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

First Appeal No. 541 of 2019

In the matter of:

Most. Firoza Begum
… Plaintiff-Appellant.
-Versus-
Limo Electronics Limited and others.
…defendants-Respondents.

Mr. Lutfor Rahman, Advocate
…For the Appellant

Mr. M.M. Shafiullah, Advocate
… For the Respondent nos. 1-4.

Heard on 25.06.2025 and 02.07.2025
Judgment on 03.07.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the plaintiff in Title Suit No. 51 of 2019, this appeal is directed against the judgment and decree dated 21.08.2019 passed by the learned Joint District Judge, First Court, Dhaka in the aforesaid Title Suit rejecting the plaint against the defendant nos. 1-4 on contest.

The precise facts leading to preferring this appeal are:

The present appellant as plaintiff instituted the aforesaid suit before the Joint District Judge, First Court, Dhaka on 23.01.2019 seeking the following reliefs:

" ক) বিবাদীগণ তফসিল বর্ণিত ফ্ল্যাটটি বাদী বরাবরে রেজিষ্ট্রি করিয়া দিতে বাধ্য মর্মে এক ঘোষণামূলক ডিক্রী প্রদান করিতে;

খ) বাদীপক্ষে চুক্তি অনুযায়ী তফসিল বর্ণিত ফ্ল্যাটটি বাদীর বরাবরে রেজিষ্ট্রি করিয়া দেওয়ার এক নির্দেশনামূলক ডিক্রী প্রদান করিতে;

গ) বিবাদীপক্ষ ফ্ল্যাটটি রেজিষ্ট্রি না দিলে আদালতযোগে রেজিষ্ট্রির নির্দেশ প্রদানের এক ডিক্রী প্রদান করিতে;

ঘ) বিজ্ঞ ৫ম যুগ্ম জেলা জজ আদালতে বিচারাধীন ২/২০১৯ নং মানী মোকদ্দমা নিষ্পত্তি না হওয়া পর্যন্ত তফসিল বর্ণিত সম্পত্তিতে বাদীর নিরঙ্কুশ ও শান্তিপূর্ণ দখল হইতে অবৈধভাবে উচ্ছেদ না করিতে পারে মর্মে এক ডিক্রী প্রদান করিতে;

ঙ) নালিশের সম্যক ব্যয় বাদীর অনুকূলে এবং বিবাদীর প্রতিকূলে ডিক্রি দিতে;

চ) আদালতের ন্যায় বিচারে বাদী আর যে সকল বৈধ প্রতিকার পাইবার হকদার উহার সম্যক বাদীর অনুকূলে এবং বিবাদীর প্রতিকূলে ডিক্রি দিতে আজ্ঞা হয়।"

The case of the plaintiff, in short, is that the plaintiff was appointed on 06.05.2001 as the Personal Secretary to the Managing Director of the defendant no.1 company, wherein her husband was also employed as Project Manager. Defendant nos. 2 and 3, being pleased and satisfied with their services, orally gifted the flat described in the schedule to the plaintiff. Since 01.11.2001, the plaintiff, along with her husband, has been residing there in the flat duly paying all utility charges. Subsequently, in March 2003, the defendants asked the plaintiff and her husband to purchase the flat, which had earlier been gifted to them. The

purchase price of the flat was fixed at Taka 30,00,000/- (thirty lac) only. Out of the said amount, Taka 5,00,000/- (five lac) was adjusted by the defendants from the receivable commission of the plaintiff's husband, and the remaining sum of Taka 25,00,000/- (twenty five lac) was agreed to be paid through deductions from the salary of the plaintiff in monthly installments of Taka 10,000/- (ten thousand). However, from September 2014, the defendants abruptly ceased payment of the plaintiff's salary without assigning any reason. Thereafter, in November 2018, the defendants asked the plaintiff to resign from service and vacate the suit flat. Feeling aggrieved, the plaintiff filed Money Suit No. 02 of 2019 against the defendants for recovery of arrears of salary amounting to Taka 10,51,500/- (ten lac fifty one thousand and five hundred). Subsequently, on 21.01.2019, the defendants again threatened the plaintiff with eviction from the suit flat. Under such circumstances, the plaintiff instituted the suit.

On 07.04.2019, the defendant nos. 1-4 entered appearance and filed an application under Order 7, Rule 11 read with section 151 of the Code of Civil Procedure stating that the plaint is liable to be rejected as the same is barred by law. The plaintiff filed a written objection against the said application stating that the application is not maintainable as the defendants did not file written statement. Subsequently, on 20.05.2019 the defendant nos. 1-4 filed written statement denying the material allegations so made in the plaint and stated that the suit is not maintainable in its present form, the suit is barred by limitation and section 42 of the Specific Relief Act.

