

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No.252 of 2017

Dr. Md. Shafikur Rahman and others

..... appellants

-Versus-

Government of the People's Republic of Bangladesh
and others

..... respondents

Mr. Probir Neogi, Senior Advocate with Mr. Md.
Sumon Ali, Mr. Nabil Ahmed Khan and Ms.
Joydeepa Deb Choudhury, Advocates

..... for the appellants

Mr. Redwan Ahmed, Deputy Attorney General with
Ms. Anjuman Ara Lima, Mr. Md. Montu Alam,
Assistant Attorney Generals

..... for the respondents

Judgment on 21.07.2025

Bhishmadev Chakrabortty, J:

The plaintiffs have preferred this appeal challenging the judgment and decree of the Joint District Judge, Court 2, Dhaka passed on 02.03.2017 in Title Suit 101 of 2013 dismissing the suit.

The plaint case, in brief, is that Bochai Bhuiyan was the original owner of the suit land of CS *khatian* 13 plot 76. During his possession and enjoyment he died leaving behind Abdur Rahman Bhuiyan and others as heirs. Accordingly SA *Khatian* 27 was prepared in their names. The government through two LA cases acquired 910 and 166 acres, *i.e.*, in total 1076 acres of land including the suit land. Accordingly, RS *khatian* 1 was prepared in the name of government in respect of the aforesaid lands. Subsequently, government through a *kabala* dated 17.06.1971 sold 662.095 acres of land therefrom to Eastern Housing

Limited. But the Ministry of Housing and Public Works executed an exchange deed with Eastern Housing Limited on 22.03.1980 and the latter got 5.0650 acres of land of mouja Senpara Parbata and the lands suited at Duaripara mouja measuring total 21.8250 acres. Eastern Housing Limited then mutated its name on 11.12.1980 in respect of the exchanged land including the suit land. The housing company developed residential plots namely 'Pallabi' in the exchanged land and decided to sell the plots to the public. Plaintiff 1 took allotment therefrom .0825 acres of land of plot No.J/14 through registered deed dated 26.04.1981 and got its possession. But when he went to tahshil office for payment of rent the tahshilder refused to accept it because of the fact that RS record was prepared in *khatian* 1. He then collected certificate copy of the *khatian* and instituted Title Suit 246 of 2005 in the Court of Senior Assistant Judge, Court 1, Dhaka against the government and housing company praying for declaration that the RS *khatian* prepared in the name of the government is erroneous. The plaintiff obtained an *ex parte* decree in the suit. He then entered into an agreement with City Builders, a developer company on 22.08.2004 to construct a 6 storied residential building in the suit plot. He executed and registered a power of attorney on 21.08.2004 authorizing the developer company to do so and to sell the flats of respective shares as per the terms of agreement. The developer company completed the project and handed over the flats of the share of plaintiff 1 and sold out the flats of their share to other plaintiffs. Plaintiff 1 kept a flat for him and sold out others flats of his

share to other plaintiffs. The purchasers, the other plaintiffs have been occupying their respective flats. Plaintiff 1 and other purchasers have mutated their names and paid up to date rent to the concerned. But mysteriously the land has been recorded in the name of the Government in city survey *khatian*. The plaintiffs collected certified copy of the aforesaid *khatian* on 20.01.2013 and came to learn about the erroneous record. In the meantime the prescribed period for filing suit before the Land Survey Tribunal had already passed. The plaintiffs finding no other alternative instituted this suit for declaration of title in the suit land with further prayer that city survey *khatian* prepared in the name of defendant 1 is incorrect, illegal, *void ab initio* and not binding upon them.

Defendants 1-4 contested the suit by filing written statement stating that the suit is not maintainable in the present form and manner; that there is no cause of action of filing the suit; that the suit is barred by limitation; that it is bad for defect of parties and barred by principles of *estoppel, waiver and acquiescence*. They further contended that the suit land with other lands of CS *khatian* 13 corresponding to SA *khatian* 27 plot 76 was acquired by the Government and correctly recorded in *khatian* 1. The Government has title and interest in the suit land and they have been possessing it. The plaintiffs have filed the suit on forged documents only to grab government valuable property and as such the suit would be dismissed.

On pleadings, the trial Court framed the following issues-

- I. Whether or not the suit is maintainable in the present form?
- II. Whether the suit is bad for defect of parties?
- III. Whether or not the plaintiffs have right, title, interest and possession in the suit land?
- IV. Whether the plaintiffs are entitled to get decree as prayed for?

In the trial, the plaintiffs examined 1 witness and their documents were exhibits-1-18(Kha), on the other hand defendants examined 1 witness but did not produce any document in support of their claim. However, the trial Court dismissed the suit only on 2 grounds that the suit is bad for defect of parties and that the plaintiffs failed to prove the chronological chain of title in the suit land. Being aggrieved by the plaintiffs have preferred this appeal.

