

O. S 849/2021

Bangladesh Form No. 3701

HIGH COURT FORM NO.J (2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT- CHATTOGRAM

IN THE COURT OF SENIOR ASSISTANT JUDGE, 2ND COURT,

PATIYA, CHATTOGRAM

Present : Mr. Md. Hasan Zaman,

Senior Assistant Judge, Patiya, Chattogram.

Date of Delivery of Judgment : 29th day of February, 2024

Other Suit No. 849 of 2021

Soyada Rowshon AkterPlaintiffs

-Versus-

Sayad Md Rezaul Karim and OrsDefendants

This case came up for final hearing on 24.07.2022, 22.09.2022, 25.10.2022, 28.03.2023; 18.06.2023; 27.07.2023; 31.08.2023 and 18.01.2024.

In presence of :

Mr. A.K.M Shajahan UddinAdvocate for Plaintiff.

Mr. Quazi Jashim UddinAdvocate for Defendants.

And having stood for consideration to this day, the court delivered the following judgment:-

This is a suit for cancellation of deed.

Case of the Plaintiff

1. Plaintiff's case in brief is that the suit land described in the schedule was initially owned by Nazir Uddin @ Mozir Uddin Ahmed, Asaduzzaman, Badaruzzaman, Badsha

O. S 849/2021

Bibi, and Ambia Khatun. Their names were recorded in R.S. Khatian Nos. 164, 174, 375, and 845. Subsequently, on January 10, 1938, under Partition Deed No. 47, the property in dispute was apportioned to Mozir Uddin, who continued in possession and was acknowledged as the rightful owner. His name was duly recorded in B.S. Khatian Nos. 672, 670, 679, 680, and 861.

2. That Mozir Uddin died leaving a wife, Mabiya Khatun, three sons, namely, Mohammad Syed Chadd Uddin, Syed Mohammad Saifuddin, and Syed Mohammad Abu Taher, and four daughters, Syeda Hosne Ara Begum, Syeda Khurshida Akhtar, Syeda Asma Khatun, and Syeda Roushan Akhtar (the plaintiff). Upon the death of Johartenessa, the plaintiff and her brother Syed Chadd Uddin inherited her share of the property, making the plaintiff a co-sharer with her siblings under an undivided title. The plaintiff's name was mutated vide Mutation Khatian No. 974.

3. The plaintiff, a widow and an elderly woman with six sons, has resided at her matrimonial home since her marriage. Financially constrained, she depended on the usufructuary rights of the disputed property for sustenance. During the lifetime of her brother, Syed Chadd Uddin, he collected and managed the usufructs of the property on her behalf. Upon his demise, Defendant No. 1, the plaintiff's nephew, voluntarily undertook the responsibility of managing the property and collecting usufructs, which he assuredly provided to the plaintiff. Owing to this relationship of trust, the plaintiff allowed Defendant No. 1 to manage the property.

4. On February 14, 2015, Defendant No. 1 misrepresented to the plaintiff that the B.S. records required rectification, necessitating the execution of a partition deed. The plaintiff was taken to the Gachbaria Sub-Registry Office on February 15, 2015, where she was persuaded to affix her signature on several documents, including the alleged deed of gift. She was coerced into acknowledging her signatures before the registrar, under the false assurance that failure to do so would void the partition deed. No details or contents of the documents were disclosed to the plaintiff at the time.

5. On June 1, 2015, the plaintiff, upon requesting financial assistance from Defendant No. 1, was informed that she no longer retained any right, title, or possession over the

O. S 849/2021

disputed property as it had been gifted to Defendants Nos. 1–5. This revelation was further substantiated when the plaintiff's son obtained a certified copy of the purported deed of gift dated February 15, 2015. The plaintiff denies executing or consenting to such a deed and asserts that no reasonable basis exists for disinheriting her own children in favor of the defendants.

6. The plaintiff contends that the alleged deed of gift was fraudulently and clandestinely created without her consent or knowledge. The plaintiff further alleges that the execution and registration of the deed were orchestrated by Defendant No. 1, with the collusion of the scribe, witnesses, and registry office staff. The plaintiff's thumb impression was obtained deceitfully, under the guise of rectifying records. No intention to gift the property was ever expressed or acted upon by the plaintiff.