The learned Judge of the trial Court upon hearing the parties and considering of materials on record rejected the plaint on contest by impugned judgment and decree dated 21.08.2019.

Being aggrieved by and dissatisfied with the said judgment and decree dated 21.08.2019 passed by the learned Joint District Judge, First Court, Dhaka the plaintiff as appellant preferred this appeal.

Mr. Lutfor Rahman, the learned counsel appearing for the appellant upon taking us to the impugned judgment and decree at the very outset submits that the trial Court has erroneously rejected the plaint without considering the facts and circumstances of the case and law so placed before it.

He further contends that the gift has already been acted upon and the trial Court failed to appreciate that the plaintiff can prove her case by adducing evidence at the time of trial and hence, the impugned judgment is liable to be set aside.

The learned counsel also contends that the appellant has been in exclusive, uninterrupted and peaceful possession in the suit property and paying electricity bills, WASA bills, Gas bills and other charges of the suit flat till date, but without considering the possession the trial Court rejected the plaint in a slipshod manner illegally and arbitrarily.

In support of his contention, the learned counsel for the appellant has referred to the decisions passed in the cases of ***Saifuddin Ahmed Vs. Dr. Hosne Ara Begum alias Golap and others***, reported in XIIIADC(2016)498 and ***Kari Moulavi Abdul Gafur and another Vs. Mohammad Nurullah alias Badsha***, reported in 6 LM(AD)(2019)190.

With these submissions and relying on the decisions the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and decree.

Per contra, Mr. M. M. Shafiullah, the learned Advocate appearing for the respondent nos. 1-4 vehemently opposes the contention taken by the learned counsel for the appellant and contends that there is no existence of any agreement regarding the alleged gift.

He further contends that no oral gift is permissible under Hindu Law and for the purpose of making a gift of immovable property, the transfer must be in writing and effected by a registered instrument signed by the donor and attested by at least two witnesses under section 123 of the Transfer of Property Act which is absent in the instant case. In support of his such contention, he referred to the decisions passed in the case of ***Kala Miah Vs. Gopal Chandra Paul and others***, reported in 51 DLR(1999)77.

He next contends that, the trial Court has very rightly rejected the plaint since the suit is a fruitless one as the ultimate result of the suit is as clear as day light and such type of suit should be buried in its inception. In support of his contention, he then relied upon the decision passed in the case of ***Abdul Jalil and others Vs. Islamic Bank Bangladesh Limited and others***, reported in 53DLR(AD)(2001)12.

The learned counsel also contends that no gift was made to the plaintiff by the defendants nor was any contract or agreement executed between the plaintiff and the defendants concerning the suit flat and as such, no legal obligation or enforceable right within the meaning of

section 55 of the Specific Relief Act has arisen in favour of the plaintiff and therefore, the plaintiff is not entitled to a decree of mandatory injunction as prayed for. In support of his contention, he referred to the decisions passed in the case of ***Aftabuddin Vs. Mahfuzus Sobhan and others,*** reported in 1990 BLD (AD) 47.

With those submissions, the learned counsel finally prays for dismissing the appeal by affirming the impugned judgment and decree.

We have considered the submission so advanced by the learned counsel for the appellant and that of the respondents at length, perused the memorandum of appeal, supplementary affidavit, application for injunction and the impugned judgment and decree.

On going through the plaint, we find that the plaintiff who is a Muslim by religion claimed that defendant nos. 2 and 3 belonging to Hindu community made an oral gift of the suit flat. The plaintiff sought for a declaration that the defendants are bound to register the suit flat in her favour. But it is settled proposition of law that under Hindu Law, oral gift is not valid and permissible in view of the provision of section 123 of the Transfer of Property Act. Under section 123 of the Transfer of Property Act, 1882, for the purpose of making a gift of immovable property valid, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. An oral gift of immovable property by a Hindu, even followed by possession, does not create any legal rights in favour of the donee and is void in the eye of law.

In ***Hari Kison Panday Vs. Nageswari Debi and others***, reported in 8 DLR 65 it has been held that a gift under the Transfer of Property Act can only be effected in the manner provided by section 123.

In ***Kalu Miah Vs. Gopal Chandra Paul and others***, (supra) it has been held:

> " In the absence of a registered instrument a gift by a person belonging to Hindu Community (governed by the Dayabhaga School of Hindu Law) is not valid under section 123 of the Act."

