

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 464 of 2000

In the matter of:

Md. Eskandar Ali Moral, son of late Md. Danesh Moral and others.

... Appellants

-Versus-

Monjur Hossain Shikdar, son of Moslem Ali Shikdar, village- Madhab Kati, Police Station- Kachua, District- Bagerhat and others.

... Respondents.

Mr. Pronay Kanti Roy, Advocate

...For the appellants

Mr. Md. Abdul Hai Sarker, Advocate

...For the respondent no. 1

Heard on 09.05.2024 and 23.05.2024.
Judgment on 23.05.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of defendants, this appeal is directed against the judgment and decree dated 23.01.2000 passed by the learned the then Subordinate Judge (now Joint District Judge), 2nd Court, Bagerhat in Title Suit No. 45 of 1996 decreeing the suit.

The short facts leading to preferring this appeal are:

The present respondent no. 1 as plaintiff filed a suit being Title Suit No. 45 of 1996 in the court of the then Subordinate Judge, 2nd Court, Bagerhat for specific performance of contract for the suit land measuring an area of 226 decimals seeking following reliefs:

“(ক) বাদী মূল বিবাদীর বিরুদ্ধে বিরোধীয় জমির চুক্তি প্র বলের ডিক্রি পান।

(খ) যাবতীয় মোকদ্দমা খরচার ডিক্রি পান।

(গ) প্লিডিং সন্যায় ও অবস্থানুসারে বাদী আর যে কোন প্র তিকার পাইতে পারেন তাহার ডিক্রি হয়।”

The present respondent nos. 2-7 as defendant nos. 3-8 contested the suit by filing a joint written statement denying all the material statement made in the plaint and prayed for dismissing the suit.

The case of the plaintiff-respondent no. 1 is brief in that, while the defendant no. 1 had been enjoying title and possession of the suit land offered to sale the same fixing the value at taka 1,35,000/- on 27.02.1995. Since there had been scarcity in getting required stamp paper a sale deed was thus executed on cartridge paper (ডেমি). On that very date, the defendant no. 1 received entire amount and promised that within 15 days he would register the sale deed upon collecting the stamp paper from the treasury. Ultimately, he failed to do so rather he on 11.10.1996 refused to register the sale deed and hence, the suit.

On the contrary, the petitioners as defendant nos. 3-8 contested the suit by filing a joint written statement contending that, the defendant no. 1 as per *bainapatra* he executed on 19.02.1992 to sale 19.17 acres of land including the suit land at a consideration of taka 6,94,900/-. Afterwards, the

defendant no. 1 registered three sale deeds in their favour on 17.04.1995 where the plaintiff stood as one of the attesting witnesses and the suit is thus liable to be dismissed.

The learned Judge of the trial court on examining the pleadings then framed 6 different issues when the plaintiff and the said defendants examined five witnesses each in support of their respective cases. Aside for that, the plaintiff produced documents which were marked as exhibit nos. '1' and '2' while the defendant's documents were marked as exhibit nos. 'ka'- 'gha'.

The learned Judge of the trial court after conclusion of trial by his judgment and decree dated 25.01.2000 decreed the suit against the defendant nos. 3-8 on contest.

Being aggrieved by and dissatisfied with the said judgment and decree, the defendants preferred this appeal.

Mr. Pronay Kanti Roy, the learned counsel appearing for the appellants upon taking us to the impugned judgment and decree and those of the evidence so adduced by the P.W-1 to P.W-5 and the exhibited documents being exhibit nos. 1-1(ka) at the very outset submits that, since there has been no existence of any contract so the suit for specific performance of contract itself is not maintainable in view of section 22 of the Specific Relief Act.

The learned counsel further contends that, though the plaintiff claimed to have a deed registered on cartridge paper dated 27.02.1995 for a consideration of taka 1,35,000/- but there has been no condition or any clause thereof specifying any time limit that in default of registering the

sale deed within that specific period, the plaintiff will be entitled to file a suit for specific performance of contract and in absence of such condition, the suit itself is not maintainable.

The learned counsel next contends that, the plaintiff himself stood attesting witness of the deed of sale so have been executed and registered by the defendant no. 1 in favour of the present defendant-respondent nos. 3-8 dated 14.07.1995 having no reason to perform the deed of sale (even not contract) alleged to have furnished by the defendant no. 1 in favour of the plaintiff dated 27.02.1995.

