

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 618 of 2023

Abdul Jalil Mridha....Petitioner

-Versus-

Most. Fatima Johora and others....Opposite parties

Mr. Sk. Sharifuddin, Advocate

....For the petitioner

Mr. Sikder Guljar Ahmed, Advocate

....For the opposite party No. 1

Heard on 07.05.2026, 11.05.2026, 12.05.2026, 10.06.2026 and 15.06.2026

Judgment delivered on 22.06.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 24.10.2022 (decree drawn on 31.10.2022) passed by the Joint District Judge, Court No. 2, Borguna in Title Appeal No. 92 of 2016 reversing those dated 30.06.2016 passed by the Assistant Judge, Amtoli, Borguna in Title Suit No. 30 of 2004 decreeing the suit shall not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The plaint case, in a nutshell, are that the plaintiff Abdul Jalil Mridha filed Title Suit No. 30 of 2004 in the Court of Assistant Judge, Amtoli, Borguna praying for a decree of specific performance of unregistered contract dated 15.07.2001 (exhibit 1) executed by Kanchon Mia, husband of the defendant No. 2, stating that 2.00 acres of suit land appertaining to SA Khatian No. 224 of Pujakhola Mouza belonged to Kanchon Mia, husband of the defendant No. 2, who had given an offer to sell the said land to the plaintiff and he accepted the offer to purchase the said land at a price of Tk. 80,000. On 31st Asar, 1408 B.S., corresponding to the Gregorian calendar date 15.07.2001, Kanchon Mia received Tk. 70,000 as advance and executed the bainapatra. Kanchon Mia agreed to register the sale deed, collecting all other documents required for registration within the next 03 months, and delivered possession of the land to the plaintiff. On 24.09.2001, Kanchon Mia died, leaving behind his wife, defendant No. 2, Ambia Khatun, two brothers and one sister who were impleaded as defendant Nos. 1 to 4 in the suit. After the death of Kanchon Ali, on 15.02.2002, 15.10.2002 and 31.12.2002, the plaintiff requested the defendants to execute and register a sale deed within the next 3 to 4 months, but the defendants took time. Subsequently, the defendant Nos. 1 to 4 agreed to execute and register the deed on 29.06.2003, and accordingly, he went to the Office of the Sub-register but the defendant Nos. 1 to 3 did not go to the Office of the Sub-register but the defendant No. 4 only went to the Office of the Sub-Registrar and received Tk.

3,000 and executed and registered a sale deed regarding 60 decimals of land. Lastly, on 15.01.2004, the plaintiff along with the witnesses went to the defendant Nos. 1 to 3 and requested them to execute and register the sale deed in his favor, but they refused. Subsequently, the defendant No. 1 executed and registered the sale deed on 28.03.2005 in respect of 60 decimals of land, and defendant No. 3 executed and registered the sale deed on 13.02.2005 in respect of 30 decimals of land, which was sold by Kanchon Ali by unregistered bainapatra dated 15.07.2001 (Exhibit 1). Although two brothers and one sister of Kanchon Mia transferred their 1.50 acres of land to the plaintiff following the bainapatra dated 15.07.2001 (Exhibit 1), the defendant No. 2, wife of Kanchon Mia, refused to execute and register the sale deed in respect of 50 decimals of land with an ulterior motive and subsequently illegally transferred 50 decimals of land to defendant No. 6.

The defendant No. 6 contested the suit by filing a written statement stating that Kanchon Mia sold 1.00 acre of land out of 2.00 acre of land at a price of Tk. 50,000. He could not collect the registration costs of the deed. Kanchon Mia executed an unregistered bainapatra on 20.05.1995 (exhibit Kha) and delivered possession of the land to the defendant No. 6 with prior knowledge of the other defendants. Since Kanchon Ali died suddenly, he could not execute and register the said deed. After the death of Kanchon Ali, defendant No. 2, wife of Kanchon Ali, executed and registered a sale deed in his favor on 23.09.2002, and defendant No. 4 is a witness to the said deed. After that, the plaintiff and the defendant Nos. 1, 3 and 4 created a false and forged bainapatra in the name of Kanchon Ali to obtain illegal gain. The plaintiff never took possession of the suit land, and the bainapatra dated 15.07.2001 is false and forged, and no consideration was paid to Kanchon Ali for alleged transfer of the land by bainapatra dated 15.07.2001.

During trial, the plaintiff examined 3(three) P.Ws, and the defendants examined 3(three) D.Ws to prove their respective cases. After concluding trial, the trial Court by judgment and decree dated 30.06.2016 decreed the suit holding that the bainapatra 15.07.2001 (exhibit 1) is genuine and acted upon and that the defendant Nos. 2 and 6 created the collusive deed (exhibit Ka) to deprive the plaintiff of his purchase land since he had a defective and weak document (bainapatra) and that after filing the suit, the defendant Nos. 2 and 6 illegally created an ante-dated bainapatra (exhibit Kha) to show that the plaintiff's vendor's previously extinguished his title by executing the said bainapatra and pursuant to the exhibit 1, the plaintiff got the exclusive possession on 2.00 acres of land as admitted by the defendant No. 2 Ambia Khatun and that the deed executed by defendant No. 2 in favour of defendant No. 6 is false, void, collusive

inoperative, ineffective and fraudulently created without any consideration and the defendant No. 6 is not a bonafide purchaser and that the suit is not barred by limitation and thus maintainable in law. The trial Court also directed the plaintiff to deposit the proportionate unpaid consideration within thirty days from the date of obtaining the certified copy of the decree.

