

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.526 of 2018

Nurul Akbar being dead his heirs- Mst. Laila Begum
and others

.... Appellants

-Versus-

Azizul Haque and others

.... Respondents

Mr. Mukunda Chandra Debnath, Advocate

.... For the appellants.

Mr. Mohammad Nurul Huda Ansary, Advocate

.... For the respondent Nos.1(Ka),
1(Kha), 37, 47 and 49.

Heard on 12.05.2026 and Judgment on 18.05.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 26.07.2018 passed by the learned Joint District Judge, Patiya Court, Chattogram in Other Suit No.78 of 2011 dismissing the same.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 22 decimal land as described in the schedule to the plaint and for further declaration that preparation of B. S. Khatian for above land in the name of the defendants is unlawful and not binding upon the plaintiffs alleging that above 22 decimal land belonged to Foyez Ahmed and Halima Khatun who agreed to sale

above land for Taka 1,12,000/- and on receipt of Taka 90,000/- executed a bainapatra on 10.02.2003 and delivered possession to the plaintiffs. Above Foyez Ahmed and Halima Khatun having refused to execute and register a sale deed on receipt of the outstanding consideration money. The plaintiffs filed Other Class Suit No.53 of 2004 in the Court of Assistant Judge, Boalkhali, Chattogram for enforcement of above bainapatra who dismissed above suit on 10.10.2005. Being aggrieved by above judgment the plaintiffs as appellants preferred Other Class Appeal No.569 of 2005 to the District Judge, Chattogram which was heard by the learned Joint District Judge who allowed above appeal ex-parte and set aside the judgment and decree of the trial Court and decreed above suit by judgment and decree dated 05.01.2009. The plaintiffs initiated Execution Case No.1 of 2009 and obtained a registered sale deed from the Court on 16.09.2009. Thus the plaintiffs became rightful owner and possessor of above 22 decimal land but in the B. S. Survey above land has been erroneously recorded in the name of the defendants who on the basis of above erroneous record denied plaintiff's title.

Defendant Nos.1-5 contested above suit by filing joint written statement denying all material claims and allegations made in the plaint and alleging that Foyez Ahmed and Halima Khatun while owning and possessing above 22 decimal land transferred the same to Nurul Islam by registered kabla deed dated 27.08.2003. Above defendants preferred Miscellaneous Case No.12 of 2003 against above kabla deed dated

27.08.2003 of Nurul Islam under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption which was allowed and above defendants filed Execution Case No.5 of 2007 and received possession of above land through Court on 18.07.2007. Defendants are in possession in above land and in their names relevant B. S. Khatian has been rightly prepared.

At trial plaintiff examined 2 witnesses and defendants examined 3. Documents of the plaintiffs were marked as Exhibit Nos.1-3 series and those of the defendants were marked as Exhibit Nos.“Ka” to “Ja”.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit.

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

Mr. Mukunda Chandra Debnath, learned Advocate for the appellants submits that Foyez Ahmed and Halima Khatun were the rightful owners and possessors of above 22 decimal land who agreed to sale above land to the plaintiffs for Taka 1,12,000/- and on receipt of Taka 90,000/- executed a bainapatra on 27.08.2002 and delivered possession. Above Foyez Ahmed and Halima Khatun obtained time for execution of a sale deed on various pretexts and ultimately refused to execute a sale deed and the plaintiffs filed Other Class Suit No.53 of 2004 for enforcement of above bainapatra which was dismissed.

Plaintiffs as appellants preferred Other Class Appeal No.569 of 2005 and the learned Joint District Judge allowed above appeal ex-parte, set aside the judgment and decree of the trial Court and decreed above suit and by filing Execution Case No.1 of 2009 plaintiffs got a registered kabla deed from the Court. But disputed 3 B. S. Khatians were erroneously recorded in the name of the defendants. Plaintiffs have adduced oral evidence of two witnesses and produced and proved documents which were marked as Exhibit Nos.1 and 2 series. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge should have decreed above suit but the learned Joint District Judge most illegally dismissed above suit which is not tenable in law. The learned Advocate lastly submits that the plaintiffs want to implead above Nurul Islam as a defendant and challenge the legality and propriety of judgment and order passed in Pre-emption Case No.12 of 2003. The plaintiffs can prove by legal evidence that the kabla deed of above Nurul Islam was fraudulent and judgment and order of above Miscellaneous Case No.12 of 2003 was collusive. 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 plaintiffs an opportunity to amend the plaint and adduce further evidence.

On the other hand Mr. Mohammad Nurul Huda Ansary, learned Advocate for the respondent Nos.1(Ka), 1(Kha), 37, 47 and 49 submits that the plaintiffs claim title in above 22 decimal land on the basis of

judgment and decree passed ex-parte in Other Class Appeal No.569 of 2005. Above appeal was against the judgment and decree passed by the trial Court in Other Class Suit No.53 of 2004 for specific performance of bainapatra dated 10.02.2003 which was dismissed by the trial Court. It is admitted that Foyez Ahmed and Halima Khatun transferred above land to Nurul Islam by registered kabala deed dated 27.08.2003 within six months from the date of bainapatra the plaintiffs and long before of filing of Other Class Suit No.53 of 2004. The plaintiffs did not implead Nurul Islam as a defendant in Other Class Suit No.53 of 2004 nor sought any relief against his registered kabla deed dated 27.08.2003. The plaintiffs filed Other Class Suit No.53 of 2004 against Foyez Ahmed and Halima Khatun who had no title or possession in above land. As such by decree of Other Class Appeal No.569 of 2005 the plaintiffs did not acquired valid title in above land. The plaintiffs have obtained a kabla deed by execution of above decree but the plaintiffs did not get possession of above land through Court. It has been alleged that the plaintiff plaintiffs got possession at the time of execution of bainapatra dated 10.02.2003 but the plaintiffs did not produce above bainapatra at trial. PW1 Nurul Akbar could not remember the date when he received possession. He has stated that he got possession of above land amicably with the co-sharers which is inconsistent with above claim in the plaint. PW2 Nurul Islam has admitted that defendants are in possession in above land. On consideration of above facts and circumstances of the

case and evidence on record the learned Judge of the trial Court rightly dismissed above suit which calls for no interference.

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

It is admitted that disputed 22 decimal land belonged to Foyez Ahmed and Halima Khatun and they transferred above land to Nurul Islam by a registered kabla deed dated 27.08.2003 and defendants as petitioners filed Pre-emption Case No.12 of 2003 against above registered kabla deed which was allowed and by filing Execution Case No.5 of 2007 defendants also got possession of above land through Court.

Plaintiff's claimed that above Foyez Ahmed and Halima Khatun agreed to sale above 22 decimal land to the plaintiffs for Taka 1,12,000/- and on receipt of Taka 90,000/- they executed a bainapatra on 10.02.2003. It is admitted that for enforcement of above bainapatra plaintiffs filed Other Class Suit No.53 of 2004 in the Court of Senior Assistant Judge which was dismissed and the plaintiffs preferred Other Class Appeal No.569 of 2005 to the District Judge which was heard by the learned Joint District Judge who allowed above appeal and decreed above suit and above appellants filed Execution Case No.1 of 2009 and got a registered kabla deed from the Court. The plaintiffs did not get possession of above land through Court and the claim of the plaintiffs as stated in the plaint that he got possession on the date of above

bainapatra remains not proved due to non production of above bainapatra at trial.

It is admitted that in Other Class Suit No.53 of 2004 above Nurul Islam who purchased above land from Foyez Ahmed and Halima Khatun before filing of above suit was not made a defendant nor any relief was sought against registered kabla deed dated 10.02.2003 of above Nurul Islam. As such it is crystal clear that the plaintiffs filed Other Class Suit No.53 of 2004 against the defendants who did not have any subsisting title or possession in above land. Plaintiffs should have impleaded above Nurul Islam as a defendant in Other Class Suit No.53 of 2004 and allege that above Nurul Islam was fully aware as to the bainapatra dated 10.03.2003 of the plaintiffs and inspite of that he has fraudulently purchased above land by registered kabla deed dated 27.08.2003. No the plaintiffs did not do that.

It is not disputed that the defendant preferred Pre-emption Miscellaneous Case No.12 of 2003 against above kabla deed of Nurul Islam which was allowed and by filing Execution Case No.5 of 2007 above defendants got possession of above land on 18.07.2007. The learned Advocate for the appellants has claimed that above Pre-emption Case and Execution Case were all collusive and fraudulent. But above submission of the learned Advocate for the appellants is beyond pleadings. Above Nurul Islam gave evidence in above suit as PW2 because the defendants pre-empted his land which he purchased by the registered kabla deed dated 27.08.2003. Giving of evidence as

PW2 by above Nurul Islam falsifies the claim of the learned Advocate for the appellants that registered kabla deed dated 27.08.2003 of Nurul Islam and judgment and order of Pre-emption Case No.1 of 2009 and Execution Case No.5 of 2007 were collusive and ineffective.

In above view of the facts and circumstances of the case and materials on record we hold that no lawful purpose will be served by remanding above suit for retrial and the learned Joint District Judge on correct appreciation of materials on record rightly dismissed above suit which calls for no interference.

We are unable to find any substance in this First Appeal which is liable to be dismissed.

In the result, this First Appeal is dismissed.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.