

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

First Appeal No.310 of 2018

Abdul Hamid Fakir being died his heirs:

1(a) Mst. Habibun Nessa and others

..... appellants

-Versus-

M/s. Momtaz Jute Baling and Company and
others

..... respondents

Ms. Jobaida Parvin, Advocate

..... for the appellants

Mr. Shishir Kanti Mazumder, Advocate

..... for respondents 1-8

Judgment on 06.02.2024

Bhishmadev Chakrabortty, J.

This appeal, at the instance of defendants 6-8, is directed against the judgment and decree of the Joint District Judge, Additional Court, Narayangonj passed on 30.04.2017 in Title Suit No.01 of 2013 decreeing the suit.

The plaint case, in brief, are that the schedule suit land along with others originally belonged to Raja Brothers. They left this Country during Indo-Pak war and accordingly the property was gazetted in the list of Enemy Property. The property was then vested to the Jute Board under the Ministry of Commerce. After independence of this Country the Ministry of Commerce sold the suit property to Bangladesh Jute Trading Corporation by a registered *kabala* dated 20.06.1974. The predecessor of the plaintiffs Mamataz

Jute Baling Company took settlement of the property and started possessing the same as tenant by performing business of jute therein. Subsequently, the Corporation decided to sell the suit property and put it into auction. The predecessor of the plaintiffs Mamataz Jute Baling Company participated in the tender and became highest bidder. It purchased the property and its possession was formally handed over to the Company on 23.06.1985. There were some error in the sale deed dated 29.06.1974 which was subsequently corrected on 10.04.1990 by the concerned Ministry. Subsequently, the Corporation was abolished and Additional Secretary of the Corporation by a registered *kabala* dated 21.05.1991 finally sold the suit property to the Company. The owner of the Company remained in possession and mutated the name through Mutation Case No.2531 of 1991. It paid rent to the concerned authority up to 1398 BS. When the predecessor of the plaintiffs came to learn that defendant 2, Additional Deputy Commissioner (Revenue) was taking steps treating it as vested property he filed an application to the concerned authority on 20.05.1992 refraining them from taking any steps. His application was considered and defendant 1 through letter admitted that the property was legally transferred in 1974 and 1991 and it cannot be treated as vested property under the Ministry of Land. It was the property of Ministry of Commerce which was subsequently transferred validly to the plaintiffs' predecessor. Some plots of the property was gazetted in the 'Kha' list of *Arpita Sampatti*

at serial Nos.50, 60, 61, 76, 80 and 88 which was subsequently abated under section 28(Ka) of the Ain, 2001 by operation of law. They paid rent up to 1422 BS but they found that RS plot 3890 measuring an area of .0525 acres out of .06 acres of SA *Khatian* 340 and .2794 acres of RS plot 3891 of RS *Khatian* 105 measuring an area of .0475 acres out of .2795 acres have been recorded in the name of defendants 6-8 erroneously. It was further found that .1762 acres of RS plot 3892 and .2391 acres out of .2794 acres of RS plot 3891 in RS *Khatian* 11 was recorded in the names of defendants 5(Ka)-5(Dha) erroneously. Such wrong record in the name of the defendants clouded title of the plaintiffs over the suit land and as such they instituted the suit for declaration of title in the suit land with further prayer that RS *Khatians* 11 and 105 of plots 3890, 3891 and 3892 measuring .5081 acres as detailed in the schedule to the plaint prepared in the name of defendants 5-8 is erroneous, incorrect, collusive and not binding upon them.

Defendants 1-4 Government, defendants 6-8 and defendants 5(Ka)-5(Dha) contested the suit by filing separate sets of written statements. Defendants 1-4 in their written statement contended that the original owners of the suit land left this Country in 1965 and as such the property became Vested and Non-Resident Property and subsequently it has been listed in the census list. The documents

relying on which the plaintiffs claimed title are not correct. They created those documents to grab the Government property.

Defendants 5(Ka)-5(Dha) in their statement contended that Ruplal Chandra Das and others were the owners in possession of the lands of SA plots 443 and 444. By a registered *kabala* dated 13.04.1964 they sold out .51 acres to Md. Ansar Ali, the predecessor of the above defendants and handed over possession thereof. RS *Khatian* 11 for plots 3892 and 3891 was prepared for .1762 and .2319 acres totally .4081 acres in their names. In order to grab the Government property the plaintiffs collusively managed to endorse it in the census list and took settlement from the Ministry of Commerce. However, they admitted the fact of enlisting the property in '*Kha*' list in the gazette of *Arpita Sampatti*. The property was never owned and possessed by Raja Brothers. In auction, the plaintiffs purchased land of holding Nos.15, 19 and 24 and as such they cannot claim the land of holding No. 28 which is owned, held and possessed by these defendants. The mutation in the name of the plaintiffs was cancelled by the AC Land on 15.12.2014. The suit, therefore, would be dismissed.

