

**Present:**

**Mr. Justice Md. Nuruzzaman**  
**-And-**  
**Mr. Justice Md. Khasruzzaman**

**First Appeal No. 256 / 2010.****IN THE MATTER OF :**

Mrs. Cyma Salam.

.....Appellant

-Versus-

Amina Begum and others

.....Respondents

Mr. Fazlur Rahman Khan, Advocate

....For the appellant

Mr. Fida M. Kamal, Adv. with

Mr. M.A. Azim Khair Advocate

.....For the respondent Nos. 7-8

Ms. Sahida Khatun, A.A.G.

.....For the respondent No. 5

**Judgment on 08.10. 2018****Md. Khasruzzman, J:**

This appeal at the instance of the plaintiff appellant has been arisen from the judgment and decree dated 29.03.2010, decree signed on 18.04.2010, passed by the learned Joint District Judge, Arbitration Court, Dhaka in Title Suit No. 41 / 2009 dismissing the suit for specific performance of contract.

The appellant as plaintiff instituted Title Suit No. 9 / 1993 in the 4<sup>th</sup> Court of Sub ordinate Judge, Dhaka for specific performance of contract impleading vendor Sheikh Azgor Ali as

proprietor of M/s. National Engineering Works, predecessor of respondent Nos. 1-4, as defendant No. 1 and respondent Nos. 5-6 as defendant Nos. 2-3, and respondent No. 7 was subsequently added as defendant No. 4. In different times the suit was transferred and eventually transferred to the Court of Joint District Judge, Arbitration Court, Dhaka renumbering as Title Suit No. 41 / 2009. During pendency of the suit, defendant No.1, Sheikh Azgor Ali died and his heirs were substituted as defendant Nos. 1(Ka) to 1(Gha), and M/s. Luxury Electro Chemicals Limited was added as defendant No.4 in the suit.

Facts of the case are as follows:

The suit land originally belonged to the government of the then East Pakistan and the land was leased out as perpetual lease to Sheikh Azgor Ali. The lease deed was executed on 31.03.1967 and registered on 02.05.1967 and thereafter, the possession of the land was transferred to him. When Sheikh Azgor Ali was in possession of the suit property, he offered to sale out the same and the plaintiff Mrs. Cyma Salam accepted the offer at Tk. 30,00,000.00 (thirty lac). Accordingly, on 13.07.1982 a deed of agreement for sale was executed between the parties, the plaintiff paid Tk. 29,00,000.00 (twenty nine lac only) out of Tk. 30,00,000.00 (thirty lac) and then Azgor Ali transferred the possession of the suit property to the plaintiff. Thereafter, the plaintiff took initiative to establish a sweater manufacturing industry named “Professional Knitters

Limited” where she was the Managing Director of the company. After getting proper approval from the concerned authority, the plaintiff constructed a structure on the suit land and started business thereon. But, after filing the suit the sale agreement was lost and the said agreement was subsequently recovered by police from one Fazlul Kader Chowdhury alias Mukul Chowdhury who overwrote the signatures of Sheikh Azgor Ali in the agreement for sale in order to make harm of the plaintiff. It was stated in clause No. 3 and 4 of the agreement dated 13.07.1982 that after getting sale permission from the authority, the seller would complete the execution and register the sale deed in favour of the plaintiff. In fact, the plaintiff was always ready to pay the rest amount as well as to receive the registered sale deed. But, the seller took no positive steps to execute proper sale deed. On 17.06.1992 by receiving a notice from the office of defendant No. 2 addressing the National Engineering Works the plaintiff then came to know that the seller took no steps to get sale permission from the Ministry of Public Works. Thereafter, the plaintiff also came to know that Sheikh Azgor Ali, the original allotment holder of the lease property, had died and his heirs, defendant Nos. 1(Ka) to 1(Gha), were trying to get their names mutated. On 15.09.1992 the plaintiff contacted with defendant No. 1(Kha) and requested him to execute and register sale deed and he denied to do so, for which the

plaintiff was compelled to file the suit for specific performance of contract.

The heirs of Sheikh Azgor Ali, defendant Nos. 1(Ka) to 1(Gha), contested the suit by filing a written statement and other defendants filed separate written statement denying material allegations of the plaint.

