

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Appeal No. 15 of 2017**

**In the matter of:**

Mrs. Bilkis, wife of late Dulal Miah and others.  
... Appellants

-Versus-

Land Reforms Board, Courts of Wards, Ministry  
of Land represented by its Manager of 141-143  
Motijheel, C/A, Dhaka and others.  
... Respondents.

Mr. Mohammad Kamrul Hasan, Advocate  
... For the appellants

Mr. Tassadder Raihan Khan, Advocate  
... For the respondent no. 1

**Heard on 15.08.2024, 22.08.2024,  
31.10.2024 and 07.11.2024.  
Judgment on 13.11.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

At the instance of the plaintiffs in Title Suit No. 876 of 2013, this appeal is directed against the judgment and decree dated 23.08.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka in the said suit dismissing the same holding that, the plaintiffs have failed to prove their title and possession in the suit property.

In a nutshell, the case of the plaintiffs-appellants is that the predecessor of the plaintiffs namely, Entaz Ali, Abdul Jobbar, Robi Ullah, Abdul Hamid and Javed Ali got the suit property measuring an area of 3.06 acres of land by way of *pattan* appertaining to C.S Plot No. 3306 and that of 1.13 acres of land of C.S. Plot No. 3305 and accordingly, a khatian namely, B/1060 was prepared in their name. During the course of preparation of S.A. record, it was also prepared in the name of Entaz Ali and another and accordingly, each of the S.A. recorded tenant got 0.8380 acres of land. While they had been in possession one, Robi Ullah died leaving behind 5 sons and 5 daughters. After getting the property as of descendents of Robi Ullah, they then started enjoying their title and possession over their inherited land through amicable partition. Subsequently, 5 (five) daughters of Robi Ullah transferred their portion of land by way of oral gift in favour of their 5 full-brothers and accordingly R.S. record was prepared in the name of those 5 full-brothers in R.S. Plot No. 10107. Subsequently, while Md. Nurul Islam, Md. Dulal Miah had been enjoying title and possession over the property died leaving behind plaintiff nos. 1-5. But when the City Survey (সিটি জরিপ) came into operation, as the predecessor of the plaintiff no. 1, Md. Dulal Miah died, he could not remain present at the time of City Survey and accordingly, City Survey in respect of the suit land was wrongly prepared in the name of the defendant no. 1. The plaintiff no. 2 on 01.07.2013 went to the respective land office to pay the land development tax (খাজনা) and showed R.S. record when the respective official at the office disclosed that, the land development tax could not be taken on the basis of S.A. and R.S. record as the latest City

Survey had not been prepared in the name of the plaintiffs. Then upon due search, the said plaintiff came to learn that the City Survey has been prepared in the name of the defendant no. 1 and upon obtaining respective *porcha* (পর্চা) of the disputed record he then apprised of the wrong recording and hence filed the suit for declaration of title in the suit property and that of declaration that the City Survey in respect of the suit land prepared in the name of the defendant no. 1 is illegal, inoperative and not binding upon the plaintiffs.

On the contrary, the present respondent no. 1, namely, Land Reforms Board, Courts of Wards, Ministry of Land represented by its Manager as defendant no. 1 contested the suit by filing written statement denying all the material averments so made in the plaint contending *inter alia* that, the land measuring an area of 4.19 acres of land of C.S. Khatian No. 646 comprising C.S. Plot Nos. 3306 and 3305 originally belonged to one, Kumar Robindra Narayan Roy Chowdhury and others whose favour the property was being enjoyed by the then Courts of Wards that is, Bhawal Raj Estate. After the demise of Kumar Robindar Narayan Roy Chowdhury, his three sons, Norendra Narayan Roy Chowdhury, Romendra Narayan Roy Chowdhury and Robindra Narayan Roy Chowdhury inherited the said property left by their father. Subsequently, the suit property was being possessed and supervised by the Courts of Wards and accordingly, C.S. record was prepared in its name and subsequently, its ownership was devolved upon the Board of Revenue. It has further been stated that, no authority has been bestowed to anybody else to transfer the suit property in favour of the predecessor of the plaintiffs and the said property has since

been owned and possessed by the Board of Revenue for the Courts of Wards and when the City Survey came into operation, it was accordingly recorded in the name of the Courts of Wards vis-à-vis defendant no. 1 finding it in possession and the same was leased out to the lessees who has now been enjoying title and possession over the same. Lastly, it has been asserted that, the plaintiffs have got no title and possession over the same rather the defendant has been enjoying title and possession over the suit property and the suit is liable to be dismissed.

Likewise, the defendant nos. 6 and 7 also filed a joint written statement denying all the material averments so made in the plaint contending *inter alia* that, the suit is not maintainable in its present form and the same is bad for defects of party as the plaintiffs have got no title and possession over the suit property and it is liable to be dismissed.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 4(four) different issues and the plaintiffs in support of their case examined two witnesses and produced several documents which were marked as exhibit nos. 1-8. On the contrary, the defendant no. 1 examined one witness but no document was produced.

