

**Present:-*****Mr. Justice Mahmudul Hoque*****Civil Revision No.5835 of 2001**

Dhiman Chandra Paul

... Petitioner

-Versus-

Ranajit Kumar Paul and others

... Opposite- parties

Mr. A.B. Roy Chowdhury, Advocate

...For the petitioner

Mr. Md. Zahurul Islam Mukul, Advocate

...For the opposite-party No.2(a)-2(b).

**Judgment on 6<sup>th</sup> August, 2025.**

In this application under Section 115(1) of the Code of Civil Procedure Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 08.05.2001 passed by the learned Subordinate Judge (now Joint District Judge), 1<sup>st</sup> Court, Bagerhat in Title Suit No.02 of 1994 allowing the same and thereby reversing the judgment and decree dated 29.06.1996 passed by the learned Senior Assistant Judge (in-charge), Rampal, Bagerhat decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The petitioner, as plaintiff, instituted Title Suit No.02

of 1994 in the Court of Senior Assistant Judge (in-charge), Rampal, Bagerhat against the opposite parties, as defendant, for a decree of Specific Performance of Contract, stating that the suit property belonged to defendant Nos.1 and 2 by inheritance and by way of deed of exchange who while in possession proposed to sell the suit property and the plaintiff agreed to purchase the same. Price of the property has been fixed at Tk.35,000/- out of which the plaintiff made advance of Tk.25,000/- to the defendant Nos.1 and 2 who upon receipt of advance money executed an agreement for sale on 21.12.1992 in favour of the plaintiff, on the terms and conditions that the plaintiff will pay balance Tk.10,000/- within a year and upon receipt of the balance amount, the defendant Nos.1 and 2 shall execute and register the sale deed in favour of the plaintiff transferring the suit property. After execution of agreement for sale the defendant Nos.1 and 2 delivered possession of the suit property to the plaintiff and their title document i.e. registered deed of exchange dated 30.04.1989.

Subsequently, on 30.08.1993 the plaintiff paid the balance amount of Tk.10,000/- to the defendant Nos.1 and 2 who upon receipt of said money granted a receipt to the plaintiff in acknowledgement of

the same. After payment of full consideration the plaintiff requested the defendant Nos.1 and 2 to execute and register sale deed in his favour. Though they assured once again that they will execute and register sale deed, but all of a sudden on 29.10.1994 refused to execute and register the sale deed. The plaintiff, thereafter, came to know that the defendant Nos.1 and 2 created a false and fraudulent sale deed in favour of defendant No.3 ignoring execution of the agreement for sale. The transfer so have been made by defendant Nos.1 and 2 in favour of defendant No.3 is without consideration and not acted upon by delivery of possession. Hence, the present suit for decree of Specific Performance of Contract.

Defendant Nos. 3 and 5 contested the suit by filing separate written statement denying all the material facts made in the plaint, contending inter alia, that the suit is not maintainable in its present form, barred by limitation and the suit is false and fictitious. Case of the defendant No.3 is that the suit land belonged to defendant Nos.1 and 2 who sold the same to the defendant No.3 for a consideration of Tk.22,000/- by a registered sale deed dated 05.09.1993. Since then the

defendant No.3 has been possessing the suit land, the agreement for sale is collusive and antedated.

Case of the defendant No.5 is that the property measuring .57 acre belonged to defendant Nos.1 and 2 who sold the same to the defendant No.3 by a registered deed dated 05.09.1993 for a consideration of Tk.22,000/-. Since the defendant No.3 is a stranger to the property, the defendant No.5 as co-sharer in the suit land filed Pre-emption Miscellaneous Case No.66 of 1993 praying for pre-emption of the suit property which is pending for disposal. The defendant No.3 in collusion with the plaintiff-petitioner managed to file the suit only to undo pre-emption proceeding filed by the defendant No.5 and as such, the suit is collusive one and liable to be dismissed.

The trial court framed 4(four) issues for determination of the dispute between the parties. In course of hearing the plaintiff examined 2(two) witnesses as P.Ws, the defendant No.3 examined 2(two) witness as D.Ws and the defendant No.5 examined single witness in favour of their respective cases. Plaintiff submitted some documents in support of the claim which were duly marked as

exhibits. The trial court after hearing decreed the suit by its judgment and decree dated 29.06.1996.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendant No.5, preferred Title Appeal No.160 of 1996 before the learned District Judge, Bagerhat. Eventually, the appeal was transferred to the Court of learned Subordinate Judge (now Joint District Judge), 1<sup>st</sup> Court, Bagerhat for hearing and disposal, who after hearing by the impugned judgment and decree dated 08.05.2001 allowed the appeal and thereby reversed the judgment and decree of the trial court and dismissed the suit. At this juncture, the petitioner moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status-quo.

Opposite party No.1 contested the Rule by filing counter affidavit.

Mr. A.B. Roy Chowdhury, learned Senior Advocate appearing for the petitioner at the very outset submits that the plaintiff in support of his case examined evidences both oral and documentary before the

trial court who found that the defendant Nos.1 and 2 executed an agreement for sale in favour of the plaintiff and received consideration money. The defendant Nos.1 and 2 did not appear in the suit and denied the case of the plaintiff, meaning thereby, agreement for sale was duly executed and the vendors received consideration. Moreover, an attesting witness to the agreement was also examined as P.W.2. The trial court discussed all the oral evidences and the agreement for sale and rightly found and observed that for obtaining a decree of Specific Performance of Contract, the plaintiff is to prove a valid agreement, payment of consideration and delivery of possession. In the instant case the plaintiff could able to prove all the ingredients of a valid agreement for sale and as such, rightly decreed the suit. The appellate court while allowing the appeal and reversing the judgment and decree of the trial court did not discuss any evidence and controverted the findings and observation made by the trial court, as such, the judgment passed by the appellate court is not in accordance with law and hence, committed an error of the law in the decision occasioning failure of justice.

