

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.96 of 2016

Managing Director, Khadimnagar Tea Estate (Nina
Industries)

... Appellant

-Versus-

Anwar Hussain being dead his legal heirs- Hussain Md.
Anwar Adnan and others

... Respondents

Mr. Mustaque Ahmed Chowdhury with

Mr. Shah Muhammad Ezaz Rahman,

Mr. Khaondaker Nazmul Ahsan, Advocates

... For the appellants.

Mr. Dider Alam Kollol, Advocate

....For the Respondent Nos.2-3,

5-9 and 11-12.

Heard and Judgment on 03.02.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 04.05.2011 passed by the learned Joint District Judge, Additional Court, Sylhet in Title Suit No.112 of 2007 decreeing the suit ex-parte against the defendants without costs.

Facts in short are that the respondent as plaintiff instituted above suit for declaration of title for 17.12 acres land as described in the schedule to the plaint alleging that above property belonged to Mohan Ray and others which was sold in auction for recovery of outstanding rent in 1903-1904 and purchased by Shafiqul Islam Chowdhury and his two brothers Nazrul Islam Chowdhury and Ziaul above auction sale was confirmed by the Court in April, 1904. Above auction purchasers transferred above property to defendant No.2 and plaintiffs purchased the same from defendant No.2. But above property was erroneously recorded in the name of defendant No.1 and on the basis of above erroneous record defendants denied plaintiff's title in above property.

Defendant No.3 submitted a written statement claiming that Shafiqul Hoque Chowdhury and others transferred above property to defendant No.2 and defendant No.3 as the successive heirs of above Shafiqul Hoque Chowdhury and others is in possession in above property. But defendant No.3 did not examine any witness in support of above written statement nor cross examined the witnesses examined by the plaintiff. The plaintiffs submitted a petition under Order 1 Rule 10 of the Code of Civil Procedure on 09.03.2010 for addition of the appellant as a defendant in above suit alleging that above defendant has purchased all interest of defendant No.1 in above property. The learned Joint District Judge on consideration of submission of the learned Advocate for the plaintiffs allowed above petition and

impleaded the appellant as defendant No.4 vide order No.43 on 18.01.2011. Since above defendant did not enter appearance and contest above suit the learned Joint District Judge decreed above suit ex-parte on 11.05.2011.

Being aggrieved by and dissatisfied with above ex-parte judgment and decree defendant No.4 as appellant moved to this Court and preferred this First Appeal.

Mr. Mustaque Ahmed Chowdhury, learned Advocate for the appellant submits that the plaintiff did not implead the appellant as a defendant at the time of filing of above suit. The appellant was impleaded as defendant No.4 on the basis of a petition under Order 1 Rule 10 of the Code of Civil Procedure dated 09.03.2010 alleging that the appellant has purchased all interest of defendant No.1. The learned Joint District Judge allowed above petition and impleaded the appellant as defendant No.4 but the learned Judge did not pass an order for issuance of summons upon defendant No.4. In fact in above suit no process was issued and served upon defendant No.4 and impugned judgment and decree was passed behind his back without giving him an opportunity of being heard.

On the other hand Mr. Dider Alam Kollol, learned Advocate for the respondent Nos.2-3, 5-9 and 11-12 submits that on consideration of facts and circumstances of the case and materials on record the learned

Joint District Judge has rightly decreed above suit ex-parte which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the respondent as plaintiff instituted above suit on 24.08.2005 for declaration of title for 18.03 acres land but the appellant was not impleaded as a defendant. The plaintiff filed a petition under Order 1 Rule 10 of the Code of Civil Procedure on 09.03.2010 for addition of the appellant as a defendant alleging that the defendant has acquired all interests of defendant No.1 in above property. The learned Joint District Judge allowed above petition and added the appellant as defendant No.4. But it turns out from the record that the learned Joint District Judge did not pass an order directing the plaintiff to put in requisites for issuance of process against the added defendant. The learned Advocate for the respondents took much pains to show us from the record that the plaintiff submitted of requisites and process was issued upon defendant No.4 but he was unable to find out anything.

We have carefully examined the order sheet of above suit and surprisingly discovered that the learned Judge did not direct the plaintiffs to put in requisites for service of process upon the defendant No.4 nor any process was issued upon above defendant. Above defendant was not given an opportunity to appear in above suit and

contest the claim of the plaintiff. As such the impugned judgment and decree which was passed ex-parte against defendant No.4 was vitiated by fraud. The learned Joint District Judge utterly failed to appreciate above materials on record and most illegally held that the process was lawfully served upon the defendants and on the basis of above erroneous perception decreed above suit ex-parte against above defendant No.4 which is not tenable in law.

On consideration of above facts and circumstance of the case and evidence on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving defendant No.4 an opportunity to file written statement and adduce evidence.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 04.05.2011 passed by the learned Joint District Judge, Additional Court, Sylhet in Title Suit No.112 of 2007 is set aside and above suit is remanded to the trial Court for retrial after giving defendant No.4 an opportunity to file written statement and adduce evidence.

The learned Joint District Judge is directed to dispose up above suit in accordance with law within a period of 6(six) months from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER