

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

First Appeal No. 292 of 2009.

Abdul Khaleque.

.....Appellant.

Vs.

The Government of Bangladesh represented
by Deputy Commissioner, Narayangonj.

.....Respondent.

Mr. Shasti Sarker, Advocate

.....For the Appellant.

None appeared.

.....for the respondent.

Present:

Mr. Justice Quazi Reza-Ul Hoque

And

Mr. Justice J.N. Deb Choudhury.

*Heard on: 16.03.2016, 30.03.2016, 06.04.2016
& 02.06.2016 and Judgment on : 05.06.2016.*

J.N. Deb Choudhury, J

This first appeal has been filed against the judgment and decree dated 17.06.2009 passed by the learned Joint District Judge, Second Court, Narayangonj in Title Suit No. 31 of 2009, rejecting the plaint.

The plaintiff-appellant on 25.01.2009 filed Civil Suit No. 31 of 2009 before the Joint District Judge, Second Court, Narayangonj for specific performance of contract.

Plaintiff's case for the purpose of the disposal of this first appeal in short, is that the defendant No. 1 agreed to sell the suit land at a consideration of Tk. 11,02,000.00 in favour of the plaintiff and on receiving Tk. 10,92,000.00, executed a registered bainapatra on

13.03.2007 and the plaintiff on different occasion approached the defendant No. 1 and lastly on 01.01.2009 requested the defendant No. 1 to execute and register the kabala; but, the defendant No. 1 ultimately denied the same and accordingly, filed the suit.

Defendant No. 1 contested the suit by filing written statement and contended inter alia that the defendant No. 1 being aged of 85 years and taking advantage of his ailment, the plaintiff created the bainapatra. The defendant No. 1 never received any amount from the plaintiff nor given possession of the suit land. After knowledge of the bainapatra, defendant No. 1 filed a criminal case being Petition Case No. 978 of 2007 under Section 341, 384, 506 and 109 of the Penal Code on 15.05.2007 against the plaintiff and in that criminal case on being negotiated by the local elderly persons, defendant No. 1 and plaintiff filed joint compromise petition and as per terms of the compromise the plaintiff undertook not to file any case pursuant to the bainapatra dated 13.03.2007 and also stated in the written statement that the present suit is barred by limitation.

The defendant No. 1 on 31.03.2009 filed an application under Order 7 Rule 11 (d) of the Code of the Civil Procedure for rejection of the plaint on the ground that the bainapatra was executed on

13.09.2007 and the suit was filed on 25.01.2009 and in view of Section 54A of the Transfer of Property Act, 1882 and in view of Article 113 of the Limitation Act, 1908, the present suit is hopelessly barred by limitation.

The trial Court by order dated 17.06.2009 on considering the statements made in the plaint and in view of Section 54A of the Transfer of Property Act, 1882 and Article 113 of the Limitation Act, 1908, rejected the plaint.

Being aggrieved the plaintiff preferred the instant first appeal and during pendency of the appeal filed an application for injunction and on 17.11.2009, Rule was issued being Civil Rule No. 911 (F) of 2009 and ad-interim order was passed restraining defendant-respondent No. 1 from dispossessing the plaintiff-appellant from the suit land and also from transferring the suit land to anyone till disposal of the Rule.

Mr. Shasti Sarker, the learned Advocate appearing for the plaintiff-appellant submits that the trial Court while rejecting the plaint failed to consider the third column of Article 113 of the Limitation Act, 1908 which clearly provides under the heading "Time from which period begins to run" is the date fixed for the

performance or if no such date is fixed, when the plaintiff has notice that performance is refused and in the present case the defendant No. 1 ultimately refused on 01.01.2009 and filed the suit on 25.01.2009 and as such the suit as filed cannot be held to be barred by limitation. He next submits that the provisions of Section 54A of the Transfer of Property Act, 1882 are for the purpose of execution and registration of the instrument of the sale and have no manner of application in the present case. In support of his submissions he relied upon a case of Khan Mohammad Amir vs. Atiqur Rahman and others, reported in 5 ALR (2015) 307 and on submitting the above he prayed for setting-aside the impugned judgment and decree of rejection of the plaint on allowing the appeal.

