

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

**Civil Revision No. 1023 of 2007**

**IN THE MATTER OF**

Sohrab Ali and others

.....Defendants-Respondents-Petitioners

-Versus-

Md. Abdul Quddus being dead his legal heirs-

1(ka) Mst. Shahar Banu Begum and others

....Plaintiffs-Appellants-Opposite parties

2. Abdur Rashid alias Kotlu and others

.....Proforma opposite parties

Mr. Md. Golam Noor, Advocate

.....For the petitioners

Mr. Md. Mozammel Haque, Advocate

.....For opposite party Nos. 1(Ka)-1(Umma)

**Heard on 03.01.23, 15.01.23, 16.01.23**

**and judgment passed on 22.01.2023**

*Present:*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

*“Let the records be called for and a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and decree dated 26.06.2006*

*passed by the learned Joint District Judge, 1<sup>st</sup> Court, Thakurgaon in Other Class Appeal No. 04 of 2004 allowing the appeal and reversing the judgment and decree dated 03.11.2003 passed by the learned Assistant Judge, Baliadangi, Thakurgaon in Other Class Suit No. 13 of 2001 dismissing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and decree dated 26.06.2006 for 1(one) year from the date, and lastly, on 27.08.2009 it was extended till disposal of the Rule.

The present opposite party No. 1 and proforma opposite party Nos. 2-4 herein as the plaintiffs filed Other Class Suit No. 13 of 2001 in the Court of learned Assistant Judge, Baliadangi, Thakurgaon for a decree of cancellation of the sale deed being No. 6557 dated 26.10.1981 by declaring the same as illegal, forged, collusive and inoperative.

The case of the plaintiff, in short, is that the suit land along with other non-suited land originally belonged to Asiruddin, and C.S Khatian No. 158 was prepared in his name. He died leaving behind two sons

Sorba Mohammad and Sasta Mohammad and one daughter Asiron and they enjoyed their paternal property as per an amicable settlement. Sorba Mohammad died leaving behind one son Soifat and two daughters Somiron and Budhi Bewa who also enjoyed their paternal property by amicable settlement. Somiron sold out .12 acres of land to plaintiff No. 4 by registered deed No. 6545 dated 26.10.1981 and delivered possession. Asiron sold out .61 acres of land to Habibur Rahman on 26.05.1979 by registered kabala deed No. 4338. Thereafter, Hobibur transferred .19 acres of land by sale deed No. 4840 dated 05.08.1979 and .08 acres of land by sale deed No. 5008 dated 08.06.1979 out of .61 acres of land to plaintiff No. 4. Budhi Bewa died leaving behind her husband Abdur Rahman and two sons Abdur Rashid and Jobed Ali alias Toyeb Ali, plaintiff Nos. 1 and 2 and accordingly, they got the land of Budhi Bewa proportionately. Then plaintiff Nos. 1 and 2 transferred .13 acres of land to plaintiff No. 4 by registered deed No. 1910 dated 15.03.1995 and thus he purchased in total .44 acres of land and mutated his name and got mutation Khatian No. 321. Plaintiff No. 4 mortgaged his said land to the Bank for loan. On 14.05.2001, the defendants tried to prevent the plaintiffs from cultivating the suit land and at that time the defendants for the first time disclosed the Sale deed No. 6557 dated 26.10.1981. It

has also been stated that the plaintiffs never transferred the suit land to defendant Nos. 1-3 and the deed is forged.

Defendant Nos. 1-3 contested the suit by filing a written statement denying the averments made in the plaint contending, *inter alia*, that C.S recorded tenant Asiruddin got 1.6 acres of land besides he had other .10 acres of land in plot No.1205 and .04 acres of land in plot No. 1206 in total .14 acres of land are homestead. Sorba Mohammad, Sasta Mohammad, and Asiron had been in possession in the suit land as ejmali possessors, and S.A. Khatian No. 161 was prepared in their names. Asiron gifted the land of homestead to her two brothers Sorba Mohammad and Sasta Mohammad by way of oral gift. Thereafter, Asiron sold her share to Hobibor and Jobeda Khatun but they did not get possession of the ejmali land. Plaintiff No. 4 did not get possession of the land sold to him by deed dated 05.06.1979. After the death of Sarbo Mohammad his son Soifat and daughters Somiron and Budhi Bewa became the heirs of his property and his son got .32 acres of land and each daughter got .16 acres of land. Plaintiff Nos. 1-3 sold out .10 acres of land including their homestead when they were minor on 26.10.1981. Plaintiff No. 4 never purchased .12 acres of land from Somiron but he purchased only .6 acres of land from her. Since the said land was sold

from 10/11 plots plaintiff did not get possession. Somiron never sold out the land of her homestead to plaintiff No. 4 and delivered possession thereof. Defendants possessed the suit land for more than 20 years. The plaintiffs have no right, title, or possession over the land in question.

