

Present:
Mr. Justice Farid Ahmed
-And-
Mr. Justice Md. Shawkat Hossain

First Appeal No. 230 of 2002.

Sree Pradip Barua alias Bappi,
...Defendant-Appellant.
-Versus-
Faisal Madani.
....Plaintiff-Respondent.

Mr. Mustafa Niaz Muhammad, Advocate.
....For the Appellant.

Mr. Abdul Wadud Bhuiyan, Advocate.
.....For the Respondent.

Heard on:08.11.2010,06.12.2010,
14.12.2010, 31.01.2011
and
Judgment on: 24.02.2011.

Md. Shawkat Hossain,J:

The instant appeal by the principal-defendant is directed against the judgment and decree dated 4.3.2002 (decree signed on 16.3.2002) passed by the Joint District Judge, 1st Court, Chittagong in Other Suit No. 137 of 2000.

Plaintiff-respondent filed the above suit on 10.8.2000 impleading the appellant as principal-defendant and Government of Bangladesh as proforma-defendant for Specific Performance of Contract stating briefly that the land in suit originally belonged to Umacharan who died leaving a son, Bijoy Sree Barua. That Bijoy Sree Barua having been succeeded and possessed the land in suit

and other properties died leaving four sons- Prodip Barua @ Bappi, Dilip @ Badal Barua, Probal Barua @ Babul and Probir Barua @ Monu Barua and a wife Mukta Rani Barua @ Kishi. That Mukta Rani Barua @ Kishi relinquished her share in favour of her four sons. On amicable partition among the sons of Bijoy Sree Barua the land in suit fell in the saham of principal-defendant (hereafter referred as defendant) who exclusively and separately possessed the same and thereafter in need of money proposed to his brothers to sell the land in suit and being denied by his brothers proposed to sell the same to plaintiff and on discussion agreed to sell the land in suit at consideration of Tk. 24,00,000/- and consequently on 01.01.1998 on receiving Tk. 10,00,000/- entered to an agreement by executing a bainanama, exhibit-2 in presence of attesting witnesses including his brother Probir Barua @ Monu Barua and thereafter delivered possession of the land in suit on that date in favour of plaintiff. Plaintiff thereafter constructed boundary wall and five katcha rooms with corrugated tin shed of bamboo fence and installed tube-well and latrine and have been possessing the same through his caretaker and staff. Plaintiff also got temporary electric connection from two storied building of defendant. It was agreed that defendant will execute register deed by mutating the land in suit in his name and on attaining other required papers for registration. That defendant thereafter received Tk. 1,32,250+62,000+1,25,000+66,050+48,000 in total= Tk. 4,33,300/- at different dates on 08.3.1998, 05.6.1998, 8.10.1998,

11.01.1999 and 2.6.1999 respectively through endorsement on back page of bainanama. That at the denial of executing deed for sale of the land in suit on receiving the balance consideration money and threatening to oust the caretaker and staff of plaintiff, the caretaker of plaintiff lodged a G. D No. 677 dated 11.7.2000 with the Police Station, Kotwali. That at the time of agreement neither defendant nor his brothers and mother disclosed any of litigation in respect of the suit property. Defendant and his brothers have been living together and they had good relation among themselves. Their mother is also alive and she resides with them. They all were present at the time of the agreement and none of them raise any objection in respect of sale of the land in suit. That defendant received total consideration of Tk. 14,33,300/- and plaintiff requested defendant at several occasions to execute sale deed. But defendant delayed and delayed and consumed time and at that instance plaintiff served legal notice upon defendant on 25.7.2000. Defendant in reply to the notice raised some fictitious allegations. Defendant had no relation with Real Estate Housing of plaintiff's father and plaintiff's father never obtained signature of defendant on blank stamp paper and cartridge papers pretending to settle disputes among his brothers and defendant has his other properties including the dwelling house at Rahmatgonj in Chittagong town and other places. Defendant under above circumstances, denied to execute sale deed lastly on 27.7.2000 and thereafter plaintiff constrained to file the above suit.

