Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1317 of 1999
Rupzan Nessa being dead his heirs:
1 Motiar Rahman Khan and others
.....petitioners
-Versus-
Motiar Rahman Khan
.....opposite party

Mr. Khandker Khaliqur Rahman, Advocate
.....for the petitioners

Mr. Zulfiqur Ahmed with
Mr. Shahanoor Ahmed, Advocates
.....for the opposite party

Heard on: 27.10.2025, 03.11.2025, 12.11.2025 and 17.11.2025

Judgment on: 18.11.2025

In the instant revision Rule was issued on 04.05.1999 calling upon the opposite party to show cause as to why the judgment and decree dated 23.02.1999 and 28.02.1999 respectively passed by the Subordinate Judge, Second Court, Manikganj in Title Appeal 43 of 1997 reversing those dated 27.02.1997 and 04.03.1997 respectively passed by the Assistant Judge, in-charge, Gheor, Manikganj in Title Suit No. 44 of 1996 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner as plaintiff filed Title Suit 44 of 1996 on 06.08.1996 in the Court of Assistant Judge, Gheor, Manikgonj for declaration that the kabala deed 3292 dated 29.09.1986 is collusive, fraudulent, without consideration and not binding upon the plaintiff.

The case of the plaintiff is that the land as mentioned in the schedule belonged to the plaintiff and she possessed the suit land through defendant who is her share-cropper. Subsequently defendant requested plaintiff for registration of a barga kabuliyat. Plaintiff accepted such proposal of the defendant and went to the registry office for execution of the same. Plaintiff put her thumb impression on some blank stamp papers upon good faith knowing the same as barga kabuliyat. In the last part of Jaistha 1403 B.S. defendant took the entire IRRI paddy without giving any share to the plaintiff. When plaintiff demanded her share to the defendant he disclosed that the suit land was sold to him long ago. Plaintiff got astonished in hearing such fatal information and went to the registry office and enquired about the incident and after having certified copy of the impugned document on 10.06.1996 she obtained the definite knowledge of such fraudulent and collusive transfer shown to have been executed by her.

Plaintiff did not sell any land to the defendant. Hence the suit was filed.

Defendant appeared and contested the suit by filing a written statement denying all material statements made in the plaint contending *inter alia* that plaintiff was the owner of the suit land. Due to want of money she decided to transfer the suit land and accordingly proposed defendant to which defendant responded and the consideration was fixed at taka five thousand in presence of the local respectable persons. Defendant purchased the stamp papers and plaintiff voluntarily went to the sub-registry office on 29.09.1986 to execute the document for registration. The scribe was appointed by plaintiff herself and the scribe after completing his job read over the document to the plaintiff to her satisfaction and accordingly she accepted the consideration money and executed the deed. Thereafter the defendant has been maintaining title and possession in the suit land for the last 10(ten) years. Plaintiff has no right, title, interest and possession in the suit land and defendant was never a share-cropper under plaintiff and plaintiff willingly went to the registry office for registration of sub-kabala deed with full

understanding. The cause of action as given in the plaint is false and the suit being false is liable to be dismissed.

Trial court framed as many as five issues. Plaintiff examined three witnesses and defendant examined four witnesses. Plaintiff did not adduce any documentary evidence. Defendant only adduced the impugned document which was marked in evidence as exhibit-Kha.

Trial Court after hearing the parties and perusal of the evidence on record decreed the suit by judgment and decree dated 27.02.1997. As against the same defendant preferred Title Appeal 43 of 1997 before the District Judge, Manikgonj which on transfer was heard by the then Subordinate Judge, Second Court, Manikgonj who was pleased to allow the appeal and dismiss the suit by the impugned judgment and decree dated 23.02.1999.

Being aggrieved by and dissatisfied with the judgment passed by the appellate court plaintiff came before this Court with this revision and obtained rule on 04.05.1999.

Mr. Khandker Khaliqur Rahman, learned Advocate appearing on behalf of the petitioner submits that the appellate court misinterpreted the evidence on record and wrongly dismissed the suit thus the appellate court committed error of

law resulting in an error in such decree occasioning failure of justice. He further submits that the appellate court relying only upon the evidence adduced by the defence reversed the finding arrived at by the trial court thus the impugned judgment is not at all a proper judgment of reversal under order 41 rule 31 of the Code of Civil Procedure. He also submits that the appellate court failed to consider that the defendant was none but a share-cropper under the plaintiff and even after the execution of the disputed document defendant gave the share to the plaintiff and thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice in dismissing the suit upon wrongful consideration. He further contends that the defendant never discharged his heavy onus by examining any witness to prove that the disputed document was read over and explained to the plaintiff and plaintiff understood the meaning of the document but the appellate court failed to understand that plaintiff entrusted and put her active confidence upon the defendant when the document was executed. He also submits that the appellate court did not advert to the evidence of defence in respect of payment of consideration which was absolutely contradictory and the payment of consideration has not been proved in

evidence. The impugned judgment suffers illegality being based upon misreading and non consideration of material evidence and the judgment passed by the trial court being based upon proper appreciation of evidence is not subject to interference according to the provision of order 41 rule 31 of the Code of Civil Procedure. The impugned judgment is liable to be set aside outright. He also submits that perusal of the evidence of PW 2 along with the deposition of DW 1 and DW 3 reveals that the consideration as claimed to be paid by defendant is not at all proved in evidence but the appellate court did not notice to this material aspect of the case affecting the merit and touching the root of the case thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice. He finally submits that the rule may be made absolute.

