

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No.10067 of 1991

[Civil Revision No.05 of 1988 (Sylhet)]

with

CR No.10123(R) 1991

Eshad Ullah Haji Talukdar being dead his
heirs:

1(Ka) Ruhitar Rahman Talukar and 5 others
.....petitioners

-Versus-

Satish Chandra Roy Chowdhury and others
.....opposite parties

Mr. Chanchal Kumar Biswas, Advocate
..... for the petitioners

Ms. Rahima Khatun, Deputy Attorney
General for opposite party 6

Judgment on 14.03.2024

Since the Rule has arisen out of the aforesaid civil revision and the parties thereto are same, both are heard together and disposed of by this judgment.

At the instance of the plaintiffs this Rule was issued calling upon opposite party 6 to show cause as to why the judgment and decree of the then Subordinate Judge, Habiganj passed on 13.04.1987 in Title Appeal No.14 of 1984 dismissing the appeal affirming the judgment and decree of the then Munsif-in-charge, Court No.2, Habiganj passed on 29.11.1983 in Title Suit No.299 of 1981 dismissing the suit for specific performance of contract and permanent injunction should not be set aside and/or such other or further order or orders passed to this Court seem fit and proper.

The rule in CR No.10123(R) of 1991 was issued upon the Government to show cause as to why it should not be restrained from disturbing petitioners' possession over the suit land and at the same time an ad interim order was passed to maintain *status quo* till disposal of the Rule.

The material facts for disposal of the Rule, in brief, are that the plaintiffs instituted the suit stating the facts that the suit land as detailed in the schedule to the plaint originally belonged to Satish Chandra Roy Chowdhury and Ashutosh Roy Chowdhury both sons of late Sharat Chandra Roy Chowdhury in equal shares. The *SA khatian* in respect of the suit land was prepared in their names. During their possession and enjoyment they offered the plaintiffs to purchase the suit land. The plaintiffs accepted the proposal and defendants 1 and 2 executed a *bainapatra* in favour of the plaintiffs at a consideration of Taka 3,000.00. Defendants 1 and 2 received earnest money of Taka 2,800.00 from the plaintiffs on 14.08.1977 BS corresponding to 30.11.1970 AD and executed a *bainapatra* to the plaintiffs. It was stipulated in the agreement that they would execute and register the *kabala* on receipt of the balance amount of Taka 200.00. At the time of execution of the *bainapatra* defendants 1 and 2 handed over possession of the scheduled land to the plaintiffs. Since then the plaintiffs have been possessing the land. The plaintiffs offered the balance amount to

defendants 1 and 2 on 24.01.1978, 25.01.1974 and 22.07.1978 but the aforesaid defendants did not execute and register the *kabala* on various pretext. Lastly on 5th Bhadra 1388 BS corresponding to 22.08.1981 AD defendants 1 and 2 refused to execute and register the *kabala*. Defendants 3-5, the government officials had been trying to lease out the suit land disclosing that it has been enlisted as enemy property. Hence, the suit for specific performance of contract against defendants 1 and 2 and for permanent injunction against defendants 3-5.

Defendants 3-6 contested the suit by filing a set of written statement denying the averments made in the plaint. They further contended that the suit land measuring an area of 61.92 acres appertaining to plot 281 within mouja Roypur of police station-Baniaching was recorded in SA *khatians* 2, 3, 5 and 6 out of which *khatians* 2 and 5 were recorded in the names of Ashutosh Roy Chowdhury and Satish Chandra Roy Chowdhury. *Khatians* 3 and 6 were recorded in the names of Narendra Chandra Roy and others. Record of right for 55.18 acres was prepared in the names of Ashutosh Roy Chowdhury and Satish Chandra Roy Chowdhury. They did not file statements as per President's Order No. 98 of 1972 and consequently the said land was confiscated in Complain Register No.397 of 1978 under the aforesaid PO. The land, therefore, has become *khas* land of the Government and has

been leased out to the cultivators. The *bainapatra* dated 13.11.1970 allegedly executed by Ashutosh and Satish is false, forged, collusive and created only to grab the Government property and as such the suit would be dismissed.

Learned Assistant Judge framed the following issues to adjudicate the matter in dispute:

- i) Is the suit maintainable as its present form?
- ii) Is the suit properly valued and court fees paid correctly?
- iii) Are the plaintiffs entitled for a decree as prayed for?
- iv) Are the plaintiffs entitled to any other reliefs?