We have heard the learned advocate for the plaintiff-appellant, perused the plaint, written statement, application and the impugned judgment and decree of the trial Court.

Admittedly the bainapatra was executed and registered on 13.03.2007 and there is no period mentioned in the bainapatra for execution and registration of the instrument of the sale. The suit is for specific performance of contract has been filed on 25.01.2009 i.e. after almost 1 year 9 months 13 days from the date of bainapatra.

Section 54A of the Transfer of Property Act has been inserted by Act No. XXVI of 2004 which specifically mentioned that the same will come into effect from 1st July, 2005. Section 54A of the Transfer of Property Act, 1882 reads as follows:

“54A. Contract for sale to be registered, etc-

Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, a contract for sale of any immovable property can be made only by an instrument in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof.

In a contract for sale of any immovable property, a time, to be effective from the date of registration, shall be mentioned for execution and registration of the instrument of sale, and if no time is mentioned, six months shall be deemed to be the time.”

From a plain reading of Section 54A of the Transfer of Property Act, 1882, it appears that the said section starts with the words “Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force” and it has also

provides that in every instrument of contract for sale of any immovable property, the time to be effective from the date of registration, shall be mentioned for the execution and registration of the instrument of sale and if no time is mentioned, 6(six) months shall be deemed to be the time. So, it appears that in every contract for sale there should be a time mentioned for execution and registration of the instrument of sale and if no time is mentioned it will be deemed to be 6(six) months.

Admittedly the contract for sale in the present suit, executed and registered on 13.03.2007 and there is no time mentioned in the contract for sale for execution and registration of the instrument of sale and in view of Section 54A of the Transfer of Property Act, 1882, the time shall be deemed to be 6(six) months for execution and registration of the instrument of sale.

Article 113 of the Limitation Act, 1908 reads as follows:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
113. For specific performance of a	One year	The date fixed for the performance, or, if

contract		no such date is fixed, when the plaintiff has notice that performance is refused.
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It appears from the first and second column under description of suit for specific performance of contract and the period of limitation is 1(one) year and under the heading “Time from which period begins to run” it has been provided that the time shall run from the date fixed for performance. As we have already found in view of Section 54A of the Transfer of Property Act, 1882, by operation of law the date fixed for performance shall be 6(six) months as no time was mentioned in the contract for sale. The second part of third column “or, if no such date is fixed, when the plaintiff has notice that performance is refused” cannot override the first part of the third column.

In view of the above there is no option; but, to hold that the contract for sale dated 13.03.2007 be deemed for the purpose of execution and registration of the instrument of sale to be 6(six) months and as such, 13.09.2007 was the last date for execution and

registration of the instrument of sale and failing thereto in view of Article 113 of the Limitation Act, 1908, the last date for filing the suit was 13.09.2008. Accordingly, the suit as filed on 25.01.2009 is hopelessly barred by limitation.

It is the settled principle of law that while the ultimate result of the suit is as clear as the daylight, such a suit should be buried at its inception so that no further time is consumed in a fruitless litigation. In the present case from the admitted facts of the case it appears that the suit will certainly fail as being barred by limitation.

The decision referred to by the learned Advocate for the plaintiff-appellant, the case of Khan Mohammad Ameer vs. Atiqur Rahman and others, reported in 5 ALR 307, the facts, circumstances and interpretation not applicable in the present case.

Accordingly, we do not find substance in the arguments of the learned Advocate for the appellant.

In the result, the appeal is dismissed.

The impugned judgment and decree dated 17.06.2009 passed by the learned Joint District Judge, Second Court, Narayangonj in Title Suit No. 31 of 2009, rejecting the plaint, is hereby affirmed.

Connected Rule being Civil Rule No. 911 (F) of 2009, is disposed of accordingly.

Send back the lower court's record along with a copy of this judgment and decree to the court concern.

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(J.N. Deb Choudhury, J)

I agree.

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(Quazi Reza-Ul Hoque, J)

*Md. Murshedul Hasan,
Bench Officer*