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

F. A. No. 400 of 2015

Mrs. Sufia Khatun

... plaintiff-appellant

-Versus-

Mohammad Mostafa Kamal and others

...defendant-respondents

No one appears
...for the appellant

Mr. Naim Ahmed, Advocate
...for the respondent Nos.1-5

Heard on 19.04.2026

Judgment on 21.04.2026

Present
Mr. Justice Mohammad Ullah
and
Mr. Justice Md. Lutfor Rahman

Mohammad Ullah, J.

This appeal is directed against the impugned judgment and decree dated 01.10.2015 by which the Joint District Judge, 3rd Court, Khulna (in brief, "the Trial Court") dismissed the Title Suit No.443 of 2007.

The record shows that the learned Advocate for the appellant obtained an adjournment on

11.01.2026 till 18.01.2026. Subsequently, on the prayer of the learned Advocate for the respondents herein, the matter was adjourned till 19.04.2026.

Today, when the matter was called on for hearing, the learned Advocate for the appellant was absent.

However, we have heard Mr. Naim Ahmed, appearing with Shahin Alam, the learned Advocate for the respondents.

The facts leading to the disposal of this appeal, in short, are that Ilias Mollah and Md. Ali Akbar Ali Mollah purchased the suit land by registered deed dated 25.11.1977, and their names were mutated. Ilias Mollah and Md. Ali Akbar Ali Mollah sold the suit land in favor of the plaintiff, Sufia Khatun, by registered deed dated 13.03.1996. On 19.01.2000, the plaintiff executed a registered deed of agreement for sale in favor of defendant Nos. 1-3 as security for the loan taken by the plaintiff's husband from Scheduled Bank. In fact, though the sale deed was written, no money was transacted.

The said deed is nothing but a security for the loan. Later, Ali Akber Mollah repaid the bank loan and released the mortgaged property. Subsequently, the defendants, without the plaintiff's knowledge, filed Title Suit No.15 of 2003 against the plaintiff, Sufia Khatun, for Specific Performance of Contract. The defendants obtained an ex-parte decree in Title Suit No.15 of 2003 without issuing any summons upon the plaintiff, Sufia Khatun. In Title Suit No.15 of 2003, the plaintiff's daughter, Shaila Sharmin, never received the summons on behalf of the plaintiff, Sufia Khatun. The plaintiff, Sufia Khatun, never received any money from the defendants through receipts, and the defendants created a money receipt through fraud and obtained a decree in Title Suit No. 15 of 2003 without letting the plaintiff know or understand anything. The defendants entered the land by force and occupied it forcibly. The plaintiff heard about the ex-parte judgment and decree from Shamim Ahmed, son of brother-in-law. On 25.07.2007, having come to know about the judgment and decree through Advocate Sheikh Nazrul Islam, the plaintiff applied for a certified copy of the

same. The plaintiff, on 12.06.2007, having received the certified copy of the judgment and decree, filed this suit for a declaration that the ex-parte judgment and decree dated 28.10.2004 passed by the Joint District Judge, 1st Court, Khulna, in Title Suit No.15 of 2003 is collusive, fraudulent, illegal, and not binding upon the plaintiff.

Defendant Nos. 1-3 contested the suit by filing a written statement denying the material allegations in the plaint, contending, inter alia, that the plaintiff, by registered deed dated 13.03.1996, purchased the suit land and, being in need of money, executed a registered deed of sale dated 19.01.2000 in favor of the defendants. The consideration of taka 6,00,000/-(six lac) was fixed, out of which the plaintiff received taka 3,00,000/-(three lac) from the defendants. Subsequently, the plaintiff received the remaining taka 3,00,000/- (three lac) through several money receipts and handed over possession in favor of the defendants. Despite receiving the total consideration, the plaintiff did not execute the deed of sale in favor of the defendants. At one

stage, when the plaintiff refused to execute the deed of sale, the defendants were compelled to file Title Suit No.15 of 2003 before the Joint District Judge, 1st Court, Khulna for Specific Performance of Contract.

The plaintiff was aware of the suit but did not appear in court. Accordingly, Title Suit No. 15 of 2003 was decreed ex parte against the plaintiff.

These defendants filed Title Execution Case No.1 of 2005. Notice of the execution case was duly served upon the plaintiff, but she did not take any step to say anything otherwise. At last, these defendants obtained a registered deed of sale No. bearing No.3674 dated 13.11.2005 through the court in accordance with law and as such the plaintiff's suit is liable to be dismissed with costs.

To prove their respective cases, the plaintiff examined four witnesses, while the defendants examined three witnesses.

Besides, both the parties produced documentary evidence which was duly exhibited.

The trial court, having considered the material evidence on record, dismissed the suit on contest against defendant Nos. 1-3 and ex parte against the rest.

Against which, the plaintiff moved this court and filed First Appeal No.400 of 2015.

