Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 285 of 1995

Appellant Nos. 1 and 2, Md. Abdul Hakim Miah and Mosammat Belayetonnessa being dead their legal hires: 2(a) Md. Al-Mamoon and others

….Appellants

Versus

Respondent No. 1, Abdul Goffer Miah, being dead, his legal heirs: 1(a) Most. Zaida Begum and others

….Respondent

Mr. Tapash Kumar Biswas, Advocate
…For the Appellants

Mrs. Nahid Hossain, DAG with
Mr. M Mohiuddin Yousuf, DAG,
Mr. Md. Abdul Mannan, DAG,
Mr. Md. Towhidul Islam, A.A.G,
Mr. Md. Sabbir Hossain, AAG, and
Mr. Nooray Alam Shiddique, AAG
….For the Proforma Respondent Nos. 2-4

Judgment on 03.02.2026.

Md. Iqbal Kabir, J:

The instant First Appeal has been directed against the judgment and decree dated 31.08.1994 (decree signed on 03.09.1994) passed by the learned Subordinate Judge, 2nd Court, Pirojpur in Title Suit No. 49 of 1994.

The short facts stated in this appeal are that the respondent No. 1 as plaintiff filed Title Suit No. 89 of 1994 before the Court of learned Subordinate Judge, 2nd Court, Pirojpur for specific performance of the contract regarding 25½ decimals of land against the defendant Nos. 1 and 2 in respect of 'Kha' Schedule land of the plaint and further for declaration in VP Case No. 205/1976-77 against the defendant No. 4 which is illegal.

The plaint case in short is that Jagadish Chandra sold 25% decimals of land to the defendant No. 1 by 3(three) kabala under S.A Khatian No. 180 and Nirmal Chandra sold 17 decimals of land to the defendant No. 1, but the defendant No. 1 finally registered the deed of kabala measuring the said 17 decimals land in favour of his wife-defendant No. 2 as benamder. After purchasing the said total land-25½ decimals land, the defendant No. 1 erected

the houses and established a rice mill over the said land. Thereafter, the plaintiff came to know by the Mistri of Rice Mill, namely Abdul Halim, that the defendant No. 1 will sell the said above-mentioned land. After getting the said information, the plaintiff, along with Abdul Halim and Abdul Rahman, went to the house of the defendant No. 1 and asked him regarding the sale of the said land and obtained information that the defendant No. 1 would sell the said land. Then, the plaintiff informed defendant No. 1 that he would purchase the said land. After discussing the matter, the value of the said land was fixed at a fixed amount of Tk. 1,57,001/-. Thereafter, on 16.03.1984, the contract of sale was written, and the defendant No. 1 received Tk. 1501/- as an advance, and the next day, the defendant No. 1 delivered the possession of the said land with house and rice mill to the plaintiff. Then, one Quddus rented the said house of the plaintiff as a tenant. According to the contract, the defendant No. 1 will give registration of the said land within 3 (three) months after receiving the rest of the money as per the contract. On the same date, the plaintiff also gave an undertaking (angikarnama) to pay the rest of the money as per the contract. Thereafter, the plaintiff went to the defendant No. 1 to pay the rest of the money, requesting to register the said land in the name of the plaintiff, but the defendant No. 1 refused to receive the rest of the said money from the plaintiff and also refused to register the deed of the said land. Then, the plaintiff sent a legal notice demanding notice on 12.05.1984 to the defendant No. 1 through the lawyer, and the said legal notice was also published in the Daily Ittafaq dated 13.05.1984.

Thereafter, the plaintiff made an application in respect of execution of the said contract to the UNO, and then, the UNO issued notice to the defendant No. 1, and after getting the said notice, the defendant No. 1 went to the UNO and took time informing the plaintiff that he would give registration in favour of the plaintiff. But, on 18.05.1984, the defendant No. 1 neither received the rest of the money nor gave the registration of the said deed, and hence, the suit.

The defendant No. 1 contested the suit by filing a written statement denying all the material allegations made in the plaint. He contended, inter-alia,

that the suit is not maintainable in its present form, barred by limitation, bad for defect of parties, and that the plaintiff has no legal right, title, or interest to institute the suit. According to him, the suit is liable to be dismissed.