7. The plaintiff maintains uninterrupted possession of the disputed property, which serves as her and her family's primary source of livelihood. The alleged deed has caused immense financial and emotional hardship, jeopardizing the plaintiff's well-being. The plaintiff claims the purported deed of gift dated February 15, 2015 as fraudulent, void, and legally unenforceable. Thus in order to cancel the said deed plaintiff has brought this instant suit.

Defendant's Case :

8. **The defendant No. 1-5 contested the suit by filing written Statement contending, *inter alia*,** that the suit property originally belonged to Mojir Uddin and his co-sharers. Mojir Uddin acquired his share of the suit property via Partition Deed No. 47, dated January 10, 1938. Upon Mojir Uddin's demise, his ownership devolved upon his first wife's children—Sayed Chhad Uddin and Rowshan Akter (the plaintiff)—and his third wife's children—Abu Taher and Asma Akter—as his legal heirs.

9. The plaintiff was married and permanently resided at her marital address in Kachua (Faruki Para), Noyabari, Patiya Upazila, as mentioned in the plaint. The suit property is situated in Chandanaysh Police Station under Paschim Elahabad Mouza. The plaintiff, after selling a portion of her share of the property, transferred her remaining share through a

O. S 849/2021

registered gift deed (No. 388, dated February 15, 2015) to her nephews (the defendants), out of affection and in recognition of their care, service, and conduct during times of both joy and adversity. The defendants subsequently took possession of the property and mutated their name vide Mutation Khatian No. 1365. They have since been paying the land revenue and enjoying possession of the property.

10. It is pertinent to note that the plaintiff had earlier transferred another piece of land (measuring 0.02 acres) to her maternal cousin through a registered gift deed (No. 2875, dated November 26, 1998). Thus, it is evident from the plaintiff's own pleadings that the suit property is not held jointly by the plaintiff and the defendants or their predecessors.

11. It is further case of the defendant that the gift deed (No. 388) and its detailed schedule clearly establish that the suit property was specifically demarcated and exclusively transferred to the defendants. The plaintiff's share was separated, and possession was handed over to the defendants. The defendants have constructed permanent structures, including residential houses, and continue to occupy the suit property with full rights and possession. Since the plaintiff transferred her ownership and possession of the suit property to the defendants via a legally valid and registered gift deed, she ceased to have any title or interest in the suit property. The plaintiff, under the influence of her sons, has filed the present suit with ill intent, despite being fully aware of the legal and factual transfer of ownership. The plaintiff does not have any possession of the property and, therefore, lacks the locus standi to bring the suit.

12. It is further case of the defendant that the plaintiff voluntarily executed and registered the gift deed after visiting the defendants' house and the Gachhbaria Sub-Registry Office. She read and understood the terms of the deed before its execution. Consequently, the gift deed is legally valid, and the plaintiff's claim that she was misled or coerced is baseless. The present suit has been filed in bad faith as an experimental measure to usurp the defendants' legitimately owned and possessed property. The suit property constitutes the defendants' homestead, pond, and agricultural land, and the plaintiff's claims of joint ownership are false. The plaintiff, having relinquished her title and

O. S 849/2021

possession, has no legal standing to maintain this suit, which is liable to be dismissed with costs.

Issues:

13. From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, the following issues has been framed for proper adjudication of the case :

- 1) Whether the suit is maintainable in it's present form and prayer?
- 2) Whether the plaintiffs have any cause of action for filing the suit ?
- 3) Whether the suit is barred by Limitation ?
- 4) Whether the plaintiff executed the deed of gift dated February 15, 2015, voluntarily and with knowledge of its contents.
- 5) Whether the deed of gift is valid and enforceable under law.
- 6) Whether the plaintiff is entitled to the relief sought for cancellation of the deed of gift.

