

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 739 of 1991

Dil Mohammad Sikder and others

.....appellants

-Versus-

Assistant Custodian, Special Property (Jute)
Cell, Ministry of Jute and others

..... respondents

Mr. Sadananda Rana with

Mr. Md. Wahiduzzaman Sohel, Advocates

..... for the appellants

Mr. Md. Tariqul Islam, Advocate

..... for respondent 5-7

Judgment on 18.11.2025

Bhishmadev Chakrabortty, J:

At the instruction of the Hon'ble Chief Justice the concerned section has sent this appeal to this Bench for hearing.

The plaintiffs have preferred this appeal which is directed against the judgment and decree of the then Subordinate Judge, Dinajpur passed on 29.03.1991 in Title Suit 86 of 1990 dismissing the suit for declaration of title.

The plaint case, in brief, is that Fatechand Chopra and others were the original owners of the suit land measuring 1.60 acres and CS khatian was prepared in their names. The aforesaid CS recorded tenants defaulted in payment of rent and consequently Certificate Officer started Certificate Case 621 of 1960 against them. The notices of the case were served upon the defendants and finally the

suit land was put into auction. Md. Farid and Anoara Begum purchased the suit property into auction on 27.04.1964. The auction was confirmed on 28.06.1964 and possession was handed over to them on 21.08.1964. During possession and enjoyment, the auction purchasers gave permission some refugees to reside in a tinshed godown situated in a part of the suit land. The auction purchasers remained in possession in other part by enjoying the fruits and by culturing fish in the ditch of plot 149. During their possession and enjoyment, government claimed title in the suit land and floted a tender notice to sell the same. The purchasers then instituted Other Class Suit 47 of 1966 against the Deputy Commissioner, Dinajpur, defendant 4 herein, and others on 16.04.1966. The suit was dismissed and the plaintiffs then preferred Other Class Appeal 34 of 1969 before the District Judge which was allowed on 08.12.1969 and defendant 4 herein was permanently restrained by an order of injunction. There was a godown and 4 kancha houses and a well in plot 149. Subsequently, the houses were destroyed except the tinshed godown. During liberation war the refugees left the place and the miscreants took away the fence and tinshed of the house. Md. Farid sold out his entire share of .80 acres to plaintiffs 1 and 2 through a registered *kabala* dated 14.07.1966 and handed over possession thereof. They started possessing the same in *ejmali* with Anoara Begum who was 50% owner of the total land. During liberation war plaintiffs 1 and 2 took shelter in India. After independence they

returned this country and found the suit land vacant. Plaintiffs 1 and 2 started possessing the same by putting fence and through cultivation. Plaintiffs 1 and 2 sold out a part of the suit land to plaintiffs 4-8. Plaintiff 8 purchased parts of the suit land through 6 separate *kabalas* in the names of his sons. After purchase plaintiffs 4-8 have been possessing the land by erecting houses thereon. Plaintiff 8 set up a saw-mill in part the suit land and has been carrying on business therein. Anora Begum who was owner of .80 acres of land sold out her share to plaintiffs 2 and 3 through a registered *kabala* dated 10.12.1975. Plaintiff 4 mutated his name in respect of his share and has been paying rent to the government. Defendant 1 claimed the suit land as enemy property and published a notice for auction sale on 15.06.1978. When defendants 2 and 3 appeared in the place of auction sale then the plaintiffs came to learn the aforesaid facts. They showed them the documents related with the land and requested them not to sell the property but they threatened the plaintiffs for dispossession. The defendants failed to sell the suit land in absence of any purchaser. The property in question in no way can be treated as enemy property. The defendants have no right, title and possession in the suit land. The steps and conduct of the defendants clouded title of the plaintiffs in the suit land, hence the suit for declaration of title.

Defendant 1 Assistant Custodian Special Property (Jute) Cell contested the suit by filing written statement denying the statements

made in the plaint. They further contended that original owner of the suit land were Fatehand Chopra and others. During Indo-Pak war they left for India and the property has been declared as Enemy Property and it was given in the superintendent and control of Custodian Enemy Property Jute and subsequently it was handed over to them for its management. The property has been correctly gazetted as enemy property. The plaintiffs have no title and possession in the suit land. The documents submitted by the plaintiffs are created and forged and as such the suit would be dismissed.

On pleadings the trial Court framed 5 issues. In the trial the plaintiffs examined 6 witnesses and produced their document exhibits-1-31. On the other hand defendant 1 examined one witness and their document was exhibit-Ka. However, the Joint District Judge dismissed the suit deciding all material issues against the plaintiffs that prompted the plaintiffs to approach this Court with the present appeal.

Mr. Sadananda Rana, learned Advocate for the appellants taking us through the materials on record and the judgment under challenge submits that the plaintiffs through evidence of 6 witnesses and the documents proved their title and possession in the suit land. On the other hand defendant 1 failed to produce any document in support of their claim. But the trial Court has gone wrong in fact and law held that the plaintiffs failed to prove that their predecessors-in-

interest purchased the suit land into auction through Certified Case 621 of 1960. The plaintiffs produced the order sheet of the aforesaid certified case exhibit-1, *bainama* exhibit-2 and writ of delivery of possession exhibit-3. He refers to the provisions of law of the Destruction of the Records Act, 1917 and submits that although the record of the certificate case was called for but it could not be produced in the trial Court because it was destroyed after long lapse of time. PW 6 brought the suit register and proved the existence of certificate case. The trial Court without considering aforesaid facts disbelieved the auction purchase of Md. Farid and Anoara in the certificate case. The findings and observation of the learned Judge about the deed dated 14.07.1966 is also perverse. The certified copy of the deed dated 13.07.1966 was produced in evidence and was marked as exhibit without any objection from the defendants. The deeds of the subsequent purchasers were produced and exhibited by calling for the volumes from concerned Sub-registry office through PW 5. The plaintiffs have been possessing the suit land by erecting houses thereon and by setting up saw-mill taking permission from the concerned Pourasava. The rent receipts issued by the government are evidence of possession and may be treated collateral evidence of title. In this connection he refers to the case of Erfan Ali vs. Joynal Abedin Miah and others, 35 DLR (AD) 216. He finally submits that since the plaintiffs have been able to prove their title and possession in the suit land, the trial Court ought to have decreed the suit and by

not doing so erred in law and fact which is required to be interfered with by this Court in this appeal. The appeal, therefore, would be allowed.

No one appears for respondent 1 although one Mr. Mohiuddin Ahmed filed a vokalatnama on behalf respondent 1, Assistant Custodian Special Cell Ministry of Jute and the matter has been appearing in the daily cause list for long days with his name. Respondents 5-7 who were the plaintiffs of the original suit appeared and adopted the submissions made by the learned Advocate for the appellants. At the instruction of the Hon'ble Chief Justice, the concerned section has sent this appeal to this bench for disposal. This is an appeal of 1991 and for last 34 years has been pending in this Court and as such taken up for disposal on merit in the absence of respondent 1.

We have considered the submissions of Mr. Sandanada Rana, learned Advocate for the appellants, gone through the materials on record and *ratio* of the case cited by him.

It appears that the parties admitted that the CS recorded tenants of the suit land were Fatechand Chopra and others. The land consists of two plots in CS khatian 392. The plaintiffs claimed that for arrear of rent the Revenue Authority filed Certificate Case 621 of 1960 in the Revenue Court against tenants Fatechand Chopra and others and suit property was put into auction. Md. Farid and Anoara

purchased the land into auction on 27.04.1964 in equal shares. The auction was confirmed on 28.06.1964 and the purchasers got delivery of position through Court by beating drum on 21.08.1964. Certified copy of the order sheet of aforesaid certificate case was produced in evidence as exhibit-1. The certified copy, boinama and Dakhalnama were exhibits- 2 and 3 and final order sheet of the case is exhibit- 4. The record of the aforesaid case was called for. PW 6 Abdus Sattar, Chief Assistant of Sadar Land office was examined as witness in support of the certificate case. He admitted in evidence that the record of the certificate case was called for but he brought sale register of the suit which contend land measuring 1.60 acres of CS khatian 392 which was sold at Taka 50 in auction and it has been mentioned that the case was for arrear of rent and the land of Fatechand Chopra and others was put into auction. He stated that he failed to bring the case record because it has been destroyed. We find that as the certificate case is of 1960 and the final order was passed in the suit 1964 there is valid reason to destroy the record under the provision Act 5 of 1917 because after long lapse of time, if no sufficient public value or justification for its preservation is found, the records are usually destroyed. The aforesaid certified copies of the certificate case exhibits- 1-4 cannot be disbelieved only on the reason that original record was not produced in the Court. The documents submitted by the plaintiffs are certified copies which have been issued by the proper authority long ago.