Mr. Probir Neogi, learned Senior Advocate for the appellants takes us through the materials on record and submits that the trial Court was wrong in dismissing the suit on the ground of defect of parties for not impleading Eastern Housing Limited in the suit. He refers to the provisions of Order 1 Rule 9 of the Code of Civil Procedure (the Code) and the case of *Safaruddin vs. Fazlul Huq*, 49 DLR (AD) 151 and *Sufia Khatun vs. Amin Hossain*, 10 BLC (AD) 41 and submits that no suit shall be defeated by reason of misjoinder or non-joinder of parties. The Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. In the suit

the defendants raised no objection as to the defect of the parties. Nothing was stated in the written objection that Eastern Housing Limited was a necessary party to the suit. He then refers to the provisions of Order 1 Rule 13 of the Code and the cases of Motilal vs. Benodini, 28 DLR (AD) 5 and Abu Saber Aziz Mohammad vs. Bangladesh, 31 DLR (AD) 218 and submits that the objection about non-joinder or misjoinder of the parties shall be taken at the earliest opportunity. If such objection was not taken at the beginning stage of the suit it shall be deemed to have been waived. Mr. Neogi further submits that Eastern Housing Limited was not a necessary party in the suit because the plaintiffs claimed that it received valuable consideration from plaintiff 1 and sold it to him by a registered deed dated 24.06.1981 and delivered possession thereof and as such it had no subsisting interest in the suit land after its disposal to plaintiff 1. Moreover, in the earlier Title Suit 246 of 2005 which was filed challenging the erroneous RS record prepared in the name of government, Eastern Housing was impleaded as defendant 3 but it did not contest the suit. Therefore, the question of plaintiffs' title in the suit land against Eastern Housing has already been decided in that suit. The findings of the trial Court as to the defect of parties is perverse and beyond the provisions of law. In the second fold of argument Mr. Neogi submits that the findings of the trial Court that the plaintiffs failed to prove the chain of title in the suit land is also perverse. In the plaint the plaintiffs described the chronological transfer of the suit property starting from CS recorded tenant to till filing of the suit. In support of

such claim the plaintiffs produced documentary evidence exhibits-1-18(Ka) and oral evidence of PW 1. There is no ambiguity, discontinuity or missing link in the chain of title. The original documents through which eastern housing accrued title in the suit land and subsequently transferred it to plaintiff 1 has been proved in evidence without having any objection from the defendants. The defendants did not make out any case against the title and ownership of the plaintiffs. The trial Court did not at all consider the pleadings and the documents before it including the record of rights prepared in the name of original owner, subsequent transfers, mutation in the name of plaintiff 1 and others and the judgment and decree passed in Title Suit 246 of 2005 against the government declaring RS record prepared in the name of government erroneous. The documents produced by the plaintiffs proved the chronological devaluation of title of the plaintiffs in the suit property. The defendants have no case for which the suit property reverted to the government. He then refers to the cases of Md. Ishaque vs. Ekramul Hoque Chowdhury, 54 DLR (AD) 26 and Chinibash Pramanik vs. Md. Nurul Hossain Molla, 7 BLD (AD) 103 and relied on the *ratio* laid therein that when both the parties led evidence, the ultimate fate of the suit is to be decided by preponderance of evidence which means comparative weight, worth and quality of evidence. Here the evidence led by the plaintiffs both oral and documentary prove that the judgment has been delivered against the plaintiffs without complying with the aforesaid settled position of law. Since the plaintiffs successfully proved 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 which is required to be interfered with by this Court. The appeal, therefore, would be allowed.

Mr. Redwan Ahmed, learned Deputy Attorney General on the other hand opposes the appeal and supports the judgment passed by the trial Court, but he finds it difficult to make any forceful submission because of the fact that in Title Suit 246 of 2005 the plaintiffs obtained a decree through competent Court and RS record prepared in the name of the government was declared erroneous.

We have considered the submissions of both the sides, gone through the materials on record and *ratio* of the cases cited by the learned Advocate for the appellants. The plaintiffs instituted the suit against the government for declaration of their title in the suit land described in the schedule to the plaint with further prayer that city survey *khatian* prepared in the name of government in respect of the suit land is incorrect, illegal, *void ab initio* and not binding upon them. The trial Court framed 4 issues out of which 2 vital issues which were decided against the plaintiffs were whether the suit is bad for defect of parties and whether the plaintiffs have right, title, interest and possession in the suit land. The plaintiffs asserted in the plaint that Bochai Bhuiyan was CS recorded tenant of the suit land and on his death SA *khatian* was prepared in the name of his heirs. Exhibit-2 CS *khatian* 13 and exhibit-3 SA *khatian* 27 prove the aforesaid case of the plaintiffs. It is admitted by

