

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.1869 OF 2015**

In the matter of:

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

And

Md. Jalal Miah

... Petitioner

-Versus-

Md. Manik Mia and another

... Opposite parties

Mr. Md. Helal Uddin Mollah, Advocate

... For the petitioner.

None appears

.... For the opposite parties.

**Heard and Judgment on 31.10.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 01.06.2015 passed by the learned Additional District Judge, Brahmanbaria in Title Appeal No.108 of 2012 reversing those of the judgment and decree dated 31.05.2012 passed by the learned Senior Assistant Judge, Akhaura, Brahmanbaria in Title Suit No.06 of 2010 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 opposite party as plaintiff instituted above suit for specific performance of registered bainapatra dated 02.04.2008 alleging that defendant No.1 was the owner and possessor of disputed 6 decimal land and he agreed to sale the same to the plaintiff at a price

of Taka 1,48,333/- and on receipt of Taka 1,23,333/- executed and registered above bainapatra and delivered possession. The plaintiff constructed dwelling house in above land and he is living in the same alongwith the members of his family. Plaintiff requested the defendant to execute and register a sale deed on receipt of remaining consideration money but the defendant took time on various pretexts and at last refused to execute and register a kabola deed on 01.01.2010.

Defendant No.1 contested the suit by filing a written statement alleging that the plaintiff lives and works in Saudi Arabia and he agreed to give the defendant a job in Saudi Arabi in lieu of Taka 2,50,000/- and the defendant paid him Taka 1,50,000/- and further executed and registered above deed of mortgage for the disputed land as a security for remaining Taka 1,00,000/-. The defendant did not enter into any contract for sale of the disputed land to the plaintiff nor he received any consideration and delivered possession.

At trial plaintiff examined 5 witnesses and defendant examined 2. Documents of the plaintiff were marked as Exhibit No.1 but the defendant did not produce and prove any document.

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

Being aggrieved by above judgment and decree of the trial Court defendant preferred Title Appeal No.108 of 2012 to the District Judge, Brahmanbaria which was heard by the learned Additional District

Judge who allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

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

Mr. Md. Helal Uddin Mollah, learned Advocate for the petitioner submits that undisputedly defendant was the rightful owner of disputed 6 decimal land. He executed and registered the deed of bainpatra dated 02.04.2008 on receipt of Taka 1,23,333/- out of total consideration of Taka 1,48,333/- for sale of above land. PW1 Hena produced and proved above registered bainapatra deed which was marked as Exhibit No.1. The scribe of above deed Wahedur Rahman gave evidence as PW2 about the due execution of above bainapatra and receipt of the part consideration by the defendant. As far as delivery of possession of the disputed land is concerned while giving evidence as DW1 defendant No.1 himself has admitted the existence of dwelling house of the plaintiff in the disputed land.

On consideration of above facts and circumstances of the case and evidence on record the learned Senior Assistant Judge rightly decreed the suit. But the learned Additional District Judge failed to appreciate above materials on record correctly and on an erroneous perception of the law of limitation most illegally held that the suit was barred by limitation and accordingly allowed the appeal, set aside the judgment

and decree of the Trial Court and dismissed the suit which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule.

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

It is admitted that defendant No.1 was the rightful owner and possessor of disputed 6 decimal land.

Hena Begum wife and constituted attorney of the plaintiff while giving evidence as PW1 produced and proved above registered deed of bainapatra in original. The scribe of above document Obaidur Rahman gave evidence as PW2 in support of due execution of above bainapatra deed by defendant No.1 on receipt of Taka 1,23,333/-.

The defendant did not dispute his signatures on above registered deed of bainapatra. It has been alleged that the defendant wanted to execute a deed of mortgage for the dispute land but fraudulently the plaintiff created above bainapatra. But no such suggestion was put to the scribe of the above bainapatra DW2 Wahidur Rahman. As mentioned above defendant examined two witnesses in this case but DW2 did not mention anything about any mortgage deed. While giving evidence as DW1 the defendant stated that he filed CR Case No.17 of 2010 against the plaintiff, his wife and father for extracting money from him on the false promise of giving him a job in Saudi Arabia and the wife and father of the plaintiff were convicted and sentenced by the

Trial Court. But it turns out from record that above convicts preferred Criminal Appeal No. 13 of 2012 against above judgment and order of conviction and sentence to the Session Judge, Brahmanbaria which was heard by the learned Additional Session Judge who allowed above appeal and set aside the judgment and order of conviction and sentence and above convicts were acquitted.

As far as delivery of possession of the disputed land and construction of the dwelling house by the plaintiff is concerned in his written statement the defendant has denied above facts and claimed that the defendant did not deliver possession to the plaintiff. But in his cross examination as DW1 the defendant admitted that in the disputed there were two tin shed ghors in the disputed land where the plaintiff resides alongwith the members of his family.

Above evidence on record proves the genuinity and authenticity of the registered deed of bainapatra dated 10.04.2008 and delivery of possession of above land to the plaintiff by the defendant.

As far as the limitation of the suit is concerned the impugned bainapatra was executed and registered on 02.04.2008. The plaintiff has claimed to have offered the defendant the remaining consideration money to execute and register a kabala deed. But the defendant obtained time on various pretexts and refused to execute a kabola deed 01.01.2010. It turns out from record that this suit for enforcement of above bainapatra dated 02.04.2008 was filed on 01.02.2010 within the

statutory period of limitation from above date of above refusal. As such this suit was and not barred by limitation.

In above view of the facts and circumstances of the case and evidence on record I hold that the learned Judge of the trial Court on correct appreciation of evidence on record rightly decreed the suit. But the learned Additional District Judge failed to appreciate above evidence on record properly and most illegally allowed the appeal and set aside the evidence based judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

I find substance in this petition under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserve to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 01.06.2015 passed by the learned Additional District Judge, Brahmanbaria in Title Appeal No.108 of 2012 is set aside and the judgment and decree dated 31.05.2012 passed by the learned Senior Assistant Judge, Akhaura, Brahmanbaria in Title Suit No.06 of 2010 is restored.

However, there is no order as to costs.

Send down the lower Court's record immediately.