

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice A. K. M. Zahirul Huq

First Appeal No. 436 of 2015

Md. Mizanur Rahman (Kishlu) and another
.... Appellants

Versus

Most. Tara Begum and others
.... Respondents

Mr. Md. Towhidul Islam, Advocate
.... For the Appellant No. 1

Mr. Md. Masudur Rahman Rana, Advocate
.... For the Respondent Nos. 1-8

Judgment on 20.01.2026.

Md. Iqbal Kabir, J:

This appeal has been presented, at the instance of the plaintiffs-appellants, against the judgment and decree dated 26.10.2015 passed by the learned Joint District Judge, 2nd Court, Borguna in Title Suit No. 17 of 2012.

The short facts narrated to the appeal are that the appellants, as plaintiffs filled the instant suit being no. 17 of 2012 praying for specific performance of contract in the scheduled suit land. The plaintiff-appellants' case, in short, is that: the schedule properties were originally owned and possessed by some Erfan Uddin, Korban Ali and Hasem as rightly recorded in S.A Khatian Nos. 315 and 317 under plot nos. 2839, 2841, 2909, situated in Kawnia mouza of Police Station, District- Barguna. Each of the persons are equally owner of the land. Korban Ali transferred his share to his sons, namely Motahar Uddin Gazi, Atahar Uddin Gazi, Azahar Uddin Gazi, Sekandar Gazi, and Azahar Uddin Gazi by a registered heba-bil-ewaz deed No. 3819 dated 23.10.1978 and transferred this suit land. Atahar Uddin Gazi died, leaving behind one wife, Most. Tara Begum and daughter Rekha Begum, Nargis Begum, Pervin Begum, Salma Begum, Runa Begum, Laizu Begum and Moni Begum. They inherit the suit land and possess the same. Thereafter, on 19.10.2010, the defendants-respondents 01 to 08 executed a registered sale agreement with the plaintiff by consideration money amounting to Tk. 7,00,000/- (Tk. seven lac) being registered sale

agreement deed No. 1698. Defendants-Respondents No. 01 to 08 took consideration money and handed over the possession to the plaintiffs. Since then, the plaintiffs have possessed the suit land. Subsequently defendant refused to execute the sale deed on 15.04.2012. Hence, the plaintiffs instituted the suit on 18.04.2012.

On the contrary, the defendant-respondents appeared before the court and contested the suit by filing written statement and denied the material allegations made in the plaint. In the written statement, they stated that defendant-respondents originally agreed to sell 7.5 decimals of land out of the suit property for Tk. 7,00,000/- (Tk. seven lac) only. Accordingly, the defendants entered into a registered Baina deed dated 19.10.2010 with the plaintiffs by taking Tk. 4,00,000/- (Tk. four lac) by way of advance. The plaintiff-appellants never gave any money to the defendant-respondents; rather, they purportedly made 2 (two) more fake money receipts dated 15.06.2011 and 07.04.2012 to show that the balance amount had been paid to the defendants-respondents No. 01 to 08.

During the hearing, the plaintiff-appellants examined two witnesses as P.W-1 and P.W-2, and during the time of their testimony, submitted sale deed No. 1698 dated 19.10.2010, unregistered receipt dated 15.06.11 and 07.04.12, which were marked as exhibits No. 1-3.

However, after hearing and considering the materials and evidence on record, the learned Judge of the trial Court, by its judgment and order, dismissed the suit for specific performance of the contract by *exparte* against the defendants.

Being aggrieved by and highly dissatisfied with the impugned judgment and decree, the plaintiffs as appellants, preferred the instant appeal before this Court.

Mr. Md. Towhidul Islam, learned Advocate for the appellants, submits that the Court below failed to apply its judicial mind to the points of law, fact, and circumstances of the case. According to him, the Court misread and misappreciated the evidence on record, both oral and documentary and thus, came to a wrong and erroneous finding, causing miscarriage of justice and passed the impugned judgment, which is liable to be set aside.

He submits that the learned trial Court did not frame issues, according to him, the impugned judgment and decree is illegal and not sustainable in law as it has passed without framing any issues.

He submits that due to misreading and non-reading, the trial Court passed the impugned judgment and *ex parte* decree. He claims the record shows defendant respondents appeared in the court and file written statement to the Court on 25.02.2013, but those were not considered by the trial Court, which causes a miscarriage of justice.

He submits that the *bainanama* was executed, the plaintiff appellant given the consideration money amounting to Tk. 7,00,000/- (Tk. seven lac) to the defendant- respondents, on the same date, i.e., 19-10-2021, who handed over the possession of land to the plaintiff. But the learned trial Court without considering that aspect, passed the impugned judgment.

Mr. Md. Masudur Rahman Rana, learned Advocate for the defendants-respondents No. 1-8, submits that the respondents had agreed to sell only 7.50 decimals of land to the plaintiffs-appellants. However, the plaintiffs dishonestly mentioned 21 decimals of land in the agreement for sale, being Deed No. 1698. According to him, respondents Nos. 2 to 8 live with their husbands in different places, away from the mouja where the suit land is located. On 19.10.2010, the defendants travelled from their distant places and arrived late. As a result, they did not get enough time or opportunity, either before or after registration, to read the agreement or have it properly read over and explained to them. Taking advantage of this situation, the plaintiffs deceived the defendants and got the agreement registered for 21 decimals of land instead of the agreed 7.50 decimals. The defendants were therefore unaware of the fraud at the time of registration.