Mr. Zulfiqur Ahmed along with Mr. Shahanoor Ahmed, learned Advocates appearing on behalf of the opposite party submits that the appellate court committed no error of law resulting in an error in such decree occasioning failure of justice inasmuch as the cause of action of the case is not proved as she did not file the certified copy of the impugned document as has been pleaded to be obtained in 1996 after the

execution of the impugned document but the trial court did not advert to this material aspect of the case and wrongly decreed the suit. He contends that the suit was filed for declaration that the impugned document is fraudulent, collusive and not binding upon the plaintiff but the trial court failed to appreciate that the suit was not maintainable because she being party to the document must file the suit under section 39 of the Specific Relief Act and the judgment passed by the appellate court is a proper judgment of reversal. He then points out that claim of possession by the plaintiff for 10(ten) years after the execution of the document till filing of the suit having not been proved in evidence to satisfaction it cannot be contended that the document is not what it purports to be within the meaning of section 91 of the Evidence Act and the impugned judgment having been passed upon proper appreciation of evidence and law is immune from interference by this court in revision. He also submits that since plaintiff did not pray for cancellation of the document the same shall stand in the way as a bar against the title of the plaintiff which cannot be avoided by mere filing a suit under section 42 of the Specific Relief Act. He finally submits that since she prayed for amendment of the plaint in respect of cancellation of

document and recovery of possession without mentioning any time, place, person or manner of such subsequent dispossession the merit of the entire suit falls through and according to law it cannot be decreed by any court of law and as such the finding arrived at by the appellate court being based upon proper appreciation of evidence and law cannot be interfered with by this court in revision and he finally submits that the rule may be discharged.

Heard the learned Advocates for both sides and gone through the judgment of the courts below and perused the materials on record as well as the revisional application with the documents appended thereto.

This is a suit for declaration that the impugned kabala dated 29.09.1986 is fraudulent, collusive and not binding upon the plaintiff. Plaintiff claims that it is actually a barga kabuliyat but defendant managed to obtain it as the impugned kabala document by fraudulent means. In the instant case it is very important to ascertain the possession of each of the parties to arrive at the correct conclusion because after ten years of the execution of the document the suit was filed in 1996. PW 1 stated in her cross-examination that the villagers have knowledge that she appointed Motiar as her share-

cropper in front of one Fazlu but Fazlu was not produced before the court to prove that she actually appointed defendant as her share-cropper. PW 1 stated in her examination-in-chief that defendant asked her to execute a barga kabuliyat to which she agreed and went to the registry office at Gheor but in cross-examination PW 1 admitted that no body was present at the time when Motiar asked for such kabuliyat and she also neither told it to anybody nor took any advice and her neighbours had also no knowledge about her going to the registry office. Thus it appears that plaintiff failed to adduce any reasonable evidence to prove that defendant was actually her bargader for which she agreed to execute the barga kabuliyat.

PW 1 also did not deny in her cross-examination that DW 4 named Durjon who is the attesting witness to exhibit-Ka is not her grandson in law. So it is clear that the document which is claimed by the defendant as kabala deed was actually executed and registered by the plaintiff in presence of her conversant persons. PW 1 also stated in her cross-examination that DW 3 who is the attesting witness and identifier of the impugned document was her neighbour and she knew him.

From this statement it is clear that DW 3 is also known to the plaintiff.

PW 2 named Tamizuddin Mollah stated in cross-examination that plaintiff granted the sharecropping and the villagers were aware of it and he was present there and the discussion took place at the house of the plaintiff and at that time DW 3, Harez, Topsher were present and approximately 50(fifty) persons were present there. Thus from the statement made by PW 2 it is apparent that Hazrat Master, Harez, Topsher and about 50(fifty) persons were present when plaintiff appointed defendant as share-cropper. So it is clear that PW 2 contradicts the statements of PW 1 as to in whose presence plaintiff appointed defendant as sharecropper. Therefore from the evidence adduced by plaintiff it can be held that the claim of the plaintiff on case of cropsharing is not proved in evidence but the trial court failed to appreciate this material aspect of the case. Since plaintiff failed to prove that defendant was her bargader so the question that she received share of the crops from defendant does not arise at all. PW 1 also admitted in her cross-examination that she sowed IRRI paddy through Shajahan but Shajahan was also not examined to prove her possession in the suit land. PW 2 further stated in

his cross-examination that plaintiff has sown the IRRI paddy through Mohu and Hashu and he (PW 2) was acting as a witness for which he would be paid wages by the plaintiff as a labourer. Thus it is presumed that PW 2 is a hired witness who contradicted the statement of PW 1 as well.

