

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

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Md. Saiful Islam

First Appeal No. 36 of 2016

A. K. M. Anower Hossain
....Appellant
-Versus-
Most. Badrunnesa (Aleya) and others
... Opposite parties
Mr. Moin Uddin, Advocate with
Mr. M. H. Sarder, Advocate
... For the appellant.
None appears
... For the respondents.

Heard on 09.12.2025 and Judgment on 10.12.2025.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 10.09.2015 passed by the learned Joint District Judge, 1st Court, Bogura, in Other Suit No.60 of 2015.

Facts in short are that the appellant as plaintiff instituted above suit for specific performance of registered deed of bainapatra dated 09.07.2008 executed by defendant No.1 on receipt of Taka 23,00,000/- for sale of disputed $36\frac{1}{2}$ decimal land to the plaintiff alleging that defendant No.1 was the rightful owner and possessor of above land and she declared to sale above land and the plaintiff agreed to purchase

the same for a consideration of Taka 40,00,000/- and on receipt of Taka 23,00,000/- executed and registered above bainapatra. It was agreed that after mutation of name of defendant No.1 and after disposal of Title Suit No.101 of 2007 instituted by the Government for above property she would execute and register a kabla deed. The defendant No.1 due to financial constraint receive Taka 3,00,000/- on 15.11.2008, Taka 2,55,000/- on 26.03.2009, Taka 2,00,000/- on 17.05.2009, Taka 3,00,000/- on 23.08.2009, Taka 4,00,000/- on 15.12.2009 and Taka 2,00,000/- on 07.03.2010 out of the outstanding consideration money. and granted a money receipt on 12.03.2010. On 15.04.2010 defendant No.1 refused to execute and register kabla deed and the plaintiff came to know that defendant No.1 has secretly executed and registered a kabla deed for above land to defendant No.3 for a consideration of Taka 2,05,000/- to deprive the plaintiff from his lawful right.

Defendant No.3 contested above suit by filing a written statement alleging that defendant No.1 was the rightful owner and possessor of above land and she transferred above land to defendant No.3 by registered kabla deed dated 19.02.2009 and delivered possession. The registered bainapatra of the plaintiff is a concocted, false and ineffective document.

At trial plaintiff examined three witnesses and defendant No.3 examined two witnesses. Documents of the plaintiffs were marked as

Exhibited Nos.1-10 and those of the defendant No.3 were marked as Exhibit No.“Ka”.

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

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Moin Uddin, learned Advocate for the appellant submits that defendant No.1 was the rightful owner and possessor of above $36\frac{1}{2}$ decimal land who agreed to sale above land to the plaintiff for Taka 40,00,000/- and on receipt of Taka 23,00,000/-she executed and registered a bainapatra on 09.07.2008. The name of defendant No.3 was not mutated for above land which made her incapable to execute and register a sale deed on receipt of the remaining consideration money. Moreover, the Government of Bangladesh filed Title Suit No.101 of 2007 claiming that above property was vested and non-resident property. It was agreed upon by the plaintiff and defendant No.1 that after disposal of above suit and mutation of her name defendant No.1 would execute and register a sale deed on receipt of the remaining consideration money. But due to financial constraints defendant No.1 further received Taka 16,55,000/- during the period from 15.11.2008 to 07.03.2010. The plaintiff has produced and proved above money receipts which were

marked as Exhibit Nos.2 series. Defendant No.3 was fully aware as to above registered deed of bainapatra dated 09.07.2008 of the plaintiff and he created above kabala deed in collusion with defendant No.1 to defeat the lawful right of the plaintiff. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge should have decreed above suit but the learned Joint District Judge utterly failed to appreciate the legal value of the evidence on record and most illegally dismissed above suit which is not tenable in law.

Respondents did not enter appearance in this First Appeal nor anyone was found available at the time of hearing of this Appeal although this First Appeal appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocates for the appellants and carefully examined all materials on record.