Mr. Md. Zahurul Islam Mukul, learned Advocate appearing for the opposite party Nos.2(a)-2(b) referring the annexures annexed to the counter affidavit submits that as admitted by the plaintiff in the plaint that the suit property was sold by the defendant Nos.1 and 2 to the defendant No.3 by a registered deed dated 05.09.1993 at a consideration of Tk.22,000/-. The defendant No.5 being co-sharer of the property filed Pre-emption Miscellaneous Case No.66 of 1993 in which present plaintiff-petitioner was opposite party No.20 who contested the case by filing written objection. The trial court by judgment and order dated 25.05.2000 allowed pre-emption in favour of pre-emptor (defendant No.5 in suit) and in that case, the court by its order allowed the plaintiff to withdraw the deposit whatever made by the pre-emptor. Against the judgment and order passed by the Senior Assistant Judge, Rampal, Bagerhat in Pre-emption Miscellaneous Case No.66 of 1993. Present petitioner, as opposite party No.20, preferred Miscellaneous Appeal No.33 of 2000 before the learned District Judge, Bagerhat which was heard and disposed of by the Subordinate Judge (now Joint District Judge), 1<sup>st</sup> Court, Bagerhat on transfer who after simultaneous hearing with the instant appeal by

judgment and order dated 08.05.2001 dismissed the appeal maintaining judgment and order of the trial court allowing pre-emption. Against the judgment and order of the appellate court present petitioner did not move before the higher court, meaning thereby, present petitioner conceded the judgment and order of the trial court and as well as the appellate court passed in Pre-emption Miscellaneous Case No.66 of 1993 and Miscellaneous Appeal No.33 of 2000. Therefore, this Rule itself has become useless, but the petitioner is entitled to receive the consideration money deposited by the pre-emptor in Pre-emption Miscellaneous Case No.66 of 1993.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Admittedly, suit property originally belonged to defendant Nos.1 and 2 by inheritance and by way of exchange. It is also admitted that defendant Nos.1 and 2 by a registered deed dated 05.09.1993 transferred the suit property in favour of defendant No.3 at a consideration of Tk.22,000/-. The plaintiff filed this suit for Specific



Performance of Contract, claiming that defendant Nos.1 and 2 entered into an agreement for sale with the plaintiff on 21.12.1992 for selling the property at a consideration of Tk.35,000/-, out of which he paid Tk.25,000/- as advance and also made payment of balance amount of Tk.10,000/- on 31.08.1993. Though, the defendant Nos.1 and 2 received full consideration from the plaintiff, but refused to execute and register sale deed in his favour, hence, the suit was filed on 18.01.1994. Defendant No.5, filed Pre-emption Miscellaneous Case No.66 of 1993 before filing of the present suit seeking pre-emption of the suit property against the defendant No.3.

It is claimed by the defendant No.5 that to make the pre-emption proceeding invalid, defendant Nos.1 and 2 in connivance with plaintiff created the antedated bainanama and filed the present suit for a decree of Specific Performance of Contract. The defendant Nos.1 and 2 did not appear in the suit and contest the same by filing written statement either admitting or denying the claim of the plaintiff, meaning thereby, they have connivance with the present plaintiff.

It is fact that, present suit was decreed by the trial court by its judgment and decree dated 29.06.1996. Pre-emption Miscellaneous Case No.66 of 1993 was disposed of by the trial court on 25.05.2000 allowing pre-emption in favour of pre-emptor (defendant No.5 in suit). Against the judgment and decree passed in Title Suit No.02 of 1994, defendant No.5 preferred Title Appeal No.160 of 1996 and against the judgment and order passed in Pre-emption Miscellaneous Case No.66 of 1993, Opposite party No.20 (plaintiff in the present suit), preferred Miscellaneous Appeal No.33 of 2000 both the appeals were heard and disposed of by the Sub-ordinate Judge (now a Joint District Judge), 1<sup>st</sup> Court, Bagerehat on transfer who after hearing by judgment dated 08.05.2001 allowed Title Appeal No.160 of 1996 reversing the judgment and decree of the trial court, dismissing the suit and dismissed Miscellaneous Appeal No.33 of 2000 affirming the judgment and order of the trial court. Resultantly, the defendant No.5 got pre-emption of the case property sold to defendant No.3 by defendant Nos.1 and 2 and in that case deposit whatever made by the pre-emptor was allowed to be withdrawn by opposite party No.20 (plaintiff in the present suit) considering his claim of payment of

money to the defendant Nos.1 and 2. Though, the opposite party No.20, preferred Miscellaneous Appeal No.33 of 2000 which was dismissed affirming judgment and order of the trial court, he did not prefer revision against the judgment and order of the appellate court, meaning thereby, he conceded that the pre-emption allowed in favour of the pre-emptor legally. When the petitioner admitted and accepted the judgment passed by the trial court in Pre-emption Miscellaneous Case No.66 of 1993 and appellate court passed in Miscellaneous Appeal No.33 of 2000 he has nothing to agitate again by fling this revision against the judgment and decree of the appellate court passed in Title Appeal No.160 of 1996.

Therefore, I find that the appellate court while allowing the appeal and dismissing the suit of the plaintiff committed no illegality or error of law in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

The order of status-quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.

*Helal/ABO*