

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 4963 of 2005**

**IN THE MATTER OF :**

An application under section 115(1) of the Code of  
Civil Procedure

-And-

In the Matter of:

Md. Fazlur Rahman

..... Petitioner

Versus

Md. Abdus Sattar and others

.....Opposite parties

None Appears

**Judgment on: 06.01.2019**

**Md. Riaz Uddin Khan, J-**

By this rule opposite party no.1 was asked to show cause as to why the judgment and decree dated 02.06.2005 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Kishoregonj in Other Class Appeal No. 46 of 1997 allowing the appeal and reversing the judgment and decree dated 17.02.1997 passed by the Senior Assistant Judge, Bajitpur, Kishoregonj shall not be set aside.

At the time of issuance of the rule all further proceeding of Other Class Suit No. 69 of 1994 was stayed for a period of 06 (six) months and thereafter there is no order of extension.

The facts relevant for the purpose of disposal of this rule, in brief, is that the Opposite Party No. 01 as plaintiff filed Other Class Suit No. 69 of 1994 in the court of Senior Assistant Judge, Bajitpur, Kishoregonj for specific performance of contract. In the plaint he stated that the Defendant-Petitioner being the owner and processor of suit land measuring 1.5 acres propose to sell the same to the plaintiff and one Md. Ismail (Defendant No.3), who agreed to purchase the same and accordingly a bainapatro (agreement for deed of sale) was

executed on the consideration of taka 75,000/- (seventy five thousand). The Defendant No.1 took taka 70,000/- (seventy thousand) as earnest money (baina) and delivered possession to the plaintiff and Md. Ismail. It was stated in the bainapatro that after taking the rest of the money the Defendant No.1 will execute a Safkobla (registered) deed in favour of the plaintiff and Md. Ismail. Later on, the plaintiff and Md. Ismail paid the balance consideration money of taka 5,000/- (five thousand) to the Defendant No.1 and requested him to execute the registered deed in their favour but the Defendant No.1 on different pleas took a dilly dally tactic. Then said Md. Ismail sold his share to the plaintiff after taking taka 37,500/- (thirty seven thousand five hundred) from the plaintiff and delivered possession. Thus the plaintiff is in possession of the entire suit land. On 05.04.1994 the defendant no. 1 finally refused to execute Safkobla deed in favour of the plaintiff for which the plaintiff filed the instant suit.

Defendant-petitioner entered appearance and contested the suit by filling written statement denying all the material facts stated in the plaint. The Defendant denied any execution of bainapatro between him and the plaintiff. He denied that he has received any consideration money from the plaintiff. He also denied that he delivered any possession to the Plaintiff No.1. He further stated that Md. Ismail never took taka 37,500/- (thirty seven thousand and five hundred) from the plaintiff and also did not deliver the possession. The defendant further stated that he took taka 25,000/- (twenty five thousand) from Md. Ismail and gave mortgage of 0.37 gonda of land to him and signed on a 50-taka blank stamp paper. It was agreed upon orally that when he will repay the money, Md. Ismail will return back the stamp and also the possession of the land. The Defendant further stated that there was long enmity between the plaintiff and Defendant No. 1 as Defendant No. 1 is the chairman of Ratanpur K.S.S, a co-operative society while plaintiff is the secretary of the said Ratanpur K.S.S. Regarding the accounts of the said

Ratanpur K.S.S there was dispute between the parties for which the Defendant No. 1 filed complaint against the plaintiff before the higher authorities. The plaintiff somehow managed the said blank stamp paper signed by him in favour of Md. Ismail and on that blank stamp the plaintiff has created the disputed bainapatro. The defendant further stated that the plaintiff with the said blank stamp paper went to various advocates of the local Bar showing the blank stamp and wanted to create a bainapatro. The defendant lastly stated that with false allegation the plaintiff filed the instant suit which is liable to be dismissed with cost.