PW 3 stated in his cross-examination that this land is cultivated by the plaintiff and this year plaintiff has sown it and she engaged labourers for the sowing and he could not say the names of the labourers and he has no land in the disputed chalk. So it is clear that PW 3 also failed to state the names of persons who actually cultivated the suit land on behalf of plaintiff. Considering this evidence it is apparently clear that plaintiff has got no possession in the suit land.

It appears from the record that on 22.02.1999 plaintiff filed an application for amendment of the plaint in appeal with the prayer for cancellation of the document and also for recovery of possession by deleting her earlier prayer of declaration that the impugned document is fraudulent and collusive. It appears from reading of the application that there is no statement made in that application to show that plaintiff maintained her possession from the date of the execution of the impugned kabala and she was subsequently dispossessed

from the suit land. There is no statement on any time, place, person to show in whose presence and at what time she was actually dispossessed from the suit land. Mere statement in the application does not mean that she has been able to prove her possession followed by dispossession. So it can easily be inferred that the application was made upon second thought having regard to the case as made out by the plaintiff being a weak one. As discussed above since possession after the execution of the impugned kabala is not proved in evidence the question of subsequent dispossession till filing of the suit does not arise. Therefore the finding on possession arrived at by the trial court is absolutely wrong.

DW 3 stated in cross-examination that Aziz and he was present at defendant's house and during the discussion plaintiff demanded the price and the negotiation took place in the late afternoon when she demanded 7-8 thousand taka and the money was paid after execution of the kabala and there were 50 notes of 100 taka each. So according to the statement of DW 3 the consideration was paid when the scribe completed his work. DW 4 also stated in cross-examination that the consideration was received after execution of the deed and Motiar counted 50 notes of 100 taka and handed to Rupjan

and at the time of execution of the deed Rupjan took DW 4 along with her and plaintiff demanded 8 thousand taka when they were at the house of defendant. So the case on payment of consideration money by defendant to the plaintiff being corroborated by DW 3 and DW 4 is held to be proved by satisfactory evidence.

The application of the plaintiff under order 6 rule 17 of the Code of Civil Procedure filed in appeal was kept with the record on 22.02.1999. The application was made with a prayer for cancellation of document under section 39 of the specific Relief Act and for recovery of possession under article 142 of the Limitation Act. Although the application for amendment of the plaint was not expressly or in other wards explicitly rejected by the appellate court but findings of the appellate court reveal that the application was impliedly rejected and this Court finds it reasonable that on question of disposal of the application no order of sending the case back to the appellate court should be made on the alibi of technicality. As discussed above since possession followed by dispossession is unfounded in evidence this application being made upon second thought cannot improve the case of the plaintiff.

From reading of paragraph 5 of the plaint it appears that the cause of action arose when defendant refused to give the share of the crops to the plaintiff claiming that she actually sold the suit land to the defendant on 29.09.1986 and after having such information plaintiff went to the registry office to obtain the certified copy of the impugned deed and obtained the same on 10.06.1996 but surprisingly she did not tender that particular document in evidence to show that she obtained definite knowledge on such date for which the cause of action arose after around 10(ten) years. So I find that the cause of action as pleaded in the plaint by the plaintiff is also unfounded.

It also appears that the claim of possession of the plaintiff for 10(ten) years after the execution of the kabala till filing of the suit since having not been satisfactorily found so it cannot be claimed that document is not what it purports to be under section 91 of the Evidence Act and section 91 of the Evidence Act shall stand as a bar to the claim of the plaintiff. Plaintiff failed to dislodge that the caption as given in the impugned deed is actually false and made by fraudulent means.

Lastly the question arises that upon completion of registration of a deed the registry office issues a registry ticket. Now the question arises as to who is the lawful recipient of that particular ticket. If the kabuliyat upon which plaintiff is relying on and which is claimed not to be a deed of sale then it becomes inexplicable as to how such a document came into the possession of the defendant. In fact under the law such document ought to remain with the plaintiff since she claims to be the owner of the land and as such she is the lawful custodian of the original kabuliyat. Generally the lawful recipient of the registry ticket is the purchaser under sections 32, 34 and 52-61 of the Registration Act being the presenter has the right of custody of the document until final registration. The registry ticket is issued to the presenter so that he or she can later collect the registered document when it is ready under section 61 of the Registration Act.

Considering the facts and circumstances of the case it is clear that the plaintiff failed to prove her case.

I therefore find no merit in this rule. Accordingly, the rule is discharged.

The judgment passed by the appellate court being lawfully passed is hereby affirmed and that of the trial court is set aside.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

Naher-B.O