Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 196 of 2014
Md. Abul Kalam
.....petitioner
-Versus-
Md. Sahidullah and others
.....opposite parties

Mr. Mohammed Mutahar Hossain with
Mr. Rashed Ahmed Rishat and
Mr. Saimon Islam, Advocates
.....for the petitioner

Mr. Md. Abdul Haque, Senior Advocate with
Ms. Shahanara Jaman Santa, Advocate
.....for the opposite parties

Heard on: 08.01.2026, 28.01.2026, 03.02.2026, 10.02.2026 and 18.02.2026

Judgment on: 25.02.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 30.06.2013 passed by the learned Additional District Judge, 4th Court, Mymensingh in Other Appeal No. 206 of 2004 allowing the appeal and affirming the judgment and decree dated 11.08.2004 passed by the learned Joint District Judge, 3rd Court, Mymensingh in other Class Suit No. 06 of 2003 decreeing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Petitioner as defendant filed Other Suit Number 28 of 2000 in the Court of Session Judge, 2nd Court, Mymensingh on 23.07.2000 which was subsequently transferred to the Court of Session Judge, 3rd Court, Mymensing and renumbered as Other Suit Number 06 of 2003 and the suit was filed for enforcement of contract dated 23.02.1998.

The case of the plaintiff is that the suit land appertaining to the schedule of the plaint belonged to defendant 1. During the subsistence of financial distress defendant expressed his intention to sell the suit land and accordingly on 23.02.1998 plaintiff agreed to purchase the same in presence of local witnesses. The consideration was fixed at Tk. 1,20,000/- (one lac twenty thousand) out of which plaintiff paid Tk. 75,000/- (seventy five thousand) to defendant as earnest money and defendant executed and delivered an agreement for sale in favour of the plaintiff acknowledging receipt of the said amount. It was stipulated in the contract that within 06(six) months from 23.02.1998 defendant would receive the balance consideration and execute and register a kabala deed in favour of the plaintiff. Plaintiff within 04(four) months from the date of the agreement tendered the remaining Tk. 45,000/- (forty five thousand) and repeatedly requested the defendant to

execute and register the sale deed but defendant on various pleas including alleged family disputes avoided performance and assured that after settlement of such disputes he would accept the balance consideration and execute and register the deed. Subsequently in a local arbitration held on 09.01.2000 at the house of the defendant in presence of local elites the defendant admitted the execution of the agreement and receipt of earnest money and agreed to execute and register the sale deed. However in disregard of the decision of the arbitration defendant refused to accept the balance consideration and to execute and register the deed on 09.07.2000. Hence the suit.

Defendant 1 filed written statement on 17.09.2001 denying the material averments made in the plaint. In substance defendant contended that the suit land originally belonged to his father and upon his death devolved upon the defendant and other heirs. Defendant denied having executed any agreement in favour of the plaintiff or having received Tk. 75,000/- (seventy five thousand) as alleged. Plaintiff actually has forged the signature shown to have been executed by the defendant in the agreement by copying the signature of defendant from gift deed dated 03.09.1996 executed by him in favour of the mother of the plaintiff. It is further contended

that plaintiff taking advantage of prior acquaintance and enmity manufactured this false and forged agreement showing execution by the defendant. The alleged document is described as written on non-judicial stamp and purportedly attested by interested witnesses. The defendant asserted that he never appeared before any scribe for execution of such document nor did he receive any earnest money from the plaintiff. The alleged agreement is forged and fabricated and the plaintiff by producing interested witnesses has attempted to create false claim. Defendant denied the holding of any arbitration as alleged by the plaintiff. It is further stated that when plaintiff attempted to interfere with the possession of the defendant on 20.09.2000 defendant then lodged Criminal Case Number 2828 of 2000 under Sections 467/468/471/109 of the Penal Code before the Court of Magistrate and he further filed General Diary bearing Entry Number 890 dated 23.09.2000 stating that the plaintiff's allegations are false and concocted. The suit being false is liable to be dismissed.

Trial Court framed as many as five issues. During course of trial plaintiff examined 06 witnesses and defendant 1 examined 04 witnesses. Plaintiff adduced the agreement dated

23.02.1998 which was marked in evidence as Exhibit-1. Defendant adduced no document.

