned in schedule 'ga' (গ) to the plaint respectively through deed of exchange dated 15.11.1995 description of which has been given in schedule 'gha' (ঘ) to the plaint.

It has been stated in the plaint that, the defendant No. 1 proposed to exchange his 16 decimals of land out of SA plot No. 66 of SA khatian No. 100 with 16 decimals of land of RS plot No. 38 of RS khatain No. 134 and on agreement, a deed of exchange was thus executed and registered on 15.11.1995 while the plaintiff had been in possession in 52 decimals of

land in 'ka' schedule and 16 decimals of land in 'kha' schedule described in the plaint. But fact remains, the alleged deed of exchange was made showing exchange of 18½ decimals of land the plaintiff of his 'ka' and 'kha' schedule with 18½ decimals of land of the defendant no. 1 described in 'ga' schedule.

Though the deed of exchange was made between them but the defendant No. 1 did never get possession in 'ka' schedule land where the plaintiff has homestead there while schedule 'ga' land was 07 (seven) miles away from plaintiff's homestead having no reason for the plaintiff to take possession in 'ga' schedule land from the defendant No. 1 through alleged exchange deed. Subsequently upon receipt a notice of a mutation proceedings from the Assistant Commission Land (AC land), Faridpur on 10.12.2000, the plaintiff at first came to know that defendant No. 1 prayed for mutation of 8 decimals of 'kha' schedule land which falls under SA plot no. 66 of SA khatian No. 100 claiming to have obtained by deed of exchange dated 15.11.1995. Subsequently upon obtaining certified copy of the deed of exchange dated 15.11.1995, he became sure that defendant No. 1 in collusion with the scribe and attesting witnesses of the exchange deed, has inserted plaintiffs 'ka' schedule land measuring 10 ½ decimals of land and 08 decimals of 'kha' schedule land in all 18 ½ decimals of land showing those to have exchanged with 'ga' schedule land of the defendant no. 1 measuring 18 ½ decimals of land. In fact, the alleged deed of exchange dated 15.11.1995 had not been read over and explained to the plaintiff though the lands described in 'ka' and 'kha' schedule brought in the alleged exchange deed is more valuable than that of 'ga' schedule land shown to have owned by the defendant no. 1. It has further been asserted

that the alleged exchange deed has never been acted upon and the defendant No. 1 had no right, title and possession in 'ga' schedule land when the alleged deed of exchange was made and the same is dilluviated land (পয়স্হি জমি).

Subsequently, during pendency of the suit the defendant no. 1 by two sale deeds both dated 05.05.2003, transferred 08 and 16 decimals of land of SA plot No. 66 out of 'kha' schedule to the defendant Nos. 3 and 4 and by way of amendment of the plaint dated 03.04.2005 those deeds were declared to be illegal, fraudulent and not binding upon of him and hence the suit

The defendant No. 1 and 3-4 though contested the suit by filing separate written statements but their assertion are same and denied all the materials statement made in the plaint contending inter alia that, the suit is barred by limitation and estoppels, waiver and acquiescence.

The further case of those defendants are that the plaintiff was the owner of 'ka' and 'kha' schedule land measuring 18 ½ decimals while by way of purchase, the defendant No. 1 got 'ga' schedule land also measuring 18 ½ decimals. The plaintiff and his brother, Abdul Quasem Bepari while proposed to exchange their 'ka and 'kha' schedule land with 'ga' schedule land, of the defendant No. 1 then for the convenience of enjoying possession, the defendant No. 1 agreed and then a deed of exchange was furnished and both the parties to the suit voluntarily executed and registered a deed of exchange on 15.11.1995 knowing fully well about the contents of the deed. Thereafter, defendant No. 1 was inducted into possession of 'ka' and 'kha' schedule land, while the plaintiff got

possession in 'ga' schedule land and the plaintiff has been in possession of 'ga' schedule land by cultivating it.

It has further been stated that the defendant no. 1 mutated his name in the *khatian* in respect of 'ka' and 'kha' schedule land, he got through deed of exchange and has been paying rent thereto and subsequently sold 8 decimals of land as shown in 'kha' schedule including his own 16 decimals out of RS plot No. 66 to defendant Nos. 3 and 4 by two kabalas (sale deeds) both dated 05.05.2003. It has also been asserted that the deed of exchange dated 15.11.1995 has duly been acted upon. The cause of action so set forth in the plaint claiming that, he (plaintiff's) first came to know about the contents of the exchange deed upon receiving the notice of mutation on 10.12.2000 on obtaining copy of the said notice is totally false and the suit is thus liable to be dismissed.

In order to dispose of the suit, the trial court framed as many as 4 different issues and in support of the case, the plaintiff examined 7 witnesses and produced several documents which were marked as exhibits 1-12. On the contrary, the appellant no. 1 as defendant no. 1 examined 9 witnesses and produced several documents which were marked an exhibit 'kha' to 'ja' when the defendant nos. 3-4 examined 3 witnesses and produced documents which were marked as exhibit nos. 'ka'-2 to 'ka'-2 (1). The learned judge of the trial court on conclusion of trial, vide judgment and decree dated 27.10.2008 decreed the suit on contest against the defendant no. 1/3-4 and ex parte against the rest.

Being aggrieved by and dissatisfied with the said judgment and decree, the defendant no. 1 and 3-4 as appellants then preferred an appeal being Title Appeal No. 147 of 2008 before the learned District Judge,

Faridpur which was on transfer heard by the learned Additional District Judge, 1st court, Faridpur. The learned Additional District Judge after hearing the parties to the appeal and on considering the material and evidence on record by impugned judgment and decree dismissed the appeal and thereby affirmed the judgment of the trial court and the said appellants who were defendant no. 1 and 3-4 as petitioners then came before this court and obtained rule and order of status quo as stated hereinabove.

Mr. Ranjan Chakravorty, the learned counsel appearing for the petitioners upon taking us to the revisional application, reading out the impugned judgment and decree and by referring to the documents lying with the lower court record, at the very outset submits that, both the learned judges of the court below committed a grave error of law resulting in an error in the decision occasioning failure of justice in not discussing evidence of a single witness of the plaintiff, let alone the witnesses of defendants yet he decreed the suit.

The learned counsel next contends that, since the plaintiff herein opposite party no. 1 is the party to the deed of exchange dated 15.11.1995 so the suit itself was not maintainable without praying for cancelling the same even then he showed cause of action in filing the suit on 20.12.2000 and thus the suit is also hopelessly barred by limitation under Article 91 of the Limitation Act.

To supplement the said submission, the learned counsel then contends that, since the plaintiff and his full brother herein, defendant no. 2, executed and registered the deed of exchange and there has been no denial in the plaint that they did not execute and register the said exchange deed, on their free will, so there has been no reason to say they had no

knowledge about the execution of the said deed, so the cause of action alleged to have shown from the date of receiving notice of mutation case, clearly false through.

The learned counsel next contends that, neither the attesting witnesses nor the scribe of the deed of exchange dated 15.11.1995 ever been produced by the plaintiff to support their case as stated in the plaint asserting that they did not execute and register the deed of exchange and therefore their contention that they have been misled by the defendant no. 1 in furnishing deed of exchange cannot stand.

The learned counsel by reading out the evidence of PW 2 and PW 3 further contends that, those two witnesses also found possession of the defendant no. 1 in respect of 'kha' schedule land which alternatively proves that the deed of exchange dated 15.11.1995 has been acted upon.

The learned counsel goes on to contend that, both the courts below have very whimsically found the deed of exchange dated 15.11.1995 void *abinitio* without considering the fact that, the said deed has been acted upon, as after the deed of exchange is executed and registered, the defendant no. 1 mutated his name in the *khatian* and then transferred 8 decimals of land including his share that is, 16 decimals of land out of plot no. 66 to the defendant nos. 3-4, so there has been no scope to find the said deed as void *abinitio*.

The learned counsel also contends that, it is the only case of the plaintiff that fraud has been committed upon him in not taking 16 decimals of his land from 'ka' schedule land rather both 'ka' and 'kha' schedule land yet to prove that alleged fraud, no witness came to

substantiate such assertion which alternatively proves that, the deed of exchange has duly been acted upon.

The learned counsel further contends that, since all the DWs in their respective testimony found the defendant no. 1 in possession on 8 decimals of land out of SA plot No. 66 earlier belonged to the plaintiff and thus without praying for recovery of khas possession in respect of 'kha' schedule land, the suit cannot be maintained yet that material point has been sidetracked by both the courts below.

The learned counsel further contends that, it is the settled proposition of law that plaintiff is to prove his/her own case without depending on the weakness of the defendants' case but from the materials on record, it shows that the plaintiff has utterly failed to lead his case and both the courts below ought to have dismissed the suit. When we pose a question to the learned counsel with regard to the enforceability of the deed of exchange dated 15.11.1995 in view of the land he acquired through sale deed dated 05.06.1986 where the defendant no. 1 got only 2 decimals of land from one, Thanda Mia even from SA plot No. 6428/ 6484 under SA khatian No. 73 when in the land of SA plot 6287 under SA khatian No. 52 is one of the plots out of 5 different plots consisting 50 decimals of land has been shown to have sold out, the learned counsel then contends that, the defendant no. 1 though produced SA khatian no. 52 subsequently, but it has not been taken into considering by the courts below and then submits that, in spite of the fact that by the deed dated 05.06.1986, the defendant no. 1 got only 2 decimals of land from SA khatian no. 73 though out of plot Nos. 6428/6484 yet the said deed of exchange will not be ineffective for that and the defendant no. 1 got possession of 18½ decimals of land out of plot no.

6281 and transferred it to the plaintiff as mentioned in schedule 'ga' to the plaintiff.

The learned counsel lastly contends that, since it has not been proved by the plaintiff that the defendant no.1 has not given possession in 'ka' and 'kha' schedule land, so on that score as well, the suit ought to have been dismissed but the learned judge avoided that very vital aspect and whimsically decreed the suit. However, in support of his submission, the learned counsel has then placed his reliance in the decision reported in 50 DLR (AD) 328, 2 ADC 822, 3 ADC 793 and 4 ADC 145 and finally prays for making the rule absolute.

On the flipside, Mr. Md. Mizanul Haque, the learned counsel appearing for the opposite party no. 1 very robustly opposes the contention taken by the learned counsel for the petitioners and by taking us through SA plot no. 6281 of SA khatain No. 73 (marked as exhibit (1-kha))submits that, in that plot the total area of land is 16.50 acres but the entire property is a dilluviated (নদী পয়স্হি) having no scope for any private party to transfer such land which exemplifies a classic fraud to have adopted in transferring that 18 ½ decimals of land out of SA plot No. 6281 by the defendant no. 1 through the alleged deed of exchange dated 15.11.1995 with schedule 'ka and 'kha' property of the plaintiff.

The learned counsel then by taking us to the sale deed dated 05.06.1986 next contends that, in the said deed, though SA plot no. 6281 has been shown to have recorded under SA khatian No. SA 52 yet in the deed of exchange, the said plot has been shown under SA khatian no. 73 even though the said sale deed, the defendant no. 1 got only 2 decimals of land even from plot no. 6428/6484 having no scope to get 18 ½ decimals of

land from plot no. 6281. At this, we pose a question to the learned counsel for the opposite party as regards to non-discussing a single witnesses adduced by the plaintiff by the learned judge of the trial court, he then readily contends that, if from the impugned judgment it is found that for non-discussing evidence, it has not affected the merit of the case of the plaintiff, then there will be no illegality in it. As regard to the absolute knowledge of the plaintiff about the execution and registration of the deed of exchange dated 15.11.1995, the learned counsel then contends that, since it has been asserted in the evidence by PW 2 that both the plaintiff and defendant no. 2 are not so literate like the defendant no. 1 and since it had been settled before executing the deed of exchange that the plaintiff would transfer his 'ka' schedule land measuring 16 decimals in exchange of 16 decimals of land out of SA plot no. 66 of the defendant no. 1 and on that understanding, the plaintiff agreed to furnish the deed of exchange which has also been asserted by PW-1 stating further that none of the plaintiff or defendant no. 1 got respective possession over 'ka', 'kha' or 'ga' schedule land, so it thus construes, the plaintiff actually had no knowledge about the alleged insertion of plot numbers and quantity so mentioned in 'ka' 'kha' and 'ga' schedule land and other than the date of knowledge mentioned in the plaint and therefore provision of Article 91 of the Limitation Act will rightly come into play here from the date of knowledge. The learned counsel in reply to the submission of the learned counsel for the petitioners with regard to finding possession of the defendant no. 1 in 8 decimals of land in 'kha' schedule by the PW-2 and PW-3 then contends that, since it has been asserted by PW 1 in his deposition that, both the plaintiff and defendant no. 1 got 16 decimals of land each from different side of SA plot

