

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4193 of 2023**

Md. Omar Faruque and others  
.... Petitioners

-Versus-

Md. Mokter Ali Gazi and others  
.... Opposite parties

*With*

**CIVIL REVISION NO.4195 of 2023**

Md. Omar Faruque and others  
.... Petitioners

-Versus-

Most. Nazma Parvin and others  
.... Opposite parties

*And*

**CIVIL REVISION NO.4595 of 2024**

Md. Omar Faruque and others  
.... Petitioners

-Versus-

Md. Abdus Satter Gazi and others  
.... Opposite parties

Mr. Abul Kalam Azad, Advocate

.... For the petitioners in all the Civil

Revisions.

Mr. Kanai Lal Saha with

Mr. Ishrat Jahan Shabana, Advocates

.... For the opposite party Nos.1-6 in  
Civil Revision No.4193 of 2023, opposite party Nos.1-3  
in Civil Revision No.4195 of 2023 and opposite party  
Nos.3-8 in Civil Revision No.4595 of 2024.

**Heard on 04.11.2024 and Judgment on 27.01.2025.**

Rules were issued in the following terms:-

This Rule was issued calling upon the opposite party Nos.1-6 to  
show cause as to why the judgment and decree dated 17.07.2023 passed

by the learned Additional District Judge, 5<sup>th</sup> Court, Satkhira Title Appeal No.123 of 2018 reversing the judgment and decree dated 16.10.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Satkhira in Title Suit No.25 of 1998 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

And another Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the judgment and decree dated 17.07.2023 passed by the learned Additional District Judge, 5<sup>th</sup> Court, Satkhira in Title Appeal No.126 of 2018 reversing the judgment and decree dated 16.10.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Satkhira in Title Suit No.25 of 1998 decreeing the suit in part should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

And another Rule was issued calling upon the opposite party Nos.1 and 3-10 to show cause as to why the impugned judgment and order dated 25.01.2024 passed by the learned Senior District Judge, Satkhira in Civil Appeal No.114 of 2023 reversing the judgment and decree dated 16.10.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Satkhira in Title suit No.25 of 1998 decreeing the suit in part should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title for  $88\frac{1}{2}$  decimal land by adverse possession or in default specific performance of registered bainapatra No.6462 dated 12.03.1986 executed by defendant Nos.1-3.

It was alleged that 3.92 acres land including above land belonged to Haripada Gosh and others who exchanged above land with Azim Uddin, predecessor of defendant Nos.1-3, Naimuddin predecessor of defendant Nos.4-8 and Aysha and Khoshi Moni with their Indian land by deed of exchange dated 09.05.1964 and pursuant to above exchange the Deputy Commissioner of Satkhira executed and registered an exchange deed on 05.08.1993. Above Azim Uddin by amicable partition was in exclusive possession in disputed  $88\frac{1}{2}$  decimal land and he died leaving defendant No.1-3 as heirs who agreed to sale above land to the plaintiff for Taka 1,53,000/- and on receipt on Taka 99,000/- they executed and registered a deed of bainapatra on 12.08.1986 and delivered possession. Plaintiffs are in possession in the home, tank and courtyard of above land and remaining land by cultivation since 12.08.1986. Due to non receipt of any registered document from the Deputy Commissioner they were unable to execute a sale deed to the plaintiff. Defendant No.1 further received Taka 50,000/- on 02.01.1996 and granted a money receipt.

Defendant Nos.1-3 refused to execute and register a kabala deed to the plaintiff on 25.09.1998.

Defendant No.1 submitted a written statement but he did not contest the suit.

Defendant Nos.4-8 who are the heirs of Naimuddin Gazi contested the suit by filling a joint written statement alleging that defendant Nos.1-3 the executants of above registered bainapatra dated 12.08.1986 did not have any right, title, interest and possession in above  $88\frac{1}{2}$  decimal land and the plaintiff did not get any title and possession in above land on the strength of the above deed of bynapattra. It was further stated that above defendants purchased 23 decimal land from defendant No.1 by registered kabala deed dated 12.11.1996.