Case of the defendant No. 1(Ka) to 1(Gha) is that the alleged agreement for sale is false, fabricated and created for oblique motive to grab the property and as such, the suit is not maintainable. After 10 (ten) years of the death of said Azgor Ali, the plaintiff created the forged agreement for sale and instituted the suit for specific performance of contract in order to deprive the heirs of the deceased Azgor Ali, which is liable to be dismissed. Defendant No.1 late Sheikh Azgor Ali, the owner of M/s. National Engineering Works was an educated person with technical knowledge. He applied to the government for allotment of an industrial plot. Accordingly, on 11.07.1960 a letter of allotment of the said plot was issued to him and after payment of lease money including all dues, Lease Agreement No. 7845 was executed and registered on 31.03.1967 and 02.05.1967 respectively. Lease holder Sheikh Azgor Ali after getting physical possession of the plot, constructed a boundary wall and semi pacca building on the frontal half portion of the plot and started business thereon. On the rest half portion of the plot, said Azgor Ali established a

partnership business where he, himself was a partner. At the time of his treatment Azgor Ali died at P.G. Hospital on 20.09.1980. Then his sons were a student and his wife was a Pardanshin lady, for which his business was being run by the partners and stuffs. On 25.10.1992 his heirs applied to the government for mutation to their names, and on 08.03.1993 they were informed that on 11.11.1997 their names were mutated by the Assistant Commission (Land), Tejgaon Circle, and khatian was separated. They had been paying rent to the government. The plaintiff, without the permission of the owner, entered into the suit property, and after the death of Sheikh Azgor Ali, the plaintiff created the false agreement by forging the signature of the owner. Neither Sheikh Azgor Ali sold the property nor transferred it to her. Accordingly, they prayed for the dismissal of the suit.

Defendant Nos. 4 and 5 also filed separate written statements. Their contention is that the Sheikh Azgor Ali became the owner of the property by dint of lease agreement, which was executed and registered between the government and him vide deed No. 7845 dated 02.05.1967. On 06.03.1974 Sheikh Azgor Ali obtained sale permission from the government and transferred the land to Luxury Electro Chemicals Limited vide registered deed Nos. 34746 and 34747 dated 28.12.1974 and then Luxury Electro Chemicals Company took loan from defendant No. 5, Janata Bank, by mortgaging the same. By a registered sale deed Luxury Electro

Chemicals Company became the owner of the property on 28.12.1974 which was much before the alleged agreement of the plaintiff dated 13.7.1982. The alleged agreement for sale is forged. Therefore, they prayed for the dismissal of the suit.

To prove their respective claim, plaintiff side examined 3 P.Ws and defendant side examined 4 D.Ws and both sides exhibited some documents.

Plaintiff Mrs. Cyma Salam, as P.W.1, in her examination-in-chief stated that Azgor Ali was the owner of the land obtained lease for 1 bigha for a duration of 99 years and he proposed to sell the land in the year of 1982, and she offered Tk. 30,00,000.00 as a consideration money, which was accepted by Sheikh Azgor Ali. Accordingly, an agreement for sale was executed on 13.07.1982 which was Notarized by the learned Advocate Mir Kashem. She paid Tk. 29,00,000.00 in cash to Azgor Ali and rest Tk. 1,00,000.00 was due to pay. Azgor Ali signed the agreement which was stolen later. And subsequently the agreement was recovered by the police as per direction of the Court. Signature of Azgor Ali was over written, and she cannot say who overwrote it and from whom the stolen agreement was recovered. After receiving Tk. 29,00,000.00 Sheikh Azgor Ali transferred the possession of the property to her. Azgor Ali was entrusted with the responsibilities to obtain sale permission from the government. She was always ready to pay rest amount Tk. 1,00,000.00 to Azgor Ali. When she

inquired as to obtaining sale permission, Azgor Ali told that no sale permission was obtained. Thereafter, she told Azgor Ali that if he failed to obtain sale permission, she would file suit. Department of Public Works informed Azgor Ali that he violated clause 4 of the lease deed and the plaintiff replied to that letter. Though she got possession of the property, there was a structure on the property erected by Azgor Ali. She came to know that Azgor Ali never tried to obtain sale permission from government. She neither knew the added defendant No.4 nor leased out a portion of land to the defendant No.4 by Azgor Ali, or he wanted to sale the property to them. She denied that Azgor Ali leased unused land to the defendant or the defendant and Azgor Ali jointly possessed the property. She also denied that on 28.12.1984 Azgor Ali executed two sale deeds in favour of defendant No.4. She denied all the material allegations against her made in the written statement.

