

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No. 349 of 2003

In the Matter of:

Alhaj Mohammed Ali Hossain

.....Plaintiff-appellant.

-Versus-

Syed Md. Ishaq and others

...Defendant-respondents.

Mr. Md. Zakir Hossain Ripon, Advocate

..... For the appellant.

Mr. Sk. Zulfiqur Bulbul Chowdhury,
Advocate.

.....For the respondents.

Heard on 28.10.2024, 04.11.2024, 11.11.2024,
12.11.2024 and Judgment on 14.11.2024.

Sheikh Abdul Awal, J:

This appeal at the instance of the plaintiff-appellant is directed against the judgment and decree dated 07.04.2003 (decree signed on 13.04.2003) passed by the learned Joint District Judge, 1st Court, Chattogram in Other Class Suit No. 60 of 2000 dismissing the suit.

The short fact relevant for disposal of this appeal is that the appellant as plaintiff instituted Other Class Suit No. 60 of 2000 in the Court of the learned Joint District Judge, 1st Court, Chattogram praying a decree declaring the plaintiff is the owner of the Schedule-1 (kha) property and the property as described in Schedule-1 (kha) recorded in the sole name of the predecessor of the principle defendants Syed Abdul Halim is incorrect and

erroneous and the plaintiff-appellant as sole authority is entitled to get compensation. The plaint case in brief is that the suit Schedule-1 land was originally belonged to Ebadullah and accordingly R.S. Plot No. 608, 3632, 3633, 3634 of R.S. Khatian No. 151 of Mouza Bakalia, Chattogram was recorded in his name; that the said Ebadullah sold out 80 decimals suit land to Abul Khair by registered Deed No. 3615 dated 01.09.1939; that the said Abul Khair sold out the said 80 decimals land to the Plaintiff by deed Nos. 4273, 4299, 4347, 4382, 4425 and 4480 dated 18.06.73, 20.06.73, 22.06.73 and 23.06.73 respectively; that the suit Schedule-1(ka) property acquisitioned in LA Case 5/98-99 and the Plaintiff received the compensation of the suit Schedule-1(ka) property; that the plaintiff has been in possession of the suit Schedule-1(kha) property; that on 15.11.99 the Plaintiff came to know that the property as described in Schedule-1(kha) was wrongly recorded in the name of Syed Abdul Halim, the predecessor of principal Defendant-Respondents in S.A and R.S Khatian. Later on the plaintiff came to know that the suit Schedule-1(kha) property acquisitioned in LA Case No. 5/98-99 and the principal defendants applied for receiving compensation of said acquisitioned property on false statements based on wrongly recorded B.S. Khatian in the name of their predecessor. Hence, the suit.

Defendant No.2 entered appearance in the suit by filing written statement denying all the material allegations made in the plaint contending, inter-alia, that the total land of suit plot is 3.21 acres as per R.S. Khatian No. 151 of which 2.49 decimals of plot No. 608 and 0.17 decimals of plot No. 3632, 0.19