The case of defendant No. 1, in short, is that the suit land originally belonged to Kartic Chandra (23 decimals), Jonardon (23 decimals), and Jogendra Nath (68 decimals) under SA Khatian No. 180, Plot Nos. 285/287. After the death of Jonardon, his son Jagadish Chandra inherited the property. Said Jagadish Chandra sold 3 decimals of land to defendant No. 1 by a registered kabala deed dated 16.08.1974 and further sold 5½ decimals by another registered kabala dated 01.01.1976 and delivered possession thereof. Although there had been an earlier agreement for the lease of 19 decimals for 18 years, ultimately only 8½ decimals were transferred by registered deeds in favour of defendant No. 1. It is further stated that in Money Suit No. 135 of 1972, filed before the Munsiff, 2nd Court, Pirojpur, the matter was disposed of on compromise. Thereafter, Jagadish Chandra sold the relevant land to Nirmal Chandra Das by registered kabala dated 19.06.1973 and delivered possession. Subsequently, Nirmal Chandra Das sold the said land to defendant No. 2 by registered kabala dated 22.01.1976 and delivered possession accordingly. Thus, according to defendant No. 1, defendant Nos. 1 and 2 became lawful owners of the respective portions of the suit land. The defendant further stated that they erected shops and a rice mill over the suit land and planted trees thereon and have been possessing the same. Upon learning that the land had been enlisted as vested property in VP Case No. 245/1976-77, they instituted Title Suit No. 50 of 1978 (renumbered as 35 of 1983) before the Munsiff, 2nd Court, Pirojpur, seeking a declaration of title and challenging the vested property proceeding as illegal. Defendant No. 1 categorically denied entering into any agreement with the plaintiff for the transfer of 25½ decimals of land or receiving any earnest money. According to him, even if any written agreement (ongikarnama) existed, the same related only to 8½ decimals and not 25½ decimals as alleged. He also stated that certain registered documents were stolen from the rice mill premises, and in that connection, defendant No. 2

lodged GR Case No. 20 of 1984 before the police station. However, based on the above grounds, he prayed for dismissal of the suit.

By filing a separate written statement, defendant No. 2 also contested the suit, denying the material allegations of the plaintiff. Her case, in brief, is that Nirmal Chandra Das became the owner of 17 decimals of land under S.A Khatian No. 180, Plot Nos. 285 and 287, having purchased the same from the SA recorded owner Jagadish Chandra Das. Thereafter, Nirmal Chandra Das sold the said 17 decimals to defendant No. 2 by registered kabala dated 21.01.1976 and delivered possession thereof. It is further stated that defendant No. 1, her husband, purchased 8½ decimals of land from Jagadish Chandra Das by two registered kabala deeds, and thus defendant Nos. 1 and 2 became owners of their respective portions. They jointly erected shops and a rice mill over the land and planted trees thereon, and have been in continuous possession.

Upon coming to know that the land was enlisted as vested property in VP Case No. 245/1976-77, they filed Title Suit No. 50 of 1978 before the Munsiff, 2nd Court, Pirojpur, for a declaration of title. She further stated that there was no agreement whatsoever between her and the plaintiff regarding the suit land. Therefore, the suit for specific performance is false, vexatious, and filed with an intention to harass the defendants.

The Government/defendant No. 5 also contested the suit, contending that the property had been enlisted as vested property under VP Case No. 205/1976-77 and that neither the plaintiff nor defendant Nos. 1 and 2 had a valid title.

However, in the course of the trial, the learned trial Court framed 4(four) issues as to whether the suit is maintainable in the present form or not; as to whether the suit is barred by limitation; as to whether the disputed baina on 16.03.1984 is right or wrong, and whether the plaintiff will get any other relief as prayed for.

However, during the trial, the plaintiff examined 4(four) P.W.s, while defendant Nos. 1, 2, and 5 examined 6(six) witnesses in support of their claim.

The learned trial Judge, after hearing the parties considering the pleadings, evidence, and other material documents of the case, decreed the suit in part regarding 19 decimals of land with four shops with a rice mill by the judgment and decree dated 31.08.1994 (decree signed on 03.09.1994).

Against the aforesaid judgment and decree, being aggrieved, defendant Nos. 1 and 2 have preferred this appeal.