Discussions of Evidences

14. To prove the plaint case, the plaintiff examined 02 witnesses namely **Sayada Rowshon Akter as P.W.1** and **Md Abul Kasem as P.W.2** before this court. During examination of P.W.1 the following documents were produced and proved, which have been marked as Exhibits:-

1. C. C of R.S Khatian no. 164, 174, 375, 845	Exhibit 1 Series
2. C. C of B.S Khatian no.670, 672, 679, 680, 681	Exhibit 2 Series
3. C. C of Gift deed no. 388 dated 15.02.2015	Exhibit 3

15. On the other hand, to prove the defendant's case, the defendants examined **03** witnesses namely **Sayed Mahmud Jasim Uddin as D.W.1, Md Asaduzzaman Faruki as D.W.2 and the deed writer Md. Abdul Goni as D.W.3** before the court. During examination of D.W.1 the following documents were produced and proved, which have been marked as exhibits:-

1. C. C of R.S Khatian no. 164, 174, 375, 845	Exhibit - Ka Series
2. C. C of B.S Khatian no.670, 672, 679, 680, 681	Exhibit - Kha Series
3. C. C of Mutation Khatian No.1362	Exhibit – Ga

O. S 849/2021

4. Original Gift deed no.388 dated 15.02.2015	Exhibit -Gha
5. C.C of deed No.2875 dated 26.11.1998	Exhibit- Uma
6. 02 Nos. of Rent receipts	Exhibit -Cha

16. Discussions and Decision

Sayada Rowshon Akter (P.W.1) for the plaintiff and **Sayed Mahmud Jasim Uddin (D.W.1)** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

Issue no. 1, 2 and 3

Whether the suit is maintainable in it's present form and prayer?

Whether the plaintiffs have any cause of action for filing the suit ?

Whether the suit is barred by limitation?

All these issues are taken up together for the sake of brevity and convenience.

Perusing the plaint, written statement and the evidences appearing in the record, it appears that the suit is purely civil in nature and there is no bar to try this suit by this Court. Therefore, the suit is well maintainable in its present form.

17. The plaint discloses a sufficient cause of action for the plaintiffs to institute the present suit. From the contents of the plaint, it is evident that the plaintiff is the lawful owner and possessor of the disputed property by virtue of inheritance. The defendants, Nos. 1 - 5, are the plaintiff's nephews. The plaintiff asserts that, with an ulterior motive to usurp her property, Defendant No. 1 deceitfully misrepresented to her on February 14, 2015, that rectification of the B.S. records was required, which necessitated the execution of a partition deed. Relying on this misrepresentation, the plaintiff, on February 15, 2015, accompanied Defendant No. 1 to the sub-registry office, where she executed the disputed deed of gift. That on June 1, 2015, when she sought to claim usufructuary rights over the disputed property from the defendants, she discovered the existence of the deed of gift. Subsequently, on June 8, 2015, upon obtaining a certified copy of the said deed, she became fully aware of the defendants' fraudulent actions. The acts of the defendants have cast a cloud over the plaintiff's right, title, interest, and possession in respect of the suit property. Thus the cause of action for the present suit arose on June 8, 2015 and the suit was instituted on July 5, 2015, well within the statutory period of limitation. Accordingly, the suit is

maintainable in law, has a valid cause of action, and is not barred by limitation. Based on the foregoing facts, all relevant issues are decided in favor of the plaintiff.

18. Issue No : 4-7:

“Whether the plaintiff executed the deed of gift dated February 15, 2015, voluntarily and with knowledge of its contents.”

“Whether the deed of gift is valid and enforceable under law.”

“Whether the plaintiff is entitled to the relief sought for cancellation of the deed of gift.”

All these issues are taken up together for the sake of brevity and convenience.

It is undisputed by both parties that the plaintiff is the lawful owner and possessor of the suit properties which she inherited from her parents. The defendants No.1-5 are her nephews . **Exhibit-3** is the impugned deed of gift by which the suit property is claimed to be transferred in favor of the defendants No.1-5 by the plaintiff. The donor as Plaintiff brought this suit and sought cancellation of that deed on the grounds of fraud, misrepresentation, and lack of voluntariness. Thus the primary contention lies in the validity and enforceability of the deed of gift.

