

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4627 of 2011

Herumbo Kumar Roy and another

..... Petitioners.

-Versus-

Noresh Chandra Roy and others

.....Opposite parties.

None appears.

.....For the petitioners.

Mr. Moshfiquddin Bakhtiar, Advocate

.....For the Opposite parties

Heard and judgment on 14th March, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 11.09.2011 passed by the Joint District Judge, Nilphamari in Title Appeal No. 22 of 2010 reversing those dated 19.01.2010 passed by the Assistant Judge, Dimla, Nilphamari in Other Class Suit No. 71 of 2008 decreeing the suit should not be set aside.

Petitioners as plaintiffs filed Other Class Suit No. 71 of 2008 before the Court of Assistant Judge, Dimla, Nilphamari against the opposite party for Specific Performance of Contract.

Plaint case in short, inter alia, is that the defendant No.1 proposed to sell the suit property to the plaintiffs and the plaintiffs agreed with the proposal and sale value of the suit land was settled at Tk. 2500/-. On 10.03.1993 the defendant No.1 received the consideration money of Tk. 2500/- and executed a sale deed but the same could not be registered due to the belly pain of the defendant No.1. The very next day, the plaintiff went to the house of the defendant No.1 and the defendant No.1 told to the plaintiff that he feel better but took some time to be fully cured and on that day the defendant No.1 delivered possession of the suit land in favour of the plaintiffs. After a week the plaintiffs requested the defendant No.1 for registering the said deed but defendant No.1 told that he is very busy he will call the plaintiffs in suitable time and will register the same. Three months later the plaintiff No.1 requested the defendant No.1 for registering the said deed but the defendant No.1 replied to the plaintiffs that the possession of suit land in favour of the plaintiffs and needs not to be worried

regarding registration and the same will be registered in the end of the year. The Defendant No.1 is the relative of the plaintiffs and also reliable person to the plaintiffs, for which they relied upon the defendant No.1 and in the end of the year that is in the month of December, 1993, the plaintiffs requested the defendant No.1 for registering the said deed but again the defendant No.1 told to the plaintiffs that the plaintiffs are in possession of the suit land so they need not to be worried, he will call for the plaintiffs in suitable time and will register the same. The plaintiffs relied upon the defendant No.1 on good faith and have been possessing the suit land continuously. In the year 1996 the plaintiffs again requested the defendant No.1, but he replied the same. On 07.07.2008, the proforma defendant No.3 asked the plaintiff to leave the possession of the suit land. The plaintiffs wanted to know the reason and he said that he has purchasing the suit land from the defendant No.1, on 06.07.2008 by way of kabala deed and showed a photocopy of such kinds of deed. The plaintiffs became astonished and went to the defendant No.1 and asked the truthfulness of the matter and the defendant No.1 told to the plaintiffs that due to necessity of money he has sold the suit land to the proforma defendant No.3 and executed a registered kabala

deed. On 13.07.2008 after obtaining the certified copy of the said kabala deed the plaintiffs became aware of the same. The defendant No.1 sold the suit land on 06.07.2008 illegally. The defendant No.1 refused to the plaintiffs to register the suit land, hence the suit.

Defendant No.1 contested the suit by filing written statement, denying the plaint case, alleging, inter alia, that the defendant No.1 was the owner of the suit land. During his possession, settling Tk.15000/- as consideration money, on 10.03.1993 the plaintiff prepared a deed, on receiving money of Tk. 2500/- the defendant put his signature on the same on good faith. Thereafter the defendant No.1 demanded Tk. 15000/- as consideration money but the plaintiffs told him the said money will be paid after returning home that is why on 10.03.1993 the said deed was not been registered. Later on the defendant No.1 wanted to return the said deed but the plaintiffs told the defendant No.1 that when they will paid Tk.15000/- call him and took registry but the plaintiff did not do so. The defendant No.1 sold the said suit land by settling consideration money of Tk. 15000/- to the proforma defendant No.3 in the year 2006 due to necessary of money and accordingly delivered the title and possession in

favour of the proforma defendant No.3 and still the proforma defendant No.3 has been possessing the suit land. The suit land has been registered on 06.07.2008 in favour of the proforma defendant No.3. The suit of the plaintiff is false, fabricated and concocted and is liable to be dismissed with cost.

By the judgment and decree dated 19.01.2010, the learned Assistant Judge decreed the suit on contest.

