

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

Present:
Mr. Justice S M Kuddus Zaman
and
Mr. Justice Sayed Jahed Mansur

FIRST APPEAL No.72 of 2018

Mrs. Rahima Khatun and another
... Appellants

-Versus-

Md. Harun-Al Rashid being dead his legal heirs;
1(a) Md. Nazmul Alam and others
...for the respondents

Mr. Md. Khalilur Rahman, Senior Advocate with
Mr. Mehrab Hossain (Mamun), Advocate
... For the appellants

Ms. Afroja Akter, Advocate
... For the respondent Nos.1(a)-1(h)

Heard & Judgment on: 11.11.2025.

S M Kuddus Zaman, J

This appeal is directed against the impugned judgment and decree dated 31.10.2017 passed by the learned Joint District Judge, Arbitration 7th Court, Dhaka in Title Suit No.58 of 2009 arising out of Title Suit No.355 of 2001.

Facts in short are that the respondents and plaintiffs instituted above suit for declaration of title for 5 katha land appertaining to plot No.24, road No.7 of Rupnagar Residential Area, Dhaka and for further declaration that the judgment and decree dated 30.01.2000 passed by the learned Sub-ordinate Judge and Commercial Court No.1 Dhaka in Title Suit No.123 of 1999 is collusive, unlawful and not binding upon the plaintiff. It was alleged that above property

belonged to Pocha Mia who died leaving only son Abdur Rahim as heir who was in possession in above land by mutating his name and who appointed defendant No.5 Sayed Imran Hossain as his constituted attorney for above property. Above Attorney transferred above land by registered kobla deed dated 26.10.1994 to defendant No.4 Most. Kaniz Anjum Doly who in her turn transferred above property to the plaintiffs by registered kobla deed dated 09.06.1999 and delivered possession. Plaintiffs are in possession in above land by mutating their name and paying rent to the government and constructing dwelling house. On 30.06.2001 defendant No.1 disclosed to the plaintiffs that they have obtained above mentioned judgment and decree for above property.

Above suit was contested by defendant Nos.1-2 and 7-9 by submitting two separate written statements. Defendant Nos.1 and 2 stated that above property belonged to Pocha Mia who died childless leaving two wives namely Rahima and Jobada as sole heirs and defendant's predecessor Abdur Rahim was an imposter. Above Rahim filed Succession Certificate Case No.946 of 1993 to the 3rd court of Joint District Judge, Dhaka and obtained a succession certificate by false representation and cheating and above succession certificate has been cancelled by the defendant by filing Revocation Case No.1142 of 1994 on 05.04.1995. Plaintiff's predecessor Doly was defendant No.1 of defendant's suit No.123 of 1999 and she contested above suit by filing a written statement and above suit was decreed against above defendant on contest on 30.01.2000 and plaintiffs allegedly purchased above land on 09.06.1999. As such above kobla deed of the plaintiffs was hit by the principal of lis pendse and they are bound by the judgment and decree of Title Suit No.123 of 1999. Plaintiffs as appellants preferred Appeal No.366 of 2006 to the District Judge, Dhaka against above judgment and decree of Title Suit No.123 of 1999 which was dismissed on

contest. Above appellants preferred Civil Revision No.5898 of 2007 to the High Court Division against above judgment of the court of appeal which was also dismissed. Above appellant preferred Civil petition for Leave to Appeal to the Appellate Division against the above judgment and order of the High Court Division which also dismissed and then the plaintiffs filed a Review Petition No.151 of 2015 to the Appellate Division which was also dismissed. The plaintiff has filed above suit by suppression of above materials facts and above suit is barred by resjudicata.

At trial plaintiffs and defendants No.1-2 examined three witnesses each. Documents of the plaintiff were marked as Exhibit Nos.1-12 and those of the defendants were marked as Exhibit Nos.Ka-Cha.

On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial court defendant Nos.1-2 as appellants moved to the court and preferred an appeal.