the parties that total 1076 acres of land including the suit land was acquired by the government in two LA cases. The government being the owner and possessor of the land through LA cases sold 662.0951 acres to Eastern Housing Limited through a registered *kabala* and handed over possession thereof. The government exchanged the suit land and other lands of the suit *mouja* with Eastern Housing through exchange deed exhibit-5 dated 21.03.1980. In the body of exhibit-5 it is found that government sold out a part of the acquired land to Eastern Housing Limited and the latter sold out the suit plot to plaintiff 1 on 24.06.1981 exhibit-6. But when plaintiff 1 after mutating his name went to tahshil office to pay rent the authority refused to accept rent on the ground of preparation of RS *Khatian* in respect of suit plot in the name of government. Then he instituted Title Suit 246 of 2005 in the Court of Assistant Judge, Court 1, Dhaka against the Housing Company and government and obtained a decree on 30.01.2006 exhibits-7 and 7(1). On the basis of the aforesaid decree plaintiff 1 mutated his name, paid rent to the government and entered into an agreement with City Builders to construct a 6 storied building in the suit plot. The memorandum of understanding and irrevocable power of attorney are exhibits-8-9. The City Builders completed the construction work of the building and sold his share of flats to some plaintiffs. Plaintiff 1 also sold out most of his share of flats to the other plaintiffs. The aforesaid *kabalas* in the name of different plaintiff-purchasers, mutation *khatian* in their names and payment of rent are exhibits-10-18(Kha).

The trial Court held that the suit is bad for defect of parties for not impleading Eastern Housing Limited as defendant. But it is found that Eastern Housing Limited got the suit land on 23.03.1980 by way of exchange exhibit-5 from the government and sold it to plaintiff 1 on 24.06.1981 through exhibit-6. Therefore, the Housing Company exhausted its right, title and interest in the suit land and as such it is not a necessary party in this suit because no relief was sought in the suit against it. It is well settled by our apex Court in numerous cases including the cases reported in 49 DLR (AD) 151 and 10 BLD (AD) 41 that no suit shall be defeated by reason of misjoinder or non-joinder of parties, and a Court in every suit may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Order 1 Rule 13 of the Code provides that an objection as to the misjoinder or non-joinder of the parties should be brought at the earliest opportunity and if any objection is brought subsequently it will be deemed to have been waived. In the written statement, we do not find that defendant government has made out any case of non-joinder of Eastern Housing Limited in the suit. We find that Eastern Housing Limited received the consideration money in respect of the suit land and sold it to plaintiff 1 through registered *kabala* dated 24.06.1981 exhibit-6 and delivered possession thereof. It had no subsisting interest in the suit land and, therefore, was not a necessary party to the suit. Moreover, in Title Suit 246 of 2005 Eastern Housing Limited was made as defendant 3 but it did contest the suit. The suit was accordingly decreed exhibits-7

and 7(Kha). In this suit, Eastern Housing Limited had no right and interest in the suit property and not effected in any way in the decision of the suit. Therefore, the decision taken by the trial Court on the issue of non-joinder of Eastern Housing limited is perverse one and cannot be sustained in law.

On perusal of oral evidence of the parties and the documents submitted by the plaintiffs, we find that the chain of title of the plaintiffs in the suit land is unbroken and complete. We find no missing link in the chain of title of the plaintiffs. The plaintiffs adduced oral evidence and submitted series of documents exhibits-2-/18(Ka) and proved the chronological devolution of title in the suit property. They also proved their possession therein. The erroneous RS record in the name of defendant government was challenged by plaintiff 1 in Title Suit 246 of 2005. The suit was decreed exhibits-7-7(Ka) and RS record prepared in the name of defendant government was declared illegal and erroneous which was not challenged by the defendant-government in the higher Court. Thereafter, plaintiff 1 entered into an agreement with a developer company and a 6 storied building has been constructed on the suit plot. Plaintiff 1 and the developer company sold out their respective share of flats to other plaintiffs. We failed to understand how after obtaining a decree of declaration that RS *khatian* in the name of the government is erroneous and completion of so many works by plaintiff 1 in the suit plot, the city survey *khatian* has been prepared in the name of defendant government. The trial Court misdirected and mis-construed in its

approach of the matter and dismissed the suit deciding issues 2, 3 and 4 against the plaintiffs which cannot be sustained in law.

Therefore, we find substance in the submissions of Mr. Neogi. Consequently, this appeal is allowed. There will be no order as to costs. The judgment and decree passed by the trial Court is hereby set aside and the suit is decreed.

Communicate the judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.

(Sumon-B.O.)