

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice A.K.M. Rabiul Hassan

First Appeal No. 171 of 2017

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Aradhan Mandol and others

.....Defendant-appellants.

-Versus-

Dhananjoy Sarker and others

.....Plaintiff-respondents.

Mr. Ashim Kumar Mollik, Advocate

..... For the appellants.

Mr. Md. Abu Hanif, Advocate

.....For the Respondents

Heard on 17.08.2026 and

Judgment on 06.09.2026.

Sheikh Abdul Awal, J:

This First Appeal at instance of the defendant Aradhan Mandol and 2 others as appellants is directed against the judgment and decree dated 27.02.2017 (decree signed on 06.03.2017) passed by the learned Joint District Judge, 2nd

Court, Manikgonj in Title Suit No. 459 of 2012 decreeing the suit.

Facts of the case, briefly, are that the Plaintiffs as Respondents instituted Title Suit no. 459 of 2012 before the learned Joint District Judge, 2nd court, Manikgonj praying a decree for declaration of title and correction of SA and RS records of the suit land against the defendant-appellants. The plaintiffs' case in brief is that the suit property situated at mouza-Horogoz, police station- Shaturia, district-Manikgonj was owned and possessed by Shyamcharan and Ramcharan in whose names the CS Khatian no. 459 was duly prepared and published. Shyamcharan and Ramcharan transferred the suit land to their step-brother namely Sreeman Raimohon Nomodas by gift deed No.1883 dated 10.03.1927 and handed over possession of the same to the donee. Thereafter the suit land were recorded in the Petty Khatian nos. 619 and 1848 in the names of Shyamcharan and Ramcharan admitting the gift made to Raimohon as written in the possession column. Sreeman Raimohon Nomodas died leaving his son Sribash Nomodas as heir, who became owner and possessor of the suit land. Sribash Nomodas transferred some land measuring 30 decimals to some defendants and until his death he was the owner and actual possessor of the suit land. Thereafter, Sribash Nomodas died leaving his 3 sons (Plaintiffs) as his heirs became owner and possessor of the suit land in place of their deceased father. In the first half of the month of Kartik, 1419 B.S., while conducting inquiries to facilitate the mutation and separation of shares in their own names, the plaintiffs obtained certified copy of the S.A. and R.S. khatian (records of rights) and discovered that those khatians were erroneously

prepared in the names of the defendants' predecessors. As the said records cast a cloud over the plaintiffs' title, they filed the suit to rectify the matter.

There are eight defendants in the suit, only defendant Nos. 1-3 have filed written statements. The essence of the written statements filed by defendant Nos. 1-3 is that the plaintiff's suit lacks a cause of action, which is not maintainable in its present form and manner, the suit is bad for defect of parties and barred by the law of limitation. In the suit-related C.S. Khatian No. 459, Shyamcharan and Ramcharan, the owners and possessors of a one-third share; upon the death of Ramcharan, his son Pagal Chan survived as his heir, who sold out 96.5 decimal to Gopal Mondol from Plot no. 14074. Gopal Mondol sold out 42 decimal to Mohammad Ali and Narayan from Plot nos. 14729 and 14733. Mohammad Ali and Narayan sold out 24 decimal to Gopal Mondol. Gopal Mondol was the only heir of Shyamcharan. The rest property was duly recorded in the name of Gopal Mondol in the SA and RS records. The defendant nos. 1-3 are the heirs of Gopal Mondol, they have been in continuous possession and occupation. The present suit, filed after 70 years based on a collusive, fabricated, and inoperative gift deed No. 1883 dated 10.03.1927. The predecessors of the plaintiffs never claimed the suit land as their own. The plaintiffs possess neither title nor possession regarding the suit land; therefore, the defendants seek the dismissal of the suit.

At the trial the learned Joint District Judge on the pleadings of the parties framed the following issues for determination:-

- I) Whether the case is maintainable its proper form and manner?
- II) Whether the case is barred by limitation.
- III) Whether the plaintiff has/had title in the suit land?
- IV) Whether the plaintiff is entitled to get a decree as prayed for?

It is found that the plaintiff side examined 3 witnesses also exhibited some documents to prove their cases but the defendants examined none.

The learned Joint District Judge, 1st Court, upon hearing the parties by his judgment and decree dated 27.02.2017 (decree signed on 06.03.2017) passed in Title Suit No. 459 of 2012 decreed the suit.

