

In the Supreme Court of Bangladesh
High Court Division
(Civil Appellate Jurisdiction)

First Appeal No. 332 of 2001

In the matter of:

Md. Abdus Sattar.

..... Defendant No.2-Appellant.

Vs.

Md. Tamser Ali Mondal being
dead his legal heirs 1(a) Jahan
Ara and others.

..... Respondents.

Mr. Md. Hamidur Rahman,
Advocate

...For the Appellant.

**Heard on 24.07.2023,
01.08.2023 and 06.08.2023.**

Judgment on: 14.08.2023.

Present:

**Mr. Justice Sheikh Hassan Arif
And**

Mr. Justice Biswajit Debnath

SHEIKH HASSAN ARIF, J

1. This appeal, at the instance of the added-defendant No. 02 in Other Class Suit No. 15 of 1999, is directed against judgment and decree dated 30.03.2000 (decree signed on 05.04.2000) passed by the then Third Court of Sub-ordinate Judge, Naogaon in the said suit, thereby, decreeing the suit and declaring title in respect of the suit land in favour of the plaintiffs.

2. **Background Facts:**

2.1 Facts, relevant for the disposal of the appeal, in short, are that the predecessor of substituted-respondent No. 1 (a) to 1 (s), namely, Md. Tamser Ali Mondal, as plaintiff, filed the said Other Class Suit No. 15 of 1999 against the government before the Third Court of the then Sub-ordinate Judge, Naogaon (now Joint District Judge), seeking declaration of title in respect of 7.20 acre land as described in the schedule to the plaint.

2.2 The case of the plaintiff, in short, is that the suit property, being originally part of debtor estate, was under the ownership of Babu Kali Pado Roy and Babu Debi Pado Roy. The said owners, being minors, one Santi Lata Chowdhury was appointed as their guardian through the process of the Court and, accordingly, the C.S. tenant Akkhoy Kumar Roy became owner of the said property. The said Akkhoy Kumar Roy having died, his grandsons, namely Kali Pado Roy and Debi Pado Roy, son of late Ashu Pado Roy, became owners of the said

property. Thereafter, the said property was transferred in favour of the plaintiff in bangla year 1352 vide hukumnana dated 27.12.1352 bangla and, accordingly, the plaintiff remained in possession of the suit land upon paying land rents by different dakhila. During S.A. survey, S.A. proposed Khatian No. 549, 2/78 field draft khatian was prepared in respect of 7.20 acres land in favour of the plaintiff followed by RS Jarip Khatian No. 832 in 10 plots under Kushmile Mouja, Naogaon. That the plaintiff was an illiterate person and he finally came to know on 11.02.1972 from the local Tohsil Office, while he went there to give khazna, that the suit property was recorded in the name of the government under khash khatian No. 01 as C.S Pattony Khatian No. 02. That after obtaining necessary information, the plaintiff filed Objection Case No. 185/72 before the Local Administration on 23.03.1972 for correction of the khatian and publication of the same in his name. That, the government contested the said objection case and it was ordered, after hearing that the DP

khatian was to be cancelled and final khatian was to be published in the name of the plaintiff vide order dated 25.10.1972. However, when the plaintiff was under impression that the khatian was published in his name, he visited the local tahsil office again on 01.07.1998 for payment of khazna, but still found that the khatian was not prepared in his name. Rather, it was still recorded in the name of the government. The plaintiff then obtained an information slip on 29.10.1998 and, accordingly, came to know officially that the order passed on 25.10.1972 in favour of the plaintiff was not acted upon and the khatian was not corrected in his favour, which compelled the plaintiff to file the said suit seeking declaration of title.

2.3 The suit was initially contested by the government as defendant No. 01 by filing written statement. The case of the government before the Court below is that the suit property originally belonged to jamider, and after abolition of zamindari system, it vested in the government as khash property and,

accordingly, the same was recorded in the name of the government under SA and RS khatian. That some property from the suit land was marsh land and some property under Plot No. 30 was given in favour of one Mosammat Sobijan Bibi as permanent settlement under Permanent Settlement Case No. 425/78-79 and the rest of the property remained vested in the government and the remaining property, namely, former Plot Nos. 29, 136, 137 are still under the sebayat of Sree Sree Joy Kali Mata. When the evidences of the parties were almost complete and the Court fixed the suit for argument hearing, the appellant added himself therein as added defendant No. 02 on 28.03.2000.

2.4 By filing separate written statement, the case of this added-defendant is that 1.90 acre of the suit property and 89 decimal land under Plot No. 137 originally belonged to Kali Pado Roy for consistency and Debi Pado Roy. That after abolition of zamindari system, the said properties, along with other properties, became choice land.

Thereafter, by Enrollment Case No. 250/75, the said property was entrusted in favour of Sree Nikhil Chandra Mohorar to look after and transfer the said property. Thereafter, the said Sree Nikhil Chandra Mohorar exchanged 89 decimal land from former Plot No. 137 with the land of the added-defendant No. 02 vide registered deed No. 3414 dated 26.02.1987. Thereafter, the added defendant No. 02 took possession of the land and remained in possession upon payment of khajna etc. That the suit property is also possessed by some other people, namely, Sultan, Moklesur, Sayed Ali and it has some houses. That the plaintiff did not get any settlement of the land and, accordingly, the said suit should be dismissed.

2.5 Upon above contesting pleadings, the Court below framed five (05) issues, namely:

- 1) Whether the suit is maintainable in its present form;
- 2) Whether the suit suffers from defect of parties;
- 3) Whether the suit is barred by limitation;

4) Whether the plaintiff has title and possession in the suit land.