Mr. Md. Khalilur Rahman along with Mehrab Hossain learned Advocates for the appellants submit that admittedly above property belonged to Pocha Mia and his employee Abdur Rahin falsely claiming to be his sole heir obtained a succession certificate by false presentation and cheating and on the basis of above succession certificate he executed a power of attorney to defendant No.5 who transferred above land to Doly who was defendant No.1 in Title Suit No.123 of 1999. Defendant Nos.1 and 2 filed above suit for declaration of title and recovery of khas possession which was decreed on contest. The plaintiffs purchased above land from Doly, defendant No.1 of above suit on 09.06.1999. As such above kobla deed was hit by lis pendse. Plaintiffs as appellants preferred Title Appeal No.366 of 2006 challenging the legality and propriety of judgment and decree of

Title Suit No.123 of 1999 which was dismissed. Above appellants preferred a civil revision to the High Court Division which was dismissed then they filed Civil Petition for Leave to Appeal to the Appellate Division which was also dismissed and a Review Petition against above judgment and order of the Appellate Division was dismissed as well. But the plaintiffs have filed this suit suppressing all above material facts and documents. But at trial the defendants could not produce all above documents namely the order of Succession Revocation Case of Abdur Rahim and judgment and decree of Title Appeal No.366 of 2006 and judgment of above Civil Revision and Petition for Leave to Appeal to the Appellate Division. Learned Advocate submits that above omissions and deficiency in prosecuting the case of the defendant was caused due to lack of professional knowledge and skill of the appointed Advocate of the defendant at the trial court and the appellants had no contribution to the same. As such the learned Advocate submits that the impugned judgment and decree may be set aside and above suit may be remanded to the trial court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

Ms. Afroja Akter learned Advocate for the respondent No.1 frankly concedes that she does have any objection if the impugned judgment and decree is set aside and the suit is remanded to the trial court for retrial provided the respondents are also given an opportunity to amend his plaint and adduce further evidence.

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

It is admitted that disputed 5 katha land of Ruppur Housing Estate, Dhaka belonged to now deceased Pocha Mia. Appellant claims that Pocha Mia was

issueless and he died leaving two wives defendant Nos.1 and 2 as sole heirs. On the other hand respondent claims that above Pocha Mia had a son namely Abdur Rahim who inherited above property got his name mutated with the government as well as with above housing state and appointed defendant No.4 constituted attorney who transferred above land by registered kobla deed to Doly, predecessor of the plaintiffs.

The plaintiffs did not mention anything about the wife or wives of Pocha Mia nor anything was stated as to the claim of the defendants that the succession certificate of defendant No.5 Abdur Rahim has been revoked by defendant Nos.1 and 2 by filing Revocation Case No.1142 of 1994.

It is admitted that Pocha Mia was a businessman who had a shop of electrical goods and he had a shop at Nababpur of Dhaka. Defendant Nos.1-2 claim that they were living in Rajshahi and they have obtained a succession certificate from a court of Rajshahi. It is not understandable as to why a electrical businessman of Nababpur, Dhaka would keep both of his wives at Rajshahi and why he would not have any bank account at Dhaka and why defendants had to obtain a succession certificate from a court at Rajshahi. It is not believable that a businessman of Dhaka Pocha Mia did not have a bank account at Dhaka.

It is admitted that Kaniz Anjum Doly predecessor of the plaintiffs was defendant No.1 of Title Suit No.123 of 1999 and above suit was decreed on contest before purchase of above land by plaintiff from above Kaniz Anjum Doly. As mentioned above the learned Advocate for the appellant frankly conceded that the defendants could not produce certified copies of above judgment and decree of above appeal, civil revision or Leave to Appeal to the Appellate Division by the plaintiff. Nor the defendants have produced and proved the judgment and

order of succession revocation case whereby the succession certificate of Rahim was cancelled.

An innocent litigant should not made to suffer for the mistakes or wrongs committed by his appointed Advocate due to lack of knowledge or professional skill. Since all above documents are in possession of the defendants but they could not produce above documents at trial due to errors and mistakes of their appointed Advocate we are of the view 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 both parties an opportunity to amend their respective pleadings and adduce further evidence.

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

In the result, the appeal is allowed.

The impugned judgment and decree dated 31.10.2017 passed by the learned Joint District Judge, 7th Court, Dhaka in Title Suit No.58 of 2009 arising out of Title Suit No.355 of 2001 is set aside and above suit is remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.

Sayed Jahed Mansur, J

I agree.