

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL No.31 of 2026

Laxmi Bilders Limited

...Appellant

-Versus-

Masons Enterprise Limited and others

... Respondents

Mr. Garib Newaz, Advocate with

Mr. Mohammad Mushruful Alam, Advocate

Ms. Maksuda Akhter, Advocate

... For the appellants.

Mr. Mohammad Ahasan, Advocate with

Mr. Mohammad Golam Kibria, Advocate

... For the respondents.

Heard on 16.08.2026 and Judgment on 18.08.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 16.03.2026 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.931 of 2025 rejecting the plaint.

Facts in short are that the appellant as plaintiff instituted above suit for specific performance of registered deed of bainapatra No.1176 dated 07.03.2022 alleging that defendant Nos.1-5 as the lawful owner and possessor of above land agreed to sale the same to the plaintiff for

Taka 35,77,00,000/- and on receipt of Taka 2,08,00,000/- executed and registered above bainapatra. It was stipulated in above bainapatra that the defendant shall execute and register a sale deed within 90 days on receipt of balance consideration money. The Chairman and a Director of the defendant company died and the defendant requested for extension of time for execution and registration of sale deed. The defendant by above time received total consideration money but on 12.02.2025 refused to execute and register a sale deed.

On 16.03.2026 the learned Joint District Judge rejected the plaint of above suit under Order 7 Rule 11(d) of the Code of Civil Procedure holding that the suit was barred by limitation.

Being aggrieved by and dissatisfied with above judgment and decree above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Garib Newaz, learned Advocate for the appellant submits that Order 7 Rule 6 of the Code of Civil Procedure, 1908 provides for filing of a suit after expiry of period of limitation by providing the grounds upon which exemption from limitation is claimed. In above bainapatra it was agreed upon that within next nine months the defendant shall on receipt of outstanding consideration money execute and register a sale deed. But defendants extended above period of nine months by issuing letters dated 13.05.2023, 25.11.2023 and 22.10.2024 due to demise of their Chairman and a Director and difficulty in getting succession certificate for substitution of their heirs and other legal

complications. In the meantime on the demand of the defendants the plaintiff paid a total amount of Taka 35,75,00000/- out of Taka 35,77,00000/-. By above conduct and action the defendants have waived the period of nine months for execution of sale deed.

On 28.01.2025 the defendants in reply to the legal notice of the plaintiff refused to execute and register a sale deed and the plaintiff filed above suit on 24.09.2025 within the period of limitation. The learned District Judge totally misconceived above facts and circumstances of the case and Article 113 of the Limitation Act, 1908 and most illegally rejected the plaint which is not tenable in law.

Mr. Mohammad Ahasan, learned Advocate for respondent Nos.1-5 frankly concedes that the limitation is a mixed question of law and facts and the learned Joint District Judge misconceived the provision of Article 113 and committed an error in rejecting the plaint suo moto under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908. However, the learned Advocate produced a bunch of documents relating to filing and withdrawal by the plaintiff a of a previous suit for specific performance of above bainapatra and filing of a Criminal Case by the defendants against the plaintiff for creation of false money receipts showing payment of consideration money to the defendants and submits that the plaint should have been rejected for creation of false and forged money receipts and filing this Second Suit for the enforcement of bainapatra. The learned Advocate lastly submits that above Criminal Case has been investigated by the Crime Investigation

Department of police and charge sheet has been submitted against the plaintiff.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the defendants agreed to sale above property to the plaintiff for Taka 35,77,00000/- and on receipt of Taka 2,08,00000/- executed and register a bainapatra on 07.03.2022. It is also admitted that in above bainapatra it was stipulated that within next nine months the plaintiff shall pay outstanding consideration money and defendants shall execute and register a sale deed.

Appellant as plaintiff filed above suit on 24.09.2025 for specific performance of above bainapatra. The defendants entered appearance in above suit on 11.03.2026 and submitted a petition for time for filing written statement. The learned Joint District Judge suo moto fixed above suit for maintainability hearing and on 16.03.2026 rejected the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure holding that above suit was barred by limitation.

Order 7 Rule 6 of the Code of Civil Procedure, 1908 provides for filing of suit after expiry of the period of limitation in the following terms:-

“6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.”

Above provision shows that plaintiff may institute a suit after expiry of the period of limitation and in the plaint the plaintiff shall state the grounds which exempts the suit from the limitation. A plaintiff may have legal disabilities or special cause or grounds which prevented him to file the suit within the period of limitation. There are may be cases in which the opposite party sought extension of time for performance of the contract. Above contentions issues of facts requires determination by the Court on consideration of the evidence. The question of limitation is a mixed question of law and facts and a plaint cannot be rejected on the basis of contentious facts.

Article 113 of the Limitation Act, 1908 provides as follows:-

Description	Period of limitation	Time from which period begins to run.
For specific performance of a contract.	One year	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

The limitation for suit for specific performance of contract is one year and the limitation shall start to run from the date fixed by the parties in the deed of contract or if no such date is fixed from the date of refusal of performance. Above deed of bainapatra provided nine months for its performance. The plaintiff has produced three written letters of the defendants dated 13.05.2023, 25.11.2023 and 22.08.2024 which show that the defendants requested for extension of above time due to demise of their Chairman and a Director and difficulties in

getting succession certificates for substitution of their heirs and other inconveniences. A suit cannot be filed against the dead persons. The learned Advocate for the respondents did not dispute the genuinity and correctness of above three letters of the defendants seeking extension of time for performance of above bainapatra. Above letters of the defendants extended the performance of above bainapatra from nine months to one year from the date of refusal of performance. As such the later part of Article 113 of the Limitation Act which provides one year period from the date of refusal of performance of above bainapatra becomes the starting date for counting of limitation for above suit.

It turns out from the letter of the defendants dated 12.02.2025 that the defendants denied performance of above bainapatra. As such the limitation for above suit starts to run from 12.02.2025 and the plaintiff filed above suit on 24.09.2025 within the statutory period of limitation.

The learned Advocate for the respondents has submits that the plaintiff has forged some money receipts to show payment of total consideration money and defendants as complaint filed a Criminal Case for forgery of above money receipts. Above claims involve contentious facts which needs to be determined by the trial court on consideration of evidence.

A plaint can be rejected under Order 7 Rule 11(d) if the suit is barred by any law and not on the basis of facts and the learned Judge while rejecting the plaint under above provision must mention the law which prohibits the institution of the suit.

On consideration of above facts and circumstances of the case and materials on record we hold that above suit was filed within the statutory period of limitation as has been provided by Article 113 of the Limitation Act, 1908 but the learned Joint District Judge utterly misconceived above facts and the provision of the law and most illegally rejected the plaint on the basis of contentions facts which is not tenable in law.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 16.03.2026 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.931 of 2025 is set aside.

The learned Joint District Judge is directed to proceed with the trial of above suit expeditiously in accordance with law.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.