Against the said judgment and decree, the defendant No. 6, Most. Fatima Johora filed Title Appeal No. 92 of 2016 in the Court of District Judge, Borguna. Joint District Judge, Court No. 2, Borguna heard the appeal and by impugned judgment and decree reversed the judgment and decree passed by the trial Court holding that Kanchon Ali died on 24.09.2001 and after death of Kanchon Ali, there is no liability of the heirs of Kanchon Ali to execute the deed pursuant to the unregistered bainapatra dated 15.07.2001 and that the plaintiff did not purchase any land based on the bainapatra dated 15.07.2001. The defendant No. 2, wife of Kanchon Ali, executed and registered the deed on 30.09.2002 in favour of the Most. Fatima Johora before filing the suit, and that the deed writer, Abdul Goni, was not impleaded as a defendant in the suit, and except Jalil, two other witnesses were not examined, for which the bainapatra executed by Kanchon Ali is doubtful, and that the alleged receipt of Tk. 70,000 as consideration out of Tk. 80,000 and execution of the bainapatra is doubtful. Against the said judgment, the plaintiff-petitioner obtained the Rule.

Learned Advocate Mr. Sk. Sharifuddin appearing on behalf of the plaintiff-petitioner submits that Kanchon Ali, husband of the defendant No. 2, executed the unregistered bainapatra on 15.07.2001 (exhibit 1) and unfortunately he died on 24.09.2001 leaving behind the defendant No. 2 as wife, defendant Nos. 1 and 4 as brother and defendant No. 3 as sister and Kanchon Ali could not register the sale deed due to his unfortunate death. He further submits that after death of Kanchon Ali, the defendant Nos. 1, 3 and 4 by three separate deeds executed and registered the three deeds transferring total 1.5 acres of land pursuant to the unregistered bainapatra dated 15.07.2001 (exhibit 1) but the defendant No. 2 in connivance with the defendant No. 6 created a false bainapatra showing ante-date i.e 20.05.1995 in favour of the defendant No. 6 and illegally executed disputed deed dated 23.09.2002 (exhibit Ka) in favour of defendant No. 6 without any reference of the bainapatra dated 20.05.1995 (exhibit Kha). He also submits that pursuant to the unregistered bainapatra dated 15.07.2001 (exhibit 1), the plaintiff is admittedly possessing 2.00 acres of land transferred by Kanchon Ali, and the unregistered bainapatra dated 15.07.2001 was partly performed by Kanchon Ali before his death. He lastly submits that the defendant No. 2 is only entitled to 25 decimals of land out of 1.00 acre of land of Khatian No. 224, but

she illegally transferred 50 decimals of land from the said khatian without mentioning the dag number and the appellate Court misreading and non-reading the material evidence of both the parties illegally passed the impugned judgment and decree and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. In support of his submission, the learned Advocate relied on the decisions made in the case of Ezaher Meah & others vs. Shaher Banu and others reported in 49 DLR (AD) 85, 3 MLR (AD), Lal Miah (Hajee) vs Nurul Amin, and others reported in 57 DLR (AD) 64.

Learned Advocate Mr. Sikder Guljar Ahmed, appearing on behalf of the defendant-opposite party No. 1, submits that after death of Kanchon Ali, the defendant No. 2 became the owner of 50 decimals of land out of 2.00 acres of land of her husband Kanchon Ali and transferred said land to defendant No. 6 and received the consideration transferring the possession of the land to defendant No. 3 before filing the suit. Therefore, the appellate Court, on correct assessment and evaluation of the evidence, passed the impugned judgment and decree. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Sk. Sharifuddin, who appeared on behalf of the plaintiff-petitioner, and the learned Advocate Mr. Sikder Guljar Ahmed, who appeared on behalf of the defendant-opposite party No. 1, perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the Courts below, and the records.

Admittedly, Kanchon Ali is the owner of 2.00 acres of suit land. The case of the plaintiff is that Kanchon Ali sold 2 acres of land to the plaintiff and received Tk. 70,000 out of the total consideration of Tk. 80,000 and executed a bainapatra on 15.07.2001 (Exhibit 1) in favour of the plaintiff. The defendants claimed that the said bainapatra (Exhibit 1) was not executed by Kanchon Ali. The appellate Court held that on the basis of the bainapatra dated 20.05.1995 (Exhibit Kha), the defendant No. 2, wife of Kanchon Ali, transferred 50 decimals of land of SA Khatian No. 224 to the defendant No. 6 and the subsequent bainapatra dated 15.07.2001 is collusive. But the learned Advocate Mr. Sikder Guljar Ahmed conceded that the defendant No. 2 did not transfer the land pursuant to the bainapatra dated 20.05.1995 (Exhibit Kha). She inherited 50 decimals of land after the death of Kanchon Ali and legally transferred the land to the defendant No. 6.

