

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4352 OF 2023

In the matter of:

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

And

Md. Hossen Mullik and others
... Petitioners

-Versus-

Md. Aminul Mullik and others
.... Opposite parties
Mr. Md. Mozibur Rahman, Advocate
....For the petitioners.
Mr. Md. Asadur Rahman, Advocate
... For the opposite party Nos.1-7.

Heard and Judgment on 05.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-17 to show cause as to why the impugned judgment and decree dated 12.06.2023 passed by the learned Additional District Judge, 2nd Court, Chuadanga, in Title Appeal No.73 of 2022 dismissing the appeal and thereby affirming the judgment and decree dated 28.08.2022 passed by the learned Joint District Judge, 1st Court, Chuadanga in Title Suit No.64 of 2016 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.

Facts in short are that the petitioner as plaintiff instituted above suit for partition for 22.74 acres land seeking a separate saham for

15.16 acres land alleging that above property belonged to Rajanikanto Das, Kanai Das and Bolai Das and accordingly C.S. Khatian Nos.170 and 171 were correctly prepared. Above Rajanikanto Das, Kanai Das and Bolai Das transferred above 22.74 acres land by registered kobala deed No.2320 dated 30.12.1943 of Chudanga Sub-registry Office to Hajari Mollick, Anukul Mollick and Kobad Mollick predecessors of the plaintiffs and defendants in equal shares. Kobad Mollick and Anukul Mollick died leaving the plaintiffs as their heirs and they are owning and possessing 15.16 acres land and Hazari Mollick died leaving defendant Nos.1-4 as heirs. But in the R. S. and S. A. Khatians above total 22.59 acres land were wrongly recorded in the name of Hazari Mollick and on basis of above erroneous record defendant claimed title in above land and refused to effect an amicable partition of above land.

Defendant Nos.2-6 contested the suit by filing a joint written alleging that Rajoni Kanto Das, Kanai Das and Bolai Das were the owners and possessors of above property and Kanai Das and Bolai Das surrendered their share to Rojoni Kanto Das who alone became owner and possessor of disputed 22.74 acres land. Subsequently above property came into the ownership of Medenipur Zamindary Company who gave settlement of 30.10 acres land including disputed 22.74 acres Hazari Lal Biswas by registered deed of Kabuliyat dated

10.03.1936. Above Hazari Lal Biswas and Rishikesh Biswas became owner of above property and Hazari Lala Biswas died leaving one son Binod and Binod died leaving only son Fhonibhuson as his heirs and Risshikesh and Phonibhuson while owning and possessing above land they executed a registered deed of power of attorney on 17.11.1953 to Hazari Mollick who transferred 12.24 acres land to Arjulla Mollick, Rupjan Bibi, Rezea Khatun and others by registered kobala deed dated 16.01.1954.

At trial plaintiffs and defendants examined two witnesses each. Documents of the plaintiffs were marked as Exhibit No.1-5 and those of the defendants were marked as Exhibit Nos. "Ka" to "Vha.

On consideration of above 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 plaintiffs as appellants preferred Title Appeal No.73 of 2022 to the District Judge, Chuadanga which was heard by the learned Additional District Judge who dismissed above appeal and affirmed by 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 appellants as petitioners

moved to this Court with this petitioner under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Mohammad Mozibur Rahman, learned Advocate for the petitioners submits that admittedly disputed land appertaining to C.S. Khatian No.170 and 171 were owned, held and possessed by Rajani, Balai and Kanai and plaintiff's claim that their predecessors namely Anukul Mollick and Kobad Mollick and defendants predecessors Hazari Mollick jointly purchased above land by registered kobala deed dated 30.12.1943. At trial the plaintiffs produced a certified copy of above registered kobala deed dated 30.12.1943 which was authenticated and attested by a Notary Public of Krisha Nagar of India since during British rule Chuadanga was a sub-division of Krisna Nagar District.

The learned Advocate for the petitioner submits that the learned Judges of both the Courts below held that above certified copy of registered kobala deed dated 30.12.1943 having not brought into Bangladesh through Government channel and not authenticated and validated by the concerned Officer of the Bangladesh Deputy High Commission, Kalkata no reliance could be placed on above deed. In order to make up above deficiency the plaintiffs has brought a new certified copy of above registered kobala deed duly authenticated and validated by the concerned Officer of Bangladesh Deputy High

Commission Office at Kalkata through Official channel and produced before this Court. The ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduced further evidence.