No. 66, so it will construe that the said PW 2 and PW 3 pointed at that portion of land that falls on the part of the defendant no. 1 and has not meant the possession from 8 decimals of land, the plaintiff has been enjoying. However, in support of his submission, the learned counsel has placed his reliance in the decision reported in 39 DLR (AD) 46 which has also been appeared in an online legal portal "*manupatro*" bearing No. LEX/BDAD/0057/1986 and read out paragraph no. 6 thereof and finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the learned counsel for the opposite party no. 1. We have also very meticulously gone through the material documents available in the lower court records and the impugned judgment and decree passed by the courts below. Together, we have also perused the decision referred at the bar. At the very outset, we would like to address the cardinal point of limitation which has been robustly asserted by the learned counsel for the petitioners and adverted to by the learned counsel for the opposite party no. 1. It is true, Article 91 of the Limitation Act provides 3 years time to file any suit for cancellation of a document reckoning it from the date of knowledge. In this regard, the learned counsel for the petitioners submits that, since the plaintiff and the defendant no. 2 who are the full brothers and the first party to the deed of exchange dated 15.11.1995, so there has been no scope to say that the plaintiff had no knowledge about the said deed of exchange and the date of knowledge to file the suit could be counted from 20.12.2000. There has been no disagreement among the parties about the execution of the deed of exchange by the plaintiff and the defendant no. 1 when it has been asserted by the plaintiff that, there had

been understating among the plaintiff and defendant no. 1, that the defendant no. 1 would get 16 decimals of land in the property mentioned in scheduled 'ka' to the plaintiff and in exchange thereof, the plaintiff will get 16 decimals of land out of SA plot no. 66 as mentioned in schedule 'kha' and on the basis of that understanding, the deed of exchange was executed and registered. On going through the examination-in-chief of the PW 1, we find from evidence of PW 1 who stated that “বাদীগন তা ী 'ক' তপসিল বর্ণিত জমির মধ্য থে 'খ' তপসিল বর্ণিত ৬৬ নং দা ১৬ শতাংশ জমি ১৫.১১.১৯৯৫ ইং তারি এওয়াজ দলিলমূলে এওয়াজ বদল করেন।”

The plaintiff as PW 1 went on to assert that:

“বাদীগন ১ নং বিবাদীর সা 'ক' 'খ' তপসিলের জমি এওয়াজ বদল করলেও প্রকৃতপ ধি নালিশী 'ক' তপসি জমিতে দখ বা দখল করেনি।”

The learned counsel appearing for the opposite party in order to support the said assertion and to point fraud committed by the defendant no. 1 then contends that, in an ill-motive, the defendant no. 1 manufactured the deed of exchange and has then committed fraud upon the plaintiff in executing and registering the alleged deed of exchange. However, we don't find any deviation of the assertion of the plaintiff as stated above through cross examination put to the PW-1 from the defendant no. 1. We are of the view that, though the plaintiff and his full brother executed the deed of exchange but they could not comprehend the manœuvre orchestrated by the defendant no. 1 while inserting the plot number in the schedules of the said deed of exchange. Furthermore, though in the deed of exchange, the plaintiff and his full brother shown to have transferred their 'ka' and 'kha' schedule land in favour of the defendant no. 1, but fact remains, the

defendant no. 2, the full brother plaintiff no. 1 (subsequently transposed as defendant no. 2) had no sellable right to transfer the property in respect of 'ka' schedule land let alone 'kha' schedule land that is, 8 decimals because by sale deed dated 17.10.1994 the defendant no. 2 had earlier transferred his share of land described in schedule 'ka' to the plaintiff to his full brother that is, plaintiff. So in that sense, as well, the deed of exchange has not been acted upon as the defendant no. 2 had no sellable right to transfer any property by way of deed of exchange either of 'ka' or 'kha' schedule land. Further, in the alleged exchange of 18½ decimals of land has found to have exchanged out of schedule 'ka' and 'kha' to the plaintiff by the plaintiff in exchange for 18½ decimals of land of the defendant, described in 'ga' schedule. But SA khatian No. 6281 under SA khatian No. 73 of 'ga' schedule is a dilluviated land (নদী পয়স্হি) where a private party can never acquire title through any sale deed. Now, the learned counsel for the petitioners submits that, that very point has not been raised by the plaintiff either by asserting in the plaint or by making any cross examination to the defendant witness no. 1. But it is our considered view that, if we find any illegality or irregularity in the material on record any court of law can look into its correctness because on going through the deed dated 05.06.1986 through which the defendant no. 1 claimed to have obtained title and possession over 'gha' schedule land measuring 18½ decimals, we rather don't find that the defendant no. 1 ever got 18½ decimals from SA plot No. 6281 when out of 5 different plots even under SA khatian no. 52, a total area of 50 decimals of land have been shown to have transferred in favour of the defendant no. 1 and only 2 decimals of land from SA plot no. 6428/6484 from SA khatian No. 73. On going through the judgment of the