19. Plaintiff as P.W.1 alleges that the defendants misled her into signing a deed of gift under the pretense that it was a partition deed. She claimed that her signature and thumb impression was obtained without proper understanding of the contents of the document. On the other hand the defendants claim that plaintiff voluntarily executed the deed of gift in favor of her nephews (the defendants) out of love and affection and it was read over and explained to her at the time of registration. No fraud or misrepresentation was committed at the time of registration.

20. It appears from the evidence that the plaintiff (**P.W.1**) is a housewife of 65 years old and resides with her six sons at her matrimonial house. D.W.1 and D.W.2 also admitted this fact and D.W.3's statements such as “ রওশন আক্তার স্বপ্ন বাড়িতে থাকে। উনি গৃহবধু। উনি বোরকা অর্থাৎ পর্দা করেন” suggests clearly that plaintiff is a Pardanashin women (পর্দানশীন মহিলা).

21. It is an established principle that when a deed is challenged by a pardanshin or aged woman, the onus shifts to the beneficiary to prove that the deed was executed with full

understanding and free consent. The party is to satisfy the court that it has been read over and explained to her, that it was understood by her and that an independent and disinterested advice in the matter.” **[Suratun Nessa Bibi vs Mohammad Naimuddin Mondol and others reported in 18 DLR (1966) 33]**

22. It is undisputed that the impugned deed of gift was executed and registered in presence of the plaintiff. It is claimed by the defendants that the impugned deed of gift **[Exhibit-Gha]** carries a presumption of correctness **under Section 103 of the Evidence Act, 1872**. Generally a registered deed carries a presumption of voluntariness unless rebutted with strong evidence to the contrary. In cases of undue influence or coercion, the burden shifts to the defendants to prove the transaction was free and voluntary.

23. **Section 14 of the Contract Act, 1872** deals with the Free Consent. Consent is not free when obtained through coercion, undue influence, fraud, misrepresentation, or mistake. Since the plaintiff has denied the voluntary execution of the said deed, the burden shifts to the Stronger party (defendants) to prove that the transaction was fair, voluntary, and understood by the weaker party. The statements of D.W.1, DW.2 and DW.3 though establishes the proper execution and registration of the impugned deed but it laves direct evidence regarding voluntariness and proper understanding of plaintiff of the said deed. To prove these matters the defendants did not produced any independent and credible witnesses. In Such situation there is no other option but to take consideration of the circumstantial evidences of the case.

24. The defendants contended that the plaintiff gifted the suit property to them out of care and affection. However, P.W.1 (plaintiff) explicitly denied this assertion, raising significant doubts about the motivation behind the deed. P.W.1’s testimony revealed that she resides in Kochuai Mouza with her six sons, whereas the suit land is situated in Alahabad Mouza. This geographical and physical separation between the plaintiff and the defendants negates the possibility of direct care or affection as the driving factor for the execution of the gift deed.

25. The plaintiff’s act of gifting her entire share of the suit property to her nephews (defendants), while excluding her six sons, raises serious questions about the deed’s

O. S 849/2021

voluntary nature. In the ordinary course of events, it would be unusual for a mother to exclude all her children from inheriting her property and transfer it entirely to nephews without any apparent justification. This casts serious doubt on the claim of voluntary execution.

26. P.W.1 testified that she “lost her senses” upon hearing the deed read aloud by the Sub-Registrar. This statement raises concerns about her comprehension of the document’s nature and terms at the time of execution. The plaintiff’s overwhelmed state weakens the presumption of voluntariness usually attached to registered deeds.

27. Admittedly, the plaintiff has other close relatives, including two brothers and three sisters, besides the father of the defendants. However, the defendants failed to produce any of these relatives as witnesses to corroborate the alleged voluntary transfer. Furthermore, none of the attesting witnesses to the impugned deed appeared before the court to affirm that the plaintiff executed the deed out of free will. This omission significantly undermines the defendants’ claim of voluntariness.

28. D.W.1 admitted that the plaintiff’s six sons were not made witnesses to the deed. This exclusion of the plaintiff’s immediate family weakens the claim of full family knowledge and agreement regarding the transaction. The absence of the sons in such a significant property transfer raises further doubts about the legitimacy of the deed.

