

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1516 OF 2021

In the matter of:

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

And

Md. Ismail Chowdhury

.... Petitioner

-Versus-

Sree Ram Proshad Podder and others

.... Opposite parties

None appears

....For the petitioner.

Mr. Sk. Sharif Uddin, Advocate

.... For the opposite party Nos.1-2.

Heard on 26.01.2025 and Judgment on 28.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 31.03.2021 passed by the learned District Judge, Manikgonj in Title Appeal No.119 of 2003 dismissing the appeal and thereby affirming the judgment and decree dated 30.04.2019 passed by the learned Senior Assistant Judge, Sadar Upazill, Manikgonj in Title Suit No.14 of 2016

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 in short are that the petitioner as plaintiff instituted above suit for rectification of registered kobala deed No.4295 dated 28.08.1996 executed by Ranoda Prashad Poddar predecessor of defendant Nos.1 and 2 to the plaintiff transferring 1 decimal land appertaining to Plot No.1238 of S. A. Khatian No.795 alleging that erroneously Plot Nos.1237 and 1245 of S. A. Khatian No.641 was written in above kobala deed. The executant of above registered kobala deed Ranoda Prashad Poddar did not have any right, title, interest or possession in the land of Plot Nos.1237 and 1245.

Defendant Nos.1 and 2 contested above suit by filling a written statement alleging that their father was the owner of land of Plot No.1237 and 1245 by purchase and transferred above land to the plaintiff by impugned kobala deed dated 28.08.1996.

At trial plaintiff examined four witnesses and documents of the plaintiff were marked as Exhibit Nos.1 series - 4 series. On the other hand defendants did not examine any witness nor produced and proved any document but they cross examined above plaintiff witnesses.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed above suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Title Appeal No.119 of 2019 to the District Judge Manikganj who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this revision although this matter appeared in the list for hearing on several dates.

Mr. Sk. Sharif Uddin, learned Advocate for the opposite party Nos.1-2 submits that the impugned registered deed of sale was executed and registered on 28.08.1996 but the plaintiff instituted this suit for rectification of above deed on 19.01.2016 after about 20 years. On consideration of above materials on record the learned judges of both the courts below have rightly held that above suit was hopelessly barred by limitation. Since above findings of facts arrived at by the learned judges of both the Courts below are based on evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

I have considered the submissions of the learned Advocate for Opposite party Nos.1-2 and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that predecessor of defendant Nos.1 and 2 executed and registered kobala deed No.4295 dated 28.08.1996 to the plaintiff transferring one decimal land appertaining to Plot Nos.1237 and 1245 of S. A. Khatian No.641.

The plaintiff claims that above Khatian and Plot numbers were erroneously written instead of Plot No.1238 of S. A. Khatian No.795. In the plaint and in his evidence as PW1 the plaintiff did not claim that the executant of above kobala deed Ranoda Prosad Podder committed fraud and thereby inserted above erroneous Plot numbers and khatian number in above deed. It has been merely alleged that above Plot numbers and Khatian number were inserted in above document erroneously but no mention has been made who committed above errors.

The plaintiff further claimed that executant of above kobala deed (Exhibit No.3) namely Ranoda Prashad Poddar did not have any right, title and possession in the land of Plot Nos.1237 and 1245 but no evidence oral or documentary was adduced at trial to substantiate above claim.

Any party of a written instrument can make out a claim or give evidence varying any term of above instrument only on the ground of fraud or error. The plaintiff was a party to above registered kobala deed dated 28.05.1996 (Exhibit No.3) and he alleged that Plot numbers and Khatian number of the land transferred by the sale deed was mentioned erroneously instead of Plot Nos.1238 S.A. Khatian No.795. As such the

plaintiff should have adduced evidence to prove that the talk of sale was about sale of 1 decimal land of Plot No.1238 but instead two plots being Nos.1237 and 1345 were erroneously inserted in above document. But the plaintiff did not examine the scribe of above kobala deed or any other witness related to above deed or talk of sale of above land to substantiate above claim.

On consideration of above facts and circumstance of the case and evidence on record I hold that the learned District Judge on correct appreciation of materials on record rightly dismissed the appeal and affirmed the lawful judgment and decree of trial Court which calls for no interference.

In above view of the materials on record I am unable to find any substance in this petition under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.