In her cross examination she stated that she could remember when she first met Azgor Ali and then Azgor Ali offered her to sale the property. Azgor Ali, himself prepared the agreement, the agreement was executed on the disputed property. At a time she paid Tk. 29,00,000.00 in cash. Only two persons (the witnesses of the agreement) were present at that time. With Tk. 29,00,000.00 in cash she went alone at Tejgaon and none was accompanied by her. Now she cannot remember the names of those witnesses. She cannot remember the person who purchased the stamp for

agreement and on what date. She could not say about the validity of the agreement. At the time of execution of agreement, the original allotment letter, lease deed and rent receipt were handed over to the plaintiff but she could not say whether she could produce the same before the Court. The agreement was stolen from her Dhanmondi residence. She could not remember the date when the agreement was stolen. She did not lodge any general diary with Dhanmondi police station but she made a complaint before the Police Commissioner, Mr. A.K. Al Mamun. All the signatures on the agreement of Azgor Ali were overwritten. She denied that Azgor Ali did not sign the agreement and the same was created by her, and the court fees filed at the time of filing of the suit was forged. She stated that she met Azgor Ali last in December 1993. She did not get the ownership papers or lease deed (which is contradictory to her earlier statement). She did not know that there was a specific time limit for filing the suit for specific performance of contract.

PW.2, Faisal Abbas, in his examination in chief stated that he took rent of his shop from the plaintiff, which was situated on the suit property. Monthly rent of the shop was Tk. 23,000.00 and he paid Tk. 76,000.00 as advance. He was the Manager of that shop from 2003. In his cross examination he denied that he deposed falsely.



P.W. 4, Shantu Salam, was examined on commission and in his examination-in-chief stated that the plaintiff is his cousin, and he knows Sheikh Azgor Ali. On 13.07.1982 Azgor Ali and Mrs. Cyma Salam came into an agreement for sale in his presence, and the said agreement was executed at 218 / B, Tejgaon, Dhaka. There were two witnesses of the sale agreement who signed the agreement in front of him. He was also present at the time of payment Tk. 29,00,000.00 to Azgor Ali by the plaintiff. After execution of the agreement, Azgor Ali handed over possession of the suit land to the plaintiff. But, the plaintiff stated that none was present at the time of agreement is not true.

D.W. 1, Babu Shubod Kumar Saha, Managing Director of defendant No.4 company, in his examination-in-chief stated that the owner of the property was the government of the then East Pakistan who leased it to Azgor Ali. He exhibited the certified copy of the lease deed No. 7845 dated 02.05.1967 which was marked as exhibit No. Ka. He also submitted the original deed in another suit. After obtaining sale permission from the authority, Azgor Ali sold the property to the defendant No.4 vide two registered sale deed No. 34746 and 34747 dated 28.12.1974 and then transferred possession thereof, and the certified copies of the said two deeds were exhibited and marked as exhibit Nos. Ga series. Defendant No.4 who completed mutation to his name and had been paying taxes and rents to the authority; mutation Khatian

and rent receipts were exhibited and marked as exhibit Nos. Gha and Umo series respectively. While defendant No.4 was in possession, they leased it to Professional Knitters, the plaintiff, and accordingly, a tenancy agreement was executed which was exhibited as exhibit No. Cha. Plaintiff paid rent for about two years which were exhibited and marked as exhibit No. Chha series. Thereafter, she paid rent through cheque which was dishonoured by the bank for insufficient fund and the same was exhibited as exhibit No. Jaa. Then they served legal notice under section 106 of the Transfer of Property Act for ejectment of the suit premises and for payment of arrear rent to the plaintiff which was marked as exhibit No. Dha. They paid electric and telephone bills also. The defendant No. 4 as plaintiff filed Title Suit No. 201 / 1994 for ejectment of the present plaintiff from the suit premises and all the original documents were filed in that suit. He denied that the property was proposed to sale to the plaintiff at a consideration of Taka 30,00,000.00 and an agreement was executed to that effect.

D.W. 2, Md. Abu Taher Khan, Surveyor, Public Works Department, Dhaka, in his examination-in-chief stated that he deposed on behalf of the defendant Nos. 2 and 3 and the disputed property was acquisitioned property for industrial area which was leased out for 99 years to Azgor Ali, proprietor of M/s. National Engineering Works. As per condition of the deed no property can be transferred to anybody without prior sale permission, Azgor Ali

never obtained any sale permission. The agreement for sale of the plaintiff is forged. Accordingly, he prayed for dismissal of the suit.