decimals of plot No. 3634 and 0.36 decimals of plot No. 3633 was belonged to Ebadullah and R.S. Khatian was recorded in his name accordingly; that out of those land the said Ebadullah sold 1.605 acres land by deed No. 1727 dated 13.03.1941 to Md. Amir Ali Chowdhury; that the said Md. Amir Ali Chowdhury sold out the said 1.605 acres land to Abdul Halim Sawdagor (Syed Abdul Halim) by registered deed No. 2786 dated 09.08.1946; that the said purchaser Syed Abdul Halim being acquired title in the said land and having possessed by paying land rent to the National Exchequer and corresponding P.S. and B.S Khatian correctly recorded in his name; that said Syed Abdul Halim died on 01.01.1988 leaving behind his wife Hazera Khatun, 09 sons Syed Abu Mohammad Shafi, Syed Nurul Huda, Syed Abu Mohammad Hossain, Syed Md. Ismail, Syed Md. Idris, Syed Md. Yusuf, Syed Md. Yunus, Syed Md. Ishaque, Syed Md. Yakub and 02 daughters Syeda Rawshan Ara Begum and Respondent No. 2 Syeda Meherunnessa Begum (Meherunnessa Khanam); that the heirs of late Syed Abdul Halim i.e. the defendants amicably got partitioned their inherited properties on 14.01.90 and executed a Naksha (Partition sheet) prepared by an appointed Surveyor and each of the heirs got their own portion of inherited property accordingly; that accordingly the Defendant No.2 got total 34.71 decimals of land under R.S plot No. 608 who being in exclusive possession in her share according to amicable partition sold out 08 decimal land to Mrs. Hasne Hena in 1990 and also sold out 05 decimal land to Mozammel Haque by deed No. 1696 dated 11.08.95 and she is owning and possessing the rest of the land measuring 21.71

decimals within the knowledge of all other shares; that a portion of the disputed land acquisitioned in LA Case No. 5/98-99 and notice under section-3 was served on 24.11.98 in the name of Syed Abdul Halim, the predecessor of the Defendant No.2; that thereafter the Defendant No.2 submitted appeal before the Additional Land Acquisition Officer Unit No. 5 on 08.12.98 for excluding her land from the acquisition proceeding and thereafter a notice was issued for hearing on 17.12.98 and the matter was heard on 28.12.98; that an application for amendment of notice under section 6 approved on 18.07.99 by the Land Acquisition Officer and thereafter, on 05.08.99 a notice under section 7(3) was issued for compensation; that the Defendant No. 2 after transferring her 13.00 decimals land being owner of the rest of the 21.71 decimals land got recorded in B.S Khatian as 646/31 in her name on 06.03.2000, vide Mutation Case No. 2206/99-2000 and the defendant is in peaceful possession over the said land and has been paying all rents and taxes to the Government and therefore she is entitled to get the compensation; that the Plaintiff has got no right, title and possession over the suit Schedule-1(kha) land and all the deeds of the plaintiff are false and fabricated by which the Plaintiff or his predecessors did not get any right, title and possession; that no Khatian has been recorded in his name and he did not pay any rent or taxes to the Government at any point of time; that on the other hand the predecessor of the defendants has been peacefully continuously possessing the suit land without any objection from anybody by paying all taxes and rents of the land; that the Plaintiff filed the suit on false, forged and fabricated facts with

ill motive for undue gain and as such, the suit is liable to be dismissed.

The learned Joint District Judge, 1st Court, Chattogram on the pleadings of the parties framed the following issues for determination:-

- i. Whether the suit is maintainable in its present form and manner?
- ii. Whether the plaintiff is entitled to get the compensation against acquisitioned land of schedule-1(Kha) as acquired by the defendant No.11 by LA Case No. 5/98-99?
- iii. Whether the plaintiff is entitled to get any other relief?

At the trial the plaintiff examined 2 witnesses and defendant side also examined 2 witnesses and also exhibited some documents to prove their respective cases.

The learned trial Judge upon hearing the parties and on considering the evidence and materials on record by his judgment and decree dated 07.04.2003 dismissed the suit.

Being aggrieved by the aforesaid impugned judgment and decree dated 07.04.2003 passed by the learned Joint District Judge, 1st Court, Chattogram the plaintiff-appellant preferred this First Appeal.