It is admitted that the defendant No.1 was the rightful owner and possessor of disputed $36\frac{1}{2}$ decimal land. Plaintiff himself gave evidence as PW1 and in his evidence he has reiterated all claims and allegations as set out in the plaint. He stated that defendant No.1 agreed to sale above $36\frac{1}{2}$ decimal land for a consideration of taka 40, 00,000/- and on receipt of 23,00000/- she executed and registered a bainapatra on 09.07.2008. During the period from 15.11.2008 to 07.03.2010 defendant

No.1 further received a total amount of Taka 16,55,000/- by six separate installments. On 12.03.2010 defendant No.1 executed a money receipt on a stamp paper acknowledging receipt of total Taka 39,55,000/- out of Taka 40,00,000/-. Above witness has produced above original deed of bainapatra and above money receipt which were marked as Exhibit Nos.2 and 3 series respectively. Above witness was cross examined by defendant No.3 but above evidence of PW1 remained consistent, free from any material contradiction and credence inspiring.

Defendant No.1 who was the rightful owner and possessor of above land and executants of above registered deed of bainapatra and money receipt and above sale deed for defendant No.3 did not contest above suit. Defendant No.1 did not give evidence as a witness for defendant No.3.

Defendant No.3 did not specifically deny the claim of the plaintiff that the name of defendant No.1 was not mutated for above land and the Government filed Title Suit No.101 of 2007 claiming above land as Arpita and Non-resident property which delayed the execution and registration of a sale deed by defendant No.1.

Above registered bainapatra and money receipts (Exhibit Nos.2 and 3) prove that defendant No.1 willing and voluntarily executed and registered above deed of bainapatra dated 09.07.2008 for sale of 36 $\frac{1}{2}$ decimal land for Taka 40,00,000/- on receipt of Taka 23,00,000/- and by six installments during the period from 15.11.2008 to 07.03.2010 she

further received Taka 16,55,000/-. As such above deed of bainapatra of the plaintiff (Exhibit No.3) was a lawful and valid deed which remained alive until filing of this suit on 11.05.2010. As such, findings of the learned Joint District Judge that above deed of bainapatra was barred by limitation is totally misconceived, unlawful and based on no evidence on record.

As mentioned above defendant No.1 has executed and registered a sale deed for defendant No.3 on 19.02.2009 for above land when above deed of bainapatra (Exhibit No.3) of the plaintiff was still in force. Section 53B of the Transfer of Property Act, 1882 was incorporated in above Act by Act No.XXVI of 2004 which came into force on 1st of July, 2005. Section 53B of the Transfer of Property Act, 1882 is runs as follows :

"No immovable property under a contract for sale shall be transferred except to the vendee so long the contract subsists, unless the contract is lawfully rescinded, and any transfer made otherwise shall be void."

As mentioned above the registered deed of bainapatra (Exhibit No.3) of the plaintiff was lawful and effective on 19.02.2009 when defendant No.1 executed and registered above kabla deed to defendant No.3. Before execution of above kabla deed defendant No.1 did not make any endeavor to rescind above bainapatra of the plaintiff. As such

above registered kabla deed dated 19.02.2009 (Exhibit No."Ka") of defendant No.3 is hit by Section 53B of the Transfer of Property Act, 1882 and above kabla deed of defendant No.3 is a void document.

As mentioned above the plaintiff contracted two purchaser of land above Taka 40,00,000/- but defendant No.3 allegedly purchased the same land for a consideration of Taka 2,05,000/- which also proves that above kabla deed of defendant No.3 was an outcome of unlawful collusion between defendant Nos.1 and 3.

In above view of the facts and circumstances of the case and materials on record we hold that the impugned judgment and decree of the trial Court suffers from serious illegality and misconception of facts and laws which is not tenable in law and the plaintiff having succeeded to prove the correctness and effectiveness of his deed of bainapatra and further payment of Taka 16,55,000/- he is entitled to get a decree for enforcement of above bainapatra.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 10.09.2015 passed by the learned Joint District Judge, 1st Court, Bogura, in Other Suit No.60 of 2015 is set aside and above suit is decreed on contest against defendant No.3 and ex-parte against the rest with cost. Defendant No.1 is directed to execute and register a sale deed in favour of the plaintiff for above $36\frac{1}{2}$ decimal land within 30(thirty) days from the date of receipt of this

order in default the plaintiff shall get the same through Court.

Defendant No.1 may withdraw the deposited money.

Send down the lower Court's record immediately.

Md. Saiful Islam, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**