Being aggrieved by the aforesaid impugned judgment and decree dated 27.02.2017, the defendants Aradhan Mandol and 2 others as appellants preferred this First Appeal.

Mr. Ashim Kumar Mallik, the learned Advocate appearing for the defendant-appellants in the course of argument takes us through the plaint and written statement of the suit, evidence of PWs and other materials on record including the impugned judgment and then submits that in the case the plaintiffs examined three witnesses and submitted the C.S, S.A, R.S., and two other petty khatians (records of rights) regarding the disputed land recorded in the names of Shyamcharan and Ramcharan and certified copy of a deed of gift dated 10/03/1927(Exhibits 1-Series and 2). He adds that the contesting defendants (Nos. 1–3) were unable to adduce any oral testimony due to their various difficulties and it is on record that

the plaintiffs failed to prove the case set forth in the plaint through either documentary or oral evidence and the learned trial court below decreed the suit in favor of the plaintiffs by the impugned judgment and decree dated 27/02/2017 mainly on the ground that the defendants did not examine any witness to prove their case. The learned Advocate further submits that the disputed deed of gift as claimed to date back to 1927, the plaintiffs first contemplated mutation or the payment of land revenue in 2012 (Bangla year 1419). They do not possess the original copy of the deed; furthermore, the certified copy submitted as 'Exhibit 2' was obtained on 01/03/2016—long after the suit was filed and a full century after the said deed's creation—meaning no cause of action has been established for the suit although the learned trial court committed an error in decreeing the suit *ex parte* while also declaring that the R.S. Khatian is not binding upon the plaintiffs.

Finally the learned Advocate submits that the plaintiffs must prove their own case to obtain a decree. In this suit, the plaintiffs have completely failed to substantiate their claim. During cross-examination, PW-2 and PW-3 admitted that they were not present when the deed was executed and they have no idea or actual knowledge regarding its execution. The plaintiffs' suit relates 160 decimals of land as per plaint but the witnesses stated that the plaintiffs are in possession over 192 decimals and thus, it is as clear as daylight that they gave false testimony relating to land in dispute but the learned trial court below erroneously held that the plaintiff's case stood proved simply because the defendant failed to adduce evidence giving a go-by to well settled principle that the plaintiffs must duly prove their

own case to obtain a decree. The plaintiffs cannot secure a decree merely by relying on the defendant's weakness. Ref. 39 DLR (AD) 237 and as such, the impugned judgment and decree dated 27.02.2017 (decree signed on 06.03.2017) passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No. 459 of 2012 decreeing the suit is liable to be set aside.

Mr. Md. Abu Hanif, the learned advocate appearing for the plaintiff-respondents, on the other hand, submits that the plaintiffs-respondents are the legal owners and actual possessors of the suit land, who have succeeded to prove their case by adducing proper documentary and oral evidences before the learned trial court, the defendant appellants have miserably failed to adduce any documentary or oral evidences before the trial court in support of their claim as they have stated in their written statement in respect of the correctness of the SA and RS record. He next submits that the plaintiff-respondents have claimed the suit land mainly on the basis of registered gift deed no. 1883 dated 10.03.1927 and as per law a registered deed prevails over khatians and that the learned judge of the trial court on examining the materials on records rightly held that the plaintiffs have been able to prove their right, title and possession in the suit land and accordingly decreed the suit. Lastly the learned Advocate submits that the plaintiff-appellants made an application dated 25.05.2016 before the learned Trial Court for calling for the volume of the said registered gift deed No. 1883 dated 10.03.1927 and the same was called for and on 19.07.2016 the learned Trial Court found the authenticity of the said gift deed and thereupon, the Trial Court justly decreed the suit.

Having heard the learned Advocates for the respective parties and having gone through the materials on record including the impugned judgment and decree.

Now, to justify the impugned judgment dated 23.01.2020, let us advert to the evidence of PWS, Exhibits and impugned judgment and decree dated 27.02.2017 as well.

We have already noticed that in this case plaintiffs examined 3 witnesses also exhibited some documents to prove their case but the contesting defendant Nos. 1-3) did not adduce any oral testimony although they submitted written statements and cross examined the PWs.