The plaint shows the acquisition of plaintiff's title in the suit flat is based on an alleged oral gift made by defendant nos. 2 and 3 who belong to the Hindu religion is explicitly and expressly barred by law where a court is always reluctant to proceed with a suit which would be a futile exercise.

In the plaint, the plaintiff claimed that the price of the suit flat was fixed at Taka 30,00,000/- (thirty lac) and Taka 5,00,000/- (five lac) was adjusted as of commission of the plaintiff's husband and rest Taka 25,00,000/- (twenty five lac) was deducted from the salary of the plaintiff. In this regard, no documents were produced before the trial Court. The trial Court in its judgment observed that "নালিশী ফ্ল্যাটের মূল্য ৩০ লক্ষ টাকা নির্ধারণ করা হয় এবং যার মধ্যে ২৫ লক্ষ টাকা বাদীর বেতন থেকে সমন্বয় করা হইয়াছে এবং বাকী ৫ লক্ষ টাকা বাদীর স্বামীর কমিশন থেকে প্রদান করা হইয়াছে। কিন্তু এইরূপ কোন বায়নাপত্র অথবা চুক্তিপত্র বা অন্য কোন দালিলিক কাগজপত্র আদালতে দাখিল করা হয় নাই।" So, it is evident that the plaintiff has no document, such as agreement, contract or *bainapatra* to prove her case.

The above factum led us to conclude that the plaintiff has been running after a fruitless litigation and in such a situation the law declared by our Appellate Division in the case of ***Abdul Jalil and others Vs. Islamic Bank Bangladesh Limited and others***, (supra) is absolutely applicable in the facts and circumstances of the instant case.

The above mentioned views were fortified in the case of ***Robi Axiata Ltd. Vs. First Labour Court***, reported in 21 BLC (AD)(2016)218, wherein the Appellate Division held:

> "...The Court can reject a plaint in exercise of inherent powers under section 151 of the Code of Civil Procedure if it is found that on the admitted facts that the plaint is otherwise barred by law. It further held that the Court should not feel helpless in circumstances to administer substantial justice and make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. If the Court can exercise power for securing ends of justice, it can be said that the powers of the Court are wide enough and residuary in nature and not controlled by any other provisions of the Code of Civil Procedure. It further held that in appropriate cases it can exercise its power to resolve a claim in order to prevent the abuse of the process of the Court or to fill up the lacuna left by legislature or where the

> legislature is unable to foresee any circumstances which may arise in a particular case."

The learned counsel appearing for the appellant contends that the appellant has been staying and enjoying the possession of the suit flat since 2001 and has been paying all utility bills. However, in view of Annexure-'E' series of the supplementary affidavit, we find the electricity bills, gas bills and service charges of co-operative society were paid in the name of one Mrs. Lipika Biswash (defendant no. 3). It is settled principle of law that mere permissive possession even for a long time does not confer title.

The plaint shows that there is no document of title on the basis of the alleged gift which otherwise implies that the possession of the plaintiff in the suit flat is permissive in nature and the same never creates any title. Therefore, the instant suit is definitely barred by section 42 of the Specific Relief Act. A court cannot grant declaration of title only on the basis of permissive possession and since the suit cannot run in accordance with law it should be buried at its inception. So, the trial Court has rightly rejected the plaint which is legally sound.

It is evident that no agreement or contract exists between the plaintiff and defendants concerning the suit flat. Accordingly, the defendants have no obligation within the meaning of section 55 of the Specific Relief Act. Since no legal right or legal obligation has accrued in favour of the plaintiff, giving rise to a cause of action for mandatory injunction and the plaintiff has failed to establish her case for the grant of any injunction, she is not entitled to any decree in this regard. We find

support in the decision rendered by the Appellate Division in the case of ***Aftabuddin Vs. Mahfuzus Sobhan and others,*** (supra) wherein it was held:

> "Where the use of property is permissive and not as of right no case is made out for injunction far less a question of mandatory injunction. The obligation referred to in this section means a legal obligation and not a moral obligation."

In the light of foregoing discussion and observation, we find merit in the submissions made by Mr. Shafiullah regarding application of section 55 of the Specific Relief Act and find his contention to have substance.

Given the above facts, circumstances of the case and discussion and observation made herein above, we are of the view that the learned Judge of the trial Court has rightly and legally rejected the plaint.

Overall, we find no ground to interfere with the impugned judgment and decree.

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

The judgment and decree dated 21.08.2019 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 51 of 2019 is hereby affirmed.

The order of status quo granted on 14.10.2019 by this Court stands recalled and vacated.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Sabuj Akan/
Assistant Bench Officer