Trial Court upon perusal of the pleadings and hearing the parties and considering both oral and documentary evidence decreed the suit by judgment and decree dated 11.08.2004. As against the same defendant preferred Other Appeal Number 206 of 2004 before the Court of District Judge, Mymensingh which on transfer was heard by Additional District Judge, 4th Court, Mymensingh who was pleased to dismiss the same by judgment and decree dated 30.06.2013. Feeling aggrieved by the judgments passed by the Cours below defendant filed this revision and obtained Rule on 20.01.2014.

Learned Advocate Mohammed Mutahar Hossain along with Mr. Rashed Ahmed Rishat appearing on behalf of the defendant-petitioner submits that the Courts below wrongly shifted the onus upon the defendant to prove that the alleged signature shown to have been given by the defendant in the agreement is forged and not of the defendant violating the settled principle of law that plaintiff has to prove his own case and under the law burden of proof was never discharged by the plaintiff thus the Courts below committed error of law resulting in an error in such decree occasioning failure of

justice. He submits that plaintiff was not ready and willing to perform his part of the contract as apparent from the judgment passed by the trial Court where it has been ordered that within 30(thirty) days from the decree the rest amount would be deposited in the Court and the same has been violated as apparent from reading of the record of the Court. He submits that plaintiff failed to prove the alleged contents of and signature on the agreement as genuine thus the Courts committed error of law occasioning failure of justice. Referring to Exhibit-1 he contends that the time fixed for performance was 06(six) months but plaintiff remained silent for a long time and did not produce any independent and corroborative evidence to show that he has tendered the rest amount of the consideration within the stipulated time and both the Courts below failed to consider this aspect of the case and also that an unregistered agreement should be dealt with extreme caution thus the Courts below committed error of law occasioning failure of justice. He also refers to the case of Roshanally Vs. Zakir Hossain reported in 16 BLC 85 and submits that Exhibit-1 is not executable being unilateral document and possession was not delivered to the plaintiff pursuant to such agreement. He further refers to the *ratio* laid

down in AIR 2008 SC 1541 case and submits that as a matter of extreme caution and judicial sobriety the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature and in the event of slightest doubt leave the matter to the wisdom of experts. He points out that the Courts below committed error of law occasioning failure of justice in examining and comparing the disputed signature in cursory manner on the basis of a mere casual or routine glance or perusal which is hazardous and risky without resorting to scientific method. He then submits that the Courts below failed to appreciate that since the suit land is a joint property and the title is under dispute the Court should not exercise its discretionary power to grant equitable relief in a suit for specific performance of contract. He then contends that the Courts below committed error of law occasioning failure of justice in ignoring the material fact that the disputed signature was a product of forgery done on the basis of the signature given by defendant 1 in gift deed dated 03.09.1996. He finally submits that the impugned judgments being perverse and misconceived are liable to be set aside and prays that the Rule having merit may be made absolute.

On the other hand learned Senior Advocate Mr. Md. Abdul Haque along with Ms. shahanara Jaman Santa appearing on behalf of plaintiff-opposite party 1 taking through the evidence on record submits that the plaintiff's acceptance of the defendant's proposal for transfer of the suit land and the fixation of the consideration money along with the payment of earnest money to the defendant have been satisfactorily proved by the oral and documentary evidence adduced by the plaintiff. He contends that the trial Court upon proper appreciation of evidence on record rightly decreed the suit and the appellate Court upon independent assessment in strict compliance with Order 41 Rule 31 of the Code of Civil Procedure affirmed the said decree assigning precise and reasoned findings. Since the Courts below did not commit any error of law occasioning failure of justice the impugned judgments are immune from interference. Referring to Sections 101, 102 and 103 of the Evidence Act he submits that the burden of proof as to any particular fact lies upon the person who desires the Court to believe in the existence of that fact. According to him the plaintiff having discharged his initial onus under Section 101 of the Evidence Act by proving the agreement and payment of earnest money the burden

shifted upon the defendant to establish that the disputed signature was not that of the defendant. He further contends that the proposition that an unregistered agreement for sale must necessarily be signed by both parties failing which a unilateral document becomes unenforceable is unsupported by any statutory provision. He also submits that the decisions cited by the petitioner are distinguishable on facts and are not applicable to the present case in view of the pleadings and evidence on record. Finally he submits that no material illegality or irregularity or jurisdictional error having been demonstrated the impugned judgments are not amenable to interference in revision under Section 115(1) of the Code of Civil Procedure and accordingly the Rule being devoid of merit is liable to be discharged.