Moreover, the plaintiffs produced Order Sheet of Case No. 1-15 of 1966-1967 exhibit- 24. Order dated 19.04.1973 passed in the case as contained in exhibit-24 shows that on the confidential report of the then Additional SDO, Sadar, Dinajpur the Joint Deputy Commissioner, Dinajpur started the case under section 53 of PDR Act which was against the Certificate Case 621 of 1960 on the allegation that the property was sold into auction in inadequate price. The case was dropped by the Joint Deputy Commissioner by its order dated 19.04.1973. The aforesaid exhibit-24, i.e., the act of the government machinery proves that Certificate Case 621 of 1960 was filed and the land was sold into auction. Therefore, we find that the trial Court did not apply its judicial mind on exhibit- 24 and exhibits- 1-4 and the evidence of PW 6 and disbelieved the auction purchase. The aforesaid exhibited documents and evidence of PWs 1-4 and 6 is found sufficient to hold that the property of Fatechand Chopra and others in the aforesaid CS khatian measuring 1.60 acres was put into auction and Md. Farid and Anoara purchased the same in auction on 27.04.1964 and the boinama and Dakhalnama was issued to them on 28.06.1964 and possession was delivered on 21.08.1964 (exhibits- 1-4). The plaintiffs further proved that Md. Farid sold his .80 acres to plaintiffs 1 and 2 Kamar Uddin and Dil Mohammad through a registered *kabala* dated 14.07.1966. Exhibit-6 is the certified copy of the deed which was exhibited without any objection from the defendants. The explanation given by the plaintiffs in their evidence

that the original document was burnt in the liberation war of 1971 is found believable. The subsequent deed of purchase by plaintiffs 2 and 3 from Anora measuring .80 acres is exhibit- 8 which has been proved by calling for the volume from concerned Sub-registry office by PW 5. All the subsequent deeds by the subsequent purchasers have been produced and marked as exhibits- 9, 10, 11, 12, 25, 26, 27, 28, 29 and 30. Among those deeds some are found original and some are found certified copies which were exhibited without any objection and proved by calling for the volumes and evidence of PW 5. It is found that the deed of 1966 exhibit-6 has been acted upon by the subsequent transfers as subsequent purchasers mutated there names in the suit land and paid rent to the concerned through exhibits-17, 19, 20, 22 and 23 series. We further find that plaintiff 8 Jashim Uddin got a plan approved from Poursava and set up a saw mill there. Plaintiff 4, PW 1 taking approval from the concerned Poursava erected a building in the suit premises also and has been residing therein.

In the oral evidence it is found that the plaintiffs proved their possession in the suit land. PW 1 in evidence stated, “আমি নালিশী জমি কেনার পরে নালিশী জমিতে পাকা বাড়ী নির্মান করিয়াছি। ৮নং বাদী জসিমউদ্দিন নালিশী জমিতে ‘স’ মিল দিয়াছে। উক্ত আনোয়ারা খাতুন তার অংশ পুরোটাই ১০/১২/১৯৭৫ ইং তারিখে ২/৩ নং বাদীর নিকট বিক্রয় করে। আমাদের অংশটা নাম খারিজ করে দিয়াছি ও পৃথকভাবে খাজনা প্রদান করেছি। পৌরসভার থেকে অনুমতি নিয়া উক্ত জায়গায় বাড়ী করেছি। জসিমউদ্দিন ৮নং বাদী পৌরসভা থেকে লাইসেন্স নিয়া ‘স’ মিল করেছে। নালিশী জমিতে