5) Whether the plaintiff is entitled to get relief as prayed for or if he is entitled to get any other reliefs.

2.6 To prove the case, the plaintiff produced three witnesses (P.W. 1- P.W. 3) and certain documents which were marked as Exhibits-1-5. On the other hand, the government as defendant No. 01, produced one witness and produced two documents which were exhibited as Exhibit-Ka and Kha. On the other hand, the added-defendant No. 02 produced two witnesses and some documents which were not marked as exhibits. Thereafter, the Court below, after hearing the parties, decreed the suit in favour of the plaintiff and, thereby, declared title of the plaintiff in respect of the suit land vide impugned judgment and decree dated 30.03.2000 (decree signed on 05.04.2000). Being aggrieved by this judgment and decree, added-defendant No. 2, as appellant, has preferred this appeal.

2.7 The appeal is not contested by any one, although the record shows that notices have been properly served on the respondents.

3. **Submissions:**

3.1 Mr. Md. Hamidur Rahman, learned advocate appearing for the appellant, has made the following submissions:

- (a) That the hukumnama or amalnama (Exhibit-01) did not pass any title in favour of the plaintiff and that the Exhibit-01 appears to be a forged document.
- (b) By referring to the objection case order dated 25.10.1972 directing preparation of final khatian in favour of the plaintiff, he submitted that it was an order without lawful authority inasmuch as the officer concerned did not have any authority to pass such an order for correction of finally published khatian.
- (c) That the evidences produced by the added-defendant No. 02-appellant are sufficient to prove the title of the defendant No.2-appellant

and as such the Court below has committed illegality in not dismissing the suit.

4. **Deliberations, Findings, and Orders of the Court:**

4.1. It appears from the written statement of this appellant, as submitted before the Court below as added-defendant No. 02, that he has not pleaded anything therein as regards the genuineness of the hukumnama (Exhibit-01). Therefore, the submission of the learned advocate as regards genuineness of the hukumnama in question is a submission beyond the pleading, which cannot be accepted or considered by this Court at this stage.

4.2. Again, upon perusal of the order dated 25.10.1972 passed in Objection Case 185/72, it appears that the officer concerned did not issue any direction for correction of any finally published khatian. Rather, he passed the order for correction of DP khatian. Therefore, the submission of the learned advocate as regards authority of the said officer to pass such

direction is beyond the context of this case and does not have any substance.

4.3. In this case, the plaintiff has filed the suit seeking declaration of his title on the basis of a hukumnama (Exhibit-01) obtained from the admitted jaminders. As against this case of the plaintiff, the case of the government before the Court below is that after the abolition of the zamindari system, the land in question vested in the government and, accordingly, it is a government land. However, admittedly, government put forward the said case before the revenue officer concerned in the said Objection Case No. 185 of 1972 and the competent government officer rejected such case of the government. At the same time, the said officer accepted the case of the plaintiff in support of his title on the basis of the said hukumnama. Considering this aspect and the documents produced by the plaintiff, namely, Exhibit-1 to Exhibit-5, the Court below found title in favour of the plaintiff.

4.4. On the other hand, the case of the added-defendant No. 02-appellant before the Court below was that 1.93 acre land out of schedule land and some other land originally belonged to the same jaminder, Kali Pado Roy, and Debi Pado Roy and the said land became choice land vide allotment Case No. 250/75 and the said jaminder appointed one Nikhil Chandra Moharar to look after and transfer the said property and the said Nikhil Chandra Moharar appointed an attorney vide deed No. 3414 dated 26.02.1987 and the said attorney transferred the said property in favour of this added-defendant No. 02 by way of exchange deed. Therefore, it appears that the very basis of the claim of this added-defendant No. 02 starts from a time in 1975 through Allotment Case No. 250/1975. But this defendant does not have any case against the claim of the plaintiff regarding the said hukumnama and the subsequent transfer on the basis of the said hukumnama. On the other hand, the trial Court has found that the D.W. 01 (Shafiqul Islam) in his deposition deposed that the suit

property was in possession of the government and some other people, but the defendant did not bring any witness from among those people. It further appears that the Court below has rightly held that the defendant could not prove or establish as to how the said Nikhil Chandra Mohorar became attorney on behalf of the original owner and they failed to submit any document in support of such authority of Nikhil Chandra Mohorar on behalf of the original owner.

4.5. Therefore, since the added-defendant No. 02 has totally failed to establish his own case, namely, as to how the said Nikhil Chandra Mohorar became attorney of the original owner, the very basis of their chain of title has collapsed and such defect in title cannot be cured by producing some khazna receipts of subsequent periods. It has to be borne in mind in this appeal that the government itself did not prefer any appeal against the impugned

judgment and decree. It is the private party who has preferred this appeal merely relying on some documents which starts from the period of 1975, particularly when the dispute between plaintiff and the government got resolved in 1972 in the aforesaid objection case filed by the plaintiff.

4.6. In view of the facts and circumstance above, we have no option but to hold that the Court below has rightly decreed the suit in favour of the plaintiffs, thereby, declaring their title in respect of the suit land. Accordingly, we do not find any merit in the appeal and the same should be dismissed. We also do not find any merit in the application filed by the appellant for adducing additional evidence, particularly when the suggested additional evidence will not change the outcome of the case. Accordingly, the said application is rejected.

4.7. In the result, the appeal is dismissed. The ad-interim order, if any, thus stands recalled and vacated.

Send down the lower courts record.

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(Sheikh Hassan Arif, J)

I agree.

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(Biswajit Debnath, J)