IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 204 of 2017

In the matter of:

Md. Ashraf Ali Khan, son of late Abdul Latif and another.

… Appellants

-Versus-

Government of the People's Republic of Bangladesh represented by the Deputy Commissioner, Dhaka, Collectorate Bhaban, Police Station- Kotwali, District- Dhaka and others.

…Respondents.

Mr. Sheikh A.K.M. Moniruzzaman Kabir, Advocate

…For the appellants

Mr. Md. Shahinoor Alam (Shahin), AAG with
Ms. Kamrunnahar Tamanna, AAG

…For the respondents

Heard on 23.01.2025 and 30.01.2025.
Judgment on 30.01.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the plaintiffs in Title Suit No. 924 of 2014, this appeal is directed against the judgment and decree dated 27.04.2017 passed

by the learned Joint District Judge, 2nd Court, Dhaka in that very suit dismissing the same.

The short facts leading to preferring the appeal are:

The present appellants as plaintiffs filed the aforesaid suit seeking following reliefs:

> *"(ক) নালিশী 'ক' তফসিল অর্ন্তগত 'খ' তফসিলে বর্ণিত .০৬ শতাংশ ভূমিতে বাদীদ্বয় ১ষোল আনা স্বত্বে মালিক মর্মে ঘোষণা মূলক ডিক্রী দিতে,*
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> *(খ) বাদীদ্বয়ের স্বত্ব দখলীয় নালিশী .০৬ শতাংশ ভূমি মহানগর জরীপে ১ নং খতিয়ানে ৮৩৩, ৯৫৩ ও ৯৫৮ নং দাগ অর্ন্তভুক্ত ক্রমে ১নং বিবাদীর নামে ১.২৩০২ একর পরিমাণ ভূমি উল্লেখে হওয়া মহানগর জরীপ রেকর্ড ভুল মর্মে ঘোষণা ডিক্রি দিতে,*
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> *(গ) যেহেতু নালিশী 'খ' তফসিলে বর্ণিত .০৬ শতাংশ ভূমি ১নং খতিয়ানে সরকারের অন্য সম্পত্তির সহিত একত্রিত ক্রমে রেকর্ডভুক্ত হইয়া আছে। সেইহেতু আইনের নিমিত্ত প্রাথমিক ডিক্রি দিতে ও প্রাথমিক ডিক্রীর আলোকে বাদী পক্ষে খরিদা স্বত্ব দখলীয় .০৬ শতাংশ ভূমি ও ছাহামের ফাইনাল ডিক্রী দিতে,*
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> *(ঘ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে যে প্রতিকার, প্রতিকার সমূহ পাওয়ার হকদার তৎমর্মে আদেশ দিতে,*
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> *(ঙ) যাবতীয় আদালত ব্যয় পাওয়ার আদেশ দিতে মর্জি হয়।"*

In the suit, the plaintiffs claimed an area of 6 decimals of land appertaining to City Survey Plot Nos. 833, 953 and 958. The case of the plaintiffs in short, is that by way of successive transfers from the C.S recorded tenant one, Mosammat Tajkora Begum-the predecessor of the plaintiffs got 36 decimals of land and while she had been enjoying title and possession over the land, she offered to transfer 8 decimals of land and on

30.07.1979 and it was purchased by the predecessor of the plaintiffs, Anowara Jabin. While that Anowara Jabin had been in possession over that 8 decimals of land peacefully and without any hindrance from any quarters, she transferred 6 decimals of land to the plaintiff by way of sale deed dated 17.09.1991 and accordingly the plaintiffs started enjoying title and possession of the suit property by mutating their name in the holding vide mutation case no. 8790/91-92 dated 13.11.1991 and got DCR. Subsequently, the plaintiffs erect a ten-shed house thereon and paid *khazna* and the utility bills to the respective department and inducted a caretaker to look after the suit property. When the latest City Survey (সিটি জরিপ) came into being, the plaintiff no. 1 by remaining himself present in the area got the field *porcha* (মাঠ পর্চা) in respect of the suit land in their name followed by its assertion. Soon, the plaintiffs went to America and in the month of August, 2014 they returned to the country and on 16.10.2014 when the plaintiff no. 1 went to pay the land development tax (*khazna*), the defendant no. 5 that is, *Tahshildar* informed him that the suit property has been prepared in the name of the government in *khas* khatian no. 1 in the latest City Survey and refused to receive the rent from him. Subsequently, by obtaining certified copy of the latest city record through his caretaker and by executing power of attorney, filed the suit.

On the contrary, the present respondent nos. 1-5 as defendants by filing joint written statement denied all the material averments so made in the plaint contending *inter alia* that the suit property has rightly been prepared in the name of the government in *khas* khatian no. 1 where the

plaintiffs have got no title and possession over the suit property and the same is liable to be dismissed.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 5(five) different issues when the plaintiffs examined 3(three) witnesses and produced several documents which were marked as exhibit nos. 1-12 though the defendants cross-examined the said witnesses but no document has been produced at their instance. The learned Joint District Judge, 2nd Court, Dhaka after concluding trial and on considering the materials and evidence on record vide impugned judgment and decree dated 27.04.2017 dismissed the suit holding that the plaintiffs have utterly failed to prove their case.

It is at that stage, the plaintiffs came before this court and preferred this appeal.

Mr. Sheikh A.K.M. Moniruzzaman Kabir, the learned counsel appearing for the appellants upon taking us through the memorandum of appeal, the impugned judgment and decree and all the documents including the testimony of the P.Ws appeared in the paper book, at the very outset submits that the learned Judge of the trial court has failed to notice that the municipality tax, holding tax and the mutation khatian stand in the name of the plaintiffs and all the utility bills since have been paid by the plaintiffs so it clearly construes that the plaintiffs have been in peaceful possession over the suit property and therefore, the learned Judge erred in law innot believing those material facts and erroneously dismissed the suit.

The learned counsel next contends that though at the initial stage of the latest city record, it was prepared in the name of the plaintiffs which

can be evident from exhibit-11 and duly produced by the plaintiffs before the trial court, marked as exhibit without any objection by the defendants so clearly proves title and possession of the plaintiffs over the suit property still, the learned Judge of the trial court wrongly dismissed the suit.

The learned counsel also contends that the learned Judge has failed to consider that all the successive records namely, C.S, S.A and R.S was prepared in the name of the predecessor of the plaintiffs and even at the preliminary stage of the latest city survey it was also prepared in their name which proves that due to absence of the plaintiffs at the time of final stage of the recording it was mistakenly prepared in the name of the government and therefore, the learned Judge ought to have decreed the suit considering that admitted facts supported by record.

The learned counsel further contends that soon after purchasing the suit property from their predecessor, since the plaintiffs mutated their name in the respective khatian (holding) and paid rent and since there had been no documents for the defendants-government in acquiring title in the suit land so the learned Judge of the trial court ought to have decreed the suit.

The learned counsel next contends that since all the documents following purchase of the suit property by the plaintiffs have been produced and proved by exhibit nos. 1-12, so there has been no iota of any doubt in acquiring title of the plaintiffs-appellants in the suit land and therefore, the impugned judgment is liable to be set aside.

The learned counsel next contends that though the defendants did not produce a single document let alone any document in support of recording their name in the latest record in *khas* khatian, yet the learned Judge of the

trial court has failed to take into consideration of that vital facts and most erroneously dismissed the suit.

The learned counsel finally by taking us to the provision provided in section 92 of the State Acquisition and Tenancy Act contends that there have certain ingredients therein through which a property can be recorded as *khas* property but nothing sort of these is present for the defendants-government to get the suit land recorded in their name in *khas* khatian but in spite of such loopholes, the learned Judge did not consider that legal aspect and misconceively dismissed the suit.

When we pose a question to the learned counsel for the appellants with regard to the maintainability of the suit in view of the statutory provision provided in section 145A of the State Acquisition and Tenancy Act, the learned counsel then contends that since the Land Survey Tribunal was not constituted at that point of time in Dhaka District when the suit was filed so the plaintiffs have got no other option but to file the suit for declaration and partition and therefore, there has been no illegality in filing and proceeding with the suit in an ordinary civil court. With those counts, the learned counsel finally prays for allowing the appeal.

On the contrary, Mr. Md. Shahinoor Alam (Shahin), the learned Assistant Attorney General appearing for the respondents-government vehemently opposes the contention taken by the learned counsel for the appellants and submits that the suit land is totally unspecified and then by taking us to the impugned judgment, he contends that the learned Judge in the impugned judgment has rightly found that it is not clear that, out of 73 decimals of land, 6 decimals of suit land falls under which plot and

therefore, no decree can be passed in an unspecified land in view of the provision provided in order VII, rule 3 of the Code of Civil Procedure.

The learned Assistant Attorney General in his second leg of submission then contends that before the city record in respect of the suit land is prepared, there prepared R.S record and the suit land falls under R.S Plot No. 13 but the plaintiffs mutated their name in the khatian from S.A Plot No. 8 which is totally illogical and the learned Judge of the trial court has rightly found so and dismissed the suit.

