

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL NO.448 OF 2018 with
CIVIL RULE NO.440(F) OF 2018

Sree Ballov Chandra Das being dead his legal heirs-
Uttam Chandra Namo and others

.... Appellants

-Versus-

Abdul Motaleb and others

.... Respondents

Mr. Abul Fazal, Advocate with

Mr. Muhammad Rayhan Uddin, Advocate

.... For the appellants.

Mr. Taijul Islam Miajee, Advocate

.... For the respondent Nos.3-11.

Heard on 06.05.2026, 12.07.2026 and 13.07.2026.
Judgment on 16.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 12.05.2016 passed by the learned Joint District Judge, 2nd Court, Chandpur in Money Suit No.2 of 2013 decreeing the suit.

Civil Rule Nos.440(F) of 2018 arose out of this First Appeal on an application filed by the petitioners for temporary injunction.

This First Appeal and above Civil Rule are heard together and being disposed of by this single judgment.

Facts in short are that respondent Nos.1 and 2 as plaintiffs instituted above Money Suit for Taka 7,31,664/- alleging that the defendant while owning and possessing 37 decimal land B. S. Plot No.7415 transferred two decimal land to the plaintiffs- by registered kabla deed dated 22.08.2007. Due to shortage of time possession of above land could not be delivered on above date. The defendants took time on several pretexts for measurement and delivery of possession. It was revealed that the defendant transferred 20 decimal land to Abdur Rashid Bakaul by registered kabla deed on 15.03.2006. The boundaries of land of kabla deed of Abdur Rashid Bakaul also encompasses the boundary of land of the kabla deed of the plaintiffs. The defendant agreed to transfer double quantity of land and execute and register a correction deed but the defendants did not comply with above assurances. Plaintiff No.2 as complainant has filed C. R. Case No.73 of 2011 against the defendant for above occurrence. The plaintiffs are entitled to get Taka 7,00,000/- as consideration money and Taka 31,664/-registration cost of above kabla deed from the defendant.

Despite service of process defendant did not enter appearance and the learned Joint District Judge fixed above suit for ex-parte hearing. The plaintiffs examined two witnesses and produced and proved documents which were marked as Exhibit Nos.1 and 2.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit ex-parte for Taka 7,31,664/-.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above defendants as appellants moved to this Court and preferred this First Appeal.

Mr. Abul Fazal, learned Advocate for the appellants submits that now deceased defendant was defendants were the rightful owner and possessor of 37 decimal land of disputed Plot No.7415 and he transferred 20 decimal land to Abdur Rashid Bakaul by registered kabla deed dated 15.03.2006 and disputed 2 decimal land to the plaintiffs by registered kabla deed dated 22.08.2007. The defendant had no knowledge of above Money Suit and no summon of above suit was served upon the defendant. After above money suit was decreed the defendants deposited the decreetal money in Court by chalan on 04.04.2018. The defendant also preferred this appeal in the High Court Division and obtained an order of stay against execution of above judgment and decree. But respondent Nos.1 and 2 most illegally put above decree into execution and sold undisputed 59 decimal land of the appellants in auction which was purchased by respondent Nos.3-11. Above 59 decimal land was previously transferred to several persons by registered kabla deeds and the defendant did not have any subsisting interest in above land. The plaintiff filed a false Criminal

Case for above occurrence and the old and innocent defendant was convicted and after release from prison he died. The ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving the defendants an opportunity to contest above suit.

On the other hand Mr. Taijul Islam Miajee, learned Advocate for the respondent Nos.3-11 submits that respondent Nos.1 and 2 as plaintiffs filed above Money Suit which was lawfully decreed ex-parte and in execution of above decree 59 decimal land of the judgment debtor was sold in auction which was purchased by above respondents. But above 59 decimal land was transferred by the judgment debtor before above auction sale and the respondents did not get any title and possession in above land. The ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined the plaint, evidence, impugned judgment and decree and all other materials on record.

It has been admitted at Paragraph No.3 of the plaint that now deceased defendant was the rightful owner and possessor of 37 decimals land of disputed Plot No.7415 and he transferred 20 decimals land to Abdur Rashid Bakaul by registered kabla deed dated 15.03.2006 and further transferred disputed 2 decimals land to the plaintiffs by a

registered kabala deed dated 22.08.2007. As such the plaintiffs acquired valid title in disputed 2 decimal land by purchase from the defendant by registered kabala deed dated 22.08.2007. The plaintiffs did not abandon claim of title in above 2 decimals land either in the plaint or in the evidence as PW1. There is no allegation in the plaint or in the evidence of PWs that the defendant fraudulently transferred above 2 decimal land to the plaintiffs.

The plaintiffs have alleged that the possession of above land could not be delivered on the date of execution of above sale deed due to shortage of time. It has been claimed that on various pretexts the defendant took time for measurement and delivery of possession of above land. But there is no claim that the defendant did not have possession in above land or defendant denied to deliver possession of above land.

Above Money Suit was filed for recovery of consideration money and registration cost of registered kabala deed dated 22.08.2007. As mentioned above the plaintiffs did not abandon above kabala deed nor designated above kabala deed as a fraudulent and unlawful deed but on the contrary retains their lawful claim in above deed. As such the plaintiffs had no scope to claim return of consideration money and registration cost of above kabala deed.

The plaintiffs are the recipients and a party to above kabala deed dated 22.08.2007. As such the plaintiffs cannot make any oral claim

which is contrary to any term of above registered deed unless there is an allegation of fraud or error. As mentioned above the plaintiffs did not make any claim of fraud or error against above kabla deed dated 22.08.2007. Plaintiff No.2 Abdur Razzaque while giving evidence as PW1 produced above kabla deed dated 22.08.2007 which was marked as Exhibit No.1. It turns out from the recital of above deed that possession of 2 decimal land was delivered to the plaintiffs by the defendants. As such in the absence of an allegation of fraud or error the oral claim of the plaintiffs that the possession of above 2 decimal land was not delivered to them is barred by Section 92 of the Evidence Act, 1872.

The learned Advocates for both the parties concurrently stated that in execution of decree of above Money Suit undisputed 59 decimal land of the defendant was sold in auction and was purchased by respondent Nos.3-11. But the defendant sold above 59 decimal land long before filing of above Money Suit and respondent Nos.3-11 did not get title or possession of above land. It is to be mentioned that disputed 2 decimal lands of the plaintiffs was not sold in auction.

It is admitted that the plaintiff No.2 as complainant filed C. R. Case No.73 of 2011 against the defendant for his alleged inability to execute and register a correction deed or delivers possession of above 2 decimal land and the defendant was convicted in above case and after release from the prison above ill fated old man died.

On consideration of above facts and circumstances of the case and materials on record we hold that this case is a glaring example as to how an innocent old man was subjected to untold sufferings by filing an unfounded Money Suit but the learned Joint District Judge unfortunately failed to realize above materials on record and relevant laws correctly and most illegally decreed above suit which is not tenable in law.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 12.05.2016 passed by the learned Joint District Judge, 2nd Court, Chandpur in Money Suit No.2 of 2013 is set aside and above Money Suit is dismissed ex-parte against defendant No.1 with cost.

The connecting Civil Rule No.440(F) of 2018 is discharged.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.