

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 188 of 2018

Hazi Abul Hossain being dead his heirs 1(a)  
Nurbahar Begum and others .....appellants

-Versus-

Fakir Mohammad and others ..... respondents

Mr. Mohammad Ziaul Haque with

Mr. Nusrat Jahan and

Mr. Md. Julfikar Ali Bhuttu, Advocates

..... for the appellants

No one appears for the respondents

Judgment on 27.11.2025

Bhishmadev Chakrabortty, J:

This appeal at the instance of sole plaintiff is directed against the judgment and decree of the Joint District Judge, Court 1, Sadar, Chattogram passed on 09.03.2016 in Other Class Suit 143 of 2012 dismissing the suit for declaration of title and that BS khatian in respect of .09 acres described in schedule 1(Ka) to the plaint has been prepared erroneously.

Facts relevant for disposal of the appeal, in brief, is that the suit property measuring .99 acres appertaining to RS *khatian* 1504 plot 9152 originally belonged to Jinnat Ali who died leaving behind one wife and seven sons as heirs. The aforesaid heirs of Jinnat Ali sold the total land measuring .99 acres to Nur Ahmed through a registered *kabala* dated 19.07.1938 and handed over possession thereof. Nur Ahmed subsequently transferred the same to Ahamedur Rahman through registered pattan dated 07.11.1938. Ahamedur Rahman

remained in possession and enjoyment of the suit land and accordingly PS khatian has been prepared in his name. Ahamedur Rahman died leaving his son Abul Hossain, the plaintiff. The plaintiff has been possessing the suit land through cultivation paying rent to the government. The plaintiff on 14.10.2011 measured the land by surveyor and found that land measuring .88 acres appertaining to BS khatian 1152 plot 7277 and .02 acres appertaining to BS khatian 6208 plot 7276 recorded in the name of the plaintiff which corresponds to RS plot 9152 measuring .99 acres recorded in the name of his father. Although he is in possession of the remaining .09 acres of land of that RS plot but it was not recorded in his name in BS khatian. The plaintiff ascertained by superimposing the RS plot with corresponding BS plot and found that the land of the RS plot falls in the BS plots. The remaining land of .09 acres was wrongly recorded in the name of defendant 1 and the predecessor of other defendants to the extent of .04 and .05 acres respectively. It was recorded in BS plots 7278, 7279 in BS khatians 4015 and 2623 respectively. For such wrong recording of .09 acres of land in the name of other defendants the title of the plaintiff has been clouded and hence the suit for declaration of title and that BS khatian for .09 acres has been prepared erroneously.

On due service of summonses of the suit upon the defendants none appeared to contest it. However, the Joint District Judge took up the matter for *ex parte* disposal. In the *ex parte* trial the plaintiff examined 2 witnesses and produced their documents exhibits-1-5 and 6. However, the Joint District Judge by the judgment and decree under

challenge in this appeal dismissed the suit mainly on the ground that the plaintiff did not produce the superimpose map or any *mouja* map to assert that RS plot 9152 corresponds to BS plots 7278 and 7279.

During pending of the appeal before this Bench, the appellants on 27.04.2025 filed an application under Order 41 Rule 27 read with section 151 of the Code of Civil Procedure (the Code) for taking additional evidence annexing the superimpose map annexure-1 stating facts therein. There they stated that inadvertently learned Advocate appointed in the trial Court did not submit the aforesaid document which was handed over to him. We kept the aforesaid application with record on 06.05.2025 to be considered at the time of the disposal of the appeal, if required.

Mr. Mohammad Ziaul Haque, learned Advocate for the appellants taking us through the materials on record and pointing the application for taking additional evidence submits that the plaintiff's predecessor father purchased the suit land from the original owner measuring .99 acres. The registered deeds prove it and previous record have been prepared in the name of plaintiff's father in respect of that quantum. The plaintiff thought BS records accordingly has been prepared in his name for .99 acres but subsequently he found that out of the aforesaid land .09 acres has been recorded in the names of some of the defendants erroneously, which clouded the title of the plaintiff in the suit land. The plaintiff produced all necessary documents in the trial Court in support of his title in the suit land over .99 acres of land.