Defendant contested the suit, contending inter alia that the land in suit along with other land in suit jote is ancestral property of defendant and his brothers and they having been in ejmali possession instituted a Partition Suit No. 37 of 1994 and in the said proceeding an order of status-quo in respect of transfer of the property and changing its nature and character was passed on 18.6.1996 and that order of status-quo stands in force. Under above circumstances the alleged agreement of transfer of the land in suit is quite fictitious. Defendant carried on business with N.H. Salah Madani, father of plaintiff in Al-Faisal Real Estate and Housing Limited and as such he and his brothers had good relation with father of plaintiff and that having such fiduciary relation among defendant and his brothers, father of plaintiff proposed to negotiate the dispute and having agreed to settle long pending disputes among them, father of plaintiff proposed them to execute a memorandum in his favour appointing him as negotiator and with that end in view father of plaintiff proposed to obtain signature of defendant and his brothers on a 50/- taka stamp paper and two cartridge papers and accordingly defendant on 9.7.1997 put his signatures on blank 50/- taka stamp paper being No. 'chha-4270654' and two yellow cartridge papers. That father of plaintiff did not take any step to settle the dispute among defendant and his brothers and he adopted delay policy and defendant meanwhile through whispering came to know that father of plaintiff will create false deed using the signed blank

stamp paper and cartridge papers and under such apprehension defendant filed G.D. No. 109 on 2.05.2000. That having informed of such G.D. father of plaintiff in collusion with brother of defendant Prodip Barua @ Monu tried to take over forceful possession of the land in suit and at that instance defendant filed a complain petition against father of plaintiff and his brother Prodip Barua @ Monu on 11.7.2000 with the Police Station, Kotwali which recorded as G.D. No. 677. That father of plaintiff created bainanama fraudulently in the name of plaintiff in collusion with scribe and attesting witnesses using the signed blank stamp and cartridge papers by defendant. Defendant never instructed advocate Md. Kashem Chowdhury to draft the alleged bainanama. Defendant had/has enmity with his brother Prodip Barua @ Monu with whom litigation being No. 112 of 1995 is pending in the Court of 3rd Sub-Judge, Chittagong and he has also enmity with Md. Shahabuddin attesting witnesses to the bainanama. Plaintiff created the alleged bainanama fraudulently in collusion with scribe and his obliged attesting witnesses. Defendant never proposed plaintiff to sell the land in suit and never entered to any agreement for such sale of the land in suit and never received any consideration money either on the date of alleged bainanama or subsequently on different dates as allegedly noted on the back page of bainanama under endorsement and did not deliver possession of the land in suit and plaintiff also never possessed the same and that the land in suit is ejmali homestead

land of defendant and his brothers and they have been residing thereon and that defendant has no other residence in Chittagong town other than the homestead of the land in suit. The case of plaintiff is quite false and liable to be dismissed.

Learned Subordinate Judge on consideration of the pleadings of the parties framed as many as five issues and on discussion in the light of issues decreed the suit by impugned judgment and thereby being aggrieved defendant preferred the above appeal.

Mr. Mustafa Niaz Muhammad, the learned Advocate appearing on behalf of defendant-appellant submits that trial court committed mistake holding that plaintiff succeeded to prove the agreement to sell the land in suit, payment of consideration money of Tk. 14,33,000/- and delivery of possession of the same in favour of plaintiff. He further submits that all the witnesses of the plaintiffs are interested and on the basis of their unreliable, unworthy testimony trial court committed gross illegality in decreeing the suit. He also submits that defendant-appellant adduced convincing and credible evidence on his plea that he had good relation with N.S. Madani, father of plaintiff having his Real Estate business with him and it was at the instance of father of plaintiff to negotiate long pending dispute over ancestral property of defendant and his brothers, defendant signed a stamp paper and two cartridge papers and with the advantage of blank signed stamp and cartridge papers, plaintiff created the alleged forged bairanama in collusion with scribe, attesting witnesses and his

brother with whom he had hostility and that trial court having failed to assess those aspects of the case and misreading of evidence committed error in holding that defendant failed to prove onus on him and possession to the land in suit.

He further adds that injunction order was passed and it is in force in respect of transfer and changing the nature and character of the land in suit and by the impugned decree trial court facilitated the violators to the court's order and doing so the trial court itself violated the natural justice.

Mr. Mustafa also submits that the decree for Specific Performance of Contract is discretionary in nature and since bainanama was fraudulent and plaintiff could not prove the payment of consideration money by reliable and credible evidence, trial court committed mistake in decreeing the suit as well as committed injustice to the defendant causing hardship on him throwing him out from his only homestead where he has been residing with his family members.

He further submits that defendant admitted the signature in the front page of the stamp paper and cartridge papers but denied the signatures allegedly endorsed for acceptance of balance consideration money at different dates and trial court without being identified those signatures by the expert or by the court itself decreed the suit on conjecture and surmise and committed illegality.

He finally submits to call for necessary interference to the impugned judgment and to dismiss the suit.

