

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3338 of 2002

Abdul Hamid Kazi being dead his legal heirs 1(a) Abdul Mohammad Kazi and others

.....Petitioners.

-Versus-

Md. Jalaluddin Kazi and others

.....Opposite parties.

Mr. Md. Aminul Islam, Advocate

..... For the petitioners.

Mr. M.A. Kuddus Sheikh, Advocate

..... For the opposite parties.

Heard and judgment on 30th July. 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.03.2002 passed by the Joint District Judge, 2nd Court, Pirojpur in Title Appeal No. 123 of 1999 reversing those dated 07.10.1999 passed

by the Assistant Judge, Nazirpur, Pirojpur in Title Suit No. 81 of 1996 decreeing the suit should not be set aside.

Petitioners as plaintiff filed Title Suit No. 81 of 1996 before the Court of Assistant Judge, Nazirpur, Pirojpur against the opposite party No.2 to 7 for Specific Performance of Contract, subsequently opposite party No.1 added as defendant No.7 and contested the suit.

Plaint case, in short, inter alia, is that the suit land originally belonged to Kunja Bihari Majumder, who in need of money proposed to sell the suit land and the plaintiff agreed to purchase the suit land fixing a consideration valued at Tk.12,000/- in respect of suit land. Kunja Bihari took total consideration money of Tk. 12,000/- from the plaintiff on 15th Magh, 1393 B.S. in presence of the witnesses and executed a Bainapatra in respect of the suit land and delivered physical possession to the plaintiff. In the meantime the Government passed Rin Salishi Ain, 1989 and in the light of the said Rin Salishi Ain, Kunja Bihari filed Rin Salishi Case No. 4741/89-90 and 5394/89 before the Rin Salishi Board, Nazirpur in respect of the suit land against the plaintiff. The plaintiff appeared and contested the suit by filing written

objection. Thereafter the said suit was dismissed by a solenama and according to the solemana the plaintiff gave Tk. 25,00/- to the Kunja Bihari and Kunja Bihari left the right and title in respect of suit land for good. But before execute the kabala deed Kunja Bihari died leaving defendant opposite party Nos. 2-6. Thereafter the plaintiff requested the legal heirs of Kunja Bihari to execute the kabala deed in several times. Lastly on 22.07.96 they denied to execute the kabala deed in favour of the plaintiff. Hence the suit.

Defendant No.7 contested the suit by filing written statement denying the plaint case alleging, inter alia, that Kunja Bihari sold the suit land to defendant No.7 fixing consideration money of Tk. 15,000/- and the defendant No.7 paid total amount of Tk.15,000/- to Kunja Bihari and he delivered possession in favour of the defendant No.7. The suit is false and is liable to be dismissed with cost.

By the judgment and decree dated 13.10.1999, trial court decreed the suit.

Challenging the said judgment and decree defendant preferred Title Appeal No. 123 of 1999 before the Court of District Judge, Pirojpur, which was heard on transfer by the Joint

District Judge, 2nd Court, Pirojpur, who by the impugned judgment and decree dated 23.03.2002 allowed the appeal and after reversing the judgment of the trial court dismissed the suit.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant rule.

Mr. Md. Aminul Islam, the learned advocate appearing for the petitioner drawing my attention to the judgment of the courts below submits that appellate court committed error of law in dismissing the suit illegally in as much as he failed to consider that Kunjo Bihari executed a binanapatro on 15th Magh, 1393 B.S. in respect of the suit land (Ext.3) and received full consideration money from him in presence of Profulla, Menhaj and Panna, who as P.W.2 and 3 corroborated and proved the same and thereafter Kunja Bihari on admitting the said transaction sworn a solenama in Rin Salishi Case No. 4741/89-90 and 5394/89 (Ext.2) but this contentions although been found by the trial court correct but the appellate court totally failed to understand this aspect of this case. When the sons of Kunja Bihari, who are defendant Nos. 1-5 did not contest the plaintiffs contention but the defendant No.7, who purchased a portion of the land from Kunja Bihari, admittedly

after the transaction between the plaintiffs and Kunja Bihari and the signature on deed of agreement and the deed of defendant No.7 correspond to each other and found valid and accordingly trial court decreed the suit correctly. But the appellate court failed to understand the same and dismissed the suit most illegally. The impugned judgment is not sustainable in law, which is liable to be set aside.

Mr. M.A. Quddus Sheikh, the learned Advocate appearing for the opposite party, on the other hand submits that the appellate court has rightly found that the deed in question was not been executed by the Kunja Bihari and it was forged one and accordingly has rightly dismissed the suit. Since the judgment contains no illegality, he thus prays for discharging the rule.

Heard the learned Advocate and perused the impugned judgment and the Lower Court Record.

This is a suit for Specific Performance of Contract. Admittedly Kunja Bihari was the owner of the suit land measuring 35.67 decimals of land out of which plaintiffs claim only 40 decimals of land, which was claimed to be agreed to sell in favour of the plaintiff on 15th Magh, 1393 B.S. on fixing as well as taking

total consideration money of Tk. 12,000/-. Thereafter Kunja Bihari filed Rin Shalishi Case being No. 4741(N)/ 89-90 and 5394/89 regards and in the said suit the said agreement was been affirmed through dismissal of the suit by way of solenama but before registering the sale deed Kunja Bihari died leaving behind his heirs, who are defendant Nos. 1-5, who finally failed to register the sale deed then the instant suit was filed. Defendant No.7 claimed that he has also purchased 40 decimals of land from Kunja Bihari through registered sale deed, who are in possession thereon. Trial court upon discussing the evidences on record as well as considering the record of the Rin Shalishi Case No. 4741 (N)/ 89-90 and 5394/89 (Ext.2) together with the oral evidences found that plaintiff has successfully able to prove that Kunja Bihari executed the alleged binanama (Ext.3) with in favour of the plaintiffs and handed over the possession to him on the suit land as been affirmed by P.W. 2 and 3. The trial court further examining the signature on the deed of agreement (Ext.3), the deed of the defendant No.7 found that Kunja Bihari Mojumder executed the said deed of agreement (Ext.3) in favour of the plaintiffs. Trial court further observed that although defendant No.7 claimed to have purchased land from Kunja Bihari

Mojumder but his deed is later on of the deed of the plaintiff. The trial court further observed that total land of the Kunja Bihari Mojumder was 45.67 decimals of land out of which excepted the land, which are been claimed by the plaintiffs there are more land left on plot No. 555 and if the defendants deed is taken to be valid and he is entitled to get his purchased land but that cannot resist the claim of the plaintiffs in as much as there are more lands in plot No. 555 as was owned by the Kunja Bihari Mojumder. Thus in any view of the matter plaintiffs claim cannot be denied and accordingly he decreed the suit. But the appellate court most arbitrarily making out a 3rd case, dismissed the suit holding that the alleged deed of agreement of the plaintiffs was a forged document. The said findings is arbitrarily as well as illegal in as much as Kunja Bihari Mojumder left the title and possession in favour of the plaintiff by endorsing a solenama in Rin Shalishi Case No. 4741 (N)/ 89-90 and 5394/89, which would apparent from the record, which has been called on and is lying in the records of the suit and is proved. Despite of the said admitted position, the appellate court most arbitrarily discarded the claim of the plaintiffs although it was not been denied by the heirs of Kunja Bihari Mojumder, who are defendant Nos. 1-5 in the suit.

Moreover the appellate court deciding the appeal as if it was preferred against a contested decree in a suit for declaration of title. When the main defendants against whom plaintiffs claim for specific performance of contract not been opposed and the deed in question was not been denied either by the executant or his heirs in the suit, it is none of the business of the court to ignore as well as denied the claim of the plaintiff in the suit. Moreover on perusal of the record of the Rin Shalishi Case, which are lying in the record of the appellate court, it is found that the observation as been found and held by the appellate court is apparently incorrect and a presumptive one, which is not sustainable in law. Since the defendants claimed to have purchase 40 decimals of land by way of registered sale deed, he is also entitled to get his property as claimed by him. When the plaintiffs deed of agreement was been admitted by the executant Kunja Bihari Mojumder in an earlier instituted suit before Rin Shalishi Board, Najirpur in Rin Shalishi Case No. 4741(N)/ 89-90 and 5394/89 and the possession of the suit land was been found by the trial court in favour of the plaintiffs from the evidence of P.W.2 and 3 thereby the deed of agreement is found to be legally executed and valid and is executable. The impugned judgment passed by the appellate court

is appears to be arbitrary one and not sustainable in law, which is liable to be set aside.

I thus find merit in this rule.

In the result, the rule is made absolute and the impugned judgment and decree passed by the appellate court is hereby set aside and the decree passed by the trial court is hereby affirmed and the suit is decreed in favour of the plaintiff.

The order of status-quo granted earlier is hereby vacated.

Send down the L.C.R along with the judgment to the courts below at once.