29. The plaintiff’s assertion that she was misled into believing the document was a partition deed, rather than a deed of gift, highlights an act of misrepresentation. Misrepresentation, as defined under Section 18 of the Contract Act, 1872, occurs when a party induces another to act on a misapprehension of facts. In this case, the plaintiff’s testimony indicates she was deceived about the true nature of the transaction, which invalidates the element of free consent.

30. D.W.2 supported the lawful execution of the deed but, as an identifying witness, his role was limited to attesting the identity of the parties rather than confirming the voluntariness of the transaction. The lack of independent witnesses to testify that the plaintiff understood the deed and executed it willingly further supports the conclusion that the transaction was not entirely transparent or voluntary. Based on the above evidence and

O. S 849/2021

circumstances, it is my considered view that the impugned deed of gift has not been executed with the free consent of the plaintiff.

31. P.W.1's testimony indicates that she was subjected to subtle forms of coercion or undue influence by the defendants. Evidence shows that the predecessor of the defendants, Sayed Sad Uddin (the plaintiff's brother), maintained the suit properties on behalf of the plaintiff who was not in physical possession. After Sayed Sad Uddin's death, the defendants No.1 took control of the properties, placing the plaintiff in a position of trust and emotional dependence on her nephews. P.W.1's testimony that she resides in Kochuai Mouza, separate from the suit land in Alahabad Mouza, indicates her reliance on the defendants for information about the property. No doubt that the defendants utilized their familial position to compel the plaintiff to sign the document without fully understanding its nature and implications. This conduct aligns with the criteria of undue influence under Section 16 of the Contract Act, 1872.

32. P.W.1 claimed the defendants misled her into believing the documents was a partition deed. This alleged deceit is a hallmark of undue influence, where the stronger party exploits the weaker parties lack of understanding. Her testimony that she "Lost her senses" after sub-registrar read the deed aloud suggest she was overwhelmed or distressed by the situation, which could be interpreted as a result of psychological coercion.

33. Evidence shows that all the defendants, who belong to the same family, were present at the Gachbaria Sub-Registry Office during the execution of the deed. Additionally, another relative, Asaduzzaman Faruki (D.W.2), a cousin of the defendants, was also present. The plaintiff testified that no one from her side was present to support her during the registration process. It appears to me that the collective presence of the defendants and their relative created a power dynamic that placed the plaintiff in a vulnerable position. Although there is no direct evidence of explicit threats or overt coercion, the presence of all defendants during the transaction, coupled with the absence of any neutral or supportive individuals on the plaintiff's side, establishes an atmosphere of implicit pressure and psychological intimidation.

34. The Supreme Court in *Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib* (AIR 1967 SC 878) held that the presence of a stronger party during a property transfer could raise a presumption of undue influence if the weaker party alleges coercion. In this case, the defendants' presence at the Sub-Registry Office cannot be regarded as incidental. Instead, their involvement and dominance over the transaction reinforce the presumption of undue influence. The defendants have failed to rebut this presumption by providing evidence that the transaction was fair and free from pressure.

35. Based on the evidence and the circumstances surrounding the execution of the impugned deed it is crystal clear that the defendants exploited their familial relationship and the plaintiff's trust and reliance on them to induce her to execute the deed. The absence of independent witnesses and the presence of all defendants during the transaction created an atmosphere of pressure and intimidation, undermining the plaintiff's ability to act freely. The plaintiff's testimony of being misled into believing the deed was a partition deed, coupled with her claim of psychological distress at the time of execution, supports the conclusion that the deed was executed under undue influence.

36. Another important issue in this case is whether the plaintiff executed the impugned deed of gift with full understanding and voluntary consent. The plaintiff (P.W.1) alleged that her signature and thumb impression were obtained without proper understanding of the contents of the deed, which was presented to her as a partition deed. Conversely, the defendants claim that the plaintiff executed the deed voluntarily, with full knowledge of its contents, which were read and explained to her by the deed writer (D.W.3).

