

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 1912 OF 2003

Mosammat Sahera Begum being dead her legal heirs:

Md. Abdul Hakim Sarker and others

Defendants-Respondents-Petitioners

Versus

Mrs. Runio Wahab

Plaintiff-Appellant-Opposite Party No. 1

The Government of Bangladesh, represented by the Deputy Commissioner, Dhaka

Defendant-Respondent-Proforma Opposite Party

Mr. Syed Mahmudul Ahsan, Advocate
for the defendant-respondent-petitioners

Mr. Md. Zakir Hossain, Advocate
for the plaintiff-appellant-opposite party No. 1

Judgment on: 15.12.2022

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Decree dated 25.1.2003 passed by the learned Joint District Judge, Additional Artharin Adalat No. 2, Dhaka in Title Appeal No. 61 of 1993 allowing the appeal and thereby reversing the Judgment and Decree dated 25.11.1992 passed by the learned Assistant Judge, Dohar, Dhaka in Title Suit No. 11 of 1992 dismissing the suit

should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No.1 as plaintiff instituted Title Suit No.11 of 1992 in the Court of learned Assistant Judge, Dohar, Dhaka impleading the present petitioner and the opposite party No.2 Government as defendants for specific performance of contract by executing and registering a Sale deed in her favour and for recovery of possession of the suit land.

The plaintiff's Case, in short, is that the defendant No. 1 on 17.08.1978 purchased the suit land by virtue of a registered deed from one Md. Jalal Uddin Khan and started possessing and enjoying the same. The said defendant No. 1 out of her financial necessity proposed to sell the suit land measuring .06 acres of land to the plaintiff and the plaintiff accepted her said proposal. The consideration money was fixed at taka 48,500/- in respect of .6 acres of suit land, previous plot No. 1143, present Khatian No. 327 appertaining to Mouza Bhatara under Police Station Gulshan, District-Dhaka. Out of the total amount of consideration money the plaintiff paid Tk. 10,000/- as advance to the defendant No. 1 and the said defendant after receiving the same on 26.01.1985 executed a Deed of Agreement (Bainanama) in favour of the plaintiff in respect of the suit land in presence of the witnesses. The said defendant No.1 entered into the agreement in that regard that she after mutating her name in the concerned offices and paying rents

and taxes to the Government within one month from the date of execution of the Bainanama Deed would hand over the certified copies and relevant documents in respect of the suit land to the plaintiff and the plaintiff after paying the due consideration money amounting to Taka 31,500/- to the defendant No.1 would be entitled to get the Sale Deed in respect of the suit property which would be executed and registered by the defendant No.1 in favour of the plaintiff. But the defendant No. 1 failed to supply those documents relating to mutation and payments of rents and taxes in her own name within the fixed time and the defendant No. 1 also refused to receive the due consideration money from the plaintiff. Thereafter on so many occasions the plaintiff requested the defendant No.1 to execute and register the Sale deed in question in respect of the suit property, in her favour as per the terms and conditions of the Bainanama. But the defendant No.1 did not pay any heed to the plaintiff's said uttered prayer. Later on the plaintiff on 26.01.1987 served a legal notice upon the defendant No. 1 by Registered Post. But the plaintiff did not reply. Thereafter the plaintiff with the help of her husband and respectable persons of the locality on 25.12.1987 put pressure upon the dependant to execute the Deed of Agreement as per the terms and conditions mentioned in it and also to execute and register the Sale Deed after receiving the due consideration money from the plaintiff. That the

defendant No. 1 in the presence of the husband of the plaintiff and local respectable persons agreed that, she after receiving the due consideration money will execute and register the said sale Deed in favour of the plaintiff within one month. But the defendant No. 1 did not act as per her promise and she did not execute and register any such Sale Deed in favour of the plaintiff. Thereafter on 25.02.1988 the plaintiff sent a legal notice upon the defendant No. 1. Then the defendant No.1 replied to the said legal notice in writing. In the said reply it was claimed by the defendant No. 1 that the claim made by the plaintiff was nothing but a time barred claim. Hence the plaintiff after failing to get the Sale Deed executed and registered by the defendant No. 1 in her favour as per the terms and consideration of the Bainanama Deed instituted the instant suit. The first date of execution of the Bainanama was on 26.01.1985 and the cause of action of the instant suit arose on 25.12.1987 as because on the said date the defendant No. 1 promised to execute and register the Sale Deed in question in favour of the plaintiff. But till date of institution of the instant suit she did not act as per her promise and did not execute and register any such deed in favour of the plaintiff. The plaintiff after depositing necessary Court fees has filed the suit for specific performance of contract and for recovery of khas possession of the suit property.

