

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Appeal No. 146 of 2000

In the Matter of:

Government of the People's Republic of
Bangladesh represented by District Commissioner,
Chittagong and others

.....Defendant -appellants.

-Versus-

Mohammad Salimuddin and others.

.....Plaintiff-respondents.

Mr. Md. Md. Yousuf Ali, D.A.G.with

Ms. Israt Jahan, A.A.G with

Mr. Md. Siddik Ali, A.A.G with

Ms. Sabina Yasmin Nira, A.A.G.

... For the defendant-appellants.

Mr. Muhammad Khairul Bashar, Advocate.

.....For the plaintiff-respondents.

**Heard on 04.03.2025, 10.03.2025 and 05.05.2025
and Judgment on 22.05.2025.**

Sheikh Abdul Awal, J:

This first appeal at the instance of defendant-appellants is directed against the judgment and decree dated 26.06.1999 (decree signed on 05.07.1999) passed by the learned Subordinate Judge, 3rd Court, Chittagong in Other Suit No. 382 of 1994 decreeing the suit.

Short facts for disposal of the appeal is that the respondents as plaintiffs filed Other Suit No. 382 of 1994 impleading the defendants in the court of the learned Subordinate Judge, 3rd

Court, Chittagong praying declaration of title and correction of B.S. khatian. The plaint case in brief is that the property in question was originally belonged to Yakub Ali, R.S. Khatian was published in his name. On 06.01.1927 due to non- payment of rent the suit property was auctioned in Karjari case No. 1118 of 1930 and one Badiur Rahman Chowdhury became the owner of the said property by way of purchase agreement. Thereafter, on 21.05.1958 the said Badiur Rahman Chowdhury transferred the property in question to Alhaj Syedul Haque Sawdagar and Hamidul Haque by registered Kabla Deed No. 1774. Thereafter, the said Alhaj Syedul Haque Sawdagar and Hamidul Haque transferred the said property to the plaintiff-Respondents by 4 registered deeds being Nos. 777, 778, 779 and 780 on 19.04.1987 totaling 1.18 acres of land and thereafter, the plaintiff-respondents mutated their name through Naam Zari Khatian No. 1173/1 and paid taxes to the Government. In this backdrop on 04.09.1994 while the plaintiffs went to Tashil Office for payment of rent and then the Tashilder refused to accept the rent saying that property in question was recorded in the name of the Government in B.S. Khatian. Hence, the suit for declaration of title and correction of B.S. khatian.

The defendant Nos. 16 to 18 contested the suit by filing written statement and additional written statements denying all the material allegations made in the plaint stating, inter-alia, the suit land of B.S. khatian No.1, Dag No. 6615 and 6616 was duly and correctly recorded as Khash land of Government and subsequently, during B.S survey the suit land has been correctly recorded in the name of Government.

At the trial plaintiffs side examined 3 witnesses while defendant-Government examined only 1 witness and both the parties exhibited some documents to prove their respective cases.

The learned Sub-ordinate Judge after hearing the parties and on considering the materials on record by his judgment and decree dated 26.06.1999 (decree signed on 05.07.1999) decreed the suit in favour of the plaintiff- respondents.

Aggrieved thereby, Government as appellant preferred this Appeal.

Mr. Md. Yousuf Ali, the learned Deputy Attorney General appearing for the appellant in the course of his argument takes us through the plaint of the suit, written statement, evidence of both the parties and thereafter, submits that in this case the plaintiff side claimed the suit land on the basis of some registered deeds although at the trial plaintiff side could not produce any documents that their original predecessor Bodiur Rahman Chowdhury purchased the suit land in auction and thus the foundation of plaintiffs' title over the suit land is doubtful. The learned Deputy Attorney General further submits that B.S. record was rightly prepared in the name of the Government as Khash land and D.W-1 testified in his evidence that Government has been possessed in the suit land. He adds that P.Ws in their respective testimony inconsistently deposed as to possession of the plaintiffs over the suit land although the trial Court below without considering all these vital aspects of the case mechanically decreed the suit in favour of the plaintiffs and as such, the same is liable to be set-aside.

Mr. Muhammad Khairul Bashar, the learned Advocate appearing for the plaintiff-respondents, on the other hand, supports the impugned judgment which was according to him just, correct and proper. He in the course of argument referring some additional evidence submitted before this Court submits that Boinama itself

manifests that the predecessor of the plaintiffs named Bodiur Rahman Chowdhury purchased the land in question in auction and thereafter, time to time the property was transferred by registered deeds and finally, the plaintiffs purchased the suit land by 4 registered deeds being Nos. 777, 778, 779 and 780 in 1987 and thereafter, plaintiffs mutated their names and paid rent to the Government, possessed the suit land and the trial Court on considering all this factual aspects rightly arrived at a finding that plaintiffs have been successfully proved their right, title and possession over the suit land. He further submits that plaintiffs to prove their case examined 3 witnesses namely, P.W-1, P.W-2 and P.W-3 and all those witnesses categorically testified that plaintiffs have been possessing the suit land since the date of purchase and the plaintiffs exhibited all their material documents including rent receipts, registered deeds, the trial Judge on considering all these aspects of the case justly decreed the suit in favour of the plaintiffs.

Having heard the learned Deputy Attorney General and the learned Advocate for the respondents and having gone through the materials on record including the impugned judgment, deposition of PWs and D.W-1. Now, the only question calls for our consideration in this appeal is whether the trial Court committed any error in finding that the plaintiffs by adducing sufficient evidences have been succeeded to prove their case.

On scrutiny of the record, it appears that during trial plaintiffs examined 3 witnesses out of them PW-1, Md. Hazi Idris Miah stated in his deposition that he is the father of plaintiff Nos. 1 and 2 and plaintiffs (minor) No. 3 to 5. This witness further stated that Yakub Ali was the original owner of the suit property; his name was recorded in R.S. Khatian No. 3268. He proved the

same as exhibit-1. He stated that due to arrear of rent the property in question was put in auction and Badiur Rahman Chowdhury, son of Anwar Ali purchased the property in auction in 1930 and thereafter, Shahidul Huque and Hamidul Haque purchased the said land from Badiur Rahman in 1958 and he proved certified copy of the deed as exhibit-2. This witness further stated that thereafter, Shahidul Haque, Hamidul Haque transferred the said land to Ibrahim and three others on 12.08.1985 totaling 81 decimals of land and he proved the purchased deeds being Exhibit-3, 3(Ka) and thereafter plaintiffs purchased the said land from Ibrahim and Illius on 19.04.1987 by 4 registered deeds and proved those deeds as exhibits-3(Kha) to 3(Ga) and thereafter plaintiffs mutated their names and the plaintiffs proved Namjari Khatian as exhibit-4 and paid rent till 1995 to the Government and proved the same as