

In the Supreme Court of Bangladesh
High Court Division
 (Civil Revisional Jurisdiction)

Present:

Mr. Justice Mamnoon Rahman
And
Mr. Justice Ashish Ranjan Das

First Appeal No. 396 of 2010

In the matter of:

Sekander Chowdhury

..... Appellant.

-Versus-

Nayeem Khan and others.

..... Respondents.

Mr. M.A.Azim Khair, Advocate

.....for the Appellant.

Mr. Md. Abul Hossain, Advocate

..... for the -Respondents.

Heard on 31.03.2019 and judgment on: 29.04.2019.

Ashish Ranjan Das, J.:

Learned Joint District Judge, 1st Court, Gopalganj by his judgment dated 02.09.2009 decree signed dated 09.09.2009 passed in Title Suit No. 08 of 2007 dismissed the suit for specific performance of contract on contest.

Being aggrieved the defendant Sekander Chowdhury preferred this appeal.

We have heard the learned advocates for the respective parties and perused the record.

Short fact that could be gathered from the file and relevant for the purpose may be summarized as under- Admittedly the suit properties belonged to the father of the respondents Waheduzzaman Khan. At his demise the present respondents as his heirs have been contesting. According to the plaint Waheduzzaman Khan was in need of money and he agreed to sell the landed properties described in the schedule to the plaint for Tk. 6,50,000/-. Appellant defendant agreed to purchase and in presence of witnesses he paid Tk. 6,16,000/- in advance on 07.02.1992 and it was stipulated that Waheduzzaman Khan shall receive the remaining amount of Tk. 34,000/- only by the end of 2003 (AD) and shall execute and register the sale deed. According to the agreement the appellant began to possess the land life of the agreement expired in December 2003AD. The appellant offered money. But Waheduzzaman Khan did not fulfill his part of the contract. Hence was the suit.

It has been argued by the learned advocate for the defendant respondent as the learned trial court also observed that as a matter of practice such instruments of baina are usually written on a non judicial stamp of 150 taka. But without any reasonable explanation most unusually the alleged baina was written on a 50 Taka stamp paper. Here the case of the defendant respondent is that their

predecessor Waheduzzaman Khan was in need of money and he received only Tk. 1,00,000/- and as a security delivered a signed but blank stamp paper of 50 taka denomination and he repaid the amount but the appellant denied to return the stamp paper with a plea of missing of the same.

The learned trial court observed that the baina was written by one Ashim Kumar Biswas but the said scribe Ashim Kumar was not produced as witness while the defence plea was that Waheduzzaman Khan made no such baina written by Ashim Kumar. The learned trial court further observed that on the baina two persons were shown to have been witnesses. Of them only Akber Sikder P.W.2 was produced and he also could not testify the story of lack of sale. The other witnesses was not produced. Another uncited witnesses Zoinal Sheikh P.W.4 also could not testify the fact of talk of sale in presence of other persons.

It is unusual that where out of the total consideration of Tk. 6,50,000/- Tk. 6,16,000/- was paid and only for a small amount a formal kabla was not executed and registered. Besides time fixed for registration of the kabla was some 12 years. 12 years is a vast time and in the meantime money value may change and many things may

happen. The plaintiff appellant side put forward no explanation as to why such a long time was allowed to execute a formal Kabla.

Where almost the entire amount was paid leaving a little fraction.

Thus we are of the view that the learned trial court was justified in not believing the bonafide of the baina patro thereby dismissed the suit. We find the appeal merit less and thus the suit as well as the appeal is dismissed.

However, there is no order as to costs.

Send down the Lower Court records and communicate the judgment and decree to the concern Court at once.

Mamnoon Rahman,J

I agree