The dependant No.1 contested the suit by filing a written statement denying the material statements made in the plaint contending inter alia, that the instant suit is not maintainable in its present form and the same is also barred by limitation. There has no cause of action to file the suit and the suit is false and concocted. The present suit is hit by the principle of waiver, estoppel and acquiescence. The defendant No. 1 with the plaintiff entered into the agreement in question but did not hand over the possession of the suit land to the plaintiff and the defendant No. 1 has been possessing the same. The plaintiff as per the terms and conditions of the Bainanama-in- question failed to pay due consideration money amounting Tk. 31,500/- to the defendant No. 1 within the specific time as mentioned in the Bainanama i.e within one month from the date of execution of the Bainanama-in- question. On 28.02.1985 at the expiry of the stipulated period of time the son of the defendant No. 1 on behalf of his mother specifically informed the plaintiff in presence of other witnesses that the defendant No. 1 would not sell the suit land to the plaintiff as because the plaintiff failed to pay the due consideration money to the defendant No. 1 within the fixed time as mentioned in the Bainanama and also failed to take delivery of the title deed-in- question form the defendant No. 1 after execution and registration of the same. The son of the defendant No. 1 also informed the

plaintiff that the defendant No. 1 has forfeited the advance money amounting Tk. 10.000/- paid by the plaintiff at the time of the execution of the Bainanama-in- question. But thereafter the plaintiff demanded from the defendant No. 1 for getting back the advance money paid by him. Since the time of execution of the Bainanama the defendant No. 1 had been residing in her village home therefore her son denied to sell the suit land and the plaintiff got information about the denial of defendant No. 1 on the very date that is on 28.02.1985. Thereafter the plaintiff neither met the defendant No. 1 nor any kind of conversation took place between themselves. Long after 28th day of February, 1985 the defendant No. 1 received a notice served upon her at her village home address by the plaintiff on 25.02.1988. On receipt of the said notice the defendant No. 1 specifically informed the plaintiff that the claim of plaintiff was a time barred claim. Though the plaintiff's claim was time barred but the plaintiff with an illmotive instituted that instant suit making false statements. The statements regarding the serving of notice upon the defendant on 26.01.1987 and the facts stated in respect of the promise made by the defendant No. 1 on 25.12.1987, with the fact, stated by the plaintiff that the plaintiff met the defendant after execution of Bainanama deed are all false statements made by the plaintiff. The plaintiff is

not entitled to get any relief as prayed by her. The instant suit is barred by limitation and liable to be dismissed.

The learned Senior Assistant Judge, Dohar, Dhaka dismissed the suit by its Judgment and Decree dated 25.11.1992. Against which the plaintiff preferred Appeal being Title Appeal No. 61 of 1993 before the learned Joint District Judge, Additional Artho Rin Adalat No. 2, Dhaka who allowed the Appeal and hence the defendant-respondent as petitioner moved this application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Syed Mahmudul Ahsan, the learned Advocate for the defendant-respondent-petitioner, submits that the impugned Judgment and Decree is not a proper judgment of reversal in as much as Appellate Court below did not advert to all the findings arrived at by the Trial Court. He then submits that the Trial Court on proper consideration of the evidence and materials on record categorically held that the suit is barred by limitation but the Court of Appeal below without adverting to the said finding with reference to the evidence and materials on record passed the impugned judgment and decree and as such committed error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree. He further submits that the Court of Appeal below failed to consider and appreciate

that the plaintiff failed to adduce any positive evidence that she tendered balance consideration money to the defendant No. 1 within specific time and the defendant No. 1 refused to accept the balance consideration money and execute the sale deed. He lastly submits that P.W. 1 Abdul Wahab Khan, husband of the plaintiff in his cross-examination stated to the effect:

১নং বিবাদিনী লিগ্যাল নোটিশের জবাবে তাহার দাবী তামাদি হইয়া গিয়াছে মর্মে জানাইলে আমি আর তাহাকে পুনরায় লিগ্যাল নোটিশ দিই নাই। which clearly proves that the plaintiff's claim was hit by the principle of waiver, acquiescence and estoppels.