Now the question has arisen as to whether Kanchon Ali executed the unregistered bainapatra dated 20.05.1995 (Exhibit Kha) and the unregistered bainapatra dated 15.07.2001 (exhibit1). In the written statement, the defendant No. 6 asserted that Kanchon Ali did not execute the bainapatra dated 15.07.2001.

The bainapatra dated 15.07.2001 is proved as Exhibit 1, and the bainapatra dated 20.05.1995 is proved as Exhibit Kha. During trial, no step was taken by either party to prove that Kanchon Ali did not execute the unregistered bainapatra dated 20.05.1995 (Exhibit Kha) and 15.07.2001 (Exhibit 1) by sending those exhibits to the handwriting expert.

On perusal of evidence reveals that the defendant No. 4, brother of the Kanchon Ali, sold 60 decimals of land on 29.06.2003 to the plaintiff by registered deed No. 4248 dated 29.06.2003 (exhibit 3), the defendant No. 1, another brother of Kanchon Ali, sold 60 decimals of land by registered deed No. 1997 dated 28.03.2005 (exhibit 3Kha) to the plaintiff and the defendant No. 3, sister of the Kanchon Ali, sold 30 decimals of land by registered deed No. 626 dated 13.02.2005 (exhibit 3Ka) to the plaintiff. In exhibits 3, 3Ka and 3Kha, it has been mentioned that the defendant Nos. 1, 3 and 4 transferred 1.5 acres of land to the plaintiff based on the bainapatra dated 15.07.2001 (exhibit 1) and handed over the possession to the plaintiff. In reply to a question, defendant No. 2 admitted that the plaintiff is possessing 2.00 acres of land which clearly proved that after execution of the bainapatra dated 15.07.2001 (exhibit 1) Kanchon Ali received the part consideration and handed over the possession of 2.00 acres of land to the plaintiff and no possession was handed over by defendant No. 2 to the defendant No. 6 pursuant to the deed dated 23.09.2002 (exhibit Ka) in favour of the defendant No. 6.

The evidence discussed hereinabove clearly speaks that the bainapatra dated 15.07.2001 (Exhibit 1) is admitted by defendant Nos. 1, 3 and 4 and was partly performed by Kanchon Ali delivering possession of the suit land to the plaintiff. On perusal of the bainapatra dated 20.05.1995 (Exhibit Kha), it reveals that only SA Khatian No. 224 is mentioned in the schedule of the said deed, and no dag number has been mentioned in the schedule of the said bainapatra dated 20.05.1995 (Exhibit Kha) allegedly executed by Kanchon Ali, but on the first page of the alleged bainapatra dated 20.05.1995, Dag Nos. 1726, 1727 and 1192 were subsequently written, which clearly proved that the bainapatra dated 20.05.1995 (Exhibit Kha) is a tampered document. The trial Court held that the bainapatra dated 20.05.1995 (Exhibit Kha) was subsequently created, putting an ante-date. On perusal of the bainapatra dated 20.05.1995 (Exhibit Kha) reveals that there is no seal of the stamp vendor on the opposite side of the stamp, which creates doubt about the genuineness of the bainapatra dated 20.05.1995 (Exhibit Kha). Furthermore, the learned Advocate for the defendant No. 6 disowned the finding of the appellate Court that pursuant to the bainapatra dated 20.05.1995,

the defendant No. 6 executed and registered the disputed deed dated 23.09.2002 (Exhibit Ka).

It is found that Kanchon Ali executed and registered the bainapatra dated 15.07.2001 (Exhibit 1) in favour of the plaintiff. Therefore, the defendant No. 2, as wife of Kanchon Ali, is bound to transfer her share following the bainapatra dated 15.07.2001 (Exhibit 1).

In view of the above evidence, findings, observation and the proposition, I am of the view that the appellate Court below failed to hold that the pursuant to the bainapatra dated 15.07.2001 (exhibit 1), Kanchon Ali transferred the possession of 2.00 acres of suit land to the plaintiff and partly performed the contract i.e bainapatra dated 15.07.2001 (exhibit 1) and the plaintiff is entitled to get a decree of specific performance of contract against the defendant No. 2, wife of Kanchon Ali. The appellate Court below did not considered the exhibits 3, 3Ka and 3Kha and misread the deed dated 23.09.2002 (Exhibit Ka) executed by defendant No. 2 and arrived at a wrong finding that the pursuant to the unregistered bainapatra dated 20.05.1995 (Exhibit Kha), the defendant No. 2 transferred 50 decimals of land to the defendant No. 6 and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

In view of the above findings, observations and the proposition, the impugned judgment and decree passed by the appellate Court below is hereby set aside, and the judgment and decree passed by the trial Court is affirmed.

In the result, the Rule is made absolute.

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby vacated.

Send down the lower Court's records at once.