

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL No.68 of 2017

Ayesha Siddiqua being dead her legal heirs;

1(a) K M Abdul Mazid and others

... Appellants

-Versus-

Most. Serajun Nahar and others

...for the respondents

Mr. Nurul Amin, Senior Advocate with

Mr. Ahmed Nawshed Jamil, Advocate

....For the appellants

Mr. Mohammad Shamsul Alam, Advocate

... For the respondent No.1

Mr. Sk. Shafique Mahmud, Advocate

.....For the respondent No.3

Heard on:07.05.2026 & Judgment on: 11.05.2026.

S M Kuddus Zaman, J

This appeal is directed against the impugned judgment and decree dated 27.02.2017 passed by the learned Joint District Judge, 1st Court, Khulna in title Suit No.107 of 2005 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for Specific Performance of unregistered bainapattra dated 11.04.2003 executed by defendant No.1 for sale of Khulna Development Authority (KDA) commercial plot No.59 for a consideration of Tk.24,00,000/- alleging that on receipt of Tk.1,10,000/- defendant No.1 executed above bainapattra. It was agreed upon that

after receipt of the title deed from the Khulna Development Authority (KDA) defendant would execute and register a sale deed. But the defendant on various pretexts delayed the execution and registration of a sale deed and on 10.11.2005 denied the genuinity of above bainapattra and refused to execute and register a kobla deed.

Defendant No.1 contested above suit by filling a written statement denying all claims and allegations made in the plaint and alleging that she did not enter into any contract for sale of above plot to the plaintiff nor she executed above bainapattra or received any part payment as has been alleged in the plaint. It was further alleged that defendant No.1 merely received a letter of allotment but she did not receive deed of title from the Khulna Development Authority (KDA). As such she had no authority to enter into any contract for sale of above plot.

At trial plaintiff examined three witnesses and defendant examined two. Documents of the plaintiffs were marked as Exhibit Nos.1-4. 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 Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the learned Joint District Judge above plaintiff as appellant moved to this court and preferred this first appeal.

Mr. Nurul Amin, learned Senior Advocate for the appellant submits that the plaintiff has succeeded to prove the genuinity and correctness of the unregistered bainapattra dated 11.04.2003 (Exhibit No.3) executed by defendant No.1 for sale of Khulna Development Authority (KDA) plot No.59. In above suit defendants submitted a petition admitting that defendant No.1 shall willingly and

voluntarily execute a sale deed pursuant to above unregistered bainapattra (Exhibit No.3) after receipt of title deed and permission from the Khulna Development Authority (KDA). But the learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and legal evidence on record and most illegally held that the plaintiff could not prove the due execution of above bainapattra (Exhibit No.3) and receipt of part payment of consideration by defendant No.1 and dismissed above suit which is not tenable in law. As far as the provision of Section 21(A) of Specific Relief Act is concerned the learned advocate submits that above provision is directory in nature and not mandatory since non compliance of above provision does not make the suit liable to be dismissed. The words “no contract for sale of any immovable property can be specifically enforced” does not make above provision mandatory nor deposit of the balance amount of the consideration money on the order of the trial court on a subsequent date make above suit liable to be dismissed. In support of above submissions the learned Advocate refers to the case laws reported in 2ALR(AD)(2013)-67 and 22BLC(AD)(2017)-85. The learned Advocate further submits that since the plaintiff deposited the remaining consideration money of above bainapattra on the permission of the trial court within nine months from the date of filling of above suit which was fully lawful. In support of above submission the learned Advocate refers to the case of Ayurvedia Pharmacy (Dhaka) Ltd. vs. Meher Banu Bibi and others reported in 6XP(AD)(2013)-151. The learned Advocate lastly submits that if it is found that above suit was barred by Section 22(A) of the Specific Relief Act and not tenable in law in that case this court can grant solitium to the plaintiff who paid Tk.1,10,000/- to defendant No.1 on 11.04.2003.

On the other hand Mr. Mohammad Shamsul Alam learned Advocate for respondent No.1 submits that plaintiff filed this suit for Specific Performance of Contract on 28.11.2005 without depositing balance consideration money of Tk.22,90,000/-. The plaintiff filed a petition to the trial court on 28.01.2006 for permission to deposit balance consideration money which was allowed and the plaintiff was directed to deposit above money on 16.02.2006. But ultimately the plaintiff deposited above balance consideration money on 07.09.2006. Since the plaintiff did not deposit the balance consideration money of above unregistered bainapattra dated 11.04.2003 (Exhibit No.3) as the date of filing of the suit as such the suit was barred by Section 21(A) of the Specific Relief Act and liable to be dismissed. In support of above submissions the learned Advocate refers to the case of Abdul Kalam Vs. Md. Mohiuddin and others reported in 69DLR(AD)2017-239. The learned Advocate further submits that above judgment was passed by the Appellate Division on 09.05.2015 which represents the latest view of the Appellate Division and this court is bound to follow above interpretation of Section 21(A) of the Specific Relief Act, 1877 as provided in above case. As far as solitium is concerned the learned Advocate submits that the plaintiff has claimed that defendant No.1 received Tk,1,10,000/- as part consideration on 11.04.2003 but the defendant has denied above claim and the learned judge of the trial court on consideration of materials on record held that the plaintiff could not prove above claim by legal evidence. On consideration of materials on record the learned Joint District Judge rightly dismissed above suit which calls for interference.

