

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 98 of 2020

With

Civil Rule No. 331(F) of 2020

In the matter of:

H. M. Golam Reza, son of Alhaj Md. Sukur Ali at
present- Road No. 159/8, Mirpur-10, District-
Dhaka.

... Appellant-petitioner

-Versus-

Erick Ershad, son of late Alhaj Hussain
Mohammad Ershad permanent address- Polly
Nibus, Post Dersona, Upazila- Rangpur Sadar,
District- Rangpur, at present address: House No.
10, Dutabash Road, Baridhara Residential Area,
Block- Ka, Police Station- Gulshan, District-
Dhaka.

...Respondent-opposite party

Mr. Md. Mamun Kabir, Advocate

...For the appellant-petitioner

Heard and Judgment on 26.06.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of with this common judgment.

At the instance of the defendant in Other Class Suit No. 88 of 2012, this appeal is directed against the judgment and decree dated 17.02.2016 passed by the learned Joint District Judge, 2nd Court, Rangpur in that suit decreeing the same on contest against the sole defendant cancelling the sale deed bearing no. 5255 dated 13.05.2010 which was alleged to have executed and registered by the plaintiff in favour of the defendant-appellant.

The short facts leading to preferring this appeal are:

The present respondent as plaintiff filed the aforesaid Other Class Suit seeking following reliefs:

- “(ক) নালিশী ‘ক’ তফসিল বর্ণিত সম্পত্তি বাবদ গত ১৩/০৫/২০১০ ইং তারিখে রেজিস্ট্রিকৃত ৫২৫৫ নং কবলা দলিল বেআইনী, বেদাড়া, জাল যোগসাজশী, রদ, রহিত ও অকার্য্যকর মর্মে সিদ্ধান্ত করতঃ তাহা বাতিল পূর্বক বাদীর অনুকূলে ও বিবাদীর প্রতিকূলে ডিক্রী দিতে,
- (খ) মোকদ্দমার ডিক্রির অনুলিপি সাব রেজিস্ট্রি অফিসে প্রেরণ করিবার আদেশ দিতে,
- (গ) বাদীর অনুকূলে বিবাদীর বিরুদ্ধে মোকদ্দমা খরচার ডিক্রী দিতে,
- (ঘ) বাদী আদালতের ন্যায় বিচারের দৃষ্টিতে অন্য কোনরূপ পরিবর্তিত, পরিবর্ধিত, সংযোজিত এবং সংশোধিত প্রতিকার পাইতে হকদার হয়েন তারাও ডিক্রী দিতে হজুরের মর্জি হয়।”

As the prayer goes, the suit was filed for cancellation of the sale deed that comprises a total area of $3.43\frac{1}{2}$ acres of land described in schedule 'Kha' to the plaint.

The case of the plaintiff in short is that, the property so have been described in schedule-'ka' to the plaint originally belonged to one, Abdul Halim who subsequently by registered sale deed dated 08.10.2002 transferred 1.03 acres of land in favour of the plaintiff, Erick Ershad. The other property in schedule 'ka' also belonged to one, Most. Rezia Khatun, Alhaj Md. Azizul Haque, Most. Rawshan Ara Begum, Most. Ayesha Khatun, Md. Afsar Ali, Most. Akter Khatun and Most. Ismat Ara who jointly by registered sale deed dated 08.10.2002 also transferred 1.39 acres of land to the plaintiff. In the same vein, the property described in schedule 'ka' also belonged to some vendors, namely, Abul Kalam Azad, Md. Abdul Hai, Md. Motiar Rahman, Md. Wazed Ali, Md. Abu Taher Mondal and Nur Mohammad who also sold out 0.88 acres of land to the plaintiff by registered sale deed on 08.10.2002. Another recorded owner namely, Motiar Rahman also sold out 0.15 acres of land by registered sale deed dated 31.10.2004 also to the plaintiff. Upon purchasing all those properties by the plaintiff, he then built a cold storage over the suit land for preserving potatoes and started enjoying title and possession over the said land. Since the plaintiff being minor, on his behalf, his father late President Alhaj Hussain Mohammad Ershad purchased the said property and used to take care and maintain the same so have been mentioned in lot nos. 1-6 to the plaint. Since Alhaj Hussain Mohammad Ershad had to involve in various political and socio economic activities, he appointed defendant as his