37. The burden of proof in cases involving pardahnashin women requires the court to exercise heightened scrutiny to ensure that the document was executed with full understanding and voluntary consent. The legal principles, as established in *Nirban Chandra Mukherji & Another vs. Nirupuma Debi & Another* (26 CWN 517), mandate the following:

1. The executant must have full knowledge of the nature and effect of the transaction.
2. The document must be read over and explained to her in clear terms.

3. She must have had independent and disinterested advice before execution to avoid exploitation.

38. The plaintiff (P.W.1) stated unequivocally that her signature and thumb impression were obtained under the pretense that the deed was a partition deed. She testified that ১ নং বিবাদী প্রত্যক্ষ করে এই দানপত্র দলিল সৃজন করেছে। নালিশী জমি তার মৌরশী বাড়ি ভিটি পুকুর নাল জমি।-----তারা সাব-রেজিস্ট্রি অফিসের কর্মকর্তাগণের বশে নিয়ে তার সমস্ত সম্পত্তি ভূয়া দানপত্র দলিল সৃজন করেছে। দানপত্র টি জাল ও অকার্যকর।” P.W.1 in her cross stated that “ দলিল লিখে আনার পর তারা তার কাছ থেকে সাক্ষর নেয়। সাব-রেজিস্ট্রার তাকে পড়ে শুনানোর পর তিনি বেহুশ হয়ে যান।---- তাকে ভাগনামা করবে বলে নিয়ে গিয়ে তার থেকে দানপত্র করে নিয়েছে। তার এতবড় ক্ষতি তারা করে ফেলেছে।” These statements suggest that the plaintiff misunderstood the nature and effect of the transaction and did not sign the deed with informed consent.

39. The defendants argue that the deed writer (D.W.3) personally drafted the deed, read its contents aloud, and confirmed its accuracy with the plaintiff before execution. D.W.3 testified that the deed was explained and reviewed by the parties prior to execution. However, there is no evidence to suggest that the explanation was tailored to the plaintiff's level of understanding or that she received independent advice. The court in *Nirban Chandra Mukherji* case emphasized that the explanation of a document to a pardahnashin woman must ensure her full comprehension of its legal and practical implications. Merely reading the document verbatim may not suffice, especially for a pardahnashin, illiterate woman unfamiliar with legal terminology. A simple, clear explanation tailored to her understanding is crucial.

40. It might be true that the impugned deed of gift has been read over by the scribe D.W.3. Evidence shows that D.W.3 did not explained in short the contents of the documents and the effect of the transection to the plaintiff. If he would read over the documents in such way that “ **You are transferring your entire inherited properties in favor of your nephews by this deed of gift and thereby you will loss the ownership and possession of the said land**” then I think it would be the best form of explaining a document before a pardanashin aged housewife. If a document is read out from the beginning to the end, a

O. S 849/2021

pardanashin illiterate woman containing so many terms which is not intelligible to the executant, there is every possibility of creating confusion in the mind of the Pardanashion women. But if one or two words are stated before a pardanashin illiterate women , in my view that will have the effect of explaining the document more clearly and precisely to the paradanashin women. In this case when the scribe D.W.3 explained to the plaintiff that she was going to execute a deed of gift in favor of her nephew of her entire inherited properties without consideration, I think that is the best form of explaining the document and the plaintiff could clearly understand what transaction she was going to enter into. It had a better effect upon the mind of the plaintiff than the effect which could be produced upon her mind by reading of the entire document to her. In such circumstances it is my considered view that the contents of the impugned deed was not read over to the plaintiff properly and her signature and thumb impression was obtained without proper understanding of the contents of the documents.

41. The plaintiff inherited the property from her parents and has six sons, who are her natural heirs. It is improbable that she would transfer her entire share to her nephews without consideration or compelling reason. P.W.1 testified that she “lost her senses” when the Sub-Registrar read the deed aloud. This reaction indicates that she did not comprehend the nature of the transaction prior to signing. The plaintiff did not have independent or disinterested advisors present during the execution of the deed. This absence is significant, as it undermines the defendants’ claim that the deed was executed voluntarily and with full understanding.