In the written statements defendants 6-8 contended that the description of the property in the plaint is vague. The plaintiffs instituted the suit mentioning SA plots only. The suit land was recorded in CS plot 413 corresponding to SA plot 443 measuring .22

acres. Raghunath was the original owner of it and record was prepared in his name. The predecessor of these defendants Rustam Ali Sarder purchased .05 acres from .22 acres by *kabala* dated 28.09.1963 and took over its possession. Rajoshi Nath Ray was the owner of the land of CS *Khatian* 316, SA *Khatian* 340 corresponding CS plots 414 and SA plot 454 and his gradual heirs Sarat Chandra Ray and Satish Chandra Ray gave *pattan* of .17 acres on 13 Sharabon 1352 BS from aforesaid 2 plots to the father of the these defendants by taking *salami* of Taka 2000.00 and handed over its possession. In the RS DP *khatian* the land in respect of RS plots 3890 and 3891 in respect of .22 acres was prepared in the name of their predecessor. But in the final publication erroneously .10 acres of land was recorded in their names. These defendants have been paying rent to the concerned authority for the aforesaid .10 acres. They have been enjoying the lands of plots 3891 and 3890 by implanting tress. The plaintiffs did never possess the land of plots 316, 340, 414 and Raja Brothers had ever no godown on the premises. The plaintiffs illegally included the property of RS *Khatian* of these defendants in their purchased deeds. Therefore, the suit would be dismissed.

To adjudicate the matter in dispute between the parties, the trial Court framed as many as 7 issues. The plaintiffs examined 2 witnesses and produced their documents exhibits 1-9. Defendants 1-4 examined 1 witness and their documents were exhibits-Ka-Ka(10). Defendants

6-8 examined 2 witnesses DWs 2 and 3 and their documents were exhibits-Kha-Cha. Defendants 5(Ka)-5(Dha) examined 1 witness DW 4 but they produced no documents. However, the learned Joint District Judge after considering the evidence and other materials on record found plaintiffs' title over the suit land and accordingly decreed the suit as prayed for giving rise to this appeal by defendants 6-8.

Ms. Jobaida Parvin, learned Advocate for the appellants takes us through the materials on record and submits that the appellants' predecessor got .05 acres by a *kabala* dated 28.09.1963 from its original owner at a consideration of Taka 3,000.00. Their predecessor further got .17 acres by *pattan* dated 13 Sharabon 1352 BS from its original owner on payment of salami of Taka 2,000.00. In this way the appellants' predecessor became owner in possession of total .22 acres but erroneously RS *Khatian* has been prepared for .10 acres. Admitting that part they paid rent to the Government. They have been possessing .10 acres by fish farming in a part and the other part by implanting tress. The plaintiffs' land as claimed do not attract the land of these appellants. The appellants have been owning and possessing the lands of holding No. 26 which is not within the schedule of the plaintiffs' land. The appellants are in absolute possession in their land and the instant suit praying for declaration of title simpliciter without any prayer for recovery of possession is not maintainable. She refers

to the case of Tajuddin and others Vs. Moktar Ahmed and others, 11 BLD (AD) 144 and relied on the *ratio* laid therein that even a trespasser's possession is good and valid against the entire world except the true owner and such possessor's possession is entitled to the protection until he is evicted in due process of law. She pointed us the schedule of the plaint and submits that the schedule is vague, unspecific and no decree can be passed on such unspecified land. The Joint District Judge on misconception of fact and law decreed the suit declaring plaintiffs' title over the suit land which is required to be interfered with by this Court.

Mr. Shishir Kanti Majumder, learned Advocate for respondents 1-8 on the other hand opposes the appeal and supports the judgment and decree passed by the trial Court. He submits that the trial Court found title of the plaintiffs relying on the documents exhibits 1-9. The learned Judge assessed the evidence of witness and thereby decreed the suit which may not be interfered with. The appeal, therefore, would be dismissed.

We have considered the submissions of both the sides, gone through the plaint, written statement, evidence of the parties and the documents exhibited. It transpires that the plaintiffs brought the suit alleging that although their predecessor purchased the property from the Corporation by a registered *kabala* dated 21.05.1991 exhibit-7, mutated his name and paid rent to the Government but they found that

RS *Khatian* 11 for plot 3891 in respect of .2794 acres and RS *Khatian* 105 of plots 3892 and 3890 for .1762 and .0525 acres totally .5081 acres of land were recorded in the names of defendants 5-8 which clouded their title over the aforesaid quantum and instituted the suit praying for declaration of title with further declaration that RS *Khatians* 11 and 105 for plots 3890, 3891 and 3892 prepared in the names of defendants 5-8 were erroneous, incorrect, collusive and not binding upon them. Defendants 1-4, the Government although denied the aforesaid averments made in the plaint but this or that way they admitted that the plaintiffs purchased the suit land from the competent authority through *kabala*. They mainly contended that the suit land was enlisted as Enemy Property in 1967 and after liberation war it became Vested and Non-Resident Property and accordingly census list was prepared. In order to grab the property the plaintiffs created those documents. Defendants 5(ka)-5(dha) claimed the suit property by way of purchase from its original owner by a registered *kabala* dated 13.04.1964. They stated that they purchased .51 acres of land of plots 3892 and 3891 but RS record was prepared in their names for .4081 acres. But finally they filed a *solenama* admitting title of the plaintiffs in the suit land. The said *solenama* was exhibit-10. Defendants 6-8 (appellants) claimed that they got total .22 acres of land in plots 3890 and 3891 but finally record was prepared in their names for .10 acres. They got the suit land by *pattan* and purchase.