After taking into consideration of the materials and evidence on record, the learned Joint District Judge, 2<sup>nd</sup> court, Dhaka by his judgment and decree dated 23.08.2016 dismissed the suit.

It is at that stage, the plaintiffs came before this court and preferred this appeal.

Mr. Mohammad Kamrul Hasan, the learned counsel appearing for the appellants upon taking us through the memorandum of appeal and all

the documents appeared in the paper book at the very outset submits that, the learned Judge of the trial court erred in law in not considering the facts that, the plaintiffs have been enjoying title and possession over the suit property measuring an area of 16.76 acres of land on mutating their name in the record-of-right and by paying rent to the respective office and the DCR, S.A mutation khatian and all other relevant documents have been prepared in their name which is the proof of enjoying title and possession by the plaintiffs in the suit property but without considering such material aspect, the learned Judge has very whimsically dismissed the suit.

The learned counsel further contends that, since C.S., S.A. and R.S Khatian in respect of the suit land was prepared in the name of the predecessor of the plaintiffs and that of the plaintiffs but only for non-appearance at the time of holding City Survey, it was wrongly prepared in the name of the government but it does not *ipso facto* prove that the plaintiffs have got no title and possession over the suit property and therefore, the learned Judge has erred in law in dismissing the suit without considering the consecutive record of rights in the name of the predecessor of the plaintiffs.

The learned counsel by referring to the judgment also submits that, since the plaintiffs adduced two witnesses as well as produced several documents which were also marked exhibit nos. 1-8 but without considering those title documents, the learned Judge passed the impugned judgment and decree in a very perfunctory manner and therefore, the said judgment cannot be sustained.

The learned counsel by referring to the relevant documents annexed with the application for taking those as additional evidence also submits that, for the inadvertent mistake of the plaintiffs' lawyer in the lower court, those vital documents could not be produced and had those documents produced, the judgment would have been otherwise, yet this Hon'ble court under section 107 of the Code of Civil Procedure has got every authority to consider those documents as additional evidence and therefore, the judgment and decree of dismissal cannot be sustained in law.

When we pose a question to the learned counsel on the point of maintainability of the suit on the back of the provision provided in section 145A of the State Acquisition and Tenancy Act, 1950, the learned counsel then contends that, since the suit has not only been filed for correction of the latest City Survey record rather for declaration of title in the suit property so the suit itself is well-maintainable and the learned Judge of the trial court while framing issue to that respect has found the issue of maintainability in favour of the plaintiffs having no scope to reopen the point of maintainability before this Hon'ble court as appellate court and finally prays for allowing the appeal by setting aside the impugned judgment and decree.

Conversely, Mr. Tassadder Raihan Khan, the learned counsel appearing for the respondent no. 1 opposes the contention taken by the learned counsel for the appellants and submits that, the learned Judge of the trial court has rightly passed the impugned judgment by dismissing the suit having no reason to interfere with the same by this Hon'ble court. The learned counsel then contends that, though the plaintiffs claimed the suit

property to have obtained from the C.S. recorded tenant by way of *pattan* but since that very *pattan* has not been proved by any bilateral document and therefore, the learned Judge has rightly passed the impugned judgment dismissing the suit.

The learned counsel further contends that the chain of acquiring title by the defendant and that of the plaintiffs are totally different as it has been found by the learned Judge of the trial court below that the C.S. record has not been prepared in the name of the predecessor of the plaintiffs rather the record has been prepared in the name of the predecessor of the defendant and since the property belongs to the government finding the same to have recorded in the name of Courts of Wards so there has been no scope for the plaintiffs to claim the same as their own property and the learned Judge has rightly passed the impugned judgment.

When we pose a question to the learned counsel for the respondent no. 1 with regard to maintainability of the suit in view of the statutory provision as has been provided in section 145A of chapter XVIIA of the State Acquisition and Tenancy Act, 1950, the learned counsel finds it difficult to say anything about it in spite of taking several adjournments to that effect though finally prays for dismissing the appeal.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellants and that of the respondent no. 1 at length. We have also gone through the impugned judgment and decree.

At the first instance, we would like to confine our discussion and observation keeping ourselves within the ambit of the provision of law guided in that respect especially the provision provided in section 145A of

the State Acquisition and Tenancy Act and relevant provision which has been inserted in the State Acquisition and Tenancy Act incorporating a separate chapter being no. XVIIA by Act No. 09 of 2004.

It would be expedient if we reproduce the provision provided in section 145A of the State Acquisition and Tenancy Act which runs as follows:

“145A. (1) The Government may, by notification in the official Gazette, establish as many Land Survey Tribunals as may be required to dispose of the suits arising out of the final publication of the last revised record-of-rights prepared under section 144.

(2) The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Tribunal.

(3) The Government shall, in consultation with the Supreme Court, appoint the judge of the Land Survey Tribunal from among persons who are Joint District Judges.