Heard the learned Advocates for both sides and perused the materials on record and also gone through the impugned judgments passed by the courts below.

This is a suit for specific performance of contract. The contract in question was executed on 23.02.1998 and has been marked as Exhibit-1. The time fixed for performance under Exhibit-1 is 06(six) months. On perusal of paragraphs 3, 4 and 5 of the plaint it transpires that within the stipulated period

plaintiff tendered the balance consideration money but defendant on the plea of family complications requested for time and assured that he would execute and register the sale deed subsequently. But when defendant later disclosed his intention to transfer the land to his brother a local arbitration was held on 09.07.2000 in presence of local respectable persons wherein defendant admitted execution of the agreement and receipt of earnest money. Nevertheless defendant failed to perform his obligation under the contract and on 09.07.2000 refused to execute and register the deed in terms of the agreement. Thereafter the plaintiff instituted the present suit on 23.07.2000.

On the other hand as appears from paragraph 8 of the written statement the definite case of the defendant is that he never executed any such agreement. He asserts that by a registered deed dated 03.09.1996 he transferred 25 decimals of land in favour of plaintiff's mother and the said deed remains in the custody of the plaintiff. According to defendant out of enmity and with an intention to grab his land plaintiff copied the signature appearing in the said registered deed and thereby manufactured the unregistered agreement in question.

In support of the plaintiff's case PW 1 has been corroborated by PW 2 to PW 6. PW 2 deposed that he is an attesting witness to agreement and after negotiation plaintiff brought money from PW 4 and through PW 6 got Exhibit-1 written whereupon defendant received Tk. 75,000/- (seventy five) as earnest money and signed the document Exhibit-1. PW 3 stated that after the consideration of Tk. 1,20,000/- (one lac twenty thousand) was settled at the plaintiff's house the defendant demanded money and the parties went to Mymensingh to collect the money from PW 4 and thereafter Exhibit-1 was written by PW 6 at the Sub-Registry Office and defendant upon receipt of Tk. 75,000/- (seventy five thousand) signed the same. PW 4 stated that at the time of payment of Tk. 75,000/- (seventy five thousand) the defendant, PW 3 and others were present. PW 5 corroborated that the plaintiff's money was kept with PW 4. PW 6 a deed writer of Mymensingh Sub-Registry Office deposed that Exhibit-1was written by him as per instructions of the executant and the transaction of Tk. 75,000/- (seventy five thousand) took place in his presence.

The consistent testimony PW 2 to PW 6 corroborating PW 1 on material particulars has not been effectively shaken

in cross-examination. The plaintiff has thus proved Exhibit-1 through the attesting witnesses and the scribe in accordance with law.

Conversely DW 1 stated that the plaintiff forged the agreement by imitating his signature from the registered deed dated 03.09.1996. In cross-examination he admitted that the signature appearing in the agreement resembled his signature though he denied having signed it.

In such a circumstance an important aspect deserves specific mention. The definite case of the defendant is that the bainapatra was forged by copying his signature from a registered deed dated 03.09.1996. That document constitutes the very foundation of the defence plea of forgery. Yet the defendant neither produced the original deed nor any certified copy thereof. In terms of Sections 61-65 of the Evidence Act contents of a document must be proved by primary evidence except in cases where secondary evidence is admissible. Furthermore procedural remedies were available to the defendant under Order 11 Rule 14 of the Code of Civil Procedure to compel production of the document if allegedly in possession of the plaintiff and under Order 16 Rule 6 of the Code of Civil Procedure to summon the document from the

Sub-Registry Office. No such steps were taken. In absence of proof of the 1996 deed the plea that the signature was imitated from that deed remains wholly unsubstantiated. In this context the submission that it was the plaintiff's duty to obtain expert opinion is entirely misconceived. The plaintiff having proved execution of Exhibit-1 through attesting witnesses and the scribe and payment of earnest money and the admitted signatures being available for comparison under Section 73 of the Evidence Act his initial burden under Section 101 stands discharged. The specific allegation of forgery having been raised by the defendant the burden under Section 103 of the Evidence Act squarely lies upon him to prove that allegation. Since the defence case entirely depends upon the existence and genuineness of the alleged deed of 03.09.1996 failure to produce and prove that document renders the defence plea legally unsustainable. In such circumstances no adverse inference can be drawn against the plaintiff for not producing expert evidence.