The appellant contends that the trial court erred in law and fact in not holding that no consideration was paid against the deed of agreement for sale dated 19.01.2000. The plaintiff contends that the said deed of agreement for sale dated 19.01.2000 was executed as security against a loan. The further claim of the plaintiff-appellant is that the service as made in Title Suit No.15 of 2003 upon defendant No.1 is not a service at all in view of Order V Rule 15 of the Code of Civil Procedure. The appellant claimed that the defendants fraudulently obtained an ex-parte decree in Title Suit No.15 of 2003 in their favor without the plaintiff's knowledge. But the trial court, without considering the same, dismissed the suit on the basis of surmise and conjecture; as such, the impugned judgment and decree are liable to be set aside.

Mr. Naim Ahmed, learned Advocate for the respondent Nos. 1-5, submits that the plaintiff entered into an agreement for sale dated 19.01.2000 with the defendant Nos. 1-3 for a consideration of taka 6,00,000/- (six lac) and received taka 3,00,000/- (three lac). Subsequently, by three money receipts, the plaintiff received the remaining consideration of taka 3,00,000/- (three lac) from the defendant Nos. 1-3. The learned Advocate further submits that the defendant Nos.1-3 subsequently sold the suit land in favor of respondent No.5 by registered deed dated 16.07.2019.

Despite receiving the total consideration, the plaintiff did not execute a registered deed of sale; consequently, the defendant Nos.1-3 filed Title Suit No.15 of 2003 for Specific Performance of Contract, and summons were duly served upon the plaintiff's daughter. However, the plaintiff did not appear before the court to contest the suit, and accordingly the suit was decreed ex parte against the plaintiff.

The learned Advocate again submits that, through the execution case, the defendants Nos. 1-

3 obtained a registered deed of sale through the court on 13.11.2005. The learned Advocate next submits that, on admission of the plaintiff, it appears that the defendants have been in possession of the suit land and, as such, the present suit for simple declaration is not maintainable without seeking consequential relief for recovery of khas possession.

We have gone through the material evidence on record and considered the submission of the learned Advocate.

The plaintiff admitted that she executed a registered deed of agreement for sale in favor of the defendant Nos. 1-3.

From Exhibit Kha, the registered deed of agreement for sale dated 19.01.2000, it appears that it is an out-and-out agreement for sale and not a mortgage deed.

The trial court found that the plaintiff failed to establish that the agreement for sale was executed in favor of the defendant Nos. 1-3 as security for a loan.

The D.W.3 process server Md. Kamruzzaman deposed that summons in Title Suit No. 15 of 2003 were duly served on Shaila Sharmin, daughter of the plaintiff, Sufia Khatun. The process server deposed that Shaila Sharmin, daughter of the plaintiff, received summons in Title Suit No. 15 of 2003. So, the trial court concluded that summons of Title Suit No.15 of 2003 was duly served.

The trial court further found that Akbar Ali Mollah, the plaintiff's husband, was a witness to the registered deed of agreement for sale. Accordingly, the trial court held that the plaintiff failed to prove that the defendant Nos. 1-3 fraudulently obtained an ex-parte decree in Title Suit No. 15 of 2003.

The trial court, having considered money receipt exhibits Ga, Ga-1, and Ga-2, found that the plaintiff received consideration of taka 3,00,000/- (three lac) from defendant Nos. 1-3. Admitted position is that the Exhibit-Kha deed of agreement for sale is a registered instrument. Admittedly, the plaintiff executed the deed of

agreement for sale dated 19.01.2000 (Exhibit-Kha) in favor of the defendant Nos. 1-3.

Exhibit-Kha is an out-and-out agreement for sale, not a mortgage deed. So, the trial court rightly concluded that the plaintiff failed to prove that Exhibit Kha, the registered deed of agreement for sale dated 19.01.2000, was not executed as security for a loan, as claimed by the plaintiff.

Under section 92 of the Evidence Act, the written terms of the contract cannot be altered or varied by oral evidence.

Moreover, oral evidence is inadmissible to vary the contents of the documents. Exhibit-Kha is a registered instrument.

Accordingly, under Section 92 of the Evidence Act, the contents of the agreement for sale cannot be altered or varied by oral evidence.

The trial court found that, to deprive the defendants, the plaintiff filed a false suit.

Admitted position is that the defendants are in possession of the suit land. Accordingly, a simple suit for declaration is not maintainable

without seeking consequential relief. On that count only the suit is liable to be dismissed.

In view of the foregoing discussion and considering the material evidence on record, we do not find any cogent reason to interfere with the impugned judgment and decree dated 01.10.2015 of the trial court. Rather, the trial court's findings and decision appear satisfactory and are based on oral and documentary evidence, which this court need not interfere with.

Accordingly, the appeal is liable to be dismissed.

In the result, the appeal is dismissed; however, there will be no order as to costs.

Let a copy of this judgment and the lower court's records be transmitted to the Trial Court concerned at once.

Md. Lutfor Rahman, J.

I agree

Bo Anamul