

Present:-***Mr. Justice Mahmudul Hoque*****Civil Revision No.697 of 2023**

Md. Afsar Ali Pramanik

... Petitioner

-Versus-

Md. Amirul Islam and others

... Opposite- parties

Mr. Abdul Kashem Sarker, Advocate

...For the petitioner

Mr. Md. Asraful Hasan Siddique with

Ms. Rezina Mahmud, Advocates

...For the opposite-party Nos.1-10.

Judgment on 18th August, 2025.

In this application under Section 115(1) of the Code of Civil Procedure Rule was issued calling upon the opposite party Nos.1-10 to show cause as to why the impugned judgment and decree dated 05.01.2023 passed by the learned Additional District Judge, 2nd Court, Rangpur in Other Appeal No.60 of 2022 disallowing the same and thereby affirming the judgment and decree dated 22.02.2022 passed by the learned Senior Assistant Judge, Mithapukur, Rangpur in Other Suit No.192 of 2021 rejecting the plaint in 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 relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, filed Other Suit No.107 of 2020 in the Court of Joint District Judge, 2nd Court, Rangpur, subsequently renumbered as Other Suit No.192 of 2021 against the defendants, for a decree of declaration in the following terms;

“(ক) নালিশী “ক তফশীল বর্ণিত সম্পত্তি বাবদ মিঠাপুকুর সাবরাজিষ্ট্রি অফিস রংপুরের রেজিষ্ট্রিকৃত ৬/৯/২০২০ইং তারিখের ৭৯৪৪, ৭৯৪৫, ৭৯৪৩, ৭৯৪৭, ৭৯৪৮ নং হেবানামা ঘোষণাপত্র দলিলগুলি বেআইনী, ভিত্তিহীন, অকার্যকর, যোগসাজসী এবং দখল হস্তান্তর হয় নাই কারণে বাদীর উপর বাধ্যকর নহে মর্মে ঘোষণার ডিক্রী দিও,”

Plaint case are that the property mentioned in schedule “Ka” to the plaint belonged to Abdul Baki Miah by purchase vide Deed No.188 dated 13.01.1947. S.A. Khatian No.65 stands recorded in his name who died leaving the plaintiff only son, 5 daughters, defendant Nos.6-10 and 2 wives. Suit property is homestead land, the plaintiff along with his 2 mothers have been residing therein from the time of his father. His father by a registered deed of Wasiatnama distributed his all other properties to his legal heirs including defendant Nos.6-10. Defendant Nos.6-10 being daughters of Abdul Baki Miah entitled to get share in the property left by their father not from homestead land,

but other than the homestead, accordingly, by Wasiatnama their father distributed their share from other properties. In spite of having their share from the property left by Abdul Baki Miah, defendant Nos.6-10 with ulterior motive claiming themselves as co-sharer in the schedule “Ka” property have made 5(five) deeds of gift mentioned in the schedule “Kha” transferring the property in favour of their children defendant Nos.1-5, but could not deliver possession of the gifted property to them as the property in question has not been legally partitioned by metes and bound among the co-sharers. Hence, the present suit for declaring those deeds of gift to be illegal, collusive, void, not acted upon and binding upon the plaintiff.

The defendants appeared in suit and filed written statement denying claim of the plaintiff stating that the suit property admittedly belonged to Abdul Bakii Miah. Defendant Nos.6-10, as daughters inherited $\frac{5}{7}$ th share in the property and they by registered Deed Nos.7944, 7945, 7943, 7947 and 7948 all dated 06.09.2020 gifted their share in favour of their children, defendant Nos.1-5. The plaintiff has no locus standi or right to challenge those deeds by filing this suit. The plaintiff got his plaint amended incorporating the statement that

he is entitled to get 9 sataks of land and each of the sisters are entitled to get 4 sataks of land. He, by a separate deed of gift, gifted his share measuring 9 sataks of land in favour of his daughter by Deed No.6199 dated 28.07.2020. The defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. The trial court heard the application and after hearing by order dated 22.02.2022 allowed the application and rejected the plaint in suit, holding that the plaintiff in the plaint unequivocally admitted that defendant Nos.6-10 are his full sisters and according to Mohammadan Law of inheritance they are entitled to get $\frac{5}{7}$ th share in the property left by his father and he is also entitled to get $\frac{2}{7}$ th share in the property. The defendant Nos.6-10 transferred their property in favour of their children by 5 deeds of gift which they can transfer in favour of their children or any other persons as they desire. Because of making gift by defendant Nos.6-10 in favour their children no right whatever, accrued in favour of the plaintiff to challenge those deeds where he admitted that his 5 sisters are legally inherited said property from his father. Moreover, the plaintiff also transferred his share in favour of

his daughters like defendant Nos.6-10. The trial court finally held that when the ultimate result of the suit is clear as day light will not be maintainable in law such suit at its inception should be buried so that no further time is consumed in a fruitless litigation.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff, preferred Other Appeal No.60 of 2022 before the learned District Judge, Rangpur. Eventually, the appeal was transferred to the Court of learned Additional District Judge, 2nd Court, Rangpur for hearing and disposal, who after hearing by the impugned judgment and decree dated 05.01.2023 dismissed the appeal and thereby affirmed the judgment and decree of the trial court. At this juncture, the petitioner moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status-quo.