The corresponding records and purchase deeds have duly been admitted into evidence and exhibited. The plaintiff's predecessor also paid rent to the government in respect of the suit land. The trial Court found that the deed in favour of the plaintiff's predecessor is correct. It further found that land measuring .88 acres in BS plot 7277 has been recorded in the name of plaintiff's father and land of .02 acres recorded in the name of the plaintiff in plot in 7276 but although the plaintiff contented that he measured land in situ by a surveyor and prepared a superimpose map to ascertain the RS plot is corresponding to BS plots 7278 and 7299 in respect of remaining .09 acres but he did not submit the map and for that the Court finding it difficult to assert that the BS plots correspond to RS plot 9152 dismissed the suit. In this Court the appellants submitted the superimpose map annexure-1 with the application for taking additional evidence which was prepared on 14.10.2011, i.e., before institution of the suit. The map annexure-1 proves that BS plots of the suit land corresponds to RS plot 9152. The aforesaid document is required to be proved and marked as exhibit by examining witnesses. Therefore, this appeal would be allowed and the suit be sent on remand to the trial Court to prove the document for proper and affective disposal of the suit. The appeal, therefore, would be allowed and the judgment and decree be set aside and the suit sent be remand to the trial Court with liberty to prove the aforesaid document in evidence.

No one appears for the respondents.

We have considered the submissions of Mr. Haque and gone through the materials on record including the application for taking additional evidence.

It transpires that in the plaint the plaintiff claimed that his father Ahamedur Rahman took pattan .99 acres of suit land from Nur Ahmed through a registered document dated 07.11.1938 which the latter purchased through a registered kabala dated 19.07.1938 from the heirs of Jinnat Ali, the original owners. The suit land corresponds to RS plot 9152. The plaintiff claimed that PS khatian has been prepared in the name of Ahamedur Rahman, father of the plaintiff. In evidence the plaintiff produced a series of documents in support of his claim which were duly exhibited. He produced RS khatian 1504 exhibit-1 BS khatian 4015, 2623 and 1152 exhibit-Kha series and mutation khatian exhibit-3 and the original kabala and *patta* exhibits-4 and 4Ka dated 16.07.1938 and 16.11.1938 respectively. He also produced the rent receipts in respect of the suit land exhibits-5 and 5Ka showing payment of rent in respect of the suit land by his father. The dispute arose when .09 acres of land out of .99 acres of the deeds and previous RS and PS khatians was recorded in the name of some other defendants in BS khatians and plots which clouded the title of the plaintiff in the suit land and consequently he instituted the suit for declaration of title and also for declaration that inclusion of .05 acres in BS plot 7279 and .04 acres in BS plot 7278 and preparation of BS khatian 2623 in the name of defendant 1 and BS khatian 4015 in the name of Tajul Islam, the predecessor of defendants 2-8 are erroneous

and not acted upon. The trial Court although found other documents of the plaintiff in respect of title over .99 acres of land correct but hold that the plaintiff although contended that he measured the land in situ by appointing a surveyor and also prepared a superimpose map and ascertained that the RS plot corresponds to BS plots 7278 and 7279 but he did not submit the superimpose map or any *mouja* map of the measurement of the land in situ. Yes, it is difficult to ascertain without a superimpose map or *mouja* map that BS plots in respect of the suit land actually corresponds to RS plot 9152 and hence the trial Court dismissed the suit.

In this Court the appellants filed an application for taking addition evidence annexing the superimpose map in respect of disputed RS and BS plots. On going through the aforesaid superimpose map annexure-1, we find substance in the statements made in the plaint about superimpose map in respect of the suit land. But the fact remains that the aforesaid superimpose map is required to be proved by evidence on examining witness and it requires for proper and effective disposal of the suit. The plaintiff's legal claim of purchase the land and preparation other *khatians* in his father's name cannot be taken away only on the reason of non production of the superimpose map where it is found that otherwise the case has been proved. In the application for taking addition evidence the appellants stated that they supplied it to their learned Advocate appointed in the trial Court but it was not submitted and produced in evidence due to inadvertent mistake on the part of the learned Advocate. In the

aforesaid premises, we find substance in the application for taking additional evidence.

Therefore, the appeal is allowed. The judgment and decree passed by the trial Court is hereby set aside. The suit is send on remand to the trial Court to dispose of it allowing the plaintiff to produce aforesaid document annexure-1, the superimpose map in respect of RS and BS plots of the suit land.

The trial Court will dispose of the suit allowing the plaintiff (now plaintiffs) to lead evidence supporting the superimpose map filed with the application for taking additional evidence.

The appellants are permitted to take the aforesaid annexure-1 lying with the application dated 27.01.2025 by replacing the photocopy of the same. They will be at liberty to submit the same before the trial Court at the time of taking evidence.

The trial Court is further directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and decree.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J.

I agree.