personal secretary and subsequently, he was elected as MP and then Whip in the national parliament and he accompanied Alhaj Hussain Mohammad Ershad all along and was assigned to take his signature in the documents required thereby repose faith in him in putting signature in any document. During accompanying Hussain Mohammad Ershad, the defendant once offered to appoint him as an attorney to look after the properties so belong to his minor son, Erick Ershad and having satisfied Hussain Mohammad Ershad then put his signature on a power of attorney on 13.05.2012 on commission at his residence namely, Palli Nibas, Rangpur. But soon, it brought to the notice of Hussain Mohammad Ershad that the defendant got involved in different kind of ill-activities for which the father of the plaintiff, Hussain Mohammad Ershad then dismissed him from the party on 06.10.2012. After that it was disclosed that the property relating to the disputed deed was sold out by the plaintiff in favour of the defendant. Hussain Mohammad Ershad then made an inquiry and it came to his notice that instead of taking his, signature in the power of attorney, he (defendant) collusively obtained his signature in the alleged deed and soon after obtaining the alleged sale deed, the defendant also mutated his name in the khatian vide Mutation Case No. IX-I-2673/10-11. Then in order to cancel the said mutation, the plaintiff then filed a miscellaneous case on 07.10.2012 and the Assistant Commissioner (Land), Mithapukur, Rangpur then cancelled the mutation so have been obtained by the defendant. Then after obtaining the certified copy of the sale deed dated 13.05.2010 on 06.11.2012 and he became sure that, instead of executing a power of attorney, the defendant no. 1 got a sale deed executed and registered in his

name. After that, the plaintiff through his father asked the defendant on 08.11.2012 to cancel the sale deed dated 13.05.2010 but as the defendant refused to do so, hence the suit was filed.

The appellant as defendant entered appearance in the suit and contested the same by filing written statement denying all the material averment so made in the plaint contending *inter alia* that upon receiving the amount of taka 25,00,000/- on 04.01.2011 on behalf of the plaintiff, his father Hussain Mohammad Ershad then got the sale deed executed and registered on 13.05.2010 and soon after transferring the property, the plaintiff handed over possession of the suit property where a cold storage named, “Podagonj Cold Storage Limited” was built. It has also been denied by the defendant that in order to execute a power of attorney, he (the plaintiff) made a sale deed. It has further been stated that apart from taking consideration of the purchased land so have been mention in the sale deed, the plaintiff also obtained crores of taka in different occasions from the defendant no. 1 though finally prays for dismissing the suit.

In order to dispose of the suit, the learned Judge of the trial court vide order dated 19.03.2014 framed issues and then fixed on 29.04.2014 for taking necessary step under section 30 of the Code of Civil Procedure. Ultimately, on 30.10.2014 when the suit was fixed for taking steps, the defendant filed an order before the trial court passed in Civil Miscellaneous Case No. 23 of 2014 filed before this court under section 24 of the Code of Civil Procedure whereby further proceedings of the suit, has been stayed for 4(four) months. Subsequently on several occasions, the suit was taken up for hearing by the learned Joint District Judge but no extension order of

stay of further proceeding of the suit has been filed though several dates were fixed for settling date of peremptory (SD) hearing. As the defendant failed to turn up in the suit then the application filed by the defendant no. 1 earlier under order 7, rule 11 of the Code of Civil Procedure was taken up for hearing on 07.05.2015 and after an exhaustive discussion, the learned Judge rejected the same fixing 21.05.2015 for peremptory hearing.

However, record shows, as many as 12 different occasions, the suit was taken up for peremptory hearing that is, for examination of plaintiff witness but the defendant did not bother to appear in the suit resulting in, the learned Judge of the trial court vide order dated 27.01.2016 fixed the suit for *ex parte* hearing. On 27.01.2016, the witness of the plaintiff was examined as P.W-1 and on 02.02.2016, the plaintiff also adduced his second witness, who was also examined as P.W-2. As after taking evidence of the plaintiff who also produced several documents the learned Judge then fixed on 17.02.2016 for passing *ex parte* judgment and even on that very date, the defendant did not turn up to take any step in the suit consequent which, the learned Judge of the trial court then decreed the suit *ex parte* against the defendant no. 1 vide impugned judgment and decree dated 17.02.2016 and therefore, decree was drawn up on 23.02.2016.

Feeling aggrieved by and dissatisfied with the said judgment and decree passed *ex parte*, the defendant then preferred this appeal.

Mr. Md. Mamun Kabir, the learned counsel appearing for the appellant upon taking us through the impugned judgment and decree and by reading out the plaint, written statement and by referring to the deposition so made by the P.W-1 and P.W-2 as well as documents so have

been produced, at the very outset submits that the learned Judge of the trial court erred in law in not taking into consideration of the fact that the sale deed has already been acted upon yet the learned Judge has very illegally dismissed the suit.

The learned counsel further contends that though the property was purchased in the name of “Podaganj Cold Storage Limited” represented by its Managing Director named, H.M. Golam Reza, MP but in the cause title of the plaint, the said company has not been made any party and thereby the suit so filed cannot sustain in its present form.

The learned counsel next contends that since the defendant did not get any opportunity to contest the suit by adducing and producing their evidence so the defendant may be given a chance to contest the suit by sending back the case on remand to the trial court.

The learned counsel also contends that though the plaintiff has not acquired total share of the company, so he is not entitled to pray for cancellation of the sale deed but the said legal aspect has not been considered by the learned Judge of the trial court while decreeing the suit.

The learned counsel though frankly submits that, it is the fault of the defendant not to produce subsequent order of stay passed by this Hon’ble Court before the trial court and had it produced before the trial court, it would not have passed the impugned judgment and decree *ex parte* and the defendant could get chance to contest the suit.

