

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1980 OF 2010

In the matter of:

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

And

Md. Joynul Abedin and others

... Petitioners

-Versus-

Md. Idris Ali Sheikh and others

... Opposite parties

Mr. Shasti Sarker, Advocate

... For the petitioner.

Mr. Md. Shahidul Islam, Advocate

.... For the opposite party Nos.1-3.

Heard on 28.11.2024 and 02.12.2024.

Judgment on 03.12.2024.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 30.11.2009 passed by the learned District Judge, Rajbari, in Title Appeal No.48 of 2008 affirming the judgment and decree dated 18.05.2008 passed by the learned Assistant Judge, Pangsha, Rajbari in Title suit No.24 of 2006 in 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.

Facts in short are that opposite party as plaintiff instituted above suit for specific performance of unregistered sale deed dated 16.11.2005 for sale of 35 decimal land by defendant No.1 to the plaintiff.

It was alleged that above land belonged to Amzad Hossain who declared to sale above land and the plaintiff agreed to purchase the same at a price of Taka.2,00,000/- and on receipt of Taka.1,00,000/- defendant No.1 executed a bainapattra on 25.10.2005. On 16.11.2005 plaintiff and defendant No.1 went to the Sub-registry Office for execution and registration of a kabala deed for above land and on receipt of remaining Taka 1,00,000/- defendant No.1 executed above sale deed. But the defendant refused to registrar above document unless an additional Taka 20,000/- was paid. The plaintiff refused to pay above additional money and defendant No.1 escaped from the Registry Office.

Defendant No.1,2 and 4 contested above suit by filing a joint written statement alleging that defendant No.1 contracted to sale $17\frac{1}{2}$ decimals land to defendant Nos.2-4 for Taka 2,00,000/- and on receipt an advance of Taka 1,00,000/- executed a bainapattra on 18.05.2005 and executed and registered a sale deed on 13.04.2006 and delivered possession. Defendant No.1 agreed to sale $17\frac{1}{2}$ decimal land to the plaintiff and a sale deed was accordingly written and he gave signature on the same in good faith in the Sub-registry Office. But subsequently he read over above document and found that instead of $7\frac{1}{2}$ decimals land the plaintiff has in collusion with the scribe included total 35

decimal land in above sale deed. As such he refused to register above sale deed and left the Sub-registry office.

At trial plaintiff and defendant examined 3 witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of the defendants were marked Exhibit Nos.Ka and Kha.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court defendant No.1-4 as appellants preferred Title Appeal No.48 of 2008 to the learned District Judge, Rajbari who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this court and obtained this rule.

Mr. Shasti Sarker, learned Advocate for the petitioners submits that the deed of contract dated 16.11.2005 being not a registered document this suit was barred by section 17(a) of the Registration Act, 1908. It is true that the registered kabala deed of defendant Nos.2-4 was registered on 13.04.2006 but above sale deed was registered pursuant to the deed of bainapatra executed by defendant No.1 in favor of defendant Nos.2-4 on 18.05.2005 long before the alleged unregistered sale deed dated 16.11.2005 of the plaintiff. As such above registered kabala deed of defendant Nos.2-4 is not hit by Section 52 of the Transfer of Property Act, 1882.

Mr. Md. Shahidul Islam, learned advocate for opposite party Nos.1-3 submits that defendant No.1 has clearly admitted both in the written statement and in his evidence as DW1 that he went to Sub-registry Office where the impugned unregistered sale deed of the plaintiff was written and he executed the same by putting his signatures. Defendant No.1 has claimed that he sold $17\frac{1}{2}$ decimal land not 35 decimal. Defendant No.1 was required to prove above claim of collusion but defendant No.1 did not make any endeavor to prove above claim by legal evidence. The learned Judges of both the Courts below further held that the alleged bainapatra dated 18.05.2005 of defendant Nos.2-4 was a collusive and anti dated document created for the purpose of this suit. In above view of the facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly decreed the suit and the leaned District Judge on a correct appreciation of materials on record rightly dismissed the appeal and upheld the judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed 35 decimal land belonged to defendant no.1 who went to the Sub-registry Office with the plaintiff for execution and registration of a sale deed and the impugned sale

deed of the plaintiff was written and executed by defendant No.1 but the same was not registered.

In this regard defendant No.1 claimed that he contracted to sale $17\frac{1}{2}$ decimal land but after executing above unregistered sale deed he discovered that instead of $17\frac{1}{2}$ decimal his total 35 decimal land was included in above sale deed. It appears unusual that defendant No.1 would execute the sale deed (Exhibit No.4) without knowing about the content and quality of the land and after executing the document he discovered that instead of $17\frac{1}{2}$ decimal land 35 decimal was written in above deed.

Above claim of the defendant is directly against the terms of above written instruments (Exhibit No.4) to which defendant No.1 is a party. As such the burden to prove above claim of fraud or collusion lies upon defendant No.1. But defendant No.1 did not make any endeavor to prove above allegation of collusion or fraud by examining any witness of above sale deed or any person who was present in the talk of above sale.

As such defendant No.1 has failed to prove by legal evidence that in above sale deed instead of $17\frac{1}{2}$ decimal land the plaintiff in collusion with the scribe wrote 35 decimal.

As far as the submission of the learned Advocate for the petitioner that since Exhibit No.4 is an unregistered deed of contract for sale of land the same is not admissible in evidence pursuant to Section 17A of the Registration Act, 1908 is concerned it has been mentioned above that Exhibit No.4 is in fact not a deed o contract but a deed for sale of land. It is admitted that above sale deed was written and executed by defendant No.1 sitting in the relevant Sub-registry Office but defendant No.1 refused to register the same. As such this was in fact a suit for directing defendant No.1 to register above unregistered sale deed (Exhibit No.4) but the suit has been designated as a suit for a specific performance of contract.

The learned Advocate for the petitioner further submits that before execution of above sale deed dated 13.04.2006 (Exhibit No.4) defendant No.1 executed a bainapatra on 18.05.2005 for $7\frac{1}{2}$ decimal land and delivered possession to defendant No.3-4 and pursuant to above bainapatra subsequently executed and registered a kabala deed on 13.04.2006.

It turns from the registered kabala deed dated 13.04.2006 of defendant Nos.2-4 that in above document there is no reference of bainapatra dated 18.05.2005 allegedly executed by defendant No.1. There is no mention in above kabala deed that the same was being executed pursuant to above bainapatra dated 18.05.2005. In their written statement defendants did not mention that pursuant to above

bainapatra defendant No.1 delivered possession of above land to defendant Nos.2-6. On a detailed analysis of the evidence on record the learned Judges of both the Courts below rightly and concurrently held that above bainapatra dated 18.05.2005 of defendant Nos.2-4 was a collusive and fraudulent document.

It turns out from record this suit was filed on 14.03.2006 and above unregistered kabala deed (Exhibit No.4) was executed by defendant No.1 on 16.11.2005 and during the pendency of this suit defendant No.1 transferred $17\frac{1}{2}$ decimal land out of disputed 35 decimal to defendant Nos.2-4 by registered kabala deed dated 13.04.2006. As such above kabala deed of defendant Nos.2-4 is hit by section 52 of the Transfer of Property Act, 1882.

In above view of the facts and circumstance of the case and evidence on record I am unable to find any infirmity or illegality in the impugned judgment and decree passed by the learned District Judge in Title Appeal No.48 of 2008 on 13.11.2009 nor I find any substance in this civil revisional application under Section 115(1) of Code of Civil Procedure.

In the result the Rule is discharged.

However, there is no order as to costs.

Send down the lower Courts record immediately.