

**District-Jhalokathi.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 560 of 2021.**

Nibaro Chandra Mali being dead his legal heirs 1(a)  
Redoy Mali and others.

----- Plaintiff-Respondent-Petitioner.

-Versus-

Gourango Chandra Mali and others.

----- Defendant-Appellant-Opposite Parties.

Mr. Md. Kaiser Zahid Bhuiyan, Advocate

----- For the Plaintiff-Respondent-Petitioner.

Mr. Swapan Kumar Dutta, Advocate

----- For the Defendant-Appellant-Opposite Parties.

Heard On: 16.07.2025 and 28.07.2025.

And

**Judgment Delivered On: 6<sup>th</sup> Day of August 2025**

**Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite party to show cause as to why the Judgment and Decree dated 15.12.2020 (decree signed on 07.01.2021) passed by the learned District Judge, Jhalokathi in Title Appeal No. 41 of 2019, allowing the appeal and thereby reversing the Judgment and Decree dated 29.05.2019 (decree signed on 09.06.2019) passed by the learned Senior Assistant Judge, Jhalokathi in Title Suit No. 116 of 2005 decreeing the suit, should not be set aside.

The petitioner, as plaintiff, instituted Title Suit No. 116 of 2005 before the learned Senior Assistant Judge, Jhalokathi, against the defendant-appellant-opposite party seeking specific performance of contract in respect of the suit land.

The plaintiff's case, in brief, is that the suit land originally belonged to Darika Nath, Surendra Nath, and Mayaluxmi, each holding a one-third share in 2.64 acres situated in Mouza Kafurkathi, recorded in S.A. Khatian Nos. 295/298, Dag No. 142. They also jointly owned 20 decimals in Mouza Poshonda, recorded in S.A. Khatian No. 52, Dag No. 232. Upon the death of Darika Nath, his son Kartik Chandra inherited his share. On 24.07.1983, Kartik Chandra sold 37 decimals of land from Kafurkathi to the defendant by registered deed No. 3337. Earlier, on 15.06.1980, he had received an advance from the defendant and delivered possession. On 22.02.1979, Kartik Chandra also sold 6.75 decimals of land in Mouza Poshonda jointly to the plaintiff and defendant by registered deed. Prior to that, on 10.06.1970, Surendra Nath had sold 6.75 decimals in Poshonda and 72.5 decimals in Kafurkathi to Manoranjan Mali (father of both plaintiff and defendant) through a registered deed, and delivered possession.

Upon the death of Manoranjan Mali, his two sons, the plaintiff and the defendant, succeeded to his estate. Subsequently, on 24.07.1983, Kartik Chandra sold a further 2 ana 5 gonda share of Khatian No. 142 to the defendant. Through these transactions, the defendant acquired 73.25 decimals in Kafurkathi and 3.25 decimals in Poshonda, which, together with his earlier 3.25 decimals in Poshonda, totalled 6.5 decimals therein.

The plaintiff alleged that, due to financial hardship, the defendant expressed his willingness to sell the aforesaid land to the plaintiff for a consideration of Tk. 35,000. On 30.06.1985, the plaintiff paid Tk. 32,000 in advance, whereupon the defendant executed a bainanama (agreement for sale) in favour of the plaintiff. The plaintiff was allegedly placed in possession of the land, with an understanding that the remaining Tk. 3,000 would be paid at the time of executing the

final sale deed. However, the defendant later failed and refused to execute the final deed, compelling the plaintiff to institute the suit.

The defendant contested the suit by filing a written statement denying the plaintiff's case in toto. He asserted that, after their father's death in 1971, when he was still a minor, the plaintiff had taken charge of all documents and properties. The defendant alleged that the bainanama was a forged and fabricated document, manufactured by the plaintiff to unlawfully deprive him of his property.

To substantiate his claim, the plaintiff examined three witnesses: P.W.-1 Hridoy Mali (plaintiff's son), P.W.-2 Sunil Chandra Halder (scribe of the bainanama), and P.W.-3 Swapan Sarker (attesting witness). The defendant examined two witnesses: D.W.-1 Gouranga Mali (defendant himself) and D.W.-2 Samiran Mistri (named attesting witness of the disputed bainanama). All witnesses were fully cross-examined.

Upon consideration of the evidence, the learned trial court decreed the suit on contest against defendant No. 1 and ex parte against defendant No. 2 by judgment dated 29.05.2019 and decree dated 09.06.2019. Being aggrieved, the defendant preferred Title Appeal No. 41 of 2019. The learned District Judge, Jhalokathi, allowed the appeal and reversed the trial court's judgment and decree by judgment dated 15.12.2020 and decree dated 07.01.2021. Against this decision, the plaintiff, as petitioner, obtained the present Rule, which is now taken up for disposal.

Mr. Md. Kaiser Zahid Bhuiyan, learned Advocate for the petitioner, submits that the bainanama dated 30.06.1985 was lawfully executed by the defendant, who acknowledged receipt of Tk. 32,000 out of the agreed consideration of Tk. 35,000, with a promise to execute the

final sale deed at a later date. Pursuant to this agreement, possession of the suit land was delivered to the plaintiff, who has remained in uninterrupted possession for over 36 years. It is argued that the appellate court failed to properly evaluate the evidence on record and erred in holding the document to be forged.

He further submits that the suit land originally belonged to defendant No. 1, Gauranga Chandra Mali, who, on 30.06.1985, entered into the said agreement to sell the property to the plaintiff. In support of his claim, the plaintiff produced the bainanama (Exhibit-5) and related documents marked as Exhibit-1 series, Exhibit-2 series, Exhibit-5 series, and Exhibit-6 series. The plaintiff examined PW-1 (his son), PW-2 (the scribe), and PW-3 (an attesting witness) to prove execution of the agreement and delivery of possession. The trial court, relying on this evidence, decreed the suit in favour of the plaintiff, finding the contract for sale valid and enforceable. It is contended that the appellate court misread the material evidence and erred in reversing the trial court's well-reasoned findings. He therefore prays that the impugned appellate judgment be set aside.

Per contra, Mr. Swapan Kumar Dutta, learned Advocate for the defendant-opposite party, vehemently denies execution of any bainanama. He submits that defendant No. 1 never agreed to sell the suit land to the plaintiff, never received any consideration from him, and specifically denies the signature on the disputed document. He alleges that the plaintiff, being his full brother, has concocted a forged and fabricated bainanama with the ulterior motive of usurping his property.

He further contends that PW-2, the scribe of the bainanama, falsely stated that one attesting witness, Samiran Mistri, had died. In reality, during appellate proceedings, Samiran Mistri appeared as DW-2,

categorically denied signing the document, and produced his National Identity Card showing his date of birth as 02.02.1984. This establishes that he was barely over a year old at the time of the alleged execution, making it impossible for him to have been an attesting witness within the meaning of law. According to Mr. Dutta, this fact alone renders the plaintiff's claim inherently false and the document patently fraudulent.

Mr. Dutta also argues that the burden of proving the authenticity and due execution of the bainanama rested squarely upon the plaintiff under Sections 101 and 102 of the Evidence Act, 1872. Despite a specific denial by the defendant, the plaintiff took no steps to have the disputed signature examined by a handwriting expert under Section 45 of the Evidence Act. This omission, he contends, is a serious lapse that fatally undermines the plaintiff's case.

Finally, he submits that the plaint does not disclose any specific cause of action, and that the trial court erred in decreeing the suit on the basis of an unregistered and unproven bainanama, despite the existence of credible evidence indicating forgery and fabrication. He asserts that the appellate court rightly reversed such an erroneous judgment, and that its findings should be upheld in revision.

Having heard the learned counsel and examined the record, it is evident that the trial court found the suit land originally belonged to Dwarika Nath and others and was subsequently sold by their successors to the plaintiff and defendant. It accepted the plaintiff's case that the defendant executed a bainanama dated 30.06.1985 (Exhibit-5), as proved by the scribe (PW-2) and attesting witnesses, and held that the defendant's signature was not specifically denied by rebuttal evidence.

However, the appellate proceedings exposed fatal flaws in the plaintiff's case. PW-2, the scribe, falsely claimed that one attesting witness, Samiran Mistri, had died. In reality, DW-2 Samiran Mistri appeared before the appellate court, alive and testifying, categorically denying any role in attesting the document. He produced his NID and birth certificate showing dates of birth as 02.02.1984 and 01.03.1986, meaning he was approximately 17 months old on the date of execution. Such infancy made it legally and physically impossible for him to have been a competent attesting witness within the meaning of Section 68 of the Evidence Act, 1872. This single fact not only demolishes the credibility of PW-2 but also raises a compelling inference of fabrication and false recitals in Exhibit-5.

The plaintiff's omission to verify the defendant's disputed signature through expert opinion under Section 45 of the Evidence Act, 1872 is equally telling. Once execution is specifically denied, Sections 101 and 102 of the Evidence Act place the burden squarely on the party relying upon the document. This burden is foundational and cannot be shifted until prima facie proof is offered. The failure to obtain expert verification, despite ample opportunity, is a fatal evidentiary lapse that seriously undermines the plaintiff's case.

Furthermore, the appellate court found that the plaintiff's reliance on long possession as corroborative evidence was untenable in law, as possession alone cannot cure the inherent defect in an unproven contract. In fact, the plaintiff's own pleadings and evidence revealed inconsistencies regarding the date and manner of delivery of possession, thereby eroding the credibility of his claim. The court also observed that the plaintiff failed to produce any independent, disinterested witness from the locality to support his alleged possession under the bainanama. This absence of impartial corroboration, coupled with the proven falsehood of a key witness,

demonstrated that the plaintiff's case rested on shaky and self-serving testimony rather than on credible, lawful proof.

The appellate court, upon scrutiny, concluded that the plaintiff failed to establish the foundational fact of a valid agreement to sell. The false statement of the scribe, the impossibility of one attesting witness's participation, and the absence of expert verification all combined to discredit the document. In such circumstances, courts must reject any instrument tainted by fabrication, as judicial process cannot be founded on forged or unreliable evidence.

This Court finds that the appellate court's decision is well-reasoned, free from legal infirmity, and correctly reverses the trial court's decree. No jurisdictional error or manifest illegality is apparent to warrant interference under Section 115 CPC.

**Accordingly, the Rule is discharged.**

There shall be no order as to cost.

Let the lower court records be sent back along with a copy of this judgment at once.

**(Justice Md. Toufiq Inam)**