At trial plaintiffs examined 5 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-3. On the other hand defendant No.4-8 examined 2 witnesses and their documents were marked as Exhibit No."Ka" to "Tha".

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed the suit in part for  $64\frac{1}{2}$  decimal land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.4-8 preferred Title Appeal No.123 of 2018 and heirs of deceased defendant No.2 preferred Title Appeal No.126 of 2018 which were heard analogously by the learned Additional District Judge, 5<sup>th</sup> Court who allowed above appeals and set aside the judgment and decree dated 16.10.2018 of the trial Court and dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of the appeal below above respondents as petitioners moved to this Court with two separate petitions under Section 115 of the Code of Civil Procedure being Civil Revision Nos.4193 of 2023 and 4195 of 2023 and obtained two Rules.

The plaintiff of Title Suit No.25 of 1998 as appellants preferred Title Appeal No.114 of 2023 to the District Judge, Satkhira which was dismissed and being aggrieved by above judgment and decree of the Court of appeal below above appellants as petitioners filed Civil Revision Nos.4595 of 2024.

Above three Civil Revisions being Nos. 4193 of 2023, 4195 of 2023 and 4595 of 2024 and Rules issued in connection of above Civil Revisions having arising out of the identical judgment and decree passed by the learned Joint District Judge, 1<sup>st</sup> Court Satkhira in Title

Suit No.25 of 1998 all above Rules are heard together and being disposed of by this single judgment.

Mr. Abul Kalam Azad, learned Advocate for the petitioners of all three Civil Revisions submits that admittedly Azim Uddin, Naimuddin, Aysha and Khoshi Moni acquired 23.46 acres land by exchange with Haripada Ghosh, Dinu Dafadar and others with their Indian property by a deed of exchange dated 09.05.1964 registered in Alipur Sub Registry Office, India and on the basis of above deed of exchange the Deputy Commissioner of Satkhira subsequently executed and registered a deed of validation in favor of above four recipients on 04.08.1993 (Exhibit No."Kha"). It is also admitted that above four recipients of above deed of exchange each acquired 4.33 acres land out of S. A. Khatian Nos.1924, 1359, 1358, 2267, 2388, 2390 and 2759 and Azim Uddin died leaving defendant Nos.1-3 as his heirs.

Defendant Nos.1-3 contracted to sale disputed  $88\frac{1}{2}$  decimal land to the plaintiff for Taka 1,53,000/- and on receipt of Taka 99,000/- executed and registered a deed of bainapatra on 12.08.1986 (Exhibit No.2kha) and delivered possession. Defendant No.1 entered appearance in above suit but did not contest above claims of the plaintiff. Defendant Nos.2-3 did not enter appearance in above suit and contest the same. Defendant No.4-8 or their predecessor

Naimuddin are no party to above deed of bainapatra dated 12.08.1986 nor the plaintiffs claim any land of above Naimuddin or defendant No.4-8. On correct appreciation of above facts and circumstances of the case and materials on record the learned Judge of the trial court decreed the suit for Specific Performance of Contract but most illegally excluded 23 decimal land which is not tenable in law. The learned judge of the court of appeal below utterly failed to appreciate above factual aspect of the case and relevant laws and most illegally held that defendant No.1-3 had no legal competence to execute above deed of bainapatra (Exhibit No.2kha) and most illegally allowed above appeals and dismissed above suit which is not tenable in law. The learned Advocate lastly submits that the learned Judge of the Court of Appeal below failed to consider that the appellant provided most reasonable explanation as to delay in preferring Title Appeal No.114 of 2023 and most illegally dismissed above appeal on the ground of limitation which is not tenable in law.

On the other hand Mr. Kanai Lal Saha, learned Advocate for the opposite party Nos.1-6 of Civil Revision No.4193 of 2023, opposite party Nos.1-3 of Civil Revision No.4195 of 2023 and opposite party Nos.3-8 of Civil Revision No.4595 of 2024 submits that defendant Nos.4-8 purchased 23 decimal land from defendant No.1 by registered kabala deed on 12.11.1996 and they are in possession in

above land and on consideration of above materials on record the learned judge of the trial Court rightly excluded above 23 decimal land from the bainapatra of the plaintiffs which calls for no interference. The learned Advocate further submits that defendant No.2 was a woman and she did not receive summon of above suit and she could not contest above suit. As such her heirs preferred above Title Appeal which was rightly considered and allowed by the learned Judge of the Court of Appeal below who set aside the flawed judgment and decree of the trial Court and dismissed above suit which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the courts below and evidence.

At the very outset the plaintiff has sought declaration of title for disputed  $88\frac{1}{2}$  decimal land on the basis of adverse possession but the plaintiff admits lawful title and possession defendant Nos.1-3 in above land and further admits that he entered into possession of above land lawfully on the basis of above bainapatra. A deed of bainapatra is not a deed of title nor there is any mention either in the plaint or in the evidence of any plaintiff witness as to when above lawful possession of the plaintiff became adverse against defendant



Nos.1-3, the real others. As such there is no legal basis of the claim of the plaintiff of title by adverse possession.

The plaintiff claims that he was inducted into possession of disputed  $88\frac{1}{2}$  decimal by defendant Nos.1-3 on the strength of above registered bainapatra and he is continuing above possession. Above claim of part performance of above contract and delivery of possession has been supported by above registered deed of bainapatra dated 11.08.1986 (Exhibit No.2kha). As such the limitation for filling of a suit for Specific Performance of above bainapatra shall start from the date of refusal of defendant No.1-3 to execute and register a sale deed. It has been alleged by the plaintiffs that the defendant No.1-3 refused to execute and register a sale deed on 10.09.1998 and this suit was filed on 05.10.1998. As such this suit for Specific Performance of Contract was filed within the statutory period of limitation.

While giving evidence as PW1 plaintiff No.1 stated that Azim Uddin was the owner and possessor of 1/4th share of 4.33 acres land of disputed seven S. A. kathians and he died leaving defendant Nos.1-3 as heirs who contracted to the sale above land to the plaintiff for Taka 1,53,000/- and on a receipt of Taka 99,000/- defendant No.1-3 executed and registered a deed of bynanama on 12.08.1986 and delivered possession. Above witness produced the original

registered bainapatra dated 11.12.1986 which was marked Exhibit No.2kha which corroborates above claims of PW1 Osman Farid.

As mentioned above defendant No.1 entered appearance in above suit and filed a written statement but opted not to contest the suit. Defendant Nos.2-3 did not contest the suit or the claim of the plaintiff that pursuant to above bainapatra he was inducted into possession and he is continuously possessing above property.

It is true that after demise of defendant No.2 her heirs preferred Title Appeal No.126 of 2018 but the learned Judge of the Court below committed serious illegality in allowing above appeal without any written statement and evidence.

Defendant No.4-8 contested the suit and preferred an appeal against judgment and decree of the trial court and they are also contesting these two Civil Revisions. Defendant No.4 himself gave evidence as DW1 and in his cross examination he admitted that their predecessors and Azimuddin jointly acquired 4.33 acres land and Azim Uddin, predecessor of defendant No.1-3 got 1/4 th share. He has purchased 23 decimal land from defendant No.1 Sattar by registered kabala deed dated 12.11.1996 and excepting above land he has no claim over any other property of Azim Uddin. He further stated that he did not have any knowledge as to the impugned deed of bainapatra dated 11.12.1986 (Exhibit No.2Kha). Above evidence of

DW1 amounts to an admission of title of defendant Nos.1-3 in disputed  $88\frac{1}{2}$  decimal land and they also do not dispute the legality and propriety of impugned registered bainapatra dated 12.08.1986 (Exhibit No.2kha) nor they dispute continuous possession of the plaintiff in above land excepting 23 decimal land they purchased from defendant No.1 after about 10 years of above bainapatra. In a suit for specific performance of contract only the parties to the contract are necessity parties and in such a suit title of the land under the contract is causally examined and a complicated dispute as to title of above land cannot be determined in such a suit.

