

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Civil Revision No. 1341 of 2014**

**In the matter of:**

Mosammat Zohera Begum.

...Petitioner.

**-Vs-**

Mohammad Hatem and others.

....Opposite parties.

**Present**

Mr. Justice Mamnoon Rahman

Ms. Shimonti Ahmed, Adv. with

Mr. Mohammad Abdul Hamid, Adv.

...For the petitioner.

None appears

...For the opposite parties.

Heard & Judgment on: **The 12<sup>th</sup> January, 2025**

In an application under section 115(1) of the Code of Civil Procedure, 1908 the petitioner obtained the instant rule from this court on 07.04.2014 which runs as follows;

*এই মর্মে অপরপক্ষদের প্রতি কারণ দর্শানো পূর্বক রুল জারী করা হইল, কেন ব্রাহ্মনবাড়িয়ার বিজ্ঞ অতিরিক্ত জেলা জজ, দ্বিতীয় আদালত এর দেওয়ানী ৭৩/২০০৯ নং আপীলে প্রচারিত ১৯/১১/২০১৩ তারিখের তর্কিত রায় এবং ২৮/১১/২০১৩ তারিখের স্বাক্ষরিত ডিক্রি রদ ও রহিত করা হইবে না, যে রায় ও ডিক্রিমূলে ব্রাহ্মনবাড়িয়া জেলার সরাইলের বিজ্ঞ সহকারী জজ আদালত এর দেওয়ানী ১০৪/২০০৭ নং মোকদ্দমায় প্রচারিত ০৭/০৯/২০০৯ তারিখের রায় এবং ১৩/০৯/২০০৯ তারিখের স্বাক্ষরিত ডিক্রি পরিবর্তন পূর্বক আপীলটি মঞ্জুর হইয়াছে এবং দরখাস্তকারী অত্র আদালত এর বিবেচনায় আর যে সকল প্রতিকার পাইতে পারেন তাহার ও আদেশ কেন দেওয়া হইবে না।*

The short facts for the disposal of this rule, are that, the opposite party Nos. 1-3 as plaintiffs instituted Title Suit No. 104 of 2007 in the court of Senior Assistant Judge, Sarail, Brahmanbaria impleading the present petitioner as defendant for Specific Performance of Contract. The case of the plaintiff, in short, is that, the defendant No. 1 is the

owner of the 16 decimals land including the suit land by way of purchase by registered deed dated 02.09.1973 and 17.11.2002 and his name has been correctly recorded in Namjari Khatian No. 7634 in respect of said land and he has been possessing the same accordingly. He remaining owner and in possession of the said land, he offered to sale out 5 decimals land out of said 16 decimals land and the plaintiffs agreed to purchase the said 5 decimals suit land; seeing the relevant documents in respect of the suit land and on discussing the value of the 5 decimals land, the plaintiffs and defendant No. 1 fixed Tk. 75,000/- only as consideration money of 5 decimals land and the plaintiff on 29.07.2007 paid total consideration money to the defendant No. 1 and executed a Subkabala Deed on the stamp paper which was written by Mesbaul Haque and submitted the said deed to the Sub-Registrar Office, Sarail for registration on 30.07.2007 but before putting signature in the TI register, the defendant No. 1 fled away from the Office of Sub-Registrar and thereafter Sub-Registrar Office returned the said deed to the deed writer. Subsequently the plaintiff along with the witnesses asked the defendant No. 1 why she did not register the deed, in reply she said that she was become ill and assured to register the deed after being cure of her illness and at last the defendant No. 1 on 05.10.2007 denied to register the deed and also denied sale of the suit land to the plaintiffs. Thereafter, the plaintiff instituted the suit for getting Kabala. Hence, the case.

The defendant No. 1 entered appearance and contested the suit by filing written statement denying all the material allegations made in

the plaint. Subsequently, the defendant pressed an application under Order 7 rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint which was resisted by the plaintiff-opposite parties by way of written objection. The court below proceeded with the application and after the hearing the parties and considering the facts and circumstances and the provisions of law vide impugned judgment and decree dated 07.09.2009 allowed the application under Order 7 rule 11 of the Code of Civil Procedure, 1908 and thereby rejected the plaint which amongst to dismissal of the suit.

Being aggrieved by an dissatisfied with the aforesaid judgment and decree passed by the trial court the present opposite parties as appellants preferred Title Appeal No. 73 of 2009 before the learned District Judge, Brahmanbaria and the same was heard and disposed of the learned Additional District Judge, Second Court, Brahmanbaria who vide the impugned judgment allowed the appeal and thereby set aside the judgment and decree passed by the trial court rejecting the plaint. The defendant-respondent-petitioner being aggrieved by and dissatisfied with the said judgment and decree passed by the lower appellate court moved before this court under section 115(1) of the Code of Civil Procedure, 1908 and obtained the present rule.

No one appeared on behalf of the opposite parties to oppose the rule though the matter is of the year 2014.

