

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.579 of 2019

M/S. Banani Property Development (Pvt.) Limited

...Appellant

-Versus-

Dr. Md. Shafiqul Alam and another

... respondents

Mr. Md. Faruque Nowaz, Advocate

... For the appellant.

Mr. Partha Sarathi Mondal with

Mr. Muhammad Shahidul Islam Khoshnobish,

Advocates

... For the respondent No.1.

Heard on 27.01.2026 and Judgment on 09.02.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 12.06.2019 passed by the learned Joint District Judge, 3rd Court, Dhaka in Title Suit No.120 of 2006 decreeing the suit.

Facts in short are that the respondents as plaintiffs instituted above suit for Specific Performance of Contract dated 10.06.1997 alleging that he entered into above contract for purchase of $2\frac{1}{2}$ decimal land from the defendant with a consideration of Taka 5,25,000/-. In

accordance with the terms and conditions of above deed of bainapatra the plaintiff paid full consideration of money along with land development cost of Taka 2,00,000/- but the defendant delayed execution and registration of sale deed and delivery of possession on various pretexts. On 19.06.2006 the defendant assured in writing that he would execute a sale deed within six months but the defendant did not comply with above assurance.

Defendant No.1 contested above suit by filing a written statement admitting all above claims and allegations of the plaintiff and stating that the defendant entered into a contract for sale of $2\frac{1}{2}$ decimal land to the plaintiff for Taka 5,25,000/- and plaintiff paid full consideration money but the defendant could not execute and register a sale deed and deliver possession since the defendant could not purchase above land of C. S. and S. A. Plot No.1857 from private owners.

At trial plaintiffs examined three witnesses and defendant examined one. Documents of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos."Ka" to "Cha".

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

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. Md. Faruque Nowaz, learned Advocate for the appellant submits that the ownership of Banani Property Development Private Limited has been changed and the present owner was not the executant of above deed of agreement dated 10.06.1997 (Exhibit No.1). After taking ownership of the company the defendant came to know that the previous administration of the company without purchasing the land of C.S. and S.A. Plot No.1857 sold $2\frac{1}{2}$ decimal of land of above plot to the plaintiffs. The defendant made relentless endeavors for purchase land of above plot for transferring to the plaintiff but he could not purchase above land. As such the defendant could not fulfill his obligation under above contract but the defendant is ready to pay adequate compensation to the plaintiff. The learned Judge of the trial Court utterly failed to appreciate above materials on record and most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Partha Sarathi Mondal, learned Advocate for respondent No.1 submits that the defendants have admitted at Paragraph No."E" of their written statement as well as in the evidence of DW1 Md. Shahid Monjur that the plaintiff entered into a contract on 10.07.1997 for sale of $2\frac{1}{2}$ decimal land for Taka 5,25,000/- and the plaintiff fully paid above consideration money along with land development cost of Taka 2,00,000/-. The defendant also admitted that they did not execute and register a sale deed to the plaintiff pursuant to

above deed of contract. It has been claimed by the defendant that they could not purchase the land of Plot No.1851 which was the subject matter of above deed of contract dated 10.06.1997 (Exhibit No.1). But the plaintiff has produced certified copies of registered kabla deed Nos.2360 and 6035 dated 14.03.2000 and 21.05.2000 respectively (Exhibit No.6 series) which show that the defendant had purchased land of Plot No.1851. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial Court rightly decreed 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.

As mentioned above respondent as plaintiff filed above suit for Specific Performance of Contract dated 10.06.1997 for sale of of $2\frac{1}{2}$ decimal land executed by the appellant. While giving evidence as PW1 the plaintiff has reiterated all claims and allegations made in the plaint stating that pursuant to above deeds of contract dated 10.06.1997 he paid total consideration money of Taka 5,25,000/- and additional Taka 2,00,000/- as land development cost. But after taking time on various pretexts the defendant ultimately failed to execute a sale deed nor deliver possession of above land. The witness produced above deed of contract dated 10.06.1997 and money receipts showing payment of total consideration money which were marked as Exhibit Nos.1 and 2 series respectively.

The defendant on the other hand admitted at Paragraph No."E" of the written statement the correctness and genuinity of above deed of agreement dated 10.06.1997 (Exhibit No.1). The defendant has further admitted the receipt of total consideration money and land development cost and admitted that he did not execute and register a sale deed to the plaintiff nor delivered possession of above land. It has been alleged that the defendant sold above $2\frac{1}{2}$ decimal land out of C. S. and S. A. Plot No.1851 but the defendant could not despite relentless endeavor purchase above land from the private owners.

PW1 Dr. Md. Shafiqul Islam stated in his evidence that the defendant purchased land of Plot No.1851 by two registered kabla deeds being Nos.3260 and 6035 dated 14.03.2000 and 21.05.2000 respectively and produced certified copies of above deeds which were marked as Exhibit No.6 series. Above documents show that defendant purchased 267 decimal and 810 decimal land from C. S. and S. A. Plot No.1851 by above two kabla deeds. While give evidence as DW1 Md. Shahid Monjur admitted that the defendants in fact purchased land of Plot No.1851 by above two kabla deeds and kept 42% of above land as an open space and the same is not transferable. Above admission of DW1 Md. Shahid Monjur totally destroys the case of the appellant that they could not execute and register a sale deed to the plaintiff pursuant to above deed of agreement dated 10.06.1997 due to their failure to purchase land of Plot No.1851 from private owners.

On consideration of above facts and circumstances of the case and evidence on record we hold that the defendant with ulterior motive and for unlawful gains most illegally delayed the execution of sale deed to the plaintiff pursuant to above deed of contract dated 10.06.1997 and thereby deprived the plaintiff for a long time from the enjoyment of above land which he contracted to purchase and paid full consideration money. The learned Judge of the trial Court on correct appreciation of above materials on record rightly decreed above suit which calls for no interference.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this First Appeal which is liable to dismissed with cost.

In the result, this First Appeal is dismissed with cost.

The impugned judgment and decree dated 12.06.2019 passed by the learned Joint District Judge, 3rd Court, Dhaka in Title Suit No.120 of 2006 is hereby upheld.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.