Another significant circumstance deserves mention. PW 2 and PW 3 stated in cross-examination that the stamp used in the agreement was brought from the defendant's house. Exhibit-1 itself shows that the stamp was purchased in the

name of the defendant. This circumstance leads to a reasonable inference that defendant purchased the stamp in his own name and executed the agreement upon receipt of Tk. 75,000/- (seventy five thousand) as earnest money.

Moreover so far as the transaction of earnest money is concerned the evidence of PW 2, PW 3 and PW 4 fully corroborates PW 1 on material particulars. No material discrepancy or contradiction or inconsistency has been detected in their cross-examination. Each of them has consistently supported the other regarding negotiation, settlement of consideration, bringing of stamp, writing of the bainapatra and payment of Tk. 75,000/- (seventy five thousand) as earnest money. Their evidence are natural, consistent and mutually corroborative and therefore inspire confidence.

With regard to the signature appearing on Exhibit-1 the same has been compared with the admitted signatures of the defendant appearing on the Vokalatnama dated 22.10.2000, the written statement dated 17.09.2001 and the signatures appended by him after giving deposition before the Court on 27.01.2004 and 31.05.2004. On a careful side-by-side comparison it is evident that the signatures bearing the name

“Md. Abul Kalam” on all these documents are substantially similar and appear to have been written by one and the same person. The formation of letters and the manner of commencement with termination strokes, pen pressure pattern, alignment, slant, proportion between letters, spacing and characteristic fluency disclose common authorship. The natural variations noticed are minor and fall within the permissible range of individual variation recognized in forensic handwriting analysis. Such slight divergence does not indicate fabrication but rather supports genuineness since exact uniformity is often symptomatic of simulation. It is neither abnormal nor legally suspicious that a person’s signature may slightly vary depending upon physical condition, writing speed, writing surface, surrounding circumstances or mental state at the time of signing.

When Sections 45, 47, 67 and 73 of the Evidence Act are read conjointly the legal position becomes clear. Section 67 requires proof of signature or handwriting of the person alleged to have signed the document. Section 47 renders relevancy of the opinion of a person acquainted with such handwriting. Section 45 makes expert opinion relevant but not conclusive. Section 73 empowers the Court itself to compare

disputed handwriting with admitted handwriting. The combined effect of these provisions is that expert opinion is merely advisory and not binding. The Court is competent to form its own conclusion upon comparison particularly where there exists direct evidence of execution by attesting witnesses and the scribe. Therefore in presence of reliable evidence and admitted signatures available for comparison absence of expert evidence does not render the plaintiff's case defective nor is expert evidence infallible or decisive.

The appellate Court having undertaken comparison of signatures in exercise of power under Section 73 of the Evidence Act and having assigned cogent reasons its finding regarding genuineness of signature is a finding of fact based on evidence and does not call for interference.

The submission of the learned Advocate for the petitioner that complicated question of title is involved and therefore decree ought not to have been passed is misconceived. The present suit is not one for declaration of title but a suit for specific performance of contract governed by the Specific Relief Act. In such a suit the Court is concerned with existence of a valid contract along with passing of consideration and readiness and willingness of the

plaintiff and breach by the defendant. A decree for specific performance merely declares the right of the decree-holder to have a deed of transfer executed in his favour in respect of the property covered by the decree. The decree itself does not transfer title. Title passes only upon execution and registration of a conveyance in accordance with the Transfer of Property Act and the Registration Act.

Since the agreement for sale dated 23.02.1998 has been validly proved and passing of consideration has been established by consistent and credible evidence there exists no legal impediment to granting decree. The Courts below upon proper appreciation of evidence and correct application of law committed no illegality or material irregularity in decreeing the suit. The decisions cited by the petitioner being distinguishable on facts are not applicable.

Accordingly the Rule having no merit is discharged. The judgments and decrees of the Courts below are hereby affirmed.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

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