Both the parties adduced evidences during trial to prove their respective cases. The plaintiff adduced 5 (five) witnesses while the defendant adduced 2 (two) witnesses. After hearing both the parties, the learned Assistant Judge, Bajitpur, Kishoregonj decreed the suit in part by his judgment and decree dated 17.02.1997. Against the said judgment and decree both the parties filed appeal before the District Judge, Kishoregonj. The plaintiff filed Title Appeal No. 46 of 1997 while the Defendant No. 1 filed Title Appeal No. 77 of 1997. Both the appeals were ultimately transmitted to the Additional District Judge, 2<sup>nd</sup> court, Kishoregonj for disposal. After hearing both the appeals the learned Additional District Judge, 2<sup>nd</sup> Court, Kishoregonj by a single judgment allowed the Title Appeal No. 46 of 1997 filed by the plaintiff while dismissed Title Appeal No. 77 of 1997 filed by the defendant-petitioner.

Being aggrieved by and dissatisfied with the judgment and decree dated 02.06.2005 the Defendant No. 1 filed the instant Civil Revision and obtained the rule as stated above.

The defendant-petitioner filed the instant Civil Revision on the ground that both the courts below acted illegally in finding the plaintiff-opposite party to prove his case without any evidence from Md. Ismail, who is alleged to have taken the said suit land as mortgage from defendant-petitioner having a blank stamp paper signed by the defended-petitioner and this has occasioned a failure of

justice. His next ground is that the learned courts below have failed to take into consideration the enmity between the plaintiff-opposite party and the defendant-petitioner and this non consideration materially affected the decision of the learned courts below which occasioned failure of justice. His further case is that the learned trial court as well as the court of appeal below did not take into consideration as to why the Defendant No.3, Md. Ismail had not been examined by the plaintiff-opposite party who had a very vital role in the alleged contract for sale and payment of consideration, amount paid by the plaintiff-opposite party to the Defendant No.3 and this non consideration materially affected the decisions of the learned courts below occasioning of justice.

No one appears before this court to submit their respective cases. The defendant-petitioner in his entire application under section 115(1) of the Code of Civil Procedure did not raise any question of error of law committed by the courts below resulting any error in such decisions which occasioned failure of justice. The defendant-petitioner however raised a question of non-consideration of material evidence on record.

The plaintiff as P.W-1 stated in his deposition that the conversation regarding the sale of the suit land was held in the house of Defendant No. 1 where Fazlu, Ishad Mia and the plaintiff were present where the consideration money was fixed at Tk-75,000/- (Seventy five thousand); the conversation took place on 20<sup>th</sup> Vadro, 1398 B.S and thereafter on 25<sup>th</sup> Vadro, 1398 B.S the bainapatro was prepared at his house and on that day taka 70,000/- (seventy thousand) was received by Fazlur Rahman (Defendant No.1) as consideration money. P.W-2, Ishad Mia who is the full brother of Defendant No.3 has said in his examination-in-chief that Defendant No.1 sold the suit property to the plaintiff and Md. Ismail; consideration money was fixed as taka 75,000/-(seventy five thousand); defendant no.1 executed bainapatro after taking taka 70,000/- (Seventy thousand) when he was present during the

conversation and also during the consideration money was passed. P.W-2 also stated that he put his signature in the said bainapatro as witness which has been marked as exhibit-3(Ka). In cross-examination he categorically stated that the conversation was held on 20<sup>th</sup> Vadro, 1398 B.S when the plaintiff, Fazlu and he were present. He further stated that bainapatro was prepared in plaintiff's house; at that time the deed writer, the plaintiff, the defendant no.1, Rouf, Siddique and he were present. PW-3, Siddique Mia in his deposition has stated that he was present during the preparation of the bainapatro and he put his signature on the bainapatro as witness which has been marked as exhibit-3(Kha).

The Defendant admitted in the written statement as well as in his deposition before the court that the signature on the bainapatro is his genuine signature but he claimed that he signed on a blank 50-taka stamp in favour of Md. Ismail, defendant no. 3, for mortgaging 0.37 gonda of land and the plaintiff converted the said blank stamp into a bainapatro. Though the Defendant No.1 as D.W-1 denied the execution of such bainapatro but D.W-2, Sadek Mia said in cross-examination that he does not know whether the plaintiff and Md. Ismail purchased the suit land in the month of Vadro.

On perusal of the evidences adduced by the plaintiff side I find that there is corroboration in the depositions of the P.Ws.-1, 2 and 3 regarding the conversation of sale, execution of the bainapatro and passing of consideration money. Regarding the possession of the Suit land PWs. 1, 2 and 3 categorically stated that plaintiff Abdus Satter @ Lal Mia possess the suit land and they have strongly denied that Ismail or the Defendant No.1 possess the Suit land. P.W-5 who is the father-in-law of the Defendant No.3 (Md. Ismail) stated in his deposition that Ismail (Defendant No.3) took taka 37,500/- (thirty seven thousand and five hundred) from the plaintiff in his presence. It is mentionable that Defendant No. 3, Md. Ismail did not appear before the court to contest the suit or denied the claim of the plaintiff.

The trial court decreed the suit in part on the finding that before executing any sale deed in favour of Ismail, the Defendant No. 3 did not acquire any title to the suit land and thus was not entitled to transfer his share. On the other hand the learned court of appeal below decreed the suit in full on the finding that since Ismail took taka 37,500/- (thirty seven thousand and five hundred) from the plaintiff and delivered the possession of his share, the plaintiff being the possessor of the entire suit land was entitled to get the decree in full as he purchased the entire suit land.

This Civil Revision is against the judgment of affirmance and both the courts below believed the evidences adduced by the plaintiff-opposite party and disbelieved the statements of the defendant-petitioner. I have considered the evidences on record. I have gone through both the judgments passed by the courts below and also considered the Revisional application. I have also examined the exhibited documents. After examining the statements of the P.Ws and also the D.Ws it appears that all the P.Ws categorically stated that there was a conversation for sale between the plaintiff Abdus Satter @ Lal Miah and the Defendant No. 1 Fazlur Rahman on 20<sup>th</sup> Vadro, 1398 B.S. All the P.Ws also categorically stated that on 25<sup>th</sup> Vadro, 1398 B.S a bainapatro was prepared which was executed by Defendant No.1, Fazlur Rahman and P.Ws-2 and 3 signed on the same bainapatro as witnesses and both of them proved their signatures before the court which were exhibited and marked as exhibits-3(Ka) and 3(Kha). I have also examined the said bainapatro which is marked as exhibit-3 and the signature of Defendant No.1, Fazlur Rahman is the similar as on the Civil Revisional application filed before this court and on the Vokatnama also. The Defendant No.1 also admitted the signature. The defendant's case is that he has signed on a blank stamp paper which was purchased in the name of Md. Ismail and he took loan of taka 25,000/- (twenty five thousand) from Ismail and mortgaged 0.37 gonda of land from the suit property and delivered possession to said Ismail on the condition that he will

get back the land and said blank stamp when he will pay the said loan money but no one came up to support his case before the court though P.W-2 stated that in the said month of Vadro defendant no. 1 took taka 25,000/- (twenty five thousand) from Md. Ismail but in cross-examination he said that he does not know whether on the said month of Vadro a bainapatro was executed or not in favour of plaintiff Abdus Sattar @ Lal Mia and Md. Ismail. It is unbelievable that the defendant No. 1 being an educated person and president of Ratanpur K.S.S he signed on a blank stamp paper and both the courts below disbelieved this version of the Defendant No.1-Petitioner. I also do not find any reason to believe this version of the Defendant No.1. On dissection of the evidences adduced by the parties I do not find any reason to interfere with the concurrent findings of the courts below. Only the law points was before the Appellate Court below that weather before executing a sale deed Md. Ismail was entitle to pass his share to the Plaintiff No. 1 after taking consideration money of his share. Since it has been proved and both the courts below believed that taka 37,500/-(thirty seven thousand and five hundred) as consideration was taken by Md. Ismail who delivered his share of possession to the plaintiff, the appellate court is right who found that the plaintiff is entitle to get the title deed of the entire suit land. In such circumstances I do not find any merit in the Rule which destined to fail.

In the result the rule is discharged. The judgment and decree dated 02.06.2005 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Kishoregonj in Other Class Appeal No. 46 of 1997 is hereby affirmed. The order of stay passed at the time of issuance of rule is hereby re-called and vacated.

Send down the Lower Court Records at once along with a copy of this judgment.