Mr. Abul Kashem Sarker, learned Advocate appearing for the petitioner at the very outset submits that it is general custom and practice that the daughters normally get their share from the property left by their father other than homestead land. During life time of their father he distributed his property to the plaintiff and defendant Nos.6-

10 by Wasiatnama excluding the homestead land bearing in mind that daughters will not get any property from homestead keeping the same for the plaintiff. He submits that admittedly, the suit property has not been partitioned among the co-sharers, therefore, undivided properties cannot be transferred by any of the co-sharer without partition.

He argued that the property in question being unspecified neither the defendant Nos.6-10 got possession of the same nor they could deliver possession to the defendant Nos.1-5 after making gift in their favour and as such, the gifts itself have not been acted upon without having possession of the property. He finds it difficult to support the case, how deed of gift executed by defendant Nos.6-10 in favour of their children, defendant Nos.1-5 can be said to be illegal or void and cannot satisfy the court what is the legal status or right of the plaintiff to challenge those deeds by filing a simple suit for declaration without establishing his title in the property first.

Mr. Md. Asraful Hasan Siddique, learned Advocate appearing for the opposite party Nos.1-10 submits that the suit in its present form is not maintainable in law, in particular, under Section 42 of the Specific Relief Act, as the plaintiff has no locus standi and legal

character to file this suit against the defendants as defendant Nos.6-10 are his sisters who are entitled to get $\frac{5}{7}$ th share of the property left by his father Abdul Baki Miah. If it is so, there is no question arise that the defendant Nos.6-10 had no title in the property by inheritance. Where the defendant Nos.6-10 are legally inherited $\frac{5}{7}$ th share in the property left by their father they have every right to transfer the same by way of sale or by gift. In the instant case, they made gift in favour of their children, defendant Nos.1-5, as such, the plaintiff as one of the co-sharer like defendant Nos.6-10 cannot challenge any deed executed by the defendant Nos.6-10.

He candidly submits that the plaintiff also admitted that he is entitled to get only 9 sataks of land which was subsequently gifted to his daughter like the defendant Nos.6-10. Therefore, the trial court as well as the appellate court rightly held that the plaintiff has no locus standi to file the present suit for declaring the deed executed by the defendant Nos.6-10 in favour of defendant Nos.1-5. Resultantly, both the courts below concurrently observed that the suit itself is a gambling in litigation, ultimate result of the suit will not bring any

fruit for the plaintiff and rightly held that a fruitless litigation is liable to be buried at the very inception to save valuable time of the Court as well as unnecessary expenses of both the parties and as such, both the courts below committed no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, written statement, application for rejection of plaint and the impugned judgment and decree of both the courts below.

Admittedly, the property in question belonged to father of the plaintiff and defendant Nos.6-10 named Abdul Baki Miah. As per law of inheritance, defendant Nos.6-10 inherited $\frac{5}{7}$ th share in the property and the plaintiff inherited $\frac{2}{7}$ th share in the property left by their father.

The suit property is admittedly ejmali property not legally partitioned by metes and bound among the co-share. It means that all the co-sharer i.e. heirs of Abdul Baki Miah as owner of the property have been possessing the same in ejmali. Defendant Nos.6-10 by 5(five) deeds of gift, gifted their share in the property to their children and

from the statement made in the plaint it is found that share of the plaintiff also gifted to his daughter. It means that all the co-sharer now lost their title in the property including plaintiff. Where the plaintiff transferred his share in favour of his daughter by a deed of gift, he has no title in the property and locus standi to file the instant suit.

For seeking a declaration against some deeds to be illegal, void or ineffective, the plaintiff is to seek declaration of his title first, but in the instant case no such prayer has been made in the plaint. Moreover, the plaintiff has no right or locus standi to challenge the deed of gift executed by defendant Nos.6-10 in favour of their children, the defendant Nos.1-5. As the defendant Nos.6-10 had title in the property like the present plaintiff and they have every right to make gift in favour of their children or in favour of any other persons as they desire, a person having no locus standi or right to property without declaration of his right cannot challenge any deed of gift by way of declaration, as such, the suit itself is barred by Section 42 of the Specific Relief Act. It is true that a suit is not maintainable and plaint in suit is liable to be rejected are two different phraseology. Plaint in suit can be rejected from plain reading of the plaint if it appears from

the statement that the suit is barred by any law. A suit can be dismissed as not maintainable when after hearing, it appears that the plaintiff failed to prove his case and the suit is otherwise not maintainable in law. In the instant case, it is apparent from the statement made in the plaint that defendant Nos.6-10 are heirs of Abdul Baki Miah like the present plaintiff. The statement of the plaintiff and defendant Nos.6-10 are same and they inherited the property jointly from their father. The plaintiff as one of the heirs of Abdul Baki Miah cannot challenge title in the property of other co-sharers without acquiring title by him otherwise. But in the present case, no such statement has been made except they are heirs of late Abdul Baki Miah. Both the plaintiff and defendant Nos.6-10 divested themselves from the property left by their father by executing and registering deed of gift in favour of their children.

Therefore, the plaintiff in one hand has no title in his share inherited from his father after making gift in favour of his daughter as such, without title in the property he cannot file a suit for declaration challenging the deed of gift executed by defendant Nos.6-10 in favour of their children, defendant Nos.1-5 and as such, the suit is barred by

law. Accordingly, the trial court as well as the appellate court rightly rejected the plaint in suit, holding that it is a fruitless litigation so that no more time can be consumed with a fruitless litigation.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

The order of status-quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.