On the other hand Mr. Md. Asadur Rahman, learned Advocate for the opposite party Nos.1-17 submits that the certified copy of registered kobala deed dated 30.12.1943 produced by the petitioners before this Court is a forged document which was not at all authenticated or validated by the concerned Officer of Bangladesh Deputy High Commission at Kalkata. Above kobala deed appears to have been authenticated and validated by an officer of the Bangladesh Deputy High Commission on 16.12.2025 which was a public holiday of Bangladesh Government. Secondly above document was signed and authenticated by Mr. Andalib Illias who was not at all posted on above date at Bangladesh Deputy High Commission, at Kalkata. Before above date above Officer was transferred to Colombo High Commission of Bangladesh. In above certified copy of the Kobala deed there was erroneous spelling of the word "Deputy" which also shows that above document was a forged document. Above document did not come to Bangladesh from the

Office of the Deputy High Commission at Kalkata through Ministry of Foreign Affairs to the District Magistrate of Chuadanga but it was handed over by an Advocate of the petitioner. All above facts clearly show that above documents is a forged document and on consideration of above materials on record this Court may reject this petition for remand of the suit for retrial.

I have considered the submissions of the learned Advocate for the respective parties and carefully examined all materials on records including the pleadings, judgments of the Courts below and evidence.

It is admitted that disputed 22.74 acres land belonged to Rajono, Balai and Kanai and accordingly C. S. Khatian Nos.170 and 171 were rightly prepared. Plaintiffs claimed above land by purchase from above mentioned tenants of C.S. Khatian Nos.170 and 171 by registered kobala deed dated 30.12.1943. On the other hand defendant claims that Bolai and Kanai surrendered their Korfa tenancy to Rajoni who alone became owner and possessor of total 22.74 acres land and Hazari, predecessors of the defendants obtained settlement of above land from Medanipur Zaminder Compnay by a registered kabuliyat on 10.03.1936.

At trial PW1 produced and proved a certified copy of registered kobala deed dated 30.12.1943 allegedly executed by Rajoni Kanto

Das and others to Hazari and others which was marked as Exhibit No.4. On the other hand defendants produced and proved the original Kobuliyat deed dated 30.03.1936 executed by Hazari Lal Biswas which was marked as Exhibit No."Ka". The learned Judge of the trial Court on a detailed analysis of kobala deed dated 30.12.1943 of the plaintiffs (Exhibit No.4) held that above document did not come into Bangladesh through proper channel and on above findings the learned Senior Assistant Judge held that the plaintiffs failed to prove title by purchase in above land by above kobala deed. The learned Judge of the trial Court did not discuss other oral or documentary evidence adduced by the plaintiffs or the defendants. The learned Judge of the Court of Appeal below instead of an independent assessment of the evidence on record merely endorsed above findings of the trial Court and held that the registered kobala deed of the plaintiffs dated 30.12.1943 (Exhibit No.4) having not produced in Court through proper channel the genuinity of above deed cannot be relied upon and accordingly dismissed the appeal and upheld the judgment and decree of the trial Court.

The learned Advocate for the petitioners has submitted a petition under Order 41 Rule 27 of the Code of Civil Procedure for recording additional evidence for admitting above certified copy of registered kobala deed dated 30.12.1943 alleging that above

document has been brought into Bangladesh through proper channel and for admission of above document into evidence and for ends of justice above suit may be remanded for retrial after giving both parties an opportunity to adduce further evidence.

The learned Advocate for the opposite party has opposed above petition by submission of a Counter Affidavit assailing the correctness and genuinity of above certified copy of registered kobala deed dated 30.12.1943 as mentioned above. The learned Advocate repeatedly stated that since above document is a forged one a proceeding should be initiated against the petitioner for producing above forged document which was neither authenticated by an Officer of the Bangladesh Deputy High Commission at Kalkata nor the same came to Bangladesh through proper channel.

As mentioned both this suit for partition and the appeal preferred from the judgment and decree of the the trial Court were disposed of on the basis of identical of findings that the registered kobala deed dated 30.12.1943 (Exhibit No.4) was not properly authenticated and attested nor the same was brought into Bangladesh through proper channel. In order to make up above deficiency the plaintiffs have produced a new certified copy of above Kobala deed and wants to put above document into evidence. The allegations brought against above document by the learned Advocate for the

opposite parties are all factual in nature. A document cannot be treated as a legal evidence in a Judicial Proceedings only on its production in the Court. The document must put into evidence giving the opposite party an opportunity to subject the same to cross examination and when a document withstands above cross examination only then the document becomes a legal evidence and which may be the basis of a judicial decision. This Court cannot in its revisional jurisdiction record additional evidence or enquire into any disputed fact by its own. The allegations and objection raised by the learned Advocate for the opposite parties can be raised in the trial Court at the time of admission of above certified copy of the kobala deed dated 30.12.1943 into evidence and the trial Court shall determine the true character and nature of above document on consideration of evidence.

In above view of the materials on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respectively pleadings if any and adduce further evidence.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 12.06.2023 passed by the learned Additional District Judge, 2nd Court, Chuadanga, in Title

Appeal No.73 of 2022 dismissing the appeal and thereby affirming the judgment and decree dated 28.08.2022 passed by the learned Joint District Judge, 1st Court, Chuadanga in Title Suit No.64 of 2016 dismissing the suit is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

The learned Joint District Judge is directed to conclude the trial of the suit expeditiously within a period of 6(six) months from the date of receipt of this judgment.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER