

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 261 of 1999.

Azahar Sharif and another

...Appellants.

-Versus-

Abdul Bareque and others

....Respondents.

None appears

... For the appellants

None appears

... For the respondents.

Heard on: 21.04.2026.

Judgment on: 30.04.2026.

Md. Badruzzaman, J:

This appeal is directed against judgment and decree dated 11.11.1998 passed by learned Sub-ordinate Judge, 1st Court, Patuakhali in Title Suit No. 07 of 1997 dismissing the suit.

Facts, relevant for the purpose of disposal of this appeal, are that the appellants as plaintiffs instituted the above-mentioned suit praying for a decree of declaration that the registered sale deed as described in schedule 'ka' of the plaint in respect of 'kha' schedule suit land was collusive, void, without consideration and not binding upon the plaintiffs and that by said collusive deed the right, title to and possession of the plaintiffs in the suit land have not been affected. The positive case of the plaintiffs is that they are husband and wife and elderly simple village people. Defendant No. 3 is their son-in-law. Plaintiff No. 1 and his three sons were falsely implicated in a murder

case and for the purpose of releasing them from the case, they needed money and accordingly, by a registered sale deed dated 03.07.1996 they sold out .40 acre land to one Hasina Bibi upon receiving Tk. 40,000/- from her. Thereafter plaintiff No. 1 sold another .20 acre land to said Hasina Bibi on 15.07.1996 upon receiving Tk. 20,000/- and in the aforesaid way the plaintiff transferred .60 acre land by two different sale deeds in favour of Hasina Bibi. Recently, it was revealed that 1.00 acre land has been transferred to defendant Nos. 1 and 2 on 03.07.1996. In fact the plaintiffs did not transfer any land to defendant Nos. 1-2. Defendant Nos. 1-3 in collusion with each other created said deed. Since plaintiff No. 1 was an accused of a criminal case, they were taken to a hiding place on a boat on 03.07.1996 at Mirzagonj and took their signatures in the deed executed on 03.07.1996 in favour of Hasina Bibi. The plaintiffs executed the sale deed in favour of Hasina Bibi on 03.07.1996 but they did not execute any deed of sale in favour of defendant Nos. 1-2. The deed was presented before the Sub-register for registration but it was not read-over to them. The defendants in collusion with each other got the sale deed registered behind the knowledge of the plaintiffs and that the plaintiffs did not hand over possession of the suit land in favour of the defendants and they never disclosed about said sale deed earlier and for the first time on 17.09.1996, they disclosed about the impugned sale deed and after obtaining certified copy of said deed on 19.09.1996, the plaintiffs instituted the present suit.

Defendant Nos. 1-2 contested the suit by filing joint written statement contending, inter alia, the suit was not maintainable, barred by limitation and bad for defect of parties. Their positive case is that on 31.05.1996 the plaintiffs agreed to sale 1.00 acre suit land at a

consideration of Tk. 1,40,000/- to the defendants in presence of some local people and it was agreed that the plaintiffs would execute and register the sale deed on 03.07.1996 and thereafter, on 03.07.1996 the scribe drafted a deed and it was read-over to the plaintiffs and after receiving consideration money of Tk. 1,40,000/- they executed the sale deed and appeared before the Sub-registrar for registration and it was duly registered by the Sub-registrar and on the same day the plaintiffs handed over possession of the suit land in favour of defendant Nos. 1-2 and after getting possession, they have been owning and possessing the suit land. The plaintiffs, upon false allegation and statement, instituted the present suit only for harassing the defendants and as such, the suit is liable to be dismissed.

Upon the pleadings of the parties, the trial Court framed following issues:

- i. Weather the suit is maintainable in its present form?
- ii. Weather the suit is barred by limitation?
- iii. Weather the suit is bad for defect of parties?
- iv. Weather the plaintiffs have title to the suit land?
- v. Weather the disputed deed dated 03.07.1996 as described in the 'ka' schedule of the plaint was collusive, without consideration and was made upon coercion.
- vi. Weather the plaintiffs are entitled to the relief as prayed for.

During trial, the plaintiffs adduced four P.Ws and on the other hand the defendants adduced five D.Ws to prove their respective case. The plaintiff produced the certified copy of the impugned deed dated 03.07.1996 (marked as exhibit-1) and certified copies of FIR and order passed in G.R No. 212 of 1996 (marked as exhibits-2 and 2ka). On the

other hand, the defendants produced the original copy of the sale deed dated 03.07.1996 (marked as exhibit-'ka'), certified copies of S.A Khatian Nos. 231 and 337 (marked as exhibit 'Kha' and Kha-1), a copy of legal notice dated 26.09.1996 (marked as exhibit-'Ga') and certified copy of sale deed No. 1131 dated 03.07.1996 executed in favour of Hasina Bibi (marked as exhibit-'Gha'). Upon consideration of the evidence and materials on record the trial Court dismissed the suit vide the impugned judgment.

Since neither of the parties or their engaged advocates appeared to conduct the hearing of this appeal, we have perused the pleadings of the parties, evidence adduced by them, the judgment of the Court below and other materials available on record from which it appears that those are sufficient to dispose of this appeal on merits. Upon perusal of the grounds taken in the memorandum of appeal it appears that the appellants mainly attacked the impugned judgment mainly on the ground that the learned Sub-ordinate Judge upon misreading and non-consideration of the evidence illegally dismissed the suit. It was the case of the plaintiff that they did not execute and register the impugned sale deed in favour of defendant Nos. 1-2. To prove this contention the plaintiffs adduced four oral witnesses namely plaintiff No. 1, Azahar Sharif as P.W.1, Ali Hossain as P.W.2, Altaf Hossain as P.W.3 and Abdur Rashid Molla as P.W.4. P.W.1 deposed in support of the contention made in the plaint and stated that he and his wife (plaintiff No. 2) did not execute and register the impugned sale deed in favour of defendant Nos. 1-2. While execution and registration of another deed in favour of Hasina Bibi defendant Nos.1-3 took them in a hiding place on a boat and while taking their signatures on the deed executed in favour of Hasina Bibi they took their signatures in some

stamp papers and without giving any opportunity for admission of due execution of the impugned sale deed before the Sub-registrar defendant Nos. 1-3 collusively registered the impugned deed of sale. P.Ws 2, 3 and 4 did not support this contention. They only stated that the defendants asked the plaintiffs to give delivery of possession of the suit land two years after the execution of the deed when plaintiff Azahar Sharif said that he did not execute any sale deed in favour of defendant Nos. 1-2. In this regards the trial Court upon consideration of the evidence of the plaintiffs came to specific finding that the plaintiffs could not prove that the impugned sale deed was obtained by defendant Nos. 1-2 upon coercion or fraud and that the plaintiffs could not discharge the onus to prove that defendant Nos. 1-2 in collusion with defendant No. 3 got the impugned sale deed executed and registered from the plaintiffs. Admittedly, the impugned sale deed was registered before the Sub-registrar, certified copy of which was produced by the plaintiffs which was marked as exhibit-1. On the other hand, the defendants produced the original copy of the sale deed which was marked as exhibit-'ka'. DW 2, Md. Abul Kalam Azad deposed that he drafted the deed, consideration was paid before him and the executants signed in front in his presence. DW 3 Abdul Jabbar deposed that the deed was executed and registered in his presence on 3.7.1996. D.W 4, Abu Taher deposed that the deed was registered in his presence on 3.7.1996 and after execution, the consideration money was transacted. The trial Court, upon consideration of the evidence of the parties, came to the conclusion that the plaintiffs with free will appeared before the Sub-registrar and the impugned deed was duly registered by the Sub-registrar.

Registration Act, 1908 provides procedure relating to the registration of documents. As per section 31 of the Registration Act, ordinarily a document shall be presented and registered at the office of Sub-registrar. Section 32 stipulates that except in cases provided in section 89 every document to be registered shall be presented by the executants or his representative while section 34(1) of the Act stated that subject to the provisions contained in Part VI and in sections 41, 43, 69, 75, 77, 88 and 89 no document shall be registered under the Act unless the executants or their agent appear before the registering officer. Section 35 of the Act provides that if all persons executing the document appeared personally or by a representative before the registering officer and if he satisfied that they are the persons they represents themselves to be and if they admit the execution of the document, the registering officer shall register the document as directed under section 58-61.

The provisions under section 31, 32, 34, 52, 58, 59 and 60 read together suggest that registering officer may accept document for registration in his office. The document must be presented for registration by the executants or his representative or attorney (Section 32). The executants or their representative must appear before the registering officer within the time allowed for presentation under sections 23-26 or if they could not appear in the stipulated time due to urgent necessity or unavoidable accident they must appear before him within four months (Section 35). After the document was presented by a proper person to the satisfaction of the registering officer, he would be under a duty to inquire whether or not such document was, in fact, executed by the persons by whom it purports to have been executed and after satisfying himself as to the identity of the persons appearing

before him admitting that he had executed the deed, the registering officer shall register the documents (Section 35) and when all those formalities as required under sections 34, 35, 58 and 59 have been complied with, the registering officer shall endorse thereon a certificate containing the word 'Registered' and the said document shall then be admissible for the purpose of proving that the document has been duly registered and that the facts mentioned in the endorsement have occurred as therein mentioned (section 60).

Endorsement of the registering officer in the deed as "Registered" under section 60 of the Registration Act, 1908 would be a strong presumptive evidence of the fact that the document was explained to the executant(s) before registration who admitted his execution and the receipt of consideration and that the whole proceeding and endorsement made therein were regular and in order and the said endorsement could only be rebutted by the adverse party by adducing strong evidence proving the allegation that fraud was committed upon the Sub-registrar.

In the instant case, the plaintiffs did not raise any allegation against the Sub-registrar in respect of procedure of registration of the impugned sale deed. Since, admittedly, the impugned sale deed has been registered by the Sub-registrar after complying the relevant provisions of the Registration Act, it is to be presumed that it was explained to the plaintiffs before registration who admitted their execution and received the consideration and that the whole proceeding and endorsement made therein were regular. It appears that the plaintiffs could not prove by evidence that the impugned sale deed was obtained by fraud upon the Sub-registrar.

In view of the above, we are constrained to hold that the impugned deed was duly executed and registered by complying with the provisions of the Registration Act and the plaintiffs have miserably failed to rebut the presumption of correctness of the impugned deed by adducing cogent evidence.

In regards handing over possession of the parties, the trial Court held that the defendants could not prove handing over possession of the suit land in their favour. The contention of the plaintiffs was that at the date of registration they did not handover the possession of the suit land in favour of the defendants. In support of this claim they adduced three P.Ws who supported the claim of the plaintiffs. On the other hand the defendants adduced total five witnesses including defendant No. 1. Defendant No. 1 as D.W.1 categorically stated that at the date of execution and registration of impugned sale deed the plaintiffs handed over possession of the suit land in favour of the defendants. D.W.3 Abdul Jabbar Howlader who was a teacher of a Primary School deposed that in the evening of the day of execution and registration of the impugned sale deed dated 03.07.1996 the plaintiffs handed over possession of the suit land in favour of the defendants. In cross-examination he did not deviate from his statement rather reiterated that “তিনটি দাগ হতে ১।২ নং বিবাদিকে তর্কিত কবালার খরিদা ভূমি বাবদ দখল দেওয়া হয়।” and the defendants have been possessing the suit land by cultivation through hired persons. D.W.4 Abdul Hakim was also a teacher stated that on 03.07.1996 the impugned deed was registered in his presence and at the evening of that day the plaintiffs handed over possession of the suit land to defendant Nos. 1-2 who have been possessing the suit land. In cross-examination he did not deviate from his statement. D.W.5 Md. Motaleb Biswas stated that he was a neighbor of the plaintiffs and

defendants and that defendant Nos. 1-2 has been in possession of the suit land by purchase. He did not deviate from his statement at the time of cross-examination. Though the trial Court came to the finding that the possession of the defendants in the suit land is doubtful but from the evidence adduced by the parties it appears that the defendants could prove their possession in the suit land and accordingly, we are of the view that the finding of the trial Court in regards possession of the parties in the suit land is not based on evidence or materials on record.

On perusal of the entire evidence adduced by the parties, as well as other materials on record, we are of the view that the trial Court upon due consideration of the evidence came to definite findings that the plaintiffs could not prove their case of undue influence or coercion in execution and registration of the impugned sale deed by them. Though the trial Court gave findings in regards possession against the defendants but the entire evidence suggests that the defendants on the basis of the impugned sale deed entered into possession of the suit land.

In view of the above, we find no merit in this appeal and as such, no interference is called for by this Court.

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

Consequently, Civil Rule No. 396(F) of 1999 is discharged.

The order of injunction dated 14.07.1999 is vacated.

Send down the L.C.R along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)