Mr. Mustafa, in support of his submission referred the decisions as held in the case of Saukhi Sah and others Vs. Mahamaya Prasad Sing and others reported in AIR 1934 Patna 518; Administrator of Waqfs and another Vs. Musammat Sahera Begum Chowdhurani and others 28 DLR 238 and Biplob Chandra Das and another Vs. Biren Chandra and others 52 DLR 586.

Mr. Abdul Wadud Bhuiyan, the learned Advocate appearing on behalf of plaintiff-respondent submits that the decree in a suit for Specific Performance of Contract is a discretionary relief based on equity and trial court passed the decree on sound and reasonable exercise of discretion being based on credible and unimpeachable evidence. He further submits that plaintiff discharged his initial onus of proof to the execution of bairanama, payment of consideration money to the extent of Tk. 14,33,300/- out of total consideration of Tk. 24,00,000/- and his induction to possession of the land in suit and construction thereon by adducing evidence worthy enough to its credibility and on proper assessment of facts and circumstances and evidence on record trial court duly passed the decree and committed no error or illegality.

He also submits that under circumstances of the case onus shifts to defendant-appellant to prove the plea that defendant having his relation with father of plaintiff in connection with his

Real Estate business he entrusted father of plaintiff and signed the blank stamp paper and cartridge papers in order to make settlement of disputes over ancestral properties of defendant with his brothers and that having the advantage of signed blank stamp and cartridge papers plaintiff created bairanama fraudulently and that he retains the possession of the land in suit till date but record speaks that defendant utterly failed to discharge onus on him on above plea to his case. He further adds that no such case could be made out by defendant-appellant that execution of impugned decree would play so hardship on him that he would be thrown on the street.

Mr. Bhuiyan, in support of his argument relies on decisions in the case of Jahed Ali Mondal and others Vs. Jamini Kanta Dey and others reported in 1987, BLD (AD) 156; Lutfur Rahman and others Vs. Golam Ahmed Shah and others reported in 39, DLR 242; Secretary Ministry of Industries, Nationalised Industries Division Vs. Saleh Ahem and another reported in 46, DLR (AD) 148 and Yousuf and another Vs. Al-Haj M. A. Wahab reported in 7 MLR 27.

We have gone through the pleadings, evidence on record, oral and documentary and considered the submissions of the learned Advocates.

Plaintiff-respondent examined P.W. 1 Lutfay Madani. P.W. 2 Faisal Madani, P.W. 3 Farhad Kamal, P.W. 4 Shahabuddin and

P.W. 5 Asgor Ali and exhibited his documents as exhibit- 1 and exhibit-2.

Defendant-appellant, on the other hand, examined D.W. 1 Prodig Barua, defendant and D.W. 2, Rajib Barua and exhibited his documents as exhibit-‘ka’ to exhibit-‘kha (1)’.

P.W. 1 Lutfay Madani is the attorney of the plaintiff being appointed by power of attorney, exhibit-1. He has deposed in support of the plaint case.

The gist of his statement is that defendant entered to an agreement with plaintiff to sale the land in suit and executed the bairanama on received of Tk. 10,00,000/- out of total consideration of Tk. 24,00,000/- on 01.01.1998 and inducted possession of the land in suit to plaintiff on that date and plaintiff in obtaining possession of the land in suit constructed boundary wall and 5 kacha rooms thereon and has been possessing the same through his employees. Defendant thereafter received Tk. 1,32,250+62,000+1,25,000+66,050/- and 48,000 on 08.3.1998, 05.6.1998, 8.10.1998, 11.01.1999 and 2.6.1999 respectively through endorsement on the back page of bairanama i.e. defendant received total consideration of Tk. 14,33,300/-. Plaintiff requested defendant to execute and register the sale deed and getting no response served legal notice upon defendant on 20.7.2000.

P.W. 2 Faisal Madani, s/o N. H. Salah Madani is the plaintiff himself. He has also deposed in support of the plaint case corroborating P.W.1.

Both PWs 1 and 2 have denied the plea of defendant that their father obtained signature on a blank stamp and two cartridge papers and using that signed blank stamp and cartridge papers they in collusion with the scribe and attesting witnesses fraudulently created bainanama, exhibit-2.

P.W. 3 is Farhad Kamal. He is an employee of the plaintiff and resides in the land in suit with his family as caretaker on behalf of plaintiff.

P.W. 4 is Shahabuddin. He claims himself as the adjacent land-holder in the land in suit being under agreement of purchase from Probal Barua @ Babul Barua, brother of defendant.

