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

First Appeal No. 15 of 2020
with
(Civil Rule No. 336 (F) of 2020)

In the matter of:
Shamim Ahmed and another
… Appellants-petitioners
-Versus-
Nahid-E-Subha and others
…Respondents-opposite parties

Mr. Sikder Mahmudur Razi with
Mr. Md. Zahirul Islam and
Mr. Md. Rased Uddin Advocates
…For the appellants-petitioners
None appears
....For the respondents-opposite parties

Heard and Judgment on 25.07.2024

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 by this common judgment.

At the instance of the defendant nos. 1 and 2 of Title Suit No. 531 of 2014, this appeal is directed against the judgment and decree dated 29.09.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in that Title Suit so far as regards to decreeing taka 1,40,00,000/- against the defendant nos. 1-2 as the suit value of the plaintiffs directing them to

pay the same as of compensation in favour of the plaintiffs within 90 days

The short facts in preferring this appeal are:

The present respondent nos. 1-3 as plaintiffs filed the aforesaid suit seeking following reliefs:

(ক) নালিশী তফসিল বর্ণিত সম্পত্তি গত ১৩.০২.২০০৬ ইং তারিখে রেজিষ্ট্রিকৃত বিক্রয় চুক্তি নামা (বায়না) দলিল নং ২৩১২, ২৩১৩, ২৩১৪ যাহা ১নং বিবাদী দাতা এবং বাদীগণ প্রহিতা হিসা-ব ৩নং বিবাদীর দপ্তরে সম্পাদিত বিক্রয় চুক্তিনামা (বায়না নামা) দলিল কার্যকারী করার নির্মিত্তে ১নং বিবাদীর বিরুদ্ধে বাদীগণের পক্ষে চুক্তিপ্রবলের ডিক্রি দিতে;

(খ) নালিশী তফসিল বর্ণিত সম্পত্তি ১নং বিবাদী ৪-৫নং বিবাদীগণের দপ্তর কর্তৃক অনাপত্তিঅ গ্রহন পূর্বক ৩নং বিবাদীর দপ্ত-রর মাধ্য-ম বাদীগ-ণর বরাব-র রেজিষ্ট্রিকৃত সাফ কবলা দলিল সম্পাদ-নর জন্য ১নং বিবাদীর প্রতি এ আ-দশতাত্নক নি-র্দশ মূল ডিক্রী দিতে;

(গ) বিজ্ঞ আদাল-তর নি-র্দশিত সম-য়র ম-ধ্য ১নং বিবাদী বাদীগ-ণর বরাব-র রেজিষ্ট্রিকৃত সাফ ক্বলা দলিল সম্পাতদন করিয়া দিতে ব্যর্থ হইলে বিজ্ঞ আদালতের মাধামে বাদীগণ বরাবরে নালিশী তফসিল বর্ণিত সম্পত্তির রেজিষ্ট্রিকৃত সাফ কবলা দলিল ৩নং বিবাদীর দপ্তরের মাধ্যমে রেজিষ্ট্রি করিয়া দেওয়ার নিমিত্তে প্র-যা.জনীয় আ-দশ নি-র্দশ সহ ব্যবস্থা গ্রহন করি-ত;

(ঘ) ১নং বিবাদী কর্তৃক জাল জালিয়াতিপূর্ণ আ-ব প্রতারনার মাধ্য-ম তথাকথিঈ তফসিল বর্ণিত গত ১৮.০৫.২০১১ইং তারি-খর ৩নং বিবাদীর দপ্ত-র রেজিষ্ট্রিকৃত ডিক্লা-রশন অব হেবা বা হেবা বিষয়ক

ঘোষণাপত্র দলিল নং ৬২৮৮ যাহা ২নং হিববাদী গ্রহিতা হিসাবে সম্পাদিত কাগজী দলিলটি বাদীগণের উপর বাধ্যকর নয় তথা উক্ত দলিলটি রদ , রহিত ও বাঙ্গিল ম-র্ম ঘোষনা সহ ৩নং বিবাদীর দপ্ত-র রক্ষিত বালাম বহিতে বাতিল মর্মে লিপিবদ্ধ করার নির্মিত্তে আদেশাত্নক নির্দেশ মূলক ঘোষণার নিমিত্তে ডিক্রী দিতে;

(ঙ) অত্র মোকদ্দমায় সমুদয় ব্যয় বাদীগণের অনুকুলে বিবাদীগণের প্রতিকুলে ডিক্রী দিতে;

(চ) বাদীগণ আইন ও ইকুইটি মী-ত অন্যান্য যে সকল প্রতিকার সহ আ-দশ ও নি-র্দশ পাই-ত হকদার ত-র্ম আ-দশ ও নির্দেশ দিতে বিজ্ঞ আদালতের মর্জি হয় ।

The case of the plaintiffs-respondents as described in the plaint in precise is that, the defendant no. 1 got the suit land by a registered lease deed dated 29.06.1987 by the defendant no. 5, Rajdhani Unnyan Kartipakka (precisely, RAJUK) and accordingly the defendant no. 1 mutated her name at RAJUK and in order to build a 4-storey building over the suit land he took loan from defendant no. 4 House Building Finance Corporation (briefly HBFC) amounting to taka 20,00,000/- by mortgaging the said leasehold land in its favour on 01.02.1996 but with the said loan, since she failed to complete the building she then offered to sale the flats to have erected on the suit land as mentioned in the 'schedule' to repay the loan and complete construction of the building. The plaintiff no. 1 then agreed to purchase a flat measuring 823.16 square feet located in the western side of third floor and the value of that flat was fixed at taka 6,75, 000/- out of which the plaintiff no. 1 paid an amount to taka 3,00,000/- and a registered deed of agreement for sale

(Bainapotra) was made on 13.02.2006. In the same way the plaintiff no. 2 also agreed to purchase a flat measuring 823.16 square feet located in the eastern side of third floor of the apartment and a *bainanama* was also registered on the same date dated 13.02.2006 fixing the consideration at taka 675,000/-out of which she (the plaintiff no. 2) also paid an amount of taka 3,00,000/- when the plaintiff no. 3 agreed to purchase a flat measuring 826.16 square feet located in the western side of 4th floor of the apartment fixing its value at taka 6,75,000/- out of which she also paid taka 3,00000/- and got a bainapatra registered on 13.02.2006. The defendant no. 1 handed over possession of all those three flats to the plaintiff nos. 1-3 when the defendant no. 1 undertook that, after repaying loan to defendant no. 4 and upon receiving 'sale permission' from defendant no. 5 she will register respective sale deeds in favour of the plaintiffs. After that, the defendant no. 1 on various occasions took take 17,95,000/- from the plaintiffs which is beyond the terms of the *Bainpatra.* In such a situation, the plaintiffs by their letter dated 24.03.2006 asked the defendant no. 1 to register sale deed but the defendant no. 1 did not pay any heed to that request rather defendant no. 2 informed the plaintiffs that she (the defendant no. 1) was no more any owner of the flats rather he, the defendant no. 2. At this, the plaintiffs upon search, came to know that, the defendant no. 1 registered a deed of heba in favour of the defendant no. 2 vide registered deed on 18.05.2011 and upon obtaining the certified copy of the same on 09.06.2014 filed the suit.

Conversely, the defendant nos. 1 and 2 contested the suit by filing a joint written statement denying all the material averment so made in the plaint contending inter alia that, after obtaining the suit property from Rajuk by registered dead of lease on 04.05.2011 she (defendant no. 1) applied to RAJUK for permission to execute a deed of heba in order to transfer 2 flats at first and third floor, two flats at second floor and one flat at ground floor and proportionate 0519.75 decimals of land in favour of defendant no. 2 and upon taking permission from Rajuk dated 05.05.2011, she (defendant no. 1) then registered a deed of heba on 18.05.2011 to the defendant no. 2 who then mutated his name in RAJUK. It has further been stated that, though in the *Bainapotra* executed in favour of the plaintiffs it has been stipulated that, the plaintiffs will repay taka 11,25,000/- to defendant no. 4 that is, the loan taken by the defendant no. 1 and they will pay the balance amount at the time of registering the sale deed but it has not been complied with by the plaintiffs. It has further been asserted that, since the plaintiffs did not pay the balance amount by 13.03.2006 the deadline so stipulated in the *Bainapatra* so after expiry of the said time frame, the *Bainapatra* became inoperative and as the suit has not filed within one year of the date of expiry of the *Bainapatra,* the suit is liable to be dismissed.

In order to dispose of the suit, the learned judge of the trial court framed as many as 5 different issues and the plaintiffs examined two witnesses and produced several documents which were marked as exhibit nos. 1-14. On the other hand, the defendant adduced 1 witness that is, defendant no. 2 and also produced several documents which were

also marked as ‘ka-yeo’ series. The learned judge of the trial court after considering the materials and evidence on record eventually disposed of four issues out of the five issues against the plaintiffs and dismissed the suit. However, in disposing of issue no. 5, the learned judge of the trial court found that, defendants are liable to pay the suit value amounting to taka 1,40,00,000/- in favour of the plaintiffs as of compensation.

It is at that stage, the defendant nos. 1 and 2 as appellants preferred this appeal. It is worthwhile to mention here that, during pendency of the appeal the appellant no. 2 (mother of the appellant no. 1,-defendant no. 2) died leaving behind her only son that is, appellant no. 1 which has been noted vide order dated 05.03.2024.