During trial, the plaintiffs examined 6(six) witnesses but the defendants examined none. The *bainapatra* produced by the plaintiffs was exhibit-1. However, the Assistant Judge dismissed the suit deciding the issues against the plaintiffs. The plaintiffs then preferred appeal before the District Judge, Habigonj. The appeal was heard on transfer by the then Subordinate Judge, Habigonj who dismissed the appeal and affirmed the judgment and decree passed by the trial Court which prompted the plaintiffs to approach this Court with the revisional application upon which this Rule has been issued.

Mr. Chanchal Kumar Biswas, learned Advocate for the petitioners takes me through the materials on record and submits

that the plaintiffs entered into an agreement with defendants 1 and 2 through exhibit-1 at a consideration of Taka 3,000.00 on receipt of earnest money Taka 2,800.00. In the agreement it was stipulated that the defendants 1 and 2 will execute and register the *kabala* on receipt of balance amount Taka 200.00 but they did not comply with the terms of the agreement. On various pretext they shifted the date of execution and registration of the *kabala* and lastly on 22.08.1981 refused to do so. The plaintiffs then instituted this suit on 20.10.1981 within the period of limitation prescribed in the 2nd part of Article 113 of the Limitation Act. The findings of the Courts' below that the suit is barred by limitation is, therefore, beyond the law and materials on record. He then refers to the provisions of Order 14 Rules 1, 2 and 3 and Order 18 Rule 3 of the Code and submits that since no issue was framed by the trial Court on limitation, therefore, the plaintiffs did not lead evidence on that point. He refers to the case of Additional Deputy Commissioner and Assistant Custodian Enemy Property vs. Md. Sirajul Islam being dead his heirs: 1(a) Ayesha Khatun and others, 6 BLT (AD) 132 and relied on its *ratio* on point of limitation. He adds that the *bainapatra* exhibit-1 has been proved by PW2 Sunil Chowdhury scribe of the deed, PW3 Rahat Ullah and PW4 Md. Rafique Miah Chowdhury the witness to the deed. The possession of the plaintiffs has been proved by PWs 5 and 6 who are the

contiguous land owners. The relief sought in a suit for specific performance of contract is an equitable relief and the suit has been filed under section 21 of the Specific Relief Act. Defendants 1 and 2, the executants of the *bainapatra* did not appear to contest the suit despite service of notices upon them. The plaintiffs are not bound by law to ascertain the genuineness of the signature of the executants. The learned Assistant Judge disbelieved the execution of the *bainapatra* on flimsy grounds as to the price of the land and payment of consideration money. The lower appellate Court affirmed the judgment and decree passed by the trial Court and gave some irrelevant findings in the judgment. Although, the defendant Government filed written statement in the suit stating the facts that the land in question having been the excess land of Ashutoh and Satish has been confiscated under PO 98 of 1972, but they neither produced any document in support of their claim nor examined any witness to prove their case. Mr. Biswas finally submits that in dismissing the suit the Courts below committed error of law resulting in an error in such decisions occasioning failure of justice. Had the Courts below considered the evidence of plaintiffs' witnesses and the document itself, the decisions could have been in favour of the petitioners. Thereafter, the Rule should be made absolute and the judgment and decree passed by the Courts below be set aside.

Ms. Rahima Khatun, learned Deputy Attorney General for opposite party 6 opposes the Rule and submits that the schedule land is the *khas* land of the Government. It is the excess land of Ashutoh and Satish. As per the provisions of PO 98 of 1972, CR No.397 of 1978 was filed against them and their excess land was confiscated. The land was declared as *khas* and its possession and control has been taken over by the Government. She submits that although the alleged *bainapatra* was executed in the year 1970 but the suit was filed in 1981. The statements made in the plaint as to the demand of the plaintiffs for registration of the *kabala* was not supported by PW1 in evidence and as such the suit is barred under Article 113 of the Limitation Act. She then submits that in the suit the plaintiffs prayed for permanent injunction against the Government, but the land is unspecified and vague. Without proving title in the suit land the plaintiffs cannot get any order of permanent injunction over it. The Court of appeal below correctly assessed the evidence of PW2 and others, disbelieved the *bainapatra* and finally dismissed the appeal affirming the judgment and decree passed by the trial Court. In the judgments there is no error of law and concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision. The Rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record, particularly exhibit-1 the *bainapatra* and oral evidence of witnesses.