The learned Assistant Attorney General further contends that it is the settled proposition of law that the plaintiff has to prove his/her own case without depending on the weakness of the defendants' case but in the instant case, the plaintiffs have failed to comply with that settled proposition of law and therefore, the impugned judgment and decree is thus sustainable in law.

The learned Assistant Attorney General goes on to submit that the suit has not only been filed for declaration of title and that of challenging the latest record-of-right rather for partition, but none of the co-sharer of three separate plots mentioned in the schedule of the plaint has been impleaded as party to the Suit and the learned Judge of the trial court has rightly found the suit to be bad for defects of parties but no ground has been taken in the memorandum of appeal as to why the suit will not be barred for defect of parties.

In that respect, the learned Assistant Attorney General also takes us through the impugned judgment and submits that, the trial court has perfectly found by asserting that "বাদীর স্বত্বের ভিত্তি ও ধারাবাহিক বিবরণ প্রমাণে ব্যর্থ

হইয়াছে। এস, এ এবং আর, এস মোতাবেক নালিশী তফসিল বর্ণিত সম্পত্তি দাবীদার সকল পক্ষকে পক্ষভূক্ত করে নাই".

The learned Assistant Attorney General wrapped up his submission contending that since city survey is the latest record so as per the provision of sections 145A, 145F and 145H of the State Acquisition and Tenancy Act, 1950, the suit itself is not maintainable though that very point has not been taken into consideration by the learned Judge of the trial court but since it is a legal point that can well be agitated at any forum and prays that the appeal be dismissed.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellants and that of the learned Assistant Attorney General for the respondent nos. 1-5 at length. We have also very meticulously gone through the impugned judgment and decree vis-à-vis perused the evidence of P.W-1 to P.W-3 and all the documents produced by the plaintiffs-appellants.

On going through the exhibited documents in particular, exhibit-11, we find that at the very initial stage, the suit land has been prepared in the name of the present appellants but finally city record has been prepared in the name of the government in *khas* khatian no. 1. It is the contention of the learned counsel for the appellants, the defendants have to prove under what circumstances the suit property has been prepared in *khas* khatian in view of the provision of section 92 of the State Acquisition and Tenancy Act. But we don't find any substance in the submission since the plaintiffs have to prove their own case without inviting any explanation from the

defendants as regards to the reason for recording the suit land in the name of the government, yet we don't find the said provision applicable here.

Furthermore, before the city record is prepared in respect of the suit land R.S record was prepared in the area where suit land was prepared in R.S Plot No. 13 but why the plaintiffs mutated their name through S.A Khatian is totally incomprehensible to us rather unusual.

Further, the suit has not only been filed for declaration of title as well as declaration that the latest city record has wrongly prepared in the name of the government, rather it has also been filed for partition. We find the cause of action in filing the suit arose when the defendant no. 5 denied to receive *khazna* from the plaintiffs but we find no cause of action in the entire plaint that prompted the plaintiffs to pray for partition in the suit property. Next, we don't find any denial by any of the co-sharer to partition the suit land to the plaintiffs so in absence of any cause of action denying *saham* of the plaintiffs the suit praying for partition cannot be entertained.

Furthermore, the learned Assistant Attorney General has very rightly pointed out that all the co-sharers in respect of three suit plots have not been made any party to the suit by referring the observation and finding of the learned Judge of the trial court who arrived at a decision that the suit is bad for defect of parties.

On top of that, since it has already been settled that after coming into effect of the provision of section 145A of the State Acquisition and Tenancy Act, no suit can lie in ordinary civil court in the form of declaration as section 145F of the Act has explicitly put a bar in filing such suit by inserting a word "**shall**" which is mandatory in nature. So, for

having such legal bar, no civil suit under the disguise of declaration ostensibly challenging the latest record cannot be entertained.

Then again, section 145H of the State Acquisition and Tenancy Act also postulates a non-obstante clause as well stating *"Notwithstanding anything contained to the contrary, in this Act or any other law for the time being in force the provisions of the Chapter, shall prevail"*. In that section as well, the word '**shall**' has also been inserted making its compliance mandatory having no scope to override such provision.

Also, there has been no explanation in the entire plaint as to what prevented the plaintiffs to file a suit before the Land Survey Tribunal when in Dhaka City, Land Survey Tribunal was constituted in the year 2012.

All in all, since there has been explicit legal bar to challenge the latest recording in ordinary civil court which we already settled in the judgment dated 13.11.2024 in First Appeal No. 15 of 2017 so we don't find the suit is maintainable.

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

Let a copy of this judgment along with the lower court records be transmitted to the learned Joint District Judge, 2nd Court, Dhaka forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O.**