Mr. Sk. Shafique Mahmud learned Advocate for respondent No.3 adopted above submissions of the learned Advocate for respondent No.1 and further

submits that due to pendency of above litigation Khulna Development Authority (KDA) could not execute and register a title deed in favour of defendant No.1 and they are willing to hand over title deeds of plot No.59 to respondent No.1.

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

It is admitted that the appellant as plaintiff filed above suit on 29.11.2005 for Specific Performance of unregistered bainapattra dated 11.04.2003 alleging that defendant No.1 entered into a contract with the plaintiff for sale of her Khulna Development Authority (KDA) plot No.59 for Tk.24,00,000/- and on receipt of Tk.1,10,000/- voluntarily executed above bainapattra. It is also admitted that at the time of filling of above suit the plaintiff did not deposit Tk.22,90,000/- the outstanding consideration money to the court and obtaining permission from the trial court plaintiff deposited above balance consideration money in court on 07.09.2006. The provision of Section 21(A) of the Specific Relief Act, 1877 is reproduced below:

“Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no contract for sale of any immovable property can be specifically enforced unless-

- (a) The contract is in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof; and
- (b) The balance amount of consideration of the contract is deposited in the court at the time of filing the suit for specific performance of the contract.”

It has been alleged by respondent No.1 that above suit was barred by Section 21(A) clause (b) due to not deposit of balance consideration money at the time of filing of above suit.

The learned Advocate for the appellant has made detailed submissions as to what constitute a provision of law mandatory or directory and in support of above submissions he referred to two decisions of the Appellate Division of the Supreme Court of Bangladesh as reported in 22BLC(AD)(2017)-85 and 2ALR(AD)(2013)-67. The learned advocate rightly points out from above decisions of the Appellate Division that if a statute requires some things to be done or to be done in a particular manner and the consequence of failure to do so is provided the provision becomes mandatory and if no such consequence for non compliance is provided in the statute then that is not mandatory but mere directory. We fully concur with above interpretation and submissions of the learned advocate as to what makes a provision of law mandatory or directory.

In section 21(A) it has been sated that ‘no contract for sale of immovable property shall be specifically enforced’ unless the balance consideration of money of the contract is deposited in the court at the time of filing of above suit. Non enforcement of the contract means the court cannot pass a decree in the suit for enforcement of the contract. In a suit for Specific Performance of Contract the court passes a decree for enforcement of the contract when due execution and payment of consideration are proved. On the other hand the court dismisses a suit when it refuses to enforce the contract due to lack of prove of due execution of the contract or payment execution of money or the suit is barred by law. In our view the words “no contract for sale of any immobile property can be specifically enforced” is the consequence for non deposit of balance consideration money at

the time of filing of the suit and which makes Section 21(A) of the Specific Relief Act a mandatory provision of law.

The case law referred to above by the learned advocate for the appellant as reported in 6XP(AD)(2013)-151 was the judgment of the Appellate Division passed on 07.07.2013 but the case law referred to above by the learned advocate for respondent No.1 as reported in 69DLR(AD)2017-239 was the judgment of the Appellate Division passed on 19.05.2015. As such the case law referred to above by the learned Advocate for the respondent No.1 represent the latest view of the Appellate Division the Supreme Court of Bangladesh as to Section 21(A) of the Specific Relief Act, 1877.

The facts of the case of 68 DLR (AD) page-239 case are identical to the cases in hand and in both cases balance consideration money was not deposited at the time of filling of this suit but the same was deposited on a later date on obtaining permission of the learned judge of the trial court and the Appellate Division of the Supreme Court held that above non compliance of Section 21(A) (B) of the Specific Relief Act, 1877 made the plaint liable to rejection under Order 7 Rule 11 of the Code of Civil Procedure, 1908. When a plaint is rejected under Order 7 Rule 11 of the Code of Civil Procedure the court does not have any authority to pass any other order in above case.

In above view of the case and circumstances of the case and evidence on record we hold that above suit was barred by Section 21(A) of the Specific Relief Act, 1877 and we are unable to consider the claim of solitium of the plaintiff on the basis of above bainapatra.

In above view of the facts and circumstance of the case and evidence on record we are unable to find any illegality or irregularity in the impugned

judgment and decree of the trial court nor we find any substance in this first appeal which is liable to be dismissed.

In the result, the appeal is dismissed.

Let the lower Court's record be transmitted down to the Court concerned at once.

Tamanna Rahman Khalidi, J

I agree.

*Md. Kamrul Islam
Assistant Bench Officer*