Let us now advert to the evidence of PWs. The PW-1, Anando Namodas testified that he is plaintiff No. 3 and other plaintiffs are his brothers and nephews, they got the suit land by inheritance. This witness also testified that- “নালিশী নালিশী ভূমিতে আমরা পৈত্রিক ওয়ারিশ মূলে প্রাপ্ত হয়ে ৪৬ ডিং ভূমি ১-৩ নং বিবাদীকে মৌখিক এওয়াজ দিয়ে তৎ পরিবর্তে আর এস ১১৬০ দাগ হতে ৪৬ ডিং ভূমি আমাদেরকে দখল দেয়। এই জমির দখল দিলেও স্বত্ত্ব আমাদের রয়েছে। আমরা নালিশী জমির নামজারী করতে গিয়ে জানতে পারি যে, নালিশী ভূমির এস, এ ও আর এস খতিয়ান শ্যাম চরন ও রাম চরন এর নামেই রয়ে গেছে। তাই মামলা করেছি।” This witness in his cross examination stated that- “সাবেক সাবেক ও আর এস ৪টি দাগ নিয়ে মামলা করেছি। আর এস খতিয়ান নং বলতে পারব না। ৪৮৪০ দাগে ৮৪ ডিং ৫৬৫৯ দাগে ৪৮ ডিং জমি। আমার বয়স ৪০। ১৯২৭ সনের দানপত্র দলিল বিষয়ে আমার ব্যক্তিগত জ্ঞান নাই।” This witness in his cross examination denied the suggestion that the deed of gift was not acted upon and they have/had no possession in the suit land.

PW-2, Upendro Biswas stated in his evidence that- “আমি এই মামলার বাদী বিবাদী ও নালিশী জমি চিনি। নালিশী জমি ১৯২ ডিং বাদীরা দখল করেন। রামচরন ও শ্যাম চরন নালিশী জমি রাই মোহন কে দান করে দখল দেয়। রাম চরন ও শ্যাম চরনের ওয়ারিশনার দানের পর থেকে আর নালিশী জমি দখল করে না।” This witness in his cross examination stated that- “১৯২ ডিং জমি নিয়ে মামলা। দাগ কয়টি বলতে পারব না খতিয়ান নং বলতে পারব না। শ্যাম চরনের পুত্র গোপাল। গোপালের পুত্র ও-৩ নং বিবাদী। বাদীদের নাম বা তাদের পূর্ববর্তীদের নামে রেকর্ড না হওয়ায় তারা মামলা করেছে। সত্য নয় যে, 1927 সনের দলিল জাল কিং বাদীরা নালিশী জমি দখল করেন না। বাদী সাক্ষীর নোটিশ দিয়েছে। বিবাদীরা নালিশী জমি দখল করে তা সত্য নয়। This witness in his cross examination admitted that- **নালিশী জমির সাথে আমার কোন জায়গা জমি নাই। কি নালিশী জমি চিনিনা**”

PW-3, Nibaron Sarker stated in his evidence that- “আমি এই মামলার বাদী বিবাদী ও নালিশী জমি চিনি। রামচরন ও শ্যাম চরন নালিশী ৬ বিঘা জমি রাই মোহনের বিয়ের সময় তাকে দান পত্র করেন। এখন রাইমোহনের ওয়ারিশর বাদীরা নালিশী জমি দখল করেন।”. This witness in his cross examination stated that- “আমি ১৯২৭ সনের দলিলের সময় উপস্থিত ছিলাম না তবে রাইমোহনকে দানমূলে দখল করতে দেখেছি। সত্য নয় যে, রাইমোহনকে রামচরন গং দান পত্র করেন নি। বিবাদীরা শ্যামচরনের ওয়ারিশ। নালিশী জমি থেকে ২/২২ বিঘাজমি দূরে আমার বাড়ী। রেকর্ড ভুল হয়েছে তাই বাদীরা মামলা করেছে। সত্য নয় যে, দানপত্র দলিল মূলে রাইমোহন নালিশী জমির দখল”.

On a close perusal of the evidence of PWs both oral and documentary, we find no clear evidence of title of the plaintiffs in the suit land inasmuch as the PW-1 has exhibited a certified copy of the deed of gift being No. 1883, dated 10/03/1927 as

Exhibit-2, which was obtained on 01/03/2016, long after the suit was filed. The three (3) primary conditions of a deed of gift are offer, acceptance, and the transfer of possession. A perusal of the said Deed No. 1883 (Exhibit-2) reveals no mention of the donee having accepted the gift, nor is there any reference to the delivery of possession. Moreover, neither the plaintiff's grandfather Raimohan Namdas, nor their father Sribas Namdas, nor the plaintiffs themselves have ever paid any taxes or land revenue in the last 100 (hundred) years, which suggests that the disputed Deed No. 1883 dated 10/03/1927 did not become legally operative. It is also found the plaintiffs exhibited document exhibit-1 series being C.S. khatian, R. S. khatian and 2 petty/ tiny khatian also recorded in the name of the predecessors of the defendants.

