

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3801 OF 2002

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Nurul Islam

... Petitioner

-Versus-

Abdus Sattar and others

... Opposite parties

Mr. Purubi Saha, Advocate

... For the petitioners.

Mr. Sherder Abul Hossain, Advocate

.... For the opposite No.1.

Heard on 01.12.2024 and Judgment on 02.12.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 28.04.2002 passed by the learned Joint District Judge, 1st Court, Habigonj, in Title Appeal No.112 of 1997 dismissing the appeal affirming the judgment and decree dated 23.03.1997 passed by the learned Senior Assistant Judge, Habigonj in Title Suit No.166 of 1980 should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for specific performance of bainapatra dated 04.02.1976 executed by defendant No.1 for sale of 26 decimal land. It has been alleged that the defendant No.1 as the owner of possessor of above 26 decimal land

declared to sale the same and the plaintiff agreed to purchase the same at Taka 5,000/- and on receipt of Taka 4,000/- defendant No.1 executed a bainapatra on 04.02.1976 and delivered possession. Defendant Nos.2 and 3 were aware about above bainapatra. Defendant No.1 refused to execute and register a sale deed to the plaintiff and he has fraudulently transfer above land to defendant Nos.2 and 3.

Defendant No.1, 2 and 3 contested above suit by filing a joint written statement alleging that defendant No.1 did not enter into any contract to sale disputed 26 decimal land to the plaintiff and above bainapatra dated 04.02.1976 is a forged and ineffective document. Defendant No.1 did not receive any consideration money and deliver possession of the disputed land to the plaintiff. Defendant No.1 transferred above land to the defendant No.2 on receipt of consideration of money and delivered possession to him and after his demise his heirs are in possession in the above land.

At trial plaintiff examined 5 witnesses and defendants examined 6. Documents of the plaintiffs were marked as Exhibit Nos.1 and 2 and those of the defendants were marked as Exhibit No.A.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed above suit.

Being aggrieved by above judgment and decree of the trial Court plaintiff preferred Title Appeal No.112 of 1997 to the District Judge,

Hobigonj which was heard by the learned Joint District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Ms. Purabi Saha, learned Advocate for the petitioner submits that defendant No.1 on receipt of Taka 4,000/- executed impugned bainapatra dated 04.02.1976 (Exhibit No.1) for sale of disputed 26 decimal land to the plaintiff for Taka 5,000/-. Defendant No.2 was fully aware about above contract and possession of the plaintiff in above land and collusively purchased above land from defendant No.1 by registered kabala deed dated 05.02.1980. Defendant has refused to execute and register a sale deed on receipt of remaining Taka 1,000/- and since the defendant No.2 was fully aware about above bainapatra he is also bound to execute a sale deed for above land to the plaintiff. But the learned Judges of both the Courts below have miserably failed to appreciate above aspect of the facts and law and most illegally the trial Court dismissed the suit and the Court of Appeal below most illegally affirmed above flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Sherder Abul Hossain, learned Advocate for the opposite party Nos.2, 4 and 5 submits that admittedly plaintiff is

the nephew of defendant No.1 and they have their joint properties which they possess jointly and they have disputes with regard to above property. Now deceased defendant No.2 was a third party and bonafide purchaser for value of disputed 26 decimal land from defendant No.1 for valuable consideration on 05.02.1980 before filing of this suit. As such defendant No.2 was not bound by above bainapatra between the uncle and nephew and the learned Judges of the Courts below on correct appreciation of materials on record rightly dismissed the suit and the appeal respectively which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed 26 decimals land belonged to defendant No.1 and he has sold the same to defendant No.2 by a registered kabala deed on 05.02.1980 and the plaintiff filed the suit for specific performance of bainapatra dated 04.02.197 on 31.03.1980. It is also admitted that defendant No.1 is the paternal uncle of the plaintiff. But defendant No.2 is a third person. Plaintiff himself gave evidence as PW1 and produced the impugned deed of bainapatra dated 04.02.1976. He stated that his uncle defendant No.1 executed above bainapatra on receipt of Taka 4,000/- out of Taka 5,000/- which was the consideration for above 26 decimal land. PW2 Atar Ali is the scribe of above bainapatra and he has given consistent evidence in support of due execution of above bainapatra. On consideration of above evidence on

record I hold that the plaintiff succeeded to prove that defendant No.1 executed above bainapatra dated 04.02.1976 for sale of above 26 decimal land. But as to non execution of a sale deed and possession of above land PW1 has stated as follows in his evidence:

“৩/৪ মাস পর টাকা নিয়ে কবলা দেওয়ার কথা তখন আমার কাছে সম্পূর্ণ টাকা ছিল না। পরে টাকা নিয়ে কবলা দিতে বলেছি। ১ নং বাদী আমার চাচা। ফরিদাবাদে আমার জমি আমার চাচা এই বিবাদীর দখল করে বিধায় আমি তাহা ফেরত চাই। সে কবলা দিতে অস্বীকার করে।”

Above evidence of PW1 shows that it was the latches of the plaintiff who failed to pay the remaining consideration money of above bainapatra during the period as was agreed upon and obtained a kabala deed from defendant No.1. Above evidence further shows that the plaintiff was not in possession of disputed 26 decimal land pursuant to above bainapatra. As mentioned above defendant No.1 has transferred above 26 decimals land to defendant No.2 by a registered kabala deed on 05.02.1980 before filing of this suit. As such defendants kabala deed dated 05.02.1980 is not subject to lis pendse.

As far as the claim of the learned Advocate for the petitioner that defendant No.1 was fully aware as to the above bainapatra dated 04.02.1976 is concerned there is no specific averments in this regard in the plaint or in the evidence of the plaintiff witnesses. In the plaint it has been merely stated that defendant No.2 was aware about the above bainapatra dated 04.02.1976. But there is no mention as to the source of

knowledge of defendant No.2 about above bainapatra or the date or place from where he got above information. In his evidence as PW1 plaintiff has merely stated that defendant No.2 was aware about above sale and purchase from the very beginning. But there was no sale of the disputed land to the plaintiff by defendant No.1 and PW1 did not mention that defendant No.2 was aware about above bainapatra before his purchase.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned Judges of the Court of Appeal below on correct appreciation of evidence on record has rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

As such I find no substance in this civil revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of status-quo granted at the time of issuance of the Rule is hereby vacated.

However, there is no order as to costs.

Send down the lower courts record immediately.