Mr. Md. Zakir Hossain, the learned Advocate for the plaintiff-opposite party No. 1, submits that the Bainapatra executed by the defendant No.1 dated 26.01.1985 is admitted by the defendant No.1 and receiving money and amount of price are also admitted and as such the defendant No.1 cannot refuse to execute and register the sale deed and the plaintiff is entitled to obtain decree for specific performance of contract. He further submits that the defendant No. 1 by admitting the execution of valid Bainapatra refused to execute sale deed on the plea that the period of Bainapatra was only 01 (one) month which is not sustainable in law as there is no such stipulated period of Bainapatra. He next submits that the defendant No. 1 stated that she refused to execute sale deed for the reason that the matter was time barred but from all the documents it appears that there is no time fixed in the

Bainapatra but by misinterpretation of admitted Bainapatra the Trial Court wrongly found that the stipulated time was only for 01 (one) month and the Appellate Court below by reversing the findings of the Trial Court rightly observed that the defendant No. 1 promised to collect the relevant papers within 01(one) month. He next submits that the defendant No. 1 practicing fraud upon the plaintiff by giving reply to the legal notice dated 25.02.1988 that he would not execute the Bainapatra. But since the Bainapatra is valid and the defendant No. 1 is under obligation to execute the deed she cannot refuse to execute and register the sale deed and the Appellate Court below rightly decreed the suit. He then submits that the provision of section 12 of the Specific Relief Act the contract between the parties is specifically be enforced and the defendant No. 1 cannot deny to execute the sale deed. He next submits that the after passing the impugned judgment and decree the petitioner deposited rest amount of Tk. 38,500/- (thirty eight thousand five hundred) by a treasury chalan dated 26.01.2003. He lastly submits that the suit is filed within the stipulated time as provided in law of limitation and the suit is maintainable and the plaintiff is entitled to get relief for specific performance of contract and since there is no merit in the Rule, the Rule is liable to be discharged.

Heard the learned Advocates for the parties and perused the record.

From the record it appears that the opposite party No. 1 as plaintiff instituted the instant suit impleading the present petitioner as defendant No. 1 for specific performance of contract relating to landed property described in the schedule to the plaint. The Bainapatra executed by the defendant No. 1 dated 26.11.1985 which is admitted by the defendant No. 1 and receiving money and amount of price are also admitted. The defendant No. 1 by admitting the execution of the said Bainapatra refused to execute sale deed on the plea that the aforesaid matter was time barred as the period of Bainapatra was only 01 (one) month but from the documents it appears that there is no time fixed in the Bainapatra but by misinterpretation of admitted Bainapatra the Trial Court wrongly found that the stipulated time was only 01 (one) month but the Appellate Court below by reversing the findings of Trial Court rightly observed that the defendant No. 1 promised to collect the relevant papers of the suit land within 01 (one) month from the concerned authorities from the date of execution of the Bainapatra and the defendant No. 1 did not execute and register the sale deed intentionally.

In the above facts and circumstances of the case, the defendant No. 1 cannot refuse to execute and register the sale deed and the Appellate Court below rightly decreed the suit.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

Accordingly, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 25.1.2003 passed by the learned Joint District Judge, Additional Artharin, Court No. 2, Dhaka in Title Appeal No. 61 of 1993 allowing the appeal and thereby reversing the Judgment and Decree dated 25.11.1992 passed by the learned Assistant Judge, Dohar, Dhaka in Title Suit No. 11 of 1992 is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of the Judgment to the Courts below at once.