courts below, we further find that both the courts below found, at best the defendant no. 1 could get 2 decimals of land from plot no. 6281. But that observation is materially defective one, because that 2 decimals of land has not been transferred from SA plot No. 6281 rather from plot no. 6428/6484. So on those two vital documents that is, SA khatian no. 73 as well as sale deed 05.06.1986, it has become clear that deed of exchange dated 15.11.1995 has never been acted upon. It is the contention of the learned for the petitioners, since the case of fraud has not been proved by any witness of the plaintiff, so basing on the evidence of PWs the case of fraud cannot be taken into consideration. But we are not at one with the said submission because if a sole witness could prove the case and no deviation can be found from cross examining that sole witness, the evidence of other witness is not that required to be considered as the plaintiff as PW 1 has clearly been asserted to what was supposed to be transferred by way of deed of exchange and what had actually been done by executing the deed of exchange and since no deviation can be made by cross examining PW-1 as we thoroughly read, so mere non-discussing evidence of plaintiff's witnesses is not so fatal in adjudicating the case.

However, we have gone through the decisions so cited by the learned counsel for the petitioners and we are of the view that, since the suit has not been filed beyond the time limit counting it from the date of knowledge and the defendant could not shake the PW-1 about such knowledge, so the plaintiff has rightly filed the suit as per the provision provided in Article 91 of the Limitation Act. Then again, on going through the prayer so have been made in the plaint, we find that plaintiff has made three sorts of prayers in the suit **one**, for declaration of title in the entire suit land and

then, in prayer 'kha', the plaintiffs sought cancellation of the deed of exchange dated 15.11.1995 and **lastly** by amending the plaint on 03.04.1985, a separate prayer being prayer no 'kha-1' was inserted through which propriety of two deeds dated 05.05.2003 made by the defendant no. 1 in favour of the defendant nos. 3 and 4 transferring 16+8 decimals of land has been challenged. Since the plaintiff and his full brother, defendant no. 2 was party to the deed of exchange dated 15.11.1995, so very perfectly cancellation of the same has been sought. So we don't find any illegality in filing the suit by the plaintiff. However, the decision so have been cited by the learned counsel for the petitioners to that effect does not come to any aid to their case.

Furthermore, on the veracity of subsequent deed dated 05.05.2003, since 8 decimals land of SA plot No. 66 under SA khatian No. 100 has been transferred during pendency of the suit, so certainly the provision of section 52 of the Transfer of Property Act will come in to play here and the learned judges of the courts below on correct appreciation of that provision declared those deeds to be inoperative and not binding upon the plaintiff. Another question has been raised by the learned counsel for the petitioners that, how the deed of exchange can be termed as *void abinitio* since the plaintiff and the defendant no. 2 themselves remained present at the time of executing it and furnished the same on their free will. On the contrary, the learned counsel for the opposite party submits that since on the face of the deed of exchange it shows that, the defendant no. 1 had no sellable right to transfer 18½ decimals of land on the back of vast irregularity in S.A khatian no. 73 as well as sale deed dated 05.06.1986, so the learned judges

of the courts below has rightly found the deed of exchange as *void abinitio* which we find to have ample substance.

Last but not least, whether non discussing evidence of the parties of the suit can *ipsofacto* render a suit dismissal or not. On that very point we have already discussed that if from the testimony of a single witness it is found that the plaintiff has been able to prove his/ her case through convincing evidence supported by materials on record and the court has taken into consideration of it while adjudicating a suit, then non- discussion of evidence will not render the suit as dismissal, if by this, it has not occasioned failure of justice. In this regard, we can profitably rely on the decision of our Appellate Division reported 18 BLD (AD) 121 where it has been propounded that:

Simply because the impugned order was not a speaking order, could not by itself be a valid ground for interference by the High Court Division unless it can be shown that the subordinate court has committed any error of law “resulting in an error in the decision occasioning failure of justice”

However it is now well settled provision as established by our Appellate Division that a concurrent finding on fact arrived at by the courts below cannot be interfered with in a civil revision in no misreading or non consideration of evidence is found.

Regard being had to the above facts, circumstances and the materials and evidence on record and the submission advanced by the learned counsels for the parties, we don't find any material illegality or

impropriety in the impugned judgment and decree which is rather liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

The order of status quo granted stands vacated.

Let a copy of this judgment and decree along with the lower court records be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O