Mr. Md. Zakir Hossain Ripon, the learned Advocate appearing for the plaintiff-appellant submits that the learned Joint District Judge misconceived the facts of the case and wrongly dismissed the suit. He further submits the trial court below having failed to examine the plaint, written statement, evidence and other materials on record and thereby came to a

wrong finding that it is not possible on his part to ascertain whether the plaintiff is entitled to get compensation of the scheduled 1(Kha) property without applying its judicial mind into the facts of the case that the plaintiff successfully proved his title in the suit property and as such, the impugned judgment and decree is liable to be set-aside. Mr. Md. Zakir Hossain Ripon further submits, it is on record that the plaintiff has been succeeded to prove his right, title and possession in the specified portion of the disputed R.S. khatian but the learned trial judge without giving any observation as to the possession abruptly dismissed the suit which caused a serious miscarriage of justice. Finally, the learned Advocate submits that the learned Joint District Judge had passed the impugned judgment by not applying his judicial mind to the materials on record, the same is liable to be set-aside.

Mr. Sk. Zulfiqur Bulbul Chowdhury, the learned Advocate appearing for the plaintiff-respondent, on the other hand, supports the impugned judgment and decree, which was according to him just, correct and proper. The learned Advocate further submits that plaintiff-appellant could not prove his possession and share in the suit land and there is no khotian in their name and admittedly compensation assessment notice was not issued in the name of plaintiff and therefore, the trial court below justly dismissed the suit.

Having heard the learned Advocates for both the sides and having gone through the materials on record including the impugned judgment of the trial Court, the only question that

calls for our consideration in this appeal is whether the trial Court below was justified in dismissing the suit by the impugned judgment and decree.

On a scrutiny of the record, it appears that the appellant Alhaj Mohammed Ali Hossain as plaintiff filed the Other Suit No. 60 of 2000 in the Court of the learned Joint District Judge, 1st Court, Chattogram praying the following reliefs:

(ক) নিম্ন ১ (খ) নং তপশীলের জমি বাদীর খরিদা সূত্রে স্বত্ত্বীয় খাস দখলী জমি হয় মর্মে ঘোষণার ডিক্রি দিতে;

(খ) নিম্ন ১ (খ) নং তপশীলের জমি সংক্রান্ত চূড়ান্ত বি,এস, খতিয়ান মূল বিবাদীগণের পূর্ববর্তী ছৈয়দ আবদুল হালিম এর নামে একক ভাবে লিপি হওয়ায় অশুদ্ধ ও ভিত্তিহীন হয় মর্মে ঘোষণার ডিক্রি হয়;

(গ) নিম্ন ১ (খ) নং তপশীলের জমি সংক্রান্ত এল এ মোকদ্দমা নং ৫/৯৮ ইংরেজীতে ধার্যকৃত ক্ষতিপূরণের টাকা বাদীর তৎবৈধ স্বত্ব দখলকার হিসাবে এককভাবে প্রাপক হন মর্মে ঘোষণার ডিক্রি হয়;

(ঘ) মোকদ্দমার তাবৎ ব্যয় আপত্তিকারী বিবাদীর বিরুদ্ধে ডিক্রি হয়;

(ঙ) অন্যান্য প্রতিকার বা প্রতিকারার্থী যাহা বাদী আইনত ও ন্যায়ত প্রাপ্য তাহা ও বাদীর বরাবরে ডিক্রি হয়।

Defendant No.2 entered appearance in the suit by filing written statement denying all the material allegations made in the plaint contending, inter-alia, that the plaintiff filed the suit on false averments and as such, the suit is liable to be dismissed. It further appears that during trial the plaintiff examined in all 2 witnesses and exhibited some documents to prove his case out of which son of the plaintiff, Md. Salauddin on getting power of attorney examined as PW-1, who proves the power of attorney as “Ext.-1”. This witness stated in his deposition that the suit scheduled property originally recorded in the name of Ebadullah