<sup>2</sup>[(3A) Until such judge is appointed under sub-section (3), the Government may empower a Joint District Judge in each district as the judge of the Land Survey Tribunal of the district.

(3B) The Joint District Judge empowered under sub-section (3A) shall be deemed to be the judge of the Land Survey Tribunal appointed under sub-section (3).



(3C) The Government may, if necessary, appoint one or more Senior Assistant judge or Assistant Judge as a judge of the Land Survey Tribunal to dispose of the suits transferred by the judge of the Land Survey Tribunal appointed or empowered under this section.]

(4) No suit other than the suits arising out of the final publication of the last revised record of rights prepared under section 144 shall lie in the Land Survey Tribunal.

(5) If any suit arising out of the final publication of the last revised record-of-rights prepared under section 144 is instituted in any civil court before the establishment of the Land Survey Tribunal under this section, such suit shall stand transferred to the Tribunal as soon as it is established.

(6) Subject to the provision of sub-section (7), any person aggrieved by the final publication of the last revised record-of-rights prepared under section 144 may, within one year from the date of such publication or from the date of the establishment of the Land Survey Tribunal, whichever is later, file a suit in such Tribunal.

(7) A suit may be admitted within next one year after the expiry of the period specified in sub-section (6), if the Land Survey Tribunal is satisfied with the reasons for delay shown by the plaintiff.

<sup>3</sup>[(7A) The Land Survey Tribunal shall conclude the trial of a suit within 180 (one hundred and eighty) days from the date fixed for its final hearing.]

(8) The Tribunal shall be competent to declare the impugned record-of-rights to be incorrect and further direct the concerned office to correct the record-of-rights in accordance with its decision, and may also pass such other order as may be necessary.”

On going through the provision of section 145A (4) of the State Acquisition of Tenancy Act, we find that, challenging the propriety of the latest record be it City Survey prepared in City Corporation area and other than in the City Corporation termed as B.S record no suit shall lie in an ordinary civil court and for that obvious reason, the very word ‘shall’ has been inserted in that sub-section (4).

Furthermore, in section 145F of the Act, it also put a clear bar to entertain any suit in any civil court arising out of the final publication of the last revised record-of-rights prepared under section 144 of the Act in view of establishing Land Survey Tribunal under section 145A of the Act so for having such legal bar, no civil suit under the disguise of declaration of title ostensibly challenging the latest record can be entertained.

Further, section 145H of the State Acquisition and Tenancy Act also postulates a non-obstante clause as well stating “*Notwithstanding anything contained to the contrary, in this Act or any other law for the time being in force the provisions of the Chapter, shall prevail*”. In all those provisions,

the word 'shall' has been inserted making its compliance mandatory having no scope to override those provisions.

At this, the learned counsel for the appellant has very strenuously submits that, since the plaintiffs have not only challenged the propriety of the latest record rather they also prayed for declaration of title taking resort to the provision of section 42 of the Specific Relief Act, so the suit itself is well-maintainable. But that very submission does not stand since the plaintiffs sought remedy to correct the latest record namely, City Survey so until and unless, it is rectified through a proper legal forum no declaration of title in their favour can be passed where an ordinary civil court assumes no authority to declare title in favour of an aggrieved party even if, evidence is led favouring plaintiffs' title to that effect. That said, in the four corner of plaint, we also don't find any explanation as to what prevented the plaintiffs to seek remedy before the Land Survey Tribunal as per section 145A(6) and (7) of the Act. So no court of law other than Land Survey Tribunal can entertain a suit that actually challenges last revised record else, the very objective of legislating the provision incorporated in Chapter XVIIIA in the State Acquisition of Tenancy Act will be redundant one.

At the fag-end of the submission, the learned counsel for the appellants contends that, if this Hon'ble court ultimately finds that the suit is not maintainable and the appeal dismissed in that event, the documents so submitted with the application praying for taking additional evidence dated 12.11.2017 may be allowed to take back, so that the appellants can produce in the proper forum. Since that very application for taking

additional evidence has been kept on record vide order dated 14.02.2022, so we assume, a formal order is required to be passed to that end so that the appellants could take back the original copies annexed with the application by replacing the same with the photocopies duly attested by the learned counsel. Anyway, the submission has got substance and the learned counsel for the appellants is permitted to take back all the original documents annexed with the application filed on 12.11.2017 for taking additional evidence by replacing the same with photocopies duly attested by him.

Given the above legal aspect, we don't find any substance to entertain the appeal. In any event, we are of the view that, under the provision of sections 145A, 145F and 145H of chapter XVIIA of the Act clearly put legal bar to file the suit by the plaintiffs challenging the latest record in ordinary civil court which is not maintainable.

In the result, the appeal is dismissed however without any order as to costs.

Let a copy of this judgment along with the lower court records be transmitted to the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka forthwith.

**Md. Bashir Ullah, J.**

I agree.