The learned counsel next contends that, even for arguments' sake, if the deed of sale dated 27.02.1995 is considered to be a contract and if it is also taken into consideration that there had been oral contract among the plaintiff that the defendant no. 1 will register the sale deed upon collecting required stamp papers from the respective treasury even then, the said facts have not been proved by any convincing evidence before the trial court. On that score, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and decree.

On the contrary, Mr. Md. Abdul Hai Sarker, the learned counsel appearing for the respondent no. 1 at the very outset submits that, since at the point of executing the deed of sale dated 27.02.1995, there has been scarcity of getting required stamp papers for which it has been agreed by the plaintiff and the defendant no. 1 that, upon obtaining required stamp paper, the defendant no. 1 will register the sale deed and that very assertion has also been proved by the evidence so produced by the plaintiff.

The learned counsel further contends that, since it has been proved that the plaintiff has been enjoying title and possession over the suit property so it also construes that, the deed of sale has been carried out in favour of the plaintiff and the plaintiff is entitled to get the suit property by registering a deed of sale by the court.

The learned counsel lastly contends that, since it has been proved that, the defendant has got no title and possession over the suit property by the deed of sale dated 27.02.1995 so the learned Judge of the trial court has rightly decreed the suit in favour of the plaintiff and finally prays for dismissing the appeal.

We have considered the submission advanced by the learned counsel for the appellants and that of the plaintiff-respondent no. 1. We have also gone through the impugned judgment and all the exhibited documents so produced by the plaintiffs and the defendants and those of the deposition so made by the witnesses of the parties.

There has been no denying that, in the instant suit, there has been no contract ever furnished by the defendant no. 1 in favour of the plaintiff so in absence of any contract, no suit can be filed under section 22 of the Specific Relief Act to perform the contract by registering a deed of sale through court but what we have found in the instant case that is, from exhibit no. 1, it's an out and out a deed of sale which was alleged to have executed by the defendant no. 1 in favour of the plaintiff even though it has not been written in the required stamp paper rather in cartridge papers. It is the specific case of the plaintiff that for the scarcity of the stamp paper at

that time, the plaintiff could not procure the stamp paper but that very factum could not be proved by any convincing evidences.

Furthermore, on going through the evidences, we further find that, the P.W-2, who is one of the attesting witnesses in the alleged deed (exhibit-1) also could not support the facts that is, under what circumstances, the deed of sale was written in a cartridge paper instead of required stamp paper let alone it was not any contract or agreement for sale.

Moreover, though the learned Judge of the trial court has clearly found in his judgment that, in the alleged deed of sale, there has been no date of the vendor (defendant no. 1) beneath his signature in spite of that, he decreed the suit. Curiously enough, the learned Judge has not touched upon any evidence adduced by the defendants in his entire judgment. Had he discussed the evidence it would have been clear that, the plaintiff himself is the attesting witness in all the three sale deeds executed and registered by the self-same defendant no. 1 in favour of the defendant nos. 3-8 dated 14.07.1995. It is the contention of the learned counsel for the respondent no. 1 that, in those very sale deeds executed and registered in favour of the defendants, the plaintiff actually has not put his signature but that very submission cannot sustain at the moment given the fact that, at the time of marking those deeds of the defendant nos. 3-8 as exhibits no question was raised by him about the genuineness of those three sale deeds.

Be that as it may, since defendant will not prove the case of the plaintiff and it is the plaintiff who is duty bound to prove his own case up to the hilt and since with our above discussion, we clearly find that, the plaintiff has utterly failed to prove his case by any convincing evidence and

the exhibit no. 1 is not any deed of contract so no performance can be made by any court of law in a suit for specific performance of contract within the mischief of section 22 of the Specific Relief Act.

Given the above facts and circumstances, we find ample substance to the submission so advanced by the learned counsel for the appellant and thus the appeal is liable to be allowed.

Accordingly, the appeal is allowed however without any order as to costs.

The judgment and decree dated 23.01.2000 passed by the learned the then Subordinate Judge (now Joint District Judge), 2nd Court, Bagerhat in Title Suit No. 45 of 1996 stands set aside. Consequently, the suit is dismissed.

Let a copy of this judgment along with the lower court records be transmitted to the learned Joint District Judge, 2nd Court, Bagerhat forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O.**