

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.11 OF 2007.

(From the judgment and decree dated 20.03.2004 passed by the High Court Division in Second Appeal No.83 of 1978.)

Habiba Banu and others : Appellants.

=Versus=

Aftabullah being dead his Respondents.
heirs:

1(a) Moksodullah and others :

For the Appellants : Mr. Khair Ezaz Maswood,
Senior Advocate, instructed
by Mr. Nurul Islam Bhuiyan,
Advocate-on-Record.

For respondent the Mrs. Mahmuda Begum,
Nos.2(b), 2(c), 2(d), 2(e), Advocate-on-Record.
2(f), 2(g), 2(h) & 2(i):

Respondent Nos.1(a), Not represented
1(b), 1(c), 2(a), 2(j),
3,4 & 5. :

Date of hearing & judgment : 15.11.2022

J U D G M E N T

Hasan Foez Siddique, C.J: This appeal is directed against the judgment and decree dated 20.03.2004 passed by the High Court Division in Second Appeal No. 83 of 1978 affirming those dated 27.05.1977 passed by the then Subordinate Judge, Additional Court No.2, Sylhet in Title Appeal No.175 of 1976 reversing the judgment and decree dated 23.08.1976

passed by the learned Munsif, First Court, Habiganj in Title Suit No.137 of 1975.

The predecessor-in-interest of the appellants filed the aforesaid suit for specific performance of contract for sale of the land of plot Nos.3107, 2978, 2982, 2983, 2984, 2963, 2572 and 2575 of Mouza Timirpur, (the suit land) on the averments that the suit land belonged to the defendant No.1 and he, having been in exclusive possession of the same, agreed to sell the same to the plaintiff for a consideration of Tk.6000/- within the knowledge of the defendant Nos.2-4 and 6 and accordingly executed "bainapatra" on 14.08.1974 on receipt of Tk.4,500/- as advance; it was also agreed that the defendant No.1 would execute a kabala for registration by 15th Falgoon, 1381 B.S. on receipt of the balance consideration. The defendant No.1, by executing a memorandum on 26th Poush, 1381 B.S., delivered the possession of the suit land to the plaintiff on that very date and since then the plaintiff had been possessing the suit land. In the first part of Falgoon, 1381 B.S. the plaintiff tendered the balance consideration of Tk.1500/- to the defendant No.1 but he did not execute and register the sale deed on various pleas and on the other hand, the defendant Nos.2-4 and 6 managed to create forged and antedated kabala deeds from the

defendant No.1 as well as one Rohini Kumar Deb though he had no right, title and interest in the suit land. Hence, was the suit.

The defendant No.1 filed a written statement but finally did not contest the suit. The defendant Nos.2-4 and 6 contested the suit by filing joint written statement contending that the defendant No.1 was not owner of the land of plot No.2983 and one Rohini Kumar Deb was the actual owner of the same, from whom, the defendant No.4 by kabala dated 26.04.1975 purchased the suit plots along with other some undisputed lands. The area of land of plot No.3107 is .42 acre. The defendant No.6 purchased the same. He also purchased the land of plots described in schedule 3 to the plaint from the defendant No.1 and his mother in the names of the defendants Nos.2 and 3, his sons by a kabala deed dated 10.03.1975 at a consideration of Tk.2000/- and got possession of the same. The defendant No.1 and his mother agreed to sell the lands of plot Nos.2978, 2982, 2984 and 2963 along with other plots except plot No.2983, to the defendants No.4 and 6 at a consideration of Tk.8000/- and on executing "bainapatra" dated 09.04.1974 and on receipt of Tk.2000/-. They also delivered possession thereof to the defendant Nos.4 and 6. The defendants are also bonafide

purchasers for value without notice of the alleged contract of the defendant No.1 with the plaintiff.

The trial Court decreed the suit. Appeal preferred by the contesting defendants was allowed. Thereafter, the plaintiffs preferred Second Appeal in the High Court Division which was dismissed. Then, the plaintiffs have preferred this appeal upon getting leave.

Mr. Khair Ezaz Masood, learned Senior Counsel appearing for the appellants, submits that the determination of title of the vendor and his share will be deciding factor before awarding decree in suit for specific performance of contract in order to avoid further litigation. He further submits that in Second Appeal, the High Court Division, exceeding its jurisdiction, reassessed the evidence as to the proof of agreement for sale (exhibit-1). He further submits that the High Court Division misread and non considered evidence, thereby, overlooked well settled principle that in Second Appeal there is no scope to reassess the evidence.

Ms. Mamuda Begum, learned Advocate-on-Record appearing for the respondents, submits the High Court Division upon proper appreciation of the evidence on record passed the impugned judgment and there was no illegality in the conclusion.

It is well settled proposition of law that a contract cannot be enforced against a *bonafide* transferee for value who has paid his money in good faith and without notice of the original contract. This protection is based on the English equitable rule which allows a later legal title to prevail over an earlier equitable title in the circumstances described above. In the case of Jagan Nath Vs. Jagdish Rai and others [AIR 1998 SC 2028] it was held that plaintiff would not be entitled to relief of specific performance against subsequent purchaser when there was evidence on record establishing that the subsequent purchaser was *bonafide* purchaser for value without notice of earlier agreement with plaintiff. It is also well settled proposition of law that a person cannot transfer more than he has.

It appears from the judgment and decree of the last Court of facts that it upon appreciation of the evidence on record, came to the conclusion that the contesting defendants had no knowledge about the alleged agreement for sale of the plaintiff. In Second Appeal, the High Court Division disbelieved the 'bainanama' and held that the contesting defendants are the *bonafide* purchaser without knowledge of alleged 'bainanama'. Since the last Court of facts and the

High Court Division upon proper appreciation of the evidence on record held that the contesting defendants are bonafide purchasers without notice of alleged agreement for sale, we are of the view that the suit has been dismissed rightly.

Accordingly, we do not find any substance in the appeal.

Thus, the appeal is dismissed.

C.J.

J.

J.

J.

The 15th November, 2022.

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