P.W. 5 is Asgor Ali. He is a relation of plaintiff and at the same time claims himself as boyhood friend of defendant.

The above P.Ws 3-5 are attesting witnesses to bainanama, exhibit-2. All the above P.Ws, have deposed in support of agreement for sale of the land in suit at consideration of Tk. 24,00,000/- and execution of bainanama, exhibit-2 on 01.01.1998 by defendant on receipt of Tk. 10,00,000/- on that date and induction of the possession of the land in suit to the plaintiff.

On perusal of bainanama, exhibit-2 it appears that P.W. 1 and 3 also became the attesting witnesses to the payment of

balance consideration of Tk. 1,25,000/- on 8.10.1998 which defendant received by endorsing his signature.

All the P.Ws were thoroughly cross-examined and it appears that no material contradiction could be made out to discard their evidence as adduced in support of the case of plaintiff.

It is relevant to note that the signature of the defendant on the 50/- taka stamp being No. Cha-4270654 and signatures in front pages of yellow cartridge papers on the top are admitted. Defendant denies the signatures that appear on the back page of bairanama, exhibit-2 in support of endorsement of receiving balance money of Tk. 1,32,250+62,000+1,25,000+66,050+48,000 in total Tk. = 4,33,300/- at different dates on 08.3.198, 05.6.1998, 8.10.1998, 11.01.1999 and 2.6.1999 respectively.

Trial Court considering the evidence adduced by plaintiff, oral and documentary, arrived at decision that plaintiff discharged the initial onus of proof of the agreement, payment of consideration money of Tk. 14,33,300/- and induction of the possession of the land in suit to plaintiff on the date of agreement and thereafter possession of the same by plaintiff on construction of boundary wall and katcha structure thereon.

Defendant claims that his signatures on 50/- taka stamp being No. Chha-4270654' and yellow cartridge papers were taken by the father of plaintiff on 9.7.1997 in order to empower father of plaintiff to negotiate the dispute among defendant and his brothers

over their ancestral property having their good relation with N.H Salah Madani, father of plaintiff since defendant was a partner to Real Estate business of plaintiff's father under name and style Al-Faisal Real Estate and Housing Limited and defendant never inducted possession of the land in suit to plaintiff and he is still in possession of the same having been residing thereon with his family members.

Obviously, under section 102 of the Evidence Act, onus of proof to this part lies on defendant.

Defendant in discharging such onus examined himself as D.W. 1 and D.W. 2, Rajib Barua as sole corroborative witness to his plea of signing the blank 50/- taka stamp paper being No. Chha-4270654' and two yellow cartige papers by which he alleges that plaintiff created bainanama exhibit-2 fraudulently. The evidence of D.W. 2, Rajib Barua is thus relevant to us. D.W. 2 claims himself as an employee of Al-Faisal Real Estate and Housing Limited which defendant claims as belonged to father of plaintiff and he himself was a partner of said business.

D.W. 2 thus deposed:

*ÔAvmg mvtj n gv`vbx i e`emv cÛZôvb Awj dqmvj ixtqj GtóU ucqtb i Pvkix Ki Zvg/ D³
Awj dqmvj ixtqj GtóU gvmj K uQj mvtj n gv`vbx I 1bs weev`x cÔxc eoqv /Ô*

In cross-examination he admitted:

*ÔAvj dqmvj ixtqj GtóUi Aw`Zi cÛvb Kivi gtZv tKvb KvMR cÎ Avgvi ubKU tbB/
Avgvi K`Z gtZ D³ Avj dqmvj ixtqj GtóU Avmg ucqb c` Pvkix Kivi mg`fb tKvb
KvMR cÎ `vLj KiZ cvi tev bv/Ô*

He further admitted:

*1bs weev`x c0xc eoqv tK mvtj n gv`vbx i e`emv c0Z0vtbi GKRB Askx`vi Zv t`Lv#bv
gtZv tKvb KVMR c1 Avgvi kbKU tbB| Avgvi K#Z Avj dqmij ixtqj Gt0tUi tKvb
KgRZPev KgPvixi bvg Avgvi gtb tbB/0*

D.W. 1, defendant himself also admits in his cross-examination:

*0Avgvi mvt_ th ev`xi wczvi ixtqj Gt0tUtUi e`emv wQj Zv দেখানোর মত tKvb KVMR c1
tbB| tgS#LK fite ntq#Qj | D³ i/c K#Z e`emvi tKvb tUW j vBtmY wQj bv| tKvb BbKvg
U`v c0vb Kwi#b/0*

We do not get any evidence from the side of defendant that he had any business relation with father of plaintiff and father of plaintiff had Real Estate business under name and style Al-Faisal Real Estate and Housing Limited to which defendant was a partner and as such he had good relation with father of plaintiff who under pretension of negotiating the dispute over ancestral property among defendant and his brothers procured signatures of defendant on a blank stamp and two yellow cartridge papers. We also do not get any convincing evidence as defendant claims that for negotiating the dispute over ancestral property among defendant and his brothers, father of plaintiff ever approached defendant and his brother to entrust father of plaintiff to negotiate the same and thereby defendant and his brother Prodip Barua signed blank 50/- taka stamp being No. Chha-4270654' and two yellow cartridge papers for empowering father of plaintiff as negotiator. From pleadings it appears that defendant claims hostility with his brother Prodip Barua who appeared as attesting

witness of bainanama, exhibit-2. But there is no evidence that he has any hostility with his other brother or with his mother with whom he claims to have been living together. Defendant did not examine any of his brothers at least with whom he has no hostility or his mother in support of his case. This facts of non-examining his such brothers and mother, in regards to entrusting father of plaintiff to negotiate dispute over their ancestral property, his plea of signing blank stamp paper and cartridge papers by him and his brother Probir Barua falls short.

Defendant specifically claims that he put his signature on 50/- taka stamp paper being No. 'Chha- 4270654' and two yellow cartridge papers on 9.7.1997 but on perusal of exhibit-2 it appears that 50/- taka stamp paper being No. Chha-4270654' was purchased in the name of Faisal Madani, the plaintiff on 2.9.1997. This fact of purchasing the stamp on 2.9.1997 which bears his admitted signatures belies the plea of attaining signature on blank stamp and two yellow papers on 9.7.1997.

We have also examined the signatures of defendant on the back page of bainanama, exhibit-2 in support of his endorsement of receiving Tk. 4,33,300/- on different dates and his signatures that appears on his deposition sheet. We find little doubt to the signatures of defendant on the back page of bainanama, exhibit-2 tallying with those admitted signatures on record.

Defendant claims that witnesses of plaintiff are interested having relation with plaintiff and hostility with him. Defendant claims his hostile relation with P.W. 3 Farhad Kamal who filed criminal case against his wife and son and P.W. 5 Asgor Ali since he is a relative to plaintiff.

It appears that P.W. 5 also appears as boyhood friend of defendant. For mere relationship with plaintiff's brother we find little basis to discard his evidence since he is a competent witness as an attesting witness to bainanama, exhibit-2. Similarly, there is also no scope to discard the evidence of the P.W. 3 Farhad Kamal considering him merely as an employee of plaintiff, since he has been residing in the land in suit with his family as a caretaker of plaintiff. All the above witnesses are found competent witnesses. Although defendant claims hostility with P.W. 4 Sahabuddin, attesting witness to bainanama in his written statement but no evidence was adduced from the side of defendant, even no such suggestion was given to him in his cross-examination. Thus, P.W. 4 is found an independent witness. Since defendant utterly failed to establish his case of attaining his signatures on blank stamp and cartridge papers to negotiate dispute on ancestral property, we find evidence of P.Ws worthy enough to bear our reliance and credibility.

All the P.Ws has deposed corroboratively in support of induction of possession of the land in suit to plaintiff on the date

of bainanama through demarcating boundary and possession of plaintiff on construction of boundary wall and rooms thereon.

Defendant in respect of his claim of possession to the land in suit examined himself as D.W. 1 and D.W. 2 as corroborative witness. The evidence of D.W. 2 is not worthy enough to carry the weight of credibility. He has deposed:-

*০৩৬ শতাংশ জমি বাবদ অত্র মোকদ্দমা বিরোধীয় জমির চতুর্দিকে পাকা প্রাচীর রয়েছে। বিরোধীয় জমির চতুর্দিকে কে কে বা কি কি আছে তাহা বলতে পারবো না। -----
 Rigi evoxZ 10W fivovq প্রদত্ত Ni AvtQ/ Zte Dnvi fivovq i bvg ej tZ cvi tev bv/ ev`x
 I Zvi avZvt`i` cwiK evoxi DEi cwiog tKv#b #KPz Rwig eve` cvKv t`qvj Øviv tNivl Kiv
 AvtQ/ (under lines are ours)0*

We don't find any averments in the written statement that there is boundary wall around the land in suit. The evidence as under lined above rather supports the possession of plaintiff in the land in suit.