It is important to note that defendant Nos.3-8 on the one hand denied title and possession of the defendant Nos.1-3 on the lother hand they claimed title and possession in 23 decimal land on the basis of purchase from defendant No.1 alone by registered kabala deed dated 12.11.1996. But the plaintiff has claimed to be in possession of total  $88\frac{1}{2}$  decimal land including above 23 decimal pursuant to part performance of registered bainapatra dated 12.08.1986.

It is true that a sale deed is not comparable with a deed of bainapatra and a purchaser of land who purchases for value without notice of previous contract for sale is protected but if the purchaser

had full knowledge that the land he purchases is subject to a previous contract for sale then his right is not protected. Since the plaintiff was in possession of total  $88\frac{1}{2}$  decimal land pursuant to above bainapatra it cannot be said that defendant Nos.4-8 had no notice of above contract for sale dated 12.11.1985 (Exhibit No.2Kha). It is not the case of anyone that by above bainapatra dated 12.08.1986 (Exhibit No.2Kha) the plaintiff got possession of only  $64\frac{1}{2}$  decimal and remaining 23 decimal land was kept in the possession of defendant No.1 alone for sale after ten years.

The plaintiffs and defendant Nos.4-8 be at liberty to instituted an appropriate suit for determination of any dispute as to title or share in above ejmali property.

As far as remaining Taka 54,000/- of the consideration money is concerned as PW1 plaintiffs No.1 has in his evidence reiterated the plaint statement that defendant No.1 received above money and granted a money receipt. Above witness produced above money receipt which was marked as Exhibit No.3. PW1 was not cross examined as to his above evidence. On consideration of above evidence on record the learned Judge of the trial Court rightly held that the plaintiff has succeeded to prove the receipt of remaining consideration money by defendant No.1.

In a suit for specific performance of contract the Court cannot make an amendment of the contract unless there is a specific allegation from any party to the contract that due to error or fraud some unlawful changes have occurred in the deed of contract. In this suit there is no such allegation from any party that there was any unlawful variation or changes in above deed of bainapatra dated 12.08.1986. As such the learned Judge of the trial Court committed an error in decreeing the suit in part executing 23 decimal land.

In above view of the facts and circumstance of the case and evidence on record I hold that the plaintiff was entitled to get a decree for specific performance of above bainapatra dated 11.08.1986 (Exhibit No.2Kha) but the learned Additional District Judge committed serious illegality in dismissing above appeal and dismissed above suit which is not tenable in law. I find substance in above Civil Revisions and above Rules deserve to be made absolute.

In the result, the Rules issued in connection of Civil Revision Nos.4193 of 2023, 4195 of 2023 and 4595 of 2024 are hereby made absolute.

The impugned judgment and decree dated 17.07.2023 passed by the learned Additional District Judge, Fifth Court, Satkhira, in Title Appeal Nos.123 of 2018 and 126 of 2018 and judgment and order dated 25.01.2024 passed by the learned Senior District Judge,

Satkhira in Title Appeal No.114 of 2023 are set aside and Title Suit No.25 of 1998 is decreed on contest against defendant Nos.4-8 and ex-parte against the rest without cost.

Defendant Nos.1-3 are directed to execute and register a sale deed for  $88\frac{1}{2}$  decimal land pursuant to registered deed of bynanama dated 12.08.1986 to the plaintiffs within 60 days from the date of receipt of this order in default the plaintiffs shall get the same through Court.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*