and accordingly R.S. 137 khatian was prepared. This witness proved the R.S. khatian as “Ext-2”. This witness also stated in his deposition that Ebadullah transferred 80 decimals land by registered deed No. 3615 dated 31.09.39 to Abul Khair and handed over possession to him. This witness proved the said deed as “Ext-3”. This witness also stated that thereafter Abul Khair by 6 kabalas transferred his total 80 decimals land to the plaintiff and handed over possession of the said land to plaintiff. This witness proves those kabalas as “Ext.-4 series”. This witness also stated that plaintiff paid rent to the Government. This witness also stated that- “পূর্ববর্তী আঃ হালিমের ওয়ারিশগণের নামে এওয়ার্ড হয়েছিল যার বিরুদ্ধে আমার পিতা উক্ত হুকুম দখল মোকদ্দমায় আপত্তি দাখিল করেছেন। উক্ত ক্ষতিপূরণের টাকা এখনও হুকুম দখল মোকদ্দমায় রয়েছে।” PW-2, Md. Abdul Shukur stated in his deposition that he knew the parties and the suit land. This witness stated that- “বিরোধিয় জমি সরকার কর্তৃক হুকুম দখল করা হয়েছে এবং হুকুম দখলের আগে বিরোধিয় জমি বাদী দখল করতো। অত্র মোকদ্দমা মূল বিবাদীগণ বিরোধিয় জমি কখনও দখল করেনি।”

From the above quoted evidence, it appears that both the witnesses testified in one voice that the plaintiff possessed the suit land before acquisition of the suit land by the Government.

It further appears that the PWs could not produce any compensation assessment notice issued in the name of the plaintiff. Moreover, PW-2 stated in his cross-examination that- “আমি বিরোধিয় জমির খতিয়ান নম্বর, দাগ নম্বর বা পরিমান বলতে পারবো না।” It further appears that PW-1 in his cross-examination stated that- “১-১০ নং বিবাদীগণ আঃ হালিম সওদাগরের ওয়ারিশ” This evidence of the plaintiff side is clear admission that the defendant Nos. 1-10 are

successors of Syed Abdul Halim Sawdagor and it is on record that all the records prepared in the name of Abdul Halim Sawdagor.

It is found that DW-1 and DW-2 in their respective evidence categorically denied the right, title and possession of the plaintiff. The plaintiff side cross-examined DW-1 and DW-2 but failed to find out any contradiction in the evidence of DWs.

As per the pleadings and evidences, the land under R.S Khatian 151 corresponding P.S Khatian 1533/5627 and B.S 646 Khatian was recorded in the name of defendants' predecessor Syed Abdul Halim and total land under R.S Khatian was 3.21 acres and as per P.S Khatian 1533/5627 Exhibit-kha-(1) the total land is 3.25 acres but as per B.S Khatian Exhibit-6 the total land is 10.58 acres and the plaintiff in his Plaint did not give any explanation regarding land recorded in B.S Khatian 646. It is found from the evidence adduced by the parties that the total land was 3.21 acres of which plaintiff demanded 80 decimal land and predecessor of defendants demanded 1.605 acres and the rest 80.5 decimal land remained with the original R.S recorded owner Ebadullah. The Plaintiff did not mention in his plaint that the ejmali land of Ebadullah distributed to the Plaintiff and Defendant No. 2 rather the land subsequently recorded under P.S. and B.S. in favour of the defendants.

It is also found that the trial Court below on due consideration of the evidence and materials on record came to its conclusion that the plaintiff could not prove any clear case of compensation and on this finding dismisses the suit.

On a close analysis of the evidence and materials on record, it appears that the plaintiff stated nothing in his evidence that he made any application for compensation. It also appears that PW-1 in his cross examination admitted that- “১-১০ নং বিবাদীর নামে বিরোধীয় জমির বি,এস, জরিপে রেকর্ড হয়েছে।” and as per BS record Government acquired the land which admittedly recorded in the name of the predecessors of the defendant-respondents. Furthermore, admittedly no compensation assessment notice was issued in the name of plaintiff appellant. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the appellant.

We find no flaw in the reasonings of the trial Court or any ground to assail the impugned judgment. The learned Judge of the trial Court appears to have considered all the material aspects of the case and justly dismissed the suit. We find no reason to interfere therewith.

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

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

Md. Mansur Alam, J:

I agree.