

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 2085 of 1996

Motilal Dey

... Petitioner

-Versus-

Radheshyam Dey being dead his heirs Biswajit
Dey and others

... Opposite parties

Mr. Kamal Hossain, Advocate

...for the petitioner

Mr. Mohammad Shamsul Alam, Advocate

... for opposite parties number 1(a)-1(c)

Hearing concluded on 04.08.2024

Judgment delivered on 18.08.2024

This rule was issued on an application under Section 115 (1) of the Code of Civil Procedure challenging the legality of judgment and decree dated 27.04.1995 (decree signed on 02.05.1995) passed by the District Judge, Bhola in Title Appeal Number 90 of 1990 dismissing the same on affirming those dated 26.08.1990 passed by the Assistant Judge, Borhanuddin, Bhola in Title Suit Number 665 of 1983 dismissing the suit.

The petitioner instituted the suit for specific performance of contract on the averments, *inter alia*, that the land as described in the

Schedule (Ka) of the plaint originally belonged to defendant-opposite party number 1 Radheshyam Dey, since deceased. He entered into an agreement with the plaintiff for selling the land for a consideration of Taka 8,500/=, out of which the plaintiff already paid him Taka 8,000/= as earnest money on 06.09.1972. At the time of execution of the agreement (*bainanama*), the proposed vendor (defendant number 1) also handed over the possession of the suit land in favour of the plaintiff. It was also stipulated that the plaintiff would pay the remaining consideration money within the next three months and on receipt thereof, the defendant would execute and register the sale deed. Despite approach from the plaintiff, the defendant did not execute and register the sale deed and finally refused to do so in the first part of Poush, 1387 BS. Hence the suit.

Defendant number 1 contested the suit by filing a written statement denying the material allegations of the plaint contending, *inter alia*, that the suit land belonged to his father (Pran Hari Dey) and uncle Umesh Chandra Dey to the extent of eight *annas* each. Umesh Chandra had transferred some land to a stranger Mst. Mostafa Begum, in which event, defendant number 1 filed a preemption case, which was ultimately disposed of on compromise with a condition that he (defendant) would pay her Taka 2'000/= as compensation. The defendant was unable to pay the entire amount readily, and as such he signed a stamp paper worth Taka 1.50 and gave it to her (Mostafa Begum's) husband Rafiqul Islam on the

stipulation that on payment of the remaining amount, he would return the stamp paper. Unfortunately, the stamp paper was lost from the custody of Rafiqul Islam, in which event, he made GD Entry Number 334 dated 14.09.1979 with Borhanuddin Police Station. It was presumed that the plaintiff somehow got the said stamp paper, created the agreement and instituted the suit for harassment of defendant number 1. However, during pendency of the suit, there was a local *shalish* over the dispute and the plaintiff relinquished his claim on purchasing 35½ decimals of land for a consideration of Taka 20'000/=.

On the aforesaid pleadings, the trial court framed the issues, namely, (1) whether the suit was maintainable in its present form, (2) whether the suit was barred by limitation, (3) whether the court fees paid for the suit was correct, (4) whether there was any defect of party, (5) whether defendant number 1 properly executed the agreement in question on 06.09.1977 in favour of the plaintiff, (6) whether there was any settlement of dispute between the parties, and (7) whether the plaintiff was entitled to any relief, and if so, what reliefs he was entitled to.

The parties went on trial, in course of which, plaintiff himself deposed as PW 1 supporting the plaintiff's case as stated above and adduced the sale agreement in question in evidence vide Exhibit-1. The plaintiff examined two more witnesses in support of his case. Of them PW 2, Himangshu Chandra Dey was a relation to the plaintiff

and also an attesting witness to the sale agreement, and PW 3 Anil Chandra Dey was another relation to him, who deposed supporting the plaintiff's possession over the suit land.

On the other hand, defendant number 1 Radheshyam Dey deposed as DW 1 and adduced the documents relating to the preemption case, **sale deed dated 19.07.1988** and the self-copy of General Diary dated 14.09.1979. The defendant examined four other witnesses including the aforesaid Rafiqul Islam, who deposed as DW 2. The other witnesses were Rafiqul Huq Hawlader, A. Mannan, and Dibakar Dey who deposed as DWs 3, 4 and 5 respectively. All of them supported the defendant's case.

On conclusion of hearing, learned Assistant Judge dismissed the suit by judgment and decree dated 26.08.1990 (decree signed on 01.09.1990). Being aggrieved, the plaintiff preferred Title Appeal Number 90 of 1990 in the Court of District Judge, Bhola. Learned District Judge heard the appeal and dismissed the same by the impugned judgment and decree giving rise to the instant civil revision.

Mr. Kamal Hossain, learned advocate for the plaintiff-petitioner submits that the court of appeal below without any independent discussion on the evidence on record and without any finding of its own, dismissed the appeal in a mechanical manner and thereby committed error of law.

Mr. Kamal further submits that the trial court's finding that the plaintiff did not deposit the remaining consideration money and held the suit to be not maintainable was erroneous inasmuch as in a suit for specific performance of contract, there was no such requirement of the law that was in force at the material time. A statement in the plaint to the effect that the plaintiff was willing and still ready to pay the consideration money was enough.

Mr. Mohammad Shamsul Alam, learned advocate for opposite parties number 1(a)-1(c) on the other hand submits that both the courts below on concurrent findings of facts dismissed the suit and appeal. There is no scope to interfere with the decisions sitting in revisional jurisdiction. The rule is liable to be discharged.

I have considered the submissions of the learned advocates of both the sides and gone through the record. It appears that the agreement for sale was an unregistered one. So, for obvious reasons the learned Judges were extra cautious in considering the evidence towards enforcement of an unregistered agreement. Learned trial judge discussed the relevant law of limitation, the time-frame as mentioned in the sale agreement in question and the date of institution of the suit and found it to be barred by limitation. Learned trial judge further observed that PWs 1 and 2 were brothers inter se and **the unregistered agreement was not proved by its scribe, or any other neutral witness.** Finally the trial court did not believe the sale agreement to be a genuine one. Besides, **if the possession of the**

suit land was handed over to the plaintiff at the time of execution of the sale agreement, why he purchased 35½ decimals therefrom by registered sale deed dated 19.07.1988 (vide Exhibit-Kha) from defendant number 1 during pendency of the litigation. Under the circumstances, the trial court did not allow equitable relief of specific performance in favour of the plaintiff and accordingly dismissed the suit. The court of appeal below being the last court of facts, also discussed the evidence and agreed with the findings of the trial court. Sitting in revisional jurisdiction, I do not find any error in the discussions of the courts below and as such find no reason to interfere with their decisions.

Accordingly, the rule is discharged.

Send down the records.