

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.219 OF 2012

Selim Khan

.... Appellant

-Versus-

Mst. Aklima Khatun and another

.... Respondents

None appears

.... For both the sides.

Heard on 08.07.2026 and Judgment on 09.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 03.05.2012 passed by the learned Joint District Judge, 1st Court, Bagerhat in Title Suit No.22 of 2008 dismissing the same.

Facts in short are that the respondent as plaintiff instituted above suit for specific performance of registered deed of bainapatra dated 02.08.2007 alleging that defendant No.1 was the rightful owner and possessor of 25 decimals land and he agreed to sale above land to the plaintiff for a consideration of Taka 8,22,000/- and on receipt of an advance payment of Taka 3,00,000/-. Defendant No.1 executed and registered above bainapatra on 02.08.2007. It was stipulated in above bainapatra that on receipt of the outstanding consideration money

defendant No.1 shall execute and register a sale deed but defendant No.1 refused to receive remaining consideration money and execute and register a sale deed on 25.11.2008.

Defendant No.1 contested above suit by filing a written statement alleging that it was stipulated in above registered bainapatra dated 02.08.2007 that within next ten months plaintiff would pay the outstanding consideration money and get a registered sale deed but inspite of repeated requests from the defendant the plaintiff did not pay above money. The defendant wanted to sale above land to pay his loan with Brac Bank Limited but due to non-payment of above outstanding consideration money above Bank filed a case against the defendant and he was put in prison.

At trial plaintiff examined three witnesses and documents of the plaintiff were marked as Exhibit Nos.1 and 2. On the other hand defendant examined three witnesses but did not produce and prove any document.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit and directed the plaintiff to deposit outstanding consideration money of Taka 5,22,000/- within thirty days from the date of above order.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above defendant as appellant moved to this Court and preferred this First Appeal.

No one was found available for the appellant or the respondent when this First Appeal was taken up for hearing although the First Appeal appeared in the list for hearing on several dates. As such this Court took up this First Appeal for pronouncement of judgment under Order 41 Rule 30(2) of the Code of Civil Procedure, 1908.

It is admitted that defendant No.1 was the rightful owner and possessor of disputed 25 decimal land and he aggrieved to sale above land to the plaintiff for a consideration of Taka 8,22,000/- and on receipt of Taka 3,00,000/- defendant No.1 executed and registered a bainapatra on 02.08.2007. It is also admitted that the defendant did not execute and register a sale deed for about 25 decimal land to the plaintiff pursuant to above registered deed of bainapatra dated 02.08.2007 (Exhibit No.2). The plaintiff instituted above suit for specific performance of above registered bainapatra on 01.12.2008. As such above suit was filed within the statutory period of limitation.

Section 21A of the Specific Relief Act, 1877 provides as follows:

21A. "Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no contract for sale of any immovable property can be specifically enforced unless-

(a) the contract is in writing and registered under the Registration Act, 1908, whether or not the

transferee has taken possession of the property or any part thereof; and

(b) the balance amount of consideration of the contract is deposited in the court at the time of filing the suit for specific performance of the contract.”

Above provision of the Specific Relief Act, 1877 came into force on 01.07.2005. As mentioned above the disputed registered deed of bainapatra was executed on 02.01.2007 and for enforcement of above bainapatra the plaintiff filed above suit on 01.12.2008. As such above provision of Section 21A of the Specific Relief Act, 1877 is applicable for above suit. It turns out from order dated 01.12.2008 that on the date of filing of above suit for specific performance of contract the plaintiff did not deposit outstanding consideration money of Taka 5,22,000/- in Court as was required under Section 21A of the Specific Relief Act, 1877. On above date the plaintiff submitted a petition for time for depositing above outstanding consideration money and the learned Joint District Judge allowed above petition and fixed on 21.01.2009 for depositing outstanding consideration money by the plaintiff. On 21.01.2009 the plaintiff submitted another petition for granting of time for depositing outstanding consideration money which was also allowed by the learned Joint District Judge and 19.02.2009 was fixed for depositing outstanding consideration money and on above date the

plaintiff deposited Taka 5,22,000/- in the Court the balance consideration money of above bainapatra by a chalan.

Section 21A of the Specific Relief Act, 1877 clearly provides that no contract for sale of immovable property shall be enforced unless the consideration money is deposited in Court on the date of filing of the suit. In our view above provision of Section 21A of the Specific Relief Act, 1877 is a mandatory provision and the learned Joint District Judge did not have any legal authority to grant time to the plaintiff for depositing the balance consideration money on a date other than the date of filing of the suit. Since the plaintiff failed to deposit the balance consideration money of Taka 5,22,000/- in Court on the date of filing of above suit for specific performance of contract the suit was barred by Section 21A of the Specific Relief Act, 1877 and liable to be dismissed. But the learned Joint District Judge totally failed to appreciate above provision of law of the Specific Relief Act, 1877 and most illegally decreed above suit which is not tenable in law.

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

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 03.05.2012 passed by the learned Joint District Judge, 1st Court, Bagerhat in Title Suit No.22 of

2008 is set aside and above suit is dismissed on contest against defendant No.1.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**