D.W. 3, Md. Nurunnabi, Principal Officer, Janata Bank, deposed on behalf of the defendant No. 5, in his examination-in-chief stated that on 28.12.1974 Azgor Ali transferred the property to defendant No. 4 vide two sale deeds Nos. 34746 and 34747, which was mortgaged to this defendant against loan facilities. He denied the title of the plaintiff.

D.W. 4, Sheikh Mohammad Ali, in his examination-in-chief stated that defendant No. 1 was his father, and on behalf of substituted defendant Nos. 1(ka) to 1(gha) he deposed that government leased the property to his father, Sheikh Azgor Ali, and physical possession of the land was handed over to him. His father had a partnership business with M/s. Luxury Electro Chemicals Limited, defendant No. 4, and he was the director of the said company. On 06.12.1978 the defendant No. 4 sent a letter to his father for attending at a meeting on the date of 20.12.1978 and his father died on 19.09.1983 at P.G. Hospital. As the heirs of deceased Sheikh Azgor Ali, their names were recored in mutation and they had been paying rent and taxes to the concerned authority. He denied the agreement for sale with the plaintiff executed by his father or received any money from the plaintiff for this.

After conclusion of the trial, the learned Joint District Judge found that the suit was barred by limitation and the plaintiff failed

to prove her agreement for sale, and accordingly, the suit was dismissed against which the plaintiff as appellant preferred this first appeal.

Mr. Fazlur Rahman Khan, learned Advocate appearing along with Mr. Doud Khan, learned Advocate on behalf of the appellant, submits that after receiving taka twenty nine lac the defendant No. 1 came into an agreement with the plaintiff for selling the suit land on 13.07.1982 and the possession of the land was handed over to her, and she established an industry on the suit land, named Professional Knit Ltd, and the defendant No. 1 failed to take sale permission from the government even after frequent trying, and did not execute and register sale deed in favour of the plaintiff-appellant that has been proved by P.W. 1. Mr. Khan further submits that defendant No. 1 after taking huge amount of money handed over possession to the plaintiff, on condition that after taking sale permission, defendant No. 1 will execute and register sale deed in favour of her. Accordingly, the limitation will be counted from the date of obtaining sale permission from the authority, and as such, the suit was filed within the scheduled time. In support of his submission he cited a case of Mokbul Hosssain & ors. Vs. Anil Kumar Shaha & ors., 37 DLR 131. He also submits that agreement for sale is not a transfer deed. So, no permission is required to come into an agreement for sale. In support of his

submission he cited the case of *Secretary, Ministry of Works v. Md. Yusuf Ali*, 8 MLR (AD) 99.

He contends that defendant No. 1 denied executing and registering the sale deed, accordingly, cause of action of the suit will be counted from the date of his denial and as such, he filed the suit within the time. In support of his contention he cited a case of *Abdul Samad Gazi Vs. Abdul Khalil Gazi and others* reported in 53 DLR 262. He further contends that defendant No. 1 took time for obtaining the sale permission and assured her that after obtaining sale permission he would execute sale deed, but on query the plaintiff found that defendant No. 1 did not file any application before the authority for obtaining the sale permission. Accordingly, the defendant has committed fraud with the plaintiff. But, without considering the facts and law the learned trial Judge dismissed the suit on the point of limitation whereas the plaintiff filed the suit within the stipulated time and the plaintiff has proved the deed of agreement by adducing evidences orally and documentary, and as such, she is entitled to get relief.

He next submits that if the legal requirements are fulfilled, the Court is competent to pass all necessary order to enforce decree of specific performance, and now it is settled that the suit cannot be dismissed on the ground that the vendor may not obtain sale permission from authority, and if the suit is decreed for specific performance, the vendor may be directed to execute and register

the sale deed after obtaining sale permission, but his failure will entitle the plaintiff to get the sale deed executed and registered through Court and therefore, he prays for allowing the appeal.

On the other hand, Mr. Feda M. Kamal, the learned Advocate appearing with Mr. M.A. Aziz Khair, the learned Advocate on behalf of the respondent Nos. 7 and 8, submits that on 13.07.1982 defendant No. 1 came into a contract with the plaintiff to sell the suit land but the present suit was filed on 09.01.1993 after more than 10 years from the date of the contract. Accordingly, the suit was filed exceeding the stipulated time.