D.W. 2 has further deposed-

“১নং বিবাদী ও তার অপর তিন ভ্রাতা একটি পৈতৃক দালানে বসবাস করে”

Thus it is evident that defendant does not reside on the land in suit but resides on their two storied ancestral building along with his other brothers.

It has been argued by the learned Advocate for the appellant that an order of status-quo in respect of transfer and changing the nature and character of the land in suit was passed earlier by a competent court and it is still in force and at that event if the

impugned judgment stands it will provide incentive to the violators of courts order and doing so trial court violated natural justice.

Admittedly, plaintiff was not a party to the suit proceeding among defendant and his brothers over the ancestral property and if any order of injunction stands in force that cannot bind plaintiff. If the defendant attains any order of injunction at his own instance and if it is violated for the cause of transferring the land in suit under agreement, the violation was caused by defendant, not by plaintiff and he cannot claim any benefit for violation of such order. In this respect learned Advocate for plaintiff-respondent rightly submits in reference to the decision held in 46 DLR 148 that no body is entitled to take benefit of his own wrong.

It further appears that defendant of partition suit at whose instance the injunction order was passed already has transferred his entire share of the suit jote. Not only that, it has been brought to our notice by the learned Advocate for the respondent that all other brothers of defendant have transferred their entire share of the suit jote to different purchasers and they have separated their land by boundary wall on all sides. Learned Advocate for the appellant did not controvert such submission.

Learned Advocate for the defendant-appellant further argues that defendant has been residing on the land in suit with his family and in a suit for specific performance of contract a decree can't be passed to oust one from his homestead causing great

hardship and depriving him from natural justice. Learned Advocate for the appellant thus relies on the decision held in the case of Biplob Chandra Das and another Vs. Biren Chandra and others 52, DLR 586.

In reply to the above submission the learned Advocate for respondent submits that primarily onus of course lies, in a civil proceeding upon plaintiff and in this case primary onus has been discharged satisfactorily by plaintiff and under the circumstances the onus has shifted upon defendant to prove his particular fact of obtaining signature fraudulently on stamp and cartridge papers but defendant utterly failed to discharge the onus. In this respect he refers the decision held in the case Jahed Ali Mondal and others Vs. Jamini Kanta Dey and others reported in 1987, BLD (AD) 156. We have gone through the decision and it is found fit to the circumstances of the present case.

He has further submitted that defendant has also failed to make out the case that the impugned judgment would cause hardship throwing him out of the street as the circumstances under which the above decision was held in the case of Biplob Chandra Das and another Vs. Biren Chandra and others 52, DLR 586. In the aforesaid case it was held:

“in a suit for Specific Performance of Contract a decree cannot be passed to oust the persons from their homestead if there is possibility that they shall have to go to the street leaving their paternal property.”

The circumstance of the aforesaid case does not fit to the present case of defendant since it has been evident from the evidence of defendant that he resides in a two storied ancestral building together with his brothers and that he has other properties excepting the land in suit.

It is further argued by the learned Advocate for the defendant-appellant that onus lies on plaintiff to prove that he was willing to perform his part of contract. But in the instant case no such attempt is found to be taken on the part of plaintiff and in this respect he relies on the decision held in the case Sankhi and others Vs. Mahamaya Proshad Sing and others reported in AIR, 1934 Patna 518.

But on perusal of the evidence on record it appears that plaintiff was always ready to perform his part and paid balance consideration money of Tk. 4,33,300/- at different dates till 2.6.1999 and thereafter failing to get the sale deed executed and registered file the above suit 10.8.2000 within the stipulated period of time. The submission of the learned Advocate for the appellant thus bears little substance.

At the time of hearing both sides filed applications under Order 41 Rule 27 of the Code of Civil Procedure annexing some papers for considering as additional evidence before this Court. We have gone through the documents annexed with the applications. It appears that none of the documents were filed before the trial

court and no explanation appears why they failed to submit those before trial court. Since there is availability of adequate evidence on record to adjudicate the matter properly we do not find it convenient to consider those documents as additional evidence at this stage. The applications are thereby rejected.

Having regards to the facts, circumstance, evidence on record and on our above discussion it does not appear to us that trial court committed any error or illegality in decreeing the suit. We do not find any material substance to this appeal for any interference to the impugned judgment and decree.

In the result, the appeal is dismissed.

No order as to costs.

Send down the lower Court's Record along with the copy of the judgment at once.

Farid Ahmed, J:

I agree.