During the trial, the plaintiffs examined 3 witnesses along with documentary evidence while the defendants also examined 3 witnesses with documentary evidence.

On the conclusion of the trial the learned Assistant Judge, Baliadangi, Thakurgaon by his judgment and decree dated 03.11.2003 dismissed the suit on contest against defendant Nos. 1-3 and ex-parte against the rest without cost.

Being aggrieved by the said judgment and decree dated 03.11.2003 plaintiff No. 4 as the appellant preferred an appeal before the learned District Judge, Thakurgaon, and the same was numbered as Other Class Appeal No. 04 of 2004. Thereafter, the appeal was transferred before the learned Joint District Judge, 1<sup>st</sup> Court, Thakurgaon for hearing and after hearing the same, the learned Judge by his judgment and decree dated 26.06.2006 allowed the appeal and set aside the judgment and decree of the Trial Court, and decreed the suit by canceling the deed in question.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 26.06.2006 defendant Nos. 1-3 as the petitioners had preferred this civil revision before this Court and obtained the present Rule which is before us for consideration.

Anyway, Mr. Md. Golam Noor, the learned Advocate appearing for the defendants-petitioners submits that although the executants of the deed in question were made parties in the suit as plaintiff Nos. 1-3 but they did not examine themselves before the Court to prove their contention made in the plaint. On the other hand, neither the attesting witness nor the identifying witness of the deed was examined by the plaintiffs before the Court to prove their case but the learned Judge of the Appellate Court below on misreading and non-consideration of the evidence on record allowed the appeal and decreed the suit committing an error of law occasioning failure of justice.

He also submits that plaintiff No. 4-appellant failed to prove his possession of the suit land by producing any evidence specifying the particular plot and quantum of the land therein but the learned Judge of the Appellate Court below without controverting the specific findings of the Trial Court reversed its judgment and decree and thereby committed an error of law occasioning failure of justice.

Conversely, Mr. Md. Mozammel Haque, the learned Advocate appearing for plaintiff-opposite party Nos. 1(Ka)-1(Umma) submits that the plaintiffs are in possession of the suit land but the defendants do not have the same and the plaintiffs proved their case by evidence but the learned Trial Judge erroneously dismissed the suit by giving wrong findings and on appeal, the learned Judge of the Appellate Court below considering the facts and circumstances of the case and the evidence on record rightly decreed the suit and thereby committed no illegality.

On perusal of the materials on record, it appears that this is a suit for a decree of declaration in respect of the deed in question. The plaintiffs prayed for cancellation of deed No. 6557 dated 26.10.1981 (exhibit-1) executed by plaintiff Nos. 1 to 3 in favor of defendant Nos. 1 to 3 as illegal, forged, inoperative, and collusive as they did not sell the suit land to the defendants and did not execute and register the deed in question. But plaintiff No.4 who filed the instant suit along with the vendors of the said deed could not produce the vendors of the deed, that is to say, plaintiff Nos. 1-3 before the Court to give evidence to the effect that they did not execute and register the deed in question as such, the same is illegal, forged, collusive, and inoperative. On the other hand, plaintiff No.4 also could not produce any other witnesses relating to the

deed in question, that is to say, the deed writer or the identifier witness of the deed to prove the deed in question as forged. On top of that, it appears that 02 other PWs also did not corroborate the evidence of P.W.1 (plaintiff No.4), in supporting the contention of plaintiff No. 4 and as such, the learned Trial Judge rightly dismissed the suit of the plaintiffs. But on appeal, the learned Judge of the Appellate Court below wrongly held that the plaintiffs purchased the land of the deed in question by the deeds i.e. exhibit-2 to 8 before the suit deed (exhibit-1) and entered into possession though P.W. 1 (plaintiff No.4) gave evidence to the effect that he purchased 12 decimals of land in 11 plots from Shamiron by deed No.6545 dated 26.10.1981, but he could not say how much land he was enjoying in which plot. The Appellate Court decreed the suit by canceling the deed in question as illegal, collusive, forged, and ineffective though the plaintiffs did not try to prove their case in that line commensurate with the contention of the plaint, and thus the learned Judge of the Appellate Court below committed an error occasioning failure of justice.

In view of the above, I find substance in the submissions so made by the learned Advocate for the petitioner while I do not find any



substance in the submissions made by the learned Advocate for the opposite parties. Accordingly, the Rule succeeds.

As a result, the Rule is made absolute without cost.

Stay vacated.

The impugned judgment and decree dated 26.06.2006 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Thakurgaon in Other Class Appeal No. 04 of 2004 allowing the appeal by setting aside the judgment and decree dated 03.11.2003 passed by the learned Assistant Judge, Baliadangi, Thakurgaon in Other Class Suit No. 13 of 2001 and decreeing the suit is hereby set aside, and the original suit is dismissed.

Send a copy of this judgment along with the lower court records to the court below at once.

(TUHIN BO)