It is admitted fact that the suit land originally belonged to Ashutoh and Satish, the then *Zamindars* and SA record has been prepared in their names. The Government claimed that the land in question is the excess land of the above two and it was confiscated in Complaint Register No.397 of 1978 under PO 98 of 1972 and has become *khas* land of the Government. In support of their case, the Government did not produce any single scrap of paper. They did not lead any oral evidence to support their claim. Therefore, the case of opposite party 6 Government that the land was confiscated as excess land of Ashutosh and Satish or subsequently it has become *khas* land has not been proved. But in the written statement and by cross-examining some of the plaintiffs' witnesses they tried to make out a case that the *bainapatra* is forged, collusive and created and the plaintiffs cannot get a decree of specific performance of contract against defendants 1 and 2.

The moot question is to be decided here that whether the *bainapatra* dated 30.11.1970 AD is genuine one and plaintiffs are entitled to get a decree against defendants 1 and 2 for its performance. It transpires that the *bainapatra* is written on a stamp paper of 2 rupees with an additional page. The stamp paper

as it appears was printed before independence of this Country, i.e., in Pakistan period. In the additional page the schedule of the land has been described. It is found on the back leaf of page 1 that the stamp paper was purchased on 20.11.1970, i.e., before independence. But on the overleaf of the stamp paper I find a seal containing 'বাংলাদেশ' 'BANGLADESH'. The aforesaid seal put by using stamp pad proves that the stamp paper was purchased after independence of this Country and has been used to prepare *bainapatra* during Bangladesh period. PW1 was suggested that the *bainapatra* is forged which he denied. In the aforesaid reason I hold that the *bainapatra* is antedated and created by the plaintiffs only to make out a case of specific performance of contract.

It further appears that the land described in the schedule to the *bainapatra* is 52.13 acres and its consideration has been shown at Taka 3000.00 which is shockingly low considering the market value of the land at that time. Moreover, the land as described in the schedule of the *bainapatra* is not found identical with the land described in the schedule of the plaint. In the suit the plaintiffs also sought permanent injunction against the Government which cannot not be granted before ascertaining plaintiffs' title in the suit land. For the sake of argument if exhibit-1 is considered as genuine one the suit is found to be hopelessly barred by limitation under Article 113 of the Limitation Act. In

the plaint the plaintiffs stated that they requested defendants 1 and 2 on 24.02.1971, 25.05.1974, 22.07.1978 AD to execute and register the *kabala* but on various pretexts they shifted its date and finally on 22.08.1981 refused to execute and register the deed. The above statements made in the plaint has not been corroborated by the evidence of plaintiffs' witnesses. None of the witnesses utter a single word about the cause of action. Therefore, the plaintiffs failed to prove that the defendants refused to register the *kabala* lastly on 22.08.1981. Although no issue was framed on point of limitation but the assertion made in the plaint is to be proved by the plaintiffs by oral evidence which they failed. I find no substance in the submission of Mr. Biswas that the plaintiffs are not bound to prove the aforesaid fact since no issue was framed on point of limitation. The provisions of law of Order 14 Rule 1, 2 and 3 and Order 18(3) of the Code as referred to by him shall not apply in this case.

Undoubtedly, a suit for specific performance of contract is for granting equitable relief. It is well settled principle that who seeks equity must come to the Court with clean hands. The clean hands doctrine is based on the maxim of equity which states that one "who comes into equity must come with clean hands". This doctrine requires the Court to deny equitable relief to a party who has violated good faith with respect to the subject of the claim.

This maxim has barred a relief for any one guilty of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for the person with “unclean hands” no matter how unfairly the persons adversary has treated him or her. The maxim is the basis of the *clean hands doctrine*. Its purpose is to protect the integrity of the Court. It does not disapprove only of illegal act but will deny relief for bad conduct that, as a matter of public policy ought to be discouraged. This Rule is not made to punish uncleaness or a mistake. In this case I find that the petitioners approached the Court to have a decree of specific performance of contract with an ante dated and fraudulently crated *bainapatra* and as such they are not entitled to get relief in the suit.

Considering the facts and evidence on record in the case in hand, the *ratio* laid in the case reported in 6 BLT (AD) 132 as referred to by the petitioner shall not apply. On going through the judgment passed by the Court of appeal below, I find that although the learned Judge gave some irrelevant findings therein but his ultimate decision is correct.

In view of the discussion made hereinabove, I find no merit in this Rule. Accordingly, the Rule is discharged without any order as to costs. The rule issued an CR No.10123(R) of 1991 is accordingly disposed of.

The order of *status quo* stands vacated.

Communicate the judgment and send down the lower
Courts' record.