Mr. Sikder Mahmudur Razi along with Mr. Md. Zahirul Islam, the learned counsels appearing for the appellants upon taking us to the impugned judgment and decree and all the documents appeared in the paper book, at the very outset submits that, though the learned judge of the trial court disposed of 4 issues out of 5 issues against the plaintiffs yet the plaintiffs did not prefer any appeal leaving no scope to adjudicate those issues in the appeal afresh but while disposing of issue no. 5, the learned judge of the trial court directed the defendant to pay an amount of taka 1,40,00,000/- to the plaintiffs very unlawfully finding that since the plaintiffs has shown the valuation of the suit at taka 1,40,00,000/- and the defendants did not raise any objection with that regard, the plaintiffs are entitled to the said amount from the defendants which bears no legal basis.

The learned counsel in this regard next submits that, since in the plaint the plaintiffs are totally silent with regard to the compensation nor in the prayer any specific claim was made so in absence of any assertion in regard to compensation there has been no reason to find that the defendants are liable to pay the suit value as compensation. The learned counsel by referring to the provision of section 19 of the Specific Relief Act also contends that, though the court has got the authority to give compensation provided the contract is broken by the defendant but in the instant case the plaintiffs have failed to prove that the defendants have ever broken the contract that entitled the plaintiffs to get compensation rather it has been found from the *Bainapatra* that, in spite of getting 3 months time, the plaintiffs had failed to get sale deeds registered by the defendant no. 1 and therefore it is the plaintiffs for whose failure the sale deed could not be registered. The learned counsel by taking us to the additional grounds submits that, since there has been no assertion in the plaint as well as in the prayer in the plaint claiming any compensation so in absence of that, the plaintiffs are not entitled to any compensation from the defendants but that very vital aspect has clearly been sidetracked by the learned judge of the trial court while ordering compensation against the defendants.

With those submissions, the learned counsel finally prays for allowing the appeal by striking out the compensation so directed in the impugned judgment.

Be that as it may, we have considered the submission so placed by the learned counsel for the defendants-appellants and perused the

impugned judgment and decree. Since with regard to validity of the impugned judgment dismissing the suit in disposing of issue nos. 1-4 the plaintiffs did not prefer appeal so there is no reason to dwell on those issues leaving our discussion and observation keeping ourselves within the ambit of the propriety of the compensation so have been ordered by the learned judge of the trial court while disposing of issue no. 5. On going through the impugned judgment, we find that, at the fag end of the judgment wile disposing of issue no. 5, the learned judge out of the blue found that the defendant no. 1 is liable to pay the suit value a taka 1,40,00,000/- to the plaintiffs as of compensation asserting that, since the defendant did not raise any objection with regard to the valuation of the suit. But the said reasoning is found to be totally absurd in absence of any assertion either in the plaint or in the evidence deposed by the plaintiff's witness. Moreover, though in paragraph no. 14 to the plaint, the plaintiffs gave statement with regard to valuation of the suit but there has been no break down there with regard to the suit value at taka 1,40,00,000/-. Rather on that valuation, the plaintiffs paid highest court fee at taka 46,000/- so under what basis alleged suit value can be realized from the defendants as compensation is absolutely incomprehensible to us which rather suffers from any legal basis.

Regard being had to the above facts and circumstances we don't find any iota of substance in imposing that compensation upon the defendants as of valuation of the suit which is liable to be set aside. Accordingly, the compensation at taka 1,40,00000/-so assessed by the trial court is hereby struck down.

Insofar as regards to the rule which stemmed from an application for injunction so initiated by the plaintiffs-opposite parties we are of the considered view that, the defendants in their written statement and the deposition have asserted that, soon after executing and registering respective *bainapotra* the possession of the same was handed over to the plaintiffs and they have been in possession in their respective flats. On that very understanding, the plaintiffs of the suit herein opposite parties filed application for injunction upon which this court while issuing rule passed an order of status quo. Though the defendants-appellants filed an application for vacating the order of status quo but since they admitted the possession of the plaintiffs in the flats, the learned counsel for the appellants now find its difficult to refute the said assertion on possession. We also at one with the said assertion so made by the learned counsel for the defendants-appellants that, the plaintiffs have been in possession over the disputed flats. So to sustain the possession of the plaintiffs-opposite parties this court has rightly passed an order of status quo while issuing rule. However, if the defendants-appellants feel aggrieved with regard to possession they could invariably invoke the legal recourse to restore the possession in their favour but right at this moment we don't find any illegality or impropriety in issuing rule as well as passing ad-interim order of status quo.

In the result, the appeal is allowed however without any order as to costs and the compensation so have been imposed at taka 1,40,00,000/- vide impugned judgment and decree by the trial court upon the defendants-appellants stands struck down.

However, the connected rule being Civil Rule No. 336(F) of 2020 is hereby made absolute.

However, in view of making the rule absolute it will not have any affect in the merit of legal proceedings if initiated by the defendants-respondents.

Let a copy of this judgment and order along with the lower court records be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Kawsar/A.B.O