It is pertinent to note that this is a long-pending appeal. No one has taken the initiative for its disposal. However, on behalf of the respondent No. 2, inform this Court that the land in question was not listed under the category of vested property.

Mr. Tapash Kumar Biswas, the learned Advocate for the appellants, contends that the impugned judgment and decree passed by the learned Subordinate Judge are erroneous both in law and fact and are liable to be set aside.

Mr. Biswas submits that defendant No. 1 is the lawful owner of only 8½ decimals of land by virtue of two registered kabala deeds. Therefore, there was no scope or legal basis for entering into any agreement with the plaintiff regarding 25½ decimals of land. The learned trial Court, without properly considering the pleadings, evidence, and documents on record, erroneously decreed the suit in part for 19 decimals of land.

He next argues that in a suit for specific performance of a contract, the plaintiff must prove the agreement strictly and must approach the Court with clean hands. The plaintiff failed to examine the attesting witnesses, scribe, and other relevant witnesses to prove the alleged bainanama dated 16.03.1984. Despite such failure of proof, the trial Court decreed the suit, which amounts to a misconception of law and facts.

Mr. Biswas contended that there was no agreement whatsoever between the plaintiff and defendant No. 2. As such, the suit for specific performance against defendant No. 2 was not maintainable. Nevertheless, the learned Subordinate Judge decreed the suit in respect of land which allegedly belonged to defendant No. 2, making the judgment illegal and baseless.

He further submits that the alleged agreement for the sale of 25½ decimals contains discrepancies, including variation in the signatures of defendant No. 1 at two places. Defendant No. 1 consistently denied executing such an agreement and claimed that Exhibit 1 was a forged and fabricated document. According to him, if any agreement existed, it was only regarding 8½ decimals, as reflected in the angikarnama (Exhibit-Gha). The plaintiff, with mala fide intention, allegedly exaggerated the land area to include property belonging to defendant No. 2.

It is also argued that there was no delivery of possession to the plaintiff as alleged. The angikarnama itself indicates the area as 8½ decimals, contradicting the plaintiff's claim of 25½ decimals. Therefore, the agreement as claimed by the plaintiff stands disproved.

Moreover, the learned trial Court failed to consider material discrepancies between the plaint and the evidence of P.W.1, and that a third case was made out beyond the pleadings. Such evidence, being inconsistent with the pleadings and agreement, was inadmissible. Despite this, the suit was decreed in part.

Mr. Biswas, lastly, it is submitted that specific performance is a discretionary relief. The plaintiff, having failed to establish a valid title and having not proved the agreement properly, was not entitled to such equitable relief. Furthermore, the issue regarding the Vested Property proceeding (VP Case No. 205/1976-77) had already been challenged by defendant Nos. 1 and 2 in Title Suit No. 54 of 1978 before the competent Civil Court. Though without establishing a title, the plaintiff could not challenge the vested property proceeding. The trial Court failed to consider this aspect.

It is pertinent to note that no one appears to contest the appeal on behalf of the defendant-opposite parties, while it appears in the list for hearing. Since this is a long-pending matter, and by this time 30 (thirty) years have elapsed, we find no reason to keep it pending for an unlimited period.

This Court heard the learned Advocate for the appellants, went through the memo of appeal, impugned judgment, and decree vis-à-vis perusing the

documents exhibits appended in the paper book, and compared those kept with the lower court records available before us. On going through the plaint, other documents, and evidence of P.W.s and D.W.s, this Court examined how far the plaintiff has been able to prove its case by adducing and producing evidence.

The appellants contend that defendant No. 1 was the owner of only 8½ decimals of land and defendant No. 2 was the owner of 17 decimals by separate registered kabala deeds. It is admitted that no agreement was executed between the plaintiff and defendant No. 2. It is settle principle of law that in a suit for specific performance, relief can only be granted against a party to the contract. If defendant No. 2 was not a signatory to the alleged agreement, the suit, so far as it relates to her property, would not be maintainable. The trial Court, however, decreed the suit in part for 19 decimals without clearly determining whether the land decreed formed part of the property allegedly agreed to be sold by defendant No. 1 alone or included property standing in the name of defendant No. 2. Therefore, the maintainability of the suit, particularly against defendant No. 2, is a crucial issue requiring strict scrutiny.