By referring exhibit-Ka, the deed of agreement, Mr. Feda M. Kamal, the learned Advocate, further submits that the transferee paid a total of Taka 29,00,000.00 only to Sheikh Azgor Ali as earnest money upto filing the suit, which indicates that the payment was made by installments. But, P.W. 1 in his deposition stated that she paid the earnest money at a time, which is quite departure from the contents of deed of agreement as well as her pleadings. Accordingly, the plaintiff has failed to prove her statements in respect of payment.

He also submits that in support of transfer in the deed of agreement no attesting witness was examined as required under section 68 of the Evidence Act, and all the signatures of Sheikh Azgor Ali put in the deed were overwritten, and the plaintiff side did not prove his signature by comparing with the admitted

signature of the plaintiff which is available in the Ministry of Public Works, as such, the plaintiff side failed to prove the deed of agreement for sale of transfer of the suit land.

He contends that being a lady it was quite impossible for the plaintiff to carry such huge amount of money to the office of the defendant No. 1 where the deed was signed by them, and as such, the mode of payment of such amount by the plaintiff was not proved beyond reasonable doubt. He further contends that there is a condition in the lease deed of Sheikh Azgor Ali that before entering into a contract for sale prior permission is required from the authority but in the present case, defendant No. 1 without taking any prior permission came into an agreement for sale which was not a valid transfer. He also contends that the plaintiff failed to prove the execution of agreement and payment of money by adducing competent witnesses and the requirements to prove execution of a deed were not complied with and the suit was filed after a long elapse of time for which the Court is not bound to pass a decree of specific performance of contract. He finally submits that since the plaintiff has not come before the Court with clean hands for equitable relief, the plaintiff may not get a decree for specific performance and accordingly, he prays for the dismissal of the appeal.

Ms. Sahida Khatun, the learned Assistant Attorney General appearing on behalf of the respondent Nos. 5 and 6, submits that

both the sides failed to prove their case by adducting any original documents, and the plaintiff has failed to prove her case. Accordingly, the suit property is liable to be vested upon the government as per Article 143 (1) (c) of the Constitution as well as section 92 of the State Acquisition and Tenancy Act. She further submits that the heirs of Sheikh Azgor Ali failed to prove that they were the legal heirs of the deceased Sheikh Azgor Ali by producing any documentary evidence. Accordingly, the trial Court has rightly observed that they have failed to prove their status.

We have considered the submissions of the learned Advocates for both the sides and perused the plaint, the written statements, and other documents on record including the evidences and the judgment of the lower Court.

In a suit for specific performance of contract the essential legal requirements are to prove whether the contract was genuine, consideration money was passed from the purchaser to vendor and transfer of possession was given in pursuance thereof. To come in a conclusion, we do not think that more discussion is needed.

It appears from the Contents of the plaint and the deed of agreement of transfer, exhibit No. Ka, that defendant No. 1 executed the deed of agreement on 13.07.1982 in order to transfer the suit land to the plaintiff by considering Taka thirty lac out of which the plaintiff paid Taka twenty nine lac to the defendant No. 1 stipulating that the defendant No. 1 would execute and register the sale deed in favour of the plaintiff after obtaining the sale



permission from the concerned authority. But, the said sale deed was not executed and registered by the defendant No. 1 and lastly on 01.03.1993 defendant No. 1 refused to execute the sale deed. Accordingly, the plaintiff has instituted the present suit for specific performance of contract. Here it is questionable that the plaintiff had been passing idly for last 10 years and 7 months after paying a huge amount of money to the defendant No. 1. If the plaintiff had really paid the said amount of money (twenty nine lac), she would have proposed to him to execute and register the sale deed within the period of limitation. But, in the plaint the plaintiff stated that after execution of the *Baina patra*, she failed to tress out the defendant No. 1 and the defendant No. 1 was a non-bangali.

It further appears from the aforesaid two documents that the deed was signed on 13.07.1982 and after more than 10 years Title Suit No. 9/1993 was filed for specific performance of contract on 09.01.1993. In the meantime, the plaintiff did not take any step after the expiry of one year which has been mentioned in the said deed that the transferee would execute the sale deed within one year after obtaining the sale permission from the authority but even after one year the plaintiff did not take any positive step to know what steps had been taken by the defendant No. 1 for obtaining the sale permission from the concerned authority. Accordingly, we are of the view that the suit was filed after expiry of the period of limitation as provide under Article 113 of the

Limitation Act as the filing of the present suit limitation will be counted from the fixed date of performance or if no such date is fixed, when the plaintiff has noticed that performance is refused. Now the period of limitation for filing the suit for specific performance of contract is one year but earlier it was three years from the date of refusal.

