

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3191 of 2015.

In the matter of:

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

And

Md. Abdul Halim Faragi

...Petitioner

-Versus-

Shikh Mojibur Rahman

...opposite party

No one appears

...For the petitioner

Mr. Md. Abdul Haim Biswas with

Mr. M. Ataul Gazi, Advocates

...For the opposite party

Heard on: 26.11.2024

Judgment on: 27.11.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 10.05.2015 passed by the learned Additional District Judge, 4th Court, Khulna in Title Appeal No.139 of 2012 affirming those dated 21.05.2012 passed by the learned Joint District Judge, 1st Court, Khulna in Title Suit No.3 of 2009 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 opposite party as plaintiff instituted above suit for Specific

Performance of registered bainapatra dated 29.09.2008 executed by defendant No.1 for sale of .0990 acres land along with a tin shed ghor for Tk.4,75,000/-.

It was alleged that the defendant was the owner and possessor of above property and he declared to sale the same and the plaintiff agreed to purchase the same for Tk.4,75,000/- and on receipt of Tk.2,25,000/- the defendant executed and registered above bainapatra on 29.09.2008 It was stipulated that on or before 31.12.2008 on receipt of remaining consideration money the defendant would execute and register a sale deed. The plaintiff approached the defendant for receipt of the remaining money and execute a sale deed but he took time on various pretexts and refused to execute and register a sale deed on 25.11.2008.

Defendant No.1 contested the suit by filing a written statement alleging that there was another oral agreement to pay additional Tk.3,00,000/- for above tin shed ghor within one week of the registration of above bainapatra but the plaintiff did not pay above Tk.3,00,000/- despite repeated requests of the defendant.

At trial plaintiff examined two witness and defendant examined four. The registered bainapatra dated 29.09.2008 of the plaintiff was marked as Exhibit No.1. Defendant 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 the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above defendant as appellant preferred Title Appeal No.139 of 2012 to the District Judge, Khulna which was heard by the learned Additional District Judge, 4th Court who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and dissatisfied with above judgment and decree of the court of appeal below above appellant as petitioner moved to this court with this petition under section 115(1) of the Code of Civil Procedure and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this petition although this civil revision appeared in the list for hearing for several dates.

Mr. Md. Abdul Haim Biswas learned Advocate for the opposite parties submits that admittedly the defendant executed and registered the impugned bainapatra dated 29.09.2008 on receipt of Tk.2,25,000/- for sale of disputed .0990 acres land along with a tin shed ghor for Tk.4,75,000. The defendant claims that in above bainapatra his tin shed ghor was not included and there was a separate oral agreement for sale of above ghor for an additional Tk.3,00,000/-. On consideration of above evidence on record the learned Judges of both the courts below rightly held that above bainapatra was for sale of above land and the structure thereon for Tk.4,75,000/- and on receipt of Tk.2,25,000/- the defendant executed and registered above bainapatra and accordingly decreed the suit and dismissed the appeal rightly which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

It is admitted that defendant was the rightful owner and possessor of disputed .0990 acres land and a tin shed ghor thereon and the defendant on receipt of Tk.2,25,000/- executed

and registered a bainapatra on 29.09.2008 (Exhibit No.1).

It has been alleged by the defendant that at the time of execution of above bainapatra he noticed that Tk.300,000/- for above tin shed ghor was not incorporated in the above deed.

It turns out from the registered bainapatra dated 29.09.2008 (Exhibit No.1) that in above bainapatra the defendant contracted to sale .0990 acres land and a three room tin shed ghor for a total price of Tk.4,75,000/- and on receipt of Tk.2,25,000/- executed and registered above bainapatra.

Since the defendant is a party to above written and registered bainapatra the defendant cannot raise any claim which is inconsistency or contrary to any term of above document in the absence of any allegation of error or fraud.

I have carefully examined the written statement filed by the defendant No.1 but there is no allegation that due to error or fraud the separate price of Tk.3,00,000/- for above tin shed was not included in above document.

The defendant has examined four witnesses at trial but none of them stated anything about a

separate oral agreement for sale of above ghor for Tk.3,00,000/-

On a detailed analysis of evidence on record the learned Judge of the trial court rightly held that by impugned bainapatra the defendant agreed to sale above .0990 acres land and a tin shed ghor for Tk.4,75,000/-. On an independent assessment of evidence on record the learned Judge of the court of appeal below rightly concurred with above findings of the trial court. Above concurrent findings of the courts below being based on evidence on record this court cannot in its revisioanl jurisdiction interfere with above findings in the absence of an allegation of non consideration or misreading of any legal evidence on record.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Judge of the court of appeal below nor I find any substance in this civil revision and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.

Md.Kamrul Islam
Assistant Bench Officer