It is admitted that defendant No. 1 was the owner of 8½ decimals of land by registered deeds, while defendant No. 2 was the owner of 17 decimals by separate registered kabala. Indeed, the plaintiff did not make any agreement with the defendant No. 2. There is no evidence that defendant No. 2 entered into any agreement with the plaintiff. In the absence of any agreement with defendant No. 2, the suit for specific performance against her property was clearly not maintainable. The learned trial Court failed to appreciate that specific performance cannot be granted against a person who is not a party to the contract. Furthermore, if the alleged agreement was for 25½ decimals, the learned trial Court did not assign any clear legal basis for granting a decree in respect of 19 decimals. Such a partial decree without clear findings on contractual obligation and title is unsustainable in law.

However, in a suit for specific performance, the burden lies heavily upon the plaintiff to prove the execution, genuineness, and enforceability of the agreement. The defendant No. 1 categorically denied execution of the alleged

agreement (Exhibit-1) and asserted that the same was forged. In the above context, it is pertinent to note that PW-1 deposed that ঐ কথা বার্তা অনুযায়ী ১৬/৩/৮৪ ইং তারিখে ১নং বিবাদী চুক্তিপত্র লিখিয়াছে এবং উপস্থিত লোকজনই বাদী হইয়াছে। এই সেই চুক্তিপত্র যাহা প্রদর্শনী-১। and in his cross-examination states that ইহা সত্য নহে যে আমার বাড়ীতে বসিয়া ১নং বিবাদী চুক্তিপত্র করিয়া গিয়াছে। ১নং বিবাদী নিজে চুক্তিপত্র রাইস মিল ঘরে বসিয়া লিখিয়া দিয়াছে। চুক্তি পত্র হওয়ার পর অঙ্গিকার নামার জন্য আমি ১নং বিবাদী সে একটি সাদা র‍্যাফে দস্তখত করিয়া দিয়াছি। Upon plain reading and on scrutiny, it appears from Exhibit-1 that there are material discrepancies and inconsistencies in the signature of defendant No. 1 on the alleged agreement (Exhibit No. 1). The exhibit-1 document is not agreemental document, it is created by the plaintiff, because the defendant was owner of 8½ decimals land and it has mentioned in angikarnama. No satisfactory explanation has been provided regarding such a discrepancy. If any agreement existed, it was only regarding 8½ decimals, as reflected in the angikarnama (Exhibit-Gha). Exhibit No.1 itself did not support the contention of the plaintiff. Moreover, the plaintiff failed to examine all material witnesses necessary to prove the due execution of the document beyond doubt. The learned trial Court, without scrutinizing these material contradictions properly, accepted the agreement/exhibit No. 1 as genuine. Therefore, it is our considered view that the finding of the Court below is not supported by reliable and cogent evidence.

Although the plaintiff claimed readiness and willingness to perform his part of the contract, mere assertion is not sufficient. Since there was a serious doubt regarding the execution of the agreement itself, the question of readiness and willingness becomes immaterial. Further, it has remained that specific performance is an equitable and discretionary relief. The plaintiff must come before the Court with clean hands and establish a lawful and enforceable contract, where the execution of the agreement (Exhibit No. 1) is doubtful, and the extent of land claimed exceeds the admitted ownership of the executant; equitable relief cannot be granted. The learned trial Court misdirected itself in law in granting a partial decree without proper findings regarding an enforceable contract and lawful ownership.

Upon careful consideration of the pleadings, evidence, and submissions of the learned Advocate, we are of the view that the plaintiff has failed to prove the alleged agreement (Exhibit No. 1) dated 16.03.1984 in accordance with the law. The learned Subordinate Judge erred in decreeing the suit in part without a proper legal foundation. However, this Court finds merit in this appeal.

Accordingly, the appeal is allowed.

However, there will be no order as to costs.

The judgment and decree dated 31.08.1994 (decree signed on 03.09.1994) passed by the learned Subordinate Judge, 2nd Court, Pirojpur in Title Suit No. 49 of 1994 are hereby set aside.

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

Md. Riaz Uddin Khan, J:

I agree