Challenging the said judgment and decree, defendant petitioner preferred Title Appeal No. 22 of 2010 before the Court of District Judge, Nilphamari, which was heard on transfer by the Joint District Judge, Nilphamari, who by the impugned judgment and decree dated 11.09.2011 allowed the appeal and after reversing the judgment of the trial court dismissed the suit.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant rule.

Although the matter is posted in the list by mentioning the name of the petitioner for several days and subsequently posted in the list on several dates for delivering of judgment but no one appears to press the rule.

Mr. Moshfiquddin Bakhtiar, the learned advocate appearing for the opposite party, on the other hand drawing my attention to the judgment of the courts below submits that although in the plaint it has been stated that the principal defendant while owning the suit land, inspite of registering the deed of agreement into a sale deed transferred the suit property to the defendant No.3 vide registered sale deed dated 06.07.2008, even then without asking for cancellation of the said sale deed, only prayed for Specific Performance of Contract of the date of agreement dated 10.03.1993, accordingly suit is not maintainable. Moreover the appellate court being the last court of fact, has rightly found that the suit is filed out of time and the deed of agreement dated 10.03.1993 is not executable as been barred by limitation and as he dismissed the suit upon reversing the judgment of the trial court rightly. He finally prays that since the rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the impugned judgment and the Lower Court Record.

This is a suit for Specific Performance of Contract. Plaintiffs contention is that suit property was belonged to

defendant No.1 Noresh Chandra Roy. He intend to sell the suit property and accordingly plaintiff agreed to purchase, fixing a value of the suit property of Tk.2500/- and accordingly after receiving the said money an agreement for sale was signed on 10.03.1993 but thereafter on different pretext, since the defendant delayed to execute and register the sale deed in favour of the plaintiff and finally when he came to know that property was sold to defendant No.3 by the defendant No.1 vide registered sale deed dated 06.07.2008, he instituted the suit for a decree of Specific Performance of Contract pursuant to the deed of agreement dated 10.03.1993. On the other hand, defendant No.1 contested the suit with the statement that although he executed a deed of agreement with the plaintiffs on 10.03.1993 upon accepting Tk.2500/- and putting a signature on a paper but subsequently when the plaintiff did not agree to pay him Tk. 15,000/- a consideration money of the suit land, he asked to return the money to the plaintiff and subsequently for want of money, he sold the suit land to defendant No.3, after receiving the said money from him, by way of registered sale deed dated 06.07.2008 and handed over the possession to him. Trial court decreed the suit holding that the defendant No.3 purchased the suit land knowing fully well that

there was a deed of agreement for sale of the suit land between the plaintiff and defendant No.1 and the said agreement was a valid agreement and he accordingly decreed the suit.

On the other hand appellate court found that the deed of agreement dated 10.03.1993 was hopelessly barred by limitation and is not executable, since as per law for execution of the deed of agreement, suit ought to have been filed within 3 years and after the amendment of the Registration Act, he will get further one year to file the suit but the instant suit was filed after 15 years of the execution of the said agreement. Thus it is hopelessly barred by limitation.

Moreover upon going through the record it appears that in the plaint although plaintiff has made a statement that:

"গত ৬/৭/০৮ তারিখে অবৈধ এবং এখতিয়ার বহির্ভূতভাবে নালিশীয় বিত্ত বাবদ ৩নং বিবাদীর বরাবর অকার্যকর কবালি দলিল রেজিস্ট্রারী করিয়া দিয়া কার্যতঃ বাদীর অনুকূলে কবালি দলিল রেজিস্ট্রারী করিয়া দিতে অস্বীকার করিয়াছেন। উক্ত কবালি দলিলমূলে ৩নং মোকাবিলা বিবাদীর কোন স্বত্বদখল উদ্ভব হয় নাই।"

But without challenging or asking for cancellation of the said deed instant suit was filed for simple Specific Performance of Contract, accordingly the instant suit apparently is not filed properly and is not maintainable to its present form. However the appellate court being the last court of fact has rightly found that suit is barred by limitation.

I do not find any illegality in the said findings of the appellate court.

I thus find no merit in the rule.

In the result, the Rule is discharged and the judgment and decree passed by the appellate court are hereby affirmed.

The order of stay granted earlier is hereby recalled and vacated.

Send down the Lower Court Records along with the judgment at once.