In a suit for declaration of title, it is the prime duty of the plaintiffs to prove their absolute possession and right over the suit land and it is on record that the plaintiffs have filed the suit claiming 160 decimals of land across seven plots. PW-1 (Plaintiff No. 3) stated in his evidence that the plaintiffs filed the suit regarding 4 (four) plots, who also deposed that I cannot state the R.S. Khatian number. Conversely, PW-2 and PW-3 have claimed that the plaintiffs are in possession of 192 decimals of land which creates a doubt as to the plaintiffs' case. Further, the plaintiffs claimed an exchange of properties by way of Ewaj-badal but failed to submit any deed of exchange before the court. In a legal dispute, if the plaintiffs claim ownership or rights based on an exchange of property through ewaj-badal (an oral or written exchange deed) but they fail to submit any formal deed

of exchange before the court is generally fatal to the plaintiffs' claim of ownership.

There is another aspect of the matter to which we think the attention of the trial Court ought to have been drawn. The disputed deed of gift is claimed to date back to 1927, the plaintiffs' first contemplated mutation or the payment of land revenue in 2012 (Bangla year 1419). The plaintiffs failed to produce the original copy of the deed. The certified copy submitted as 'Exhibit 2' was obtained on 01/03/2016 long after the suit was filed and a full century after the deed's creation, meaning actually no cause of action has been established for the suit. In the facts of the case and for the reasons stated above, we are clearly of the opinion that the learned trial Judge acted illegally in holding the plaintiffs have been succeeded to prove their suit, while also declaring that the R.S. Khatian is not binding upon the plaintiffs.

A plaintiff cannot establish title or long-term possession in a suit property without producing rent receipts, revenue records, or other tangible documentary evidence.

Legal Principles on Possession and Evidence.

Burden of Proof: The plaintiff must prove their own case and cannot succeed merely on the weaknesses or defects of the defendant's case.

Value of Rent Receipts: Rent receipts and revenue records (such as *dakhilas*) alone do not automatically create title, but the complete absence of rent receipts or documents of title makes claims of long-term tenancy or lawful possession very weak.

To substantiate claims of possession spanning decades or generations. Without supporting documents, oral claims alone are generally insufficient.

In this case, we have already indicated that the plaintiffs could not produce /exhibit any type of rent receipts and revenue records (such as dakhilas), mutation khatian, ordinal copy of the deed to prove their hundred years possession and title in the suit land. Moreover, PWs inconsistently deposed before the trial court. Further, it is on record the plaintiffs' exhibited documents namely, R.S and S.A khatians are recorded in the name of defendants predecessor. Therefore, we find no difficulty whatever in holding that the trial court below was plainly wrong in decreeing the suit on the ground that the plaintiffs' suit is well maintainable in law, the defendants did not examine any witness to prove their case and the plaintiffs have been succeeded to prove their case. This finding of the trial Court is, in fact, contrary to the evidence and materials on record.

The proposition of law is by now fairly well settled that the plaintiff in order to succeed must establish his own case to obtain a decree and weakness of the defendant's case is no ground for passing a decree in favour of the plaintiff or a plaintiff must win on the strength of their own evidence, not on the flaws or failures of the defendant. We do not think, therefore, that trial Court made a correct approach to the simple problem.

The learned Advocate for the respondents at the end of the day at the time of pronouncement of judgment submits that in the deed (Ext-2) there is clear mentioned as to handing over the

possession and as such, it is not correct that the deed of gift no. 1883 dated 10.03.1927 was not acted upon.

To meet this brace argument, we have gone through the deed No. 1883 dated 10.03.1927 and we find no clear statement as to handing over the possession of the suit land in the deed.

In view of our discussions made in the foregoing paragraphs by now it is clear the instant appeal must succeed.

In the result, the appeal is allowed. The impugned ex parte judgment and decree dated 27.02.2017 (decree signed on 06.03.2017) passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No. 459 of 2012 decreeing the suit is hereby set-aside.

Let a copy of this judgment along with lower Courts' record be sent down at once.

A.K.M. Rabiul Hassan, J:

I agree.