The learned counsel lastly contends that since the plaintiff has not prayed for declaration of title in the suit property so without such

consequential relief, the suit itself is not maintainable. On those submissions, the learned counsel prays for allowing the appeal.

Record shows that, though the notice of the appeal has duly been served upon the plaintiff-respondent but none appeared to contest the appeal leaving the appeal unrepresented by the plaintiff-respondent.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellant and perused the impugned judgment and decree and all the documents so have been appended with the paper book.

Record further shows that, in order to contest the suit, the defendant filed written statement and soon after filing of the written statement, they also filed an application before this court for transfer of the said suit to another court having competent jurisdiction which was registered as Miscellaneous Case No. 23 of 2014 but ultimately the rule of the said Miscellaneous Case was discharged on 03.04.2018 though in the said Miscellaneous Case rule was issued on 09.09.2014 and it ended in 2018 but a span of 4(four) years, the defendant-appellant only produced initial order of rule as well as the order of stay before the trial court, but for the last four years though the extension was given by this court but the defendant did not produce the said extension order to the trial court enabling the trial court to stay further proceedings of the suit. However, from the order sheet, we clearly find that, the learned Judge of the trial court time and again observed to have received no order of stay by the defendant-appellant. So the learned Judge of the trial court has got no other option but to fix the suit for taking evidence of the plaintiff and accordingly, it recorded the

evidence of as many as two P.Ws and that very P.Ws also produced several documents which were also marked exhibit nos. 1-3. It is the contention of the learned counsel for the appellant that since the plaintiff has not no possession over the suit property so simply filing a suit for cancellation of the sale deed cannot be sustained in law. But in support of his such submission, the learned counsel has utterly failed to place any authority because that very suit was filed for cancellation of a deed which comes within the purview of section 39 of the Specific Relief Act. Fact remains, in the prayer of the plaint we find that in prayer 'ka', the plaintiff has not only prayed for cancellation of the sale deed dated 13.05.2010 but prayed that the sale deed is illegal, inoperative and forged having no reason to pray any declaration.

Furthermore, on going through the plaint, we also find that soon after coming to learn about the mischievous activities so adopted by the defendant no. 1 in getting a sale deed executed and registered in his favour instead of a executing power of attorney, the plaintiff also prayed for cancelling the mutation obtained fraudulently by the defendant in his name by filing a separate Mutation Case bearing No. IX-I-2673/10-11 and the Assistant Commissioner (Land) also cancelled the mutation which was earlier given to the defendant vide order dated 07.12.2010. So there has been no reason not to find title and possession in the suit land in favour of the plaintiff.

Insofar as regards to finding fraudulent acts of the defendant no. 1 in getting impugned sale deed executed and registered in the name of the plaintiff no. 1, P.W-1 has clearly substantiated to what has been stated in

the plaintiff stating that “বিবাদী ঢাকা থেকে রংপুরে এসে আম-মোক্তার দলিলের পরিবর্তে সাফ কবলা তৈরি করে নেয়। এরপর বিবাদী এরশাদকে রংপুরে আসার জন্য অনুরোধ করে। গত ১৩.০৫.২০১০ ইং তারিখে বিবাদী সাব-রেজিস্ট্রার কে কমিশনে এরশাদের বাড়ী পল্লী নিবাসে আনয়নের জন্য ব্যবস্থা করেন। এরশাদ রংপুরে আসলে দলীয় কর্মীদের নিয়ে ব্যস্ত থাকার কারণে আম-মোক্তার দলিলের পরিবর্তে সাফ কবলা দলিল তৈরি করে নেয়।”.

Moreover, on going through the disputed sale deed which has been marked an exhibit-1, we find from the recital of the same which appeared at page no. 6 of part II of the paper book that, in order to maintain day to day life of the plaintiff as well as the cost of his study the then President Hussain Mohammad Ershad, took Tk. 25,00,000/- from the defendant no. 1 and executed and registered the sale deed which appears to be totally absurd as there has been no such assertion in the entire written statement with that regard. So in absence of any assertion as defence case, we find the said recital in the sale deed is unfounded.

Furthermore, since the suit was decreed *ex parte* accomplishing all the legal requirements, provided in the Code of Civil Procedure, so we don't find any illegality or irregularity in the impugned judgment and decree. Because on going through the order sheet appeared in the paper book, we find that before passing the impugned judgment and decree dated 17.02.2016 as many as 24 orders have been passed out of which in most of the occasions, the defendant remained absent, compelling the trial court to proceed with the suit and therefore, the learned Judge of the trial court has compelled to take evidence of the plaintiff and marked several documents as exhibits.

Regard being had to the above facts and circumstances and the materials and evidence on record vis-à-vis the impugned judgment and decree, we don't find any illegality and impropriety in it that calls for interference by this court.

Accordingly, the appeal is dismissed however without any order as to costs.

Since the appeal is dismissed so the rule issued in Civil Rule No. 331 (F) of 2020 is hereby discharged.

At any rate, the order of injunction granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and decree along with the lower court records be transmitted to the learned Joint District Judge, 2nd Court, Rangpur as well as to the respondent forthwith.

Md. Bashir Ullah, J.

I agree.