

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 209 of 1998

with

First Appeal No. 59 of 2025

with

First Appeal No. 287 of 1999

Md. Abul Hossain and others

...Appellants (in F.A No. 209 of 1998)

Versus

Md. Khoda Baksh Hazra and others

...Respondents (in F.A No. 209 of 1998)

Mr. Muhammad Rezaul Kabir Khan, Advocate

...For the Appellants (in F.A No. 209 of 1998)

Mr. A.K.M. Moniruzzaman Kabir, Advocate

...For the Respondent No. 1 (in F.A No. 209 of 1998)

Mrs. Nahid Hossain, DAG with

Mr. M Mohiuddin Yousuf, DAG,

Mr. Md. Abdul Mannan, DAG,

Mr. Md. Towhidul Islam, A.A.G,

Mr. Md. Sabbir Hossain, AAG, and

Mr. Nooray Alam Shiddique, AAG

...For the Respondent No. 3 (in F.A No. 209 of 1998)

Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Satkhira

... Appellant (in F.A No. 59 of 2025)

Versus

Md. Abul Hossain and others

...Respondents (in F.A No. 59 of 2025)

Mrs. Nahid Hossain, DAG with

Mr. M Mohiuddin Yousuf, DAG,

Mr. Md. Abdul Mannan, DAG,

Mr. Md. Towhidul Islam, A.A.G,

Mr. Md. Sabbir Hossain, AAG, and

Mr. Nooray Alam Shiddique, AAG

...For the Appellant (in F.A No. 59 of 2025)

Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Satkhira

... Appellant (in F.A No. 287 of 1999)

Versus

Md. Khoda Baksh Hazra and others

... Respondents (in F.A No. 287 of 1999)

Mrs. Nahid Hossain, DAG with
Mr. M Mohiuddin Yousuf, DAG,
Mr. Md. Abdul Mannan, DAG,
Mr. Md. Towhidul Islam, A.A.G,
Mr. Md. Sabbir Hossain, AAG, and
Mr. Nooray Alam Shiddique, AAG
...For the Appellant (in F.A No. 287 of 1999)

Judgment on 02.02.2026.

Md. Iqbal Kabir, J:

We heard all three appeals together, as the appeals arise out of the same judgment, between the same parties, and are disposed of by this single judgment.

All the First Appeals have been preferred by the defendant-appellants against the judgment and decree dated 02.06.1998 (decree signed on 28.06.1998) passed by the learned Subordinate Judge, First Court, Satkhira in Title Suit No. 3 of 1997.

Short facts stated in the plaint that the plaintiff, Md. Khoda Baksh Hazra filed this suit for specific performance of the contract to compel the execution and registration of a sale deed for 5.54 acres of land. The suit for specific performance of the contract has been filed based on an agreement for sale (Baina patra) dated 9.04.1996. According to the plaintiff's averments, the total consideration was fixed at Tk. 2,35,000/-, out of the alleged consideration amount of Tk. 2,20,000/- has been paid as an advance, leaving a residual balance of Tk. 15,000/- to be paid upon registration. The plaintiff asserts that the vendor, Sanat Kumar, acquired title to the property via a registered deed of gift from his father, Hari Narayan, who managed the estate under a duly authenticated Power of Attorney executed by the original co-owners in 1976. The cause of action arose when the defendant-appellant allegedly refused to finalize the conveyance despite the plaintiff's readiness to tender the remaining balance.

The defendant No. 2, Deputy Commissioner, Satkhira, contested the suit by filing a written statement, in response, raising several legal and procedural

bars, including limitation and a defect of parties. Defendant asserted that the plaintiff lacks a valid title and possession because 2.53 acres of the land were listed as vested property following the original owner's departure for India, while the remaining 3.01 acres were settled as khas land under section 92(Ka) via Miscellaneous Case Nos. 1/97 and 3/97. The plaintiff has no title or possession in 5.54 acres of the suit land. Furthermore, the defendants categorically denied the execution of the Baina patra, contending that the alleged agreement is non-existent and that the suit should consequently be dismissed.

However, the case of the contesting added defendants Nos. 3-11/appellants are that the suit land belonged to S.A. tenants Hari Narayan and others. Harihar and Harichaitannaya left this country for India in 1947, and their share of land is listed as enemy property. Harinarayan left this country for India before 1990. Harinarayan's share of land was made khas by the Government of Bangladesh. These defendants, as landless Mukti Joddha, took a yearly settlement from the Government in the year 1997 through D.C.R. The plaintiff has no right, title, or possession in the suit land. The suit land is treated as Mukti Joddha Pally. So the plaintiff's suit is liable to be dismissed.

Upon hearing the parties the learned Subordinate Judge, First Court, Satkhira by his judgment and decree dated 02.06.98 (decree signed on 28.06.98) was please to decreed the suit thereby, directed the defendant No. 1 to executed and Register a sale deed in favour of the plaintiff within 90 (ninety) days from the date of judgment, failing which the plaintiff will get a sale deed executed and registered through Court.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the present petitioners, as appellants, preferred the instant First Appeal.

Mr. Muhammad Rezaul Kabir Khan, learned Advocate, appearing on behalf of the added defendant Nos. 3-11/appellants, submits that the suit land has been recorded as enemy property, and a portion of it was subsequently treated as khas land by the Government. He further contends that the

appellants, being landless Mukti Joddhas, obtained a yearly settlement of the land through D.C.R. (Duplicate Carbon Receipt) issued by the concerned authority. According to him, in view of such status of the land and the settlement granted in favour of the appellants, the plaintiff has no right, title, or possession in the suit land.

Mr. A.K.M. Moniruzzaman Kabir, learned Advocate, appearing for the responding No. 1 placing several documents including the plaint, submits that the suit land originally belonged to Harinarayan, Horichaitannaya, and Harihar. According to him, except Harinarayan, the other two brothers left the country for India and on 16.12.1976 allegedly executed a Power of Attorney in favour of Harinarayan. Subsequently, Harinarayan transferred the entire property to his son, Sanat Kumar, by executing a deed of gift dated 15.01.1987. Thereafter, Sanat Kumar entered into an agreement for sale (Bainapatra) with the plaintiff for transferring the suit land. However, despite such an agreement, Sanat Kumar subsequently refused to execute and register the sale deed in favour of the plaintiff. According to him, there is no illegality, and the trial Court rightly passed the judgment.

This Court heard the learned Advocates for the parties, went through the memo of appeal, judgments of the trial Court below, and the evidence lying with the lower Court records.

It is transpired to this Court that two brothers of Harinarayan left this country for India. It was argued that those two brothers executed a Power of Attorney on 16.12.76 in favour of Harinarayan, who gifted the whole property to his son, Sanat Kumar, on 15.01.87. Sanat Kumar agreed and executed a Bainanama for the alleged sale of the suit land to the plaintiff. But Sanat Kumar refused to register and execute the sale deed in favour of the plaintiff based on the Bainanama. Therefore, the plaintiff filed suit for specific performance of the contract.

From the facts, it is pertinent to note that the plaintiff's suit for specific performance is fundamentally founded upon a power of attorney. The plaintiff has to establish that Sanat Kumar had a valid right, title, and interest in the suit land at the time of execution of the alleged Bainanama. Therefore, the alleged Power of Attorney dated 16.12.1976, purportedly executed by Harihar, constitutes the very foundation and root of the plaintiff's case.

On our scrutiny, it appears that the power of attorney (Exhibit-3) has been executed by one person instead of two. Alleged execution, indicating that the Power of Attorney is forged and fabricated, or not genuine. Further, on scrutiny, it appears that it was made in white paper, and a notary public authenticated the alleged power of attorney. Though under the law, it requires that the power of attorney has to be authenticated by the proper authority, as it was executed in another country. Indeed, there is nothing in evidence on record that the High Commission of Bangladesh in India authenticated the said Power of Attorney along with the signature of the executants, and Harinarayan paid the stamp duty or adhesive stamp in Bangladesh. It is admitted that under the reciprocal arrangement between India and Bangladesh, the plaintiff failed to bring the alleged Power of Attorney following due process of law, and it is not a Power of Attorney in such view of the matter. The learned trial Court committed a serious error of law in assuming that the alleged Power of Attorney is a genuine one. So, it can be said that the Power of Attorney (Exhibit-3) produced by the plaintiff has no legal value, and the same is not admissible in evidence. In this view of the matter, the subsequent transfer of land based on the said Power of Attorney is invalid and not tenable in the eyes of the law. Under the law, by such a power of attorney, no right can be transferred or accrued. So, Harinarayan and subsequently Sanat Kumar had no right to transfer the suit land elsewhere based on the alleged Power of Attorney. The plaintiff's suit for specific performance was fundamentally based on a power of attorney, but in

this case, the plaintiff failed to prove its genuineness, which is the root of his entire claim.

It was a claim of the plaintiff that the defendant executed a Bainanama dated 30.11.1996 to sell out the land. However, on scrutiny, it appears that the Bainanama was tampered with, especially in the 2nd line from the bottom of the first page of the Bainanama, where the date was written. The signature of সনদ কুমার মুখার্জী, which is put in the Bainanama, is not the same, showing two separate and inconsistent forms, specifically the last part of the signature. Because of alleged inconsistencies and irregularities, there is no scope to say that the Bainanama is genuine. However, it appears that D.W-1 in his deposition clearly states that মাস খানেক হলো আমি এই তহশীলে এসেছি। নাঃ জমি সম্পর্কে তার আগের ব্যক্তিগত জ্ঞান নাই। হরি চৈতন্য, হরিহরি অমলেন্দু ভারতে গিয়াছে। এরা ১৯৬৫ সালের আগে ভারতে গিয়াছে। মর্মে দেখানোর মত ভিপি লিষ্ট আছে তবে তার মূল কপি নাই। আমি দাখিলী ভি, পি লিষ্ট আছে ফটোকপি অস্পষ্ট। এই ভি, পি লিষ্ট কে পাওয়া প্রিয়ার করে তা জানি না। ভি, পি লিষ্ট কবে তৈরী হয় তার তাড়াতাড়ি তারিখ এখানে নাই। হরি চৈতন্য ভারতে যায়। হরিনারায়ন এদেশে ছিল। নাঃ জমি হরিনারায়ন দখল করতো তার অংশ মোতাবেক বাকী জমি খাষ। আমাদের রিপোর্ট এ লেখা আছে যে, নাঃ জমি বর্তমানে বাদী খোদাবক্স তত্ত্বাবধানে আছে। From the above, it appears that suit land has been possessed by the plaintiff instead of the government and to took possession of the alleged land government has to follow due procedure.

It further appears from the evidence and surrounding circumstances that Sanat Kumar had already left the country for India along with his father long before the alleged execution of the deed of gift. In such a situation, the very foundation of the claim becomes doubtful. At this stage, it has been asserted that the entire suit land was donated/gifted in favour of Sanat Kumar; no such deed of gift has been produced before the Court. Moreover, no document was exhibited to substantiate the said claim. In the absence of any registered or proved deed of gift, no right, title, or interest could have been lawfully transferred in favour of Sanat Kumar. Consequently, there was no legal basis for him to execute any Bainanama for the sale of the suit land. The alleged

claim of gift, therefore, appears to be a mere assertion without proof and ought to have been treated as fabricated and not genuine.

In the given context, the power of attorney, the gift deed, and the alleged Bainanama ought to have been treated as fabricated documents. Based on such documents, no valid transfer of right, title, or interest in the suit land could have been made in favour of Sanat Kumar. Accordingly, it is established that Sanat Kumar had no lawful right, title, or ownership in respect of the suit property. The plaintiff appears to have relied upon such forged documents to obtain a decree from the court. Despite those, the trial Court, ignoring the issue, wrongly decreed the suit for specific performance, which failed justice. Indeed, a decree for specific performance is an equitable relief, and under the settled principle of law, a person who seeks equity must come with clean hands. In this case, the facts and circumstances suggest that the plaintiff committed fraud upon the court to secure the decree. Therefore, the suit for specific performance should not have been granted and ought to have been dismissed.

That being the position stated above, the impugned judgment and decree dated 02.06.1998 (decree signed on 28.06.1998) passed by the learned Subordinate Judge, First Court, Satkhira in Title Suit No. 3 of 1997 are not tenable in law, and should be set aside.

It has been recorded that the shares of land belonging to Harihar and Harichaitannaya were recorded as enemy property after they left the country for India. Harinarayan also left the country for India before 1990, and his share of the land was accordingly vested in the Government as khas land. However, the record shows that the appellants/defendants, being landless freedom fighters (Mukti Joddhas), obtained a yearly settlement of the said land from the competent authority in 1997 through D.C.R. But, the operation of the alleged settlement was suspended soon after issuance of the DCR. Thereafter, no allotment was given. This appeal has been filed by the appellants, who were not the lessee of the suit land. The learned DAG argued in this case that the

appellants/defendants had no locus-standi to claim such land, as they were neither the owners nor lessees under the Government. She claims that the plaintiff, along with some other defendants, tried to grab the property by producing a false Bainanama allegedly executed by Sanat Kumar. According to her, the appeal is not maintainable. She submits the cross appeal, which has been filed by the Deputy Commissioner, Satkhira on behalf of the Government, in the interest of the lawful beneficiaries.

From the above discussion, it appears that the appellants who have filed this First Appeal No. 209 of 1998 did not have any locus-standi to claim the aforesaid land as they are neither the owner nor the lessee of the suit land.

In the result, the First Appeal No. 209 of 1998 is dismissed, and First Appeal No. 287 of 1999 is allowed without any order as to cost.

However, in the context stated above, the impugned judgment and decree dated 02.06.1998 (decree signed on 28.06.1998) passed by the learned Subordinate Judge, First Court, Satkhira in Title Suit No. 3 of 1997, is hereby set aside.

It is pertinent to note that Mrs. Nahid Hossain, learned DAG, is not willing to press the First Appeal No. 59 of 2025. She submits it may be dismissed for non-prosecution as it has been filed inadvertently. According to her, another First Appeal No. 287 of 1999 was filed by the same appellant for the same cause. In view of the above, the First Appeal No. 59 of 2025 is dismissed for non-prosecution.

Send down the lower Court records with a copy of this judgment to the Court below at once.

Md. Riaz Uddin Khan, J:

I agree.