বিবাদীদের কোন স্বত্ত্ব সামিত্ব বা দখল নাই।” PW 3 Abdul Jabbar Talukder stated, “নালিশী জমিতে বাদীর বাড়ীঘর ও ‘স’ মিল আছে।”-----। “আমি চাউলিয়া পট্টিতে ১৯৫০ সালে এসেছি। অনুমান তাহার ৪/৫ বছর পরে নালিশী জমিতে ফরিদ ও আনোয়ারাকে দখলে দেখেছি। ফরিদ ও আনোয়ারা আম লিচু পাড়তো।-----। ডোবার উত্তরে ২/৩ টা নতুন বাড়ী হইয়াছে। ফরিদের পরের বছর খানেকের মধ্যে দীল মোহাম্মদ ও কমর উদ্দিন খরিদ করে দখলে আছে। দীল মোহাম্মদ ইং ৬৫ সালের দিকে নালিশী জমিতে আছে। দীল মোহাম্মদ নালিশী জমিতে কিছু অংশ এখনও দখল করে। ডোবার মধ্যে দীল মোহাম্মদ দখলভোগ করে। নালিশী জমিতে মজিদ সরদারের বাড়ী আছে আর জনৈক হাজী সাহেবের ‘স’ মিল আছে। বাড়ীর সাথে নালিশী জমির মধ্যে নতুন ৩টা ছোট বাড়ী আছে এবং পরে পুরোনো বাড়ী আছে।” PW 4 Taleb Ali stated, “জমি বর্তমানে বাদীরা ভোগ দখল করে। উক্ত জমি সরকার পক্ষে কেহ দখল করেনা।” -----। “রিফুজীর সেখানে ৮/১০ ঘর ছিল। কমর উদ্দিন সর্দার রিফুজীরা চলে যাওয়ার পরে সব সময়ে আসতেন ও দেখাশুনা করতেন। ডোবার পূর্বে জসীম উদ্দিন পাশ্চিমে মজিদ সরদার দখল করে।” On scanning the aforesaid oral evidence of witnesses it is found that Md. Farid and Anoara, the auction purchasers were in possession of the suit land and after their transfer Kamar Uddin, Dil Mohammad and Abdul Rouf purchased the suit land through exhibits- 6 and 8 and subsequent purchases got the suit land from them and they are in possession of the same. On the other hand defendant 1 Abdul Latif, an officer of Bangladesh Jute Corporation, Badubari, Dinajpur in his evidence sated, “বাদীদের দাখিলী কাগজপত্র সঠিক আছে। -----। নালিশী জমি শত্রু সম্পত্তি ছিল মর্মে কোন ফাইল আমি সংগে আনি নাই। -----। নালিশী জমিতে আমাদের পজিশন নেওয়ার ব্যাপারে কোন কাগজ তদসম্পর্কে নাই। -----। নালিশী জমিতে আমাদের ফিজিকাল দখল নাই। নালিশী জমি দখল হয়তো বাদী ঘর করে ভোগ দখল

করে তবে তাহা আমার জানা নাই। নালিশী জমিতে আমাদের স্বত্ব ছিল না জন্য ৮৭/৬৬ নং অন্য মোকদ্দমায় পক্ষ করে নাই তাহা আমার জানা নাই।” This witness produced a gazette notification of the then Pakistan Government exhibit-‘Ka’ but in cross examination he stated, “উক্ত নোটিফিকেশন কোন দাগ নম্বর, নকশা মৌজা কিছুই উল্লেখ নাই।” The aforesaid evidence of DW 1 in support of exhibit-‘Ka’ gazette notification proves that it does not disclose the identity of the suit property or that it was gazetted as enemy property. We have perused exhibit-Ka the gazette notification as to the identity of the suit land for our satisfaction but we find that it does not bear any plot number, khatian number, Naksha or Mouja number in respect of the land of Chopra and others. Therefore, the gazette notification exhibit-Ka does not attract the suit land.

It is further found that earlier the Deputy Commissioner, Dinajpur defendant 4 in this suit went in the suit premises to sell it into auction on 13.04.1966. Then the plaintiffs predecessors instituted Other Class Suit 47 of 1966 in Court of the then Munsif, Court 1, Dinajpur for permanent injunction which was dismissed. But Other Class Appeal 34 of 1969 against it was allowed on 08.12.1969 by then District Judge, Dinajpur and the defendant Deputy Commissioner was restrained by an order of permanent injunction from interfering with the possession of the suit land (exhibit-5). If any property is declared as enemy property its management and control vests upon the Deputy Commissioner of the concerned District who subsequently can authorize any organization

or body corporate for its management. Here, since there is a decree of permanent injunction against the Deputy Commissioner, defendant 4 in this suit through exhibit- 5, therefore, there could be no reason of enlistment of the property as enemy property.

This is a suit for declaration of title and the plaintiffs claimed that by the act of the defendants their title has been clouded and as such they instituted the suit. In the suit for declaration of title, the possession of the parties is important. Here the plaintiffs by evidence both oral and documentary as discussed above proved their title and possession in the suit land. The Government took rent from the plaintiffs in respect of the suit land, now they cannot deny their title by making a unfounded case. It is now well settle by our apex Court in numerous cases that rent receipts are evidence of possession and may be used as collateral evidence of title. The plaintiff are found in possession through valid documents and evidence of the parties supports it, therefore, the possession must follow title.

In view of the discussion made hereinabove, we find that the trial Court misdirected and misconstrued in its approached of the matter in assessing the evidence of the parties both oral and documentary and dismissed the suit. The findings and decision taken by the trial Court is found not based on materials on record.

Therefore, we find merit in this appeal. Accordingly the appeal is allowed. No order as to costs. The judgment and decree passed by the trial Court is hereby set aside and the suit be decreed.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J:

I agree.

Rajib