After going through the plaint and P.Ws, we do not find anywhere that the plaintiff offered the rest amount of money to defendant No. 1 and requested him to execute and register the sale deed in favour of her, which is one of the essential conditions in filing the suit for specific performance of contract. To offer rest amount of money and to execute the sale deed are undoubtedly absent in the plaint.

Admittedly, Sheikh Azgor Ali was the leasee of the government and he took lease the property to establish an industry thereon with some conditions.

In the present case the next pivotal questions, whether the plaintiff is able to prove the execution of the said agreement for sale by adducing competent witnesses, or payment of taka twenty nine lac, or whether the plaintiff filed the suit within prescribed period of time. PW.4 in his examination-in-chief stated that he was present at the time of execution of the agreement as well as the handing over money and he also witnessed the signatures of the witnesses. But interestingly these statements of P.W.4 were not

supported by P.W.1. The plaintiff deposed in her testimonies that none but she alone was present at the time of execution of the agreement for sale; moreover, PW.4 was neither scribe nor an attesting witness to the said agreement and, as such, the statements of the PW.4 are not trustworthy. So, the testimonies of P.W.1 and 4 are not credible, rather we are of the firm view that by these statements they, themselves, have destroyed the whole story of the plaintiff's case.

The plaintiff was examined as P.W. 1 and in support of her case the plaintiff has to prove the payment and execution of the agreement by adducing evidences either by the executants, or the scribe, or the witnesses of the agreement, or at least by the persons who were present at the time of execution of the agreement. The plaintiff miserably failed to prove the payment as well as execution of the agreement by adducing competent witnesses. Moreover, the story of losing the agreement and overwriting the signatures of Sheikh Azgor Ali are not believable, specially when no general diary was lodged admittedly with the concerned Dhanmondi Police Station. As per the settled principle of law the plaintiff has to prove his / her own case and he / she cannot take the advantages of weakness of the defence side. The submission of forged stamp paper at the time of filing the suit is another bad conduct of the plaintiff side.

Section 108 of the Transfer of Property Act, 1882 does not allow a leasee to transfer his interest unless he is authorised to do

so by the lessor. In the present case no sale permission was given by the government, and the transfer without written permission was also restricted expressly by the lease deed. The sale permission was a condition preceded to transfer the land, but actually no permission has been taken.

The plaintiff in his examination-in-chief stated that she lastly talked to Azgor Ali in December 1993. But, it appears from the death certificate and the burial certificate of Azgor Ali, exhibit Nos. 'Da' and 'Dha' respectively that Azgor Ali died at P.G. hospital on 20.09.1983. So, the contention of the plaintiff is very difficult to believe. The alleged agreement was executed on 13.07.1982 and the executor of the agreement died on 20.09.1983 but after long 10 years the suit was filed on 09.01.1993, and the explanations for delay filing the suit given in the plaint have not been proved.

There is little scope to consider the submissions of the learned Assistant Attorney General.

We are not discussing the case of the defendant No. 4 because it is a case of specific performance of contract between the plaintiff and the defendant No. 1. Besides, the defendant No. 4 was not a party in the contract and the plaintiff has failed to prove the contract which has already been discussed. Moreover, the plaintiff filed this suit stating that he had talked to Sheikh Azgor Ali in December 1993 but the said Sheikh Azgor Ali died at PG Hospital

on 21.09.1983, which were exhibited as exhibit-Da and Dha; and Sheikh Azgor Ali sold the suit land to the defendant No. 4 vide sale deed No. 34746 and 34747 dated 28.12.1974, exhibit No. Ga series; and the defendant No. 4 recorded its name by mutation and had been paying rent and taxes, exhibit No. Gha and Uma series; and the plaintiff took rent from the defendant No. 4 and paid rent for about two years, exhibit No. Cha and Chha series; and once the plaintiff paid rent to the defendant No. 4 by a payable cheque which was dishonor by the bank for insufficient fund.

The appellant referred several decisions in support of his submissions but the said decisions are not applicable in the facts and circumstances of the present case as the facts of those cases are quite distinguishable from the facts of the present case.

Considering all the material facts and circumstances of the case, we do not have any hesitation to hold that the plaintiff completely failed to prove her case.

In the result, the appeal is dismissed without any order as to costs.

Send down the lower Courts' records.

Communicate the order.

**Md. Nuruzzaman, J.**

I agree.