42. The plaintiff’s testimony suggests she was misled into believing the deed was a partition deed rather than a gift deed. The absence of her legal heirs (six sons) during the transaction and the presence of defendants further support the inference of undue influence and lack of independent advice. The complete transfer of the plaintiff’s inherited property to her nephews without consideration, and the lack of compelling reasons to exclude her legal heirs, strongly indicate that the deed was not executed with full understanding or voluntary consent. Based on the evidence and applicable legal principles, it is my

O. S 849/2021

considered view that the impugned deed of gift was not executed voluntarily or with full understanding by the plaintiff.

43. The validity of a gift deed is governed by Sections 122 and 123 of the Transfer of Property Act, 1882. Section 122 requires the donor's free consent and voluntariness in executing the gift, while Section 123 mandates the delivery of possession to the donee. In light of the facts and evidence presented, it has been established that the impugned deed of gift was not executed voluntarily or with full understanding by the plaintiff. Therefore, it is necessary to assess whether possession of the property was delivered to the donee after the execution of the deed.

44. The defendants contended that, following the registration of the deed of gift, they took possession of the disputed property and subsequently mutated their names under Mutation Khatian No. 1362. They relied on Exhibit-Ga to substantiate their claim, asserting that they have been in lawful possession of the property, constructed structures on it, and paid land revenue after the alleged transfer of ownership by the plaintiff. While the plaintiff did not explicitly deny these assertions, certain inconsistencies and deficiencies in the defendants' evidence cast serious doubt on their claim of delivery of possession.

45. The testimony of D.W.2 revealed that the defendants were allegedly in possession of the property for 20–30 years. However, his inability to specify when possession was delivered following the execution of the deed undermines the credibility of the claim. Furthermore, the defendants failed to produce independent or reliable witnesses to corroborate the delivery of possession or provide evidence of a proper survey confirming their possession. The absence of direct and conclusive evidence of delivery of possession raises significant questions about the validity of the gift deed.

46. The defendants' reliance on mutation records in their favor is insufficient to validate their claim of ownership. The absence of mutation in the plaintiff's name does not, by itself, negate her ownership rights. The plaintiff's claim is rooted in her inheritance of the property from her parents, which establishes her legitimate interest in the disputed land, irrespective of the defendants' mutation records.

O. S 849/2021

47. In considering the totality of the evidence and circumstances, it is evident that the plaintiff was misled into executing the deed of gift. The execution was neither voluntary nor carried out with a full understanding of its implications. The lack of proper explanation regarding the contents of the deed, the absence of independent advice, and the misleading circumstances surrounding its execution render the deed invalid.

48. Given these findings, it is imperative to declare the impugned deed of gift null and void. The plaintiff has successfully discharged her burden of proof and established her claim. Accordingly, all issues in the suit are decided in favor of the plaintiff. Based on the pleadings, the evidence on record, and the submissions of learned counsel for both parties, I have no hesitation in holding that the plaintiff is entitled to the relief sought.

In result the case succeeded.

Court fee paid is correct

Hence, It is Ordered

that this suit for cancellation of deed be decreed on contest against the defendant no. 1-5 and ex-parte against the rest without any order as to cost.

It is hereby declared that the impugned deed of Gift bearing No. 388 dated 15.02.2015 executed by the plaintiff, registered at Gachbaria Sub-registry office is void and has no legal effect as against the plaintiff.

The concerned Sub-registry Office is directed to cancel the registration of the said deed in its records under Section 31 of the Specific Relief Act, 1877, and to make appropriate entries reflecting this cancellation in the official registers.

The plaintiff's ownership, possession, and title over the suit property described in the schedule attached to the plaint are confirmed and restored.

Let a copy of judgment and decree be sent to the Sub-registrar of Gachbaria Sub-registry office and District registrar, Chattogram for proper execution.

The case is thus disposed of.

Typed & Corrected by me

Md. Hasan Zaman
Senior Assistant Judge,
Senior Assistant Judge, 2ndCourt,
Patiya , Chattogram.

Md. Hasan Zaman
Senior Assistant Judge,
Senior Assistant Judge, 2ndCourt,
Patiya , Chattogram.