Against the judgment and decree passed by the trial Court the Government did not prefer any appeal. Only defendants 6-8 have preferred this appeal.

It transpires that the plaintiffs claimed that the suit property along with others was the land of Raja Brothers and they left this Country in 1965 and it was enlisted as Enemy Property. This fact was not denied by the Government. The plaintiffs claimed that after the liberation war the property fell into the management of Jute Board in 1974. The Ministry of Commerce sold it to the Corporation through registered *kabala* dated 29.06.1974 exhibit-9. The Corporation put the property into auction and the predecessor of the plaintiffs purchased it in bid. The secretary of the Corporation then through exhibit-7 sold it to the predecessor of the plaintiffs. Defendant 2 Deputy Commissioner, Narayangonj wrote a letter exhibit-6 to the Divisional Commissioner wherein they admitted that the land in question was sold to the plaintiffs' predecessor through registered *Kabala*. Therefore, the plaintiffs have been able to prove their title over the suit land.

The plaintiffs brought the suit only challenging the wrong record of rights in the names of defendants 5-8. They claimed title and declaration in respect of .5081 acres of plots 3890, 3891 and 3892 as described in the schedule to the plaint. Defendants 6-8, appellants herein, claimed that they are in absolute possession over .10 acres of

land of RS plots 3890 and 3892. They got it by a *Kabala* dated 28.09.1963 and a *kabuliat* of 13 Sharaban 1352 BS measuring .05 and .17 acres. We have perused those 2 documents exhibits-Kha and Kha-1. We find that second page of the *pattan* exhibit-Kha is written on white paper. It is neither cartridge nor stamp paper. The stamp paper used in the first page do not appear as original. The other documents exhibit-Kha-1 is of similar nature. These defendants also failed to prove the *kabuliat* and *kabala*, the unregistered documents by adducing oral evidence of witnesses. Moreover, the *kabuliat* is not followed by any rent receipt.

The argument made by the learned Advocate for the appellants that they are in possession of the suit land and this suit for mere declaration of title without any prayer for recovery of possession is not maintainable. But we find that these defendants claimed that they have been possessing and enjoying .0525 acres from plot 3890 by releasing and rearing fish therein and .0475 acres from plot 3892 by implanting tress thereon. But the evidence of PWs 2 and 3 regarding possession is not corroborative. DW3 simply stated that they have been enjoy the suit land by implanting tress which contradicts with their written statement as well as the evidence of DW2. The rent receipts are evidence of possession. The defendants produced rent receipts to prove their case of payment of rent for .10 acres. The case of the plaintiffs is that the record has been prepared in the name of the

defendants erroneously. Therefore, they prayed for declaration of title with further declaration that the RS record in respect of the aforesaid plots prepared in the names of the defendants are erroneous and not binding upon them. In the case referred to by the learned Advocate for the appellants it has been held that even a trespasser's possession is good and valid against the entire world except the true owner and such he would get protection until evicted in due process of law. The *ratio* of the aforesaid case do not match this case considering the facts and circumstances upon which the *ratio* has been laid. Here, the present appellants are not the true owner of the land and we find no bar in decreeing the plaintiffs' suit declaring their title in respect of the suit land which has been clouded by preparation of wrong record in the names of the defendants.

It further transpires that defendants 5(ka)-5(dha) filed a *solenama* exhibit-10 in the trial Court admitting the title of the plaintiffs over .408 acres of land which was recorded in their names. DW 4 led evidence to support the *solenama*. It was duly exhibited but the learned Judge did not at all take it into his consideration. He could have decreed the suit on compromise with defendants 5(Ka)-5(dha). Such error on the part of the learned Judge is apparent on the face of the record which requires to be corrected by us.

In the foregoing discussion, we find that the plaintiffs have been able to prove their title over the claimed suit property and further

succeeded in proving that the RS *Khatians* 11 and 105 for plots 3890, 3891 and 3892 have been prepared wrongly in the names of defendants 5-8. The trial Court on correct assessment of fact and law decreed the suit. We find nothing to interfere with it.

We, therefore, find no merit in this appeal and accordingly it is dismissed. However, there will be no order as to costs. The judgment and decree passed by the trial Court is hereby affirmed in the modified form. The suit be decreed against defendants 1-4 and 6-8 on contest and against defendants 5(ka)-5(dha) on compromise as per exhibit-10. The *solenama* will be treated as a part of the decree. The trial Court is directed to correct the decree as above.

Communicate the judgment and send down the lower Court's record.

Md. Akhtaruzzaman, J.

I agree.