Ms. Shimonti Ahmed, the learned Advocate the for the petitioner submits that the lower appellate court being the final court of fact and law most illegally and in an arbitrary manner allowed the appeal which

requires interference by this court. She submits that the trial court on proper appreciation of the facts and circumstances as well as considering the case of the plaintiff and defendant side by side rejected the plaint on question of law and as such the judgment and decree passed by the trial court is liable to be maintained for ends of justice. She further submits that the lower appellate court failed to consider the provisions as laid down in the relevant law and also the lower appellate court failed to assess the language as stipulated in these laws which are mandatory in nature. She submits that in all relevant law by a non-obstantive clause it has been stipulated the criteria and condition for filing a suit for Specific Performance of Contract which has been miserably failed by the plaintiff and as such the decisions passed by the trial court is liable to be maintained and the decisions of the lower appellate court is liable to be set aside for ends of justice. The learned Advocate placed the provisions of section 17A of the Registration Act of 1908, section 21A of the Specific Performance of Contract Act 1877 as well as the provisions as laid down in section 54A of the Transfer of Property Act 1882.

I have heard the learned Advocate for the petitioner. Perused the impugned judgment and decree passed by the lower appellate court, judgment and decree passed by the trial court, revisional application, grounds taken thereon as well as the L.C. Records.

On perusal of the same, it transpires that the present opposite party as plaintiffs instituted Title Suit No. 104 of 2007 in the court of Assistant Judge, Sarail, Brahmanbaria impleading the petitioner as

defendant for Specific Performance of Contract. The simple case of the plaintiff-opposite parties, are that, the present petitioner is the owner and possessor of the suit property in question who agreed to sell the suit property to the plaintiff and received the consideration money and pursuant to the conversation and transaction of the consideration amount the deed writer prepared a deed which was presented for registration before the competent authority on 29.07.2007. But the defendant-petitioner left the registration office with ill motive resulting which the registration of the sale deed could not be possible. Hence, the suit. Whether the plaintiff has the substantial right or not or right to get that the deed to be executed by the court of law in a suit for Specific Performance of Contract entirely depend upon the facts and circumstances as well as evidence to be produced by both the parties. In a regular suit for Specific Performance of Contract the fate of the parties can only be adjudicated by the trial court by framing issues and by giving opportunities to the respective contestants to produce their oral and documentary evidence. A trial court after exhausting all the procedures can only decide the fate of the suit, namely whether the plaintiff is entitled to get any relief or whether the suit is liable to be dismissed in favour of the defendant.

Order 7 rule 11 of the Code of Civil Procedure, 1908 deals with the provision for rejection of plaint. By inserting the said provisions it is the intention of the legislature that the suit can be buried at its initial inception if the condition as stipulated therein has been fulfilled in an appropriate application or by the court itself at any stage. One of the

condition as stipulated in the aforesaid provisions relates to rejection of plaint in a suit is liable to be dismissed by way of rejection of plaint if the same is barred by law. In the present case in hand it transpires that an application has been pressed under Order 7 rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint wherein the trial court allowed the same and rejected the plaint but on appeal the same was set aside, namely the application for rejection of plaint is being rejected.

Section 17A of the Registration Act, 1908 has been inserted in the Registration Act, 1908 by the Act 25 of 2004. Section 17A(1) of the Registration Act, 1908 runs as follows;

*“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 shall be in writing, executed by the parties thereto and registered”.*

So, it transpires from the aforesaid provisions of law that notwithstanding anything to the contrary contained in that Act or any other law for the time being for enforcing the right of Specific Performance of Contract for sale of any immovable property must fulfilled three conditions, namely (a) instrument has to be in writing (b) executed by both the parties and (c) has to be registered in accordance with the Registration Act.

So, it transpires that as per the Registration Act a document has to be registered by the competent authority. It further transpires from section 21A of the Specific Relief Act which was also inserted in the Specific Relief Act, 1877 by the Specific Relief Amendment Act 2004 and section 21A runs as follows;

*“Unregistered contract for sale not specifically enforceable—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 can be specifically enforced unless—*

*(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 contract”.*

So, on perusal of the aforesaid provisions of law, it transpires that notwithstanding anything to the contrary contained in the said law or any other law for the time being no contract for sale of immovable property can be specifically enforced unless the contract is in writing and registered under Registration Act 1908 irrespective of possession or payment thereof. So, it is crystal clear from the aforesaid provisions of law for Specific Performance of Contract that the instruments which the parties seek to enforce through a court of law has to be registered as per the Registration Act.

Section 54A of the Transfer of Property Act, runs as follows;

*“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 immoveable 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 immoveable 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”.*

So, it transpires that the provisions of section 54A of the Transfer of Property Act 1882 lend support to the proposition as laid down by the legislature in the Registration Act as well as Specific Relief Act. From combined reading of the aforesaid provisions of law it is crystal clear that after 2004 any instruments submitted before a court of law seeking enforcement by way of Specific Performance of Contract has to be registered by the competent registration authority which is not available in the present case in hand. In the present case in hand the plaintiff-opposite party intends to get relief for Specific Performance of a Contract based upon an unregistered instrument of the year 2007. Hence, I am of the view that the lower appellate court committed gross error in passing the impugned judgment and decree and as such I find substance in the instant rule.

Accordingly, the instant rule is made absolute and the impugned judgment and decree passed by the lower appellate court is hereby set aside. The impugned judgment and decree passed by the trial court is hereby affirmed.

Send down the L.C. Records to the concerned court below with a copy of the judgment, at once.

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(Mamnoon Rahman,J:)



*Emdad.B.O.*