He submits that the defendant-respondents agreed to sell 7.5 decimals of land out of the suit property for Tk. 7,00,000/- (Tk. seven lac) only. Accordingly, a registered sale agreement deed no. 1698 dated 19.10.2010 was executed upon receiving Tk. 4,00,000/- (Tk. four lac) as advance. The plaintiff-appellants never paid the remaining Tk. 3,00,000/- (Tk. three lac). In fact, the plaintiff-appellants did not give any further money at any time rather, they created two false money receipts dated 15.06.2011 and 07.04.2012, thereby, claiming the balance amount had been paid.

He submits that exhibits 2 and 3 are forged, the plaintiff did not give the balance money, there is no question to receive balance money and put signature on the money receipt exhibits 2 and 3 by the defendant/ respondent.

This Court heard the learned Advocate appearing for the parties, went through the memo of appeal, judgments of the trial Court below and evidence lying with the lower court record and considered the submissions.

However, on our scrutiny, it appears the trial Court passed its judgment without framing any issues in the case of specific performance of contract with the finding that "নালিশী সম্পত্তিতে আদৌ দরখাস্তকারীদের পূর্বাধিকারী মতে আতাহার উদ্দিন গাজীর আরজির দাবী অনুযায়ী ১৩-১০-৭৮ তারিখে ৩৮১৯ নং হেবা দলিল মূলে স্বত্ব ছিল কিনা" The Court further stated in his judgment that; বাদীপক্ষ নালিশী খতিয়ান দাবীকৃত ১৩-১০-১৯৭৮ তারিখের হেবাবিল এওয়াজ দলিল আদালতে সাক্ষী হিসেবে দাখিল করেননি।" Against which Mr. Md. Towhidul Islam, learned Advocate submits that the finding of the court is totally mis-conceived, the learned judge traveled beyond his jurisdiction and acted illegally. According to him alleged heba deed was in custody of the defendants and it is not the subject matter of the suit. He brought notice that the defendants-respondents in their written statement states that "হেবা গ্রহিতা আতাহার উদ্দিন গাজী উক্ত নং হেবাবিল এওয়াজ নামা দলিল মূলে খতিয়ান সমূহের ভূমিতে স্বত্ববান ও মালিক দখিলকার থাকিয়া মৃত্যুবরণ করিলে তৎ ত্যাজ্য ভূমি ১ ক্রী অত্র মোকদ্দমার ১নং বিবাদী তারা বেগম, ১ পুত্র দুলাল গাজী এবং ৭ কন্যা ২-৮ নং বিবাদীনি ওয়ারিশ সূত্রে ভোগ দখলকার ও ব্যবহার করিয়া আসিতে থাকেন।" From the above, it appears that defendant-respondents admitted the plaintiffs case, on which it has reminded that admitted fact need not be proved.

Indeed, in this case, the learned trial Court passed its judgment and decree without framing any issues, which is unsustainable and not proper in law, as the court failed to apply its judicial mind to the specific points of law and fact relevant to a suit for specific performance of a contract. A judgment and decree passed without the framing of issues is considered illegal and not sustainable in law. This is because the framing of issues is essential for the Court to direct its focus on the specific points of contention between the parties. In the absence of such issues, the Court cannot effectively adjudicate the dispute or ensure that all relevant legal and factual questions are addressed. The lack of issues can lead to a miscarriage of justice.

The defendant claimed that they agreed to sell 7.5 decimals of land, but the appellants "cleverly" and deceitfully included 21 decimals in the registered deed. According to them, respondents (mother and seven daughters) lived

outside the area and arrived late to the Sub-Registry Office; they had no opportunity to read or understand the deed before signing, allowing the appellants to take advantage of them. Further, they acknowledged TK. 4,00,000/- as an advance, they stayed firm that the remaining TK. 3,00,000/- was never paid. They categorically denied the authenticity of the money receipts (Exhibits 2 and 3) submitted by the appellants, claiming that those are fake and forged documents, and on that count, they have filed an application to this Court. Thereby, the Court below can examine the authenticity of the evidence. This includes investigating claims of "fake" or "forged" money receipts used to show payment of consideration.

On consideration of the above facts and circumstances of the case and materials on record, we hold that justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for a fresh trial, so that the Court can frame the issue to adjudicate the dispute or ensure all relevant legal and factual question including authenticity of the evidence.

In the result, the Appeal is allowed without any order as to costs.

The impugned judgment and decree dated 26.10.2015 passed by the learned Joint District Judge, 2nd Court, Borguna in Title Suit No. 17 of 2012, is thus set aside and the case is remanded back to the Court below for a fresh trial.

Send down the lower Court records with a copy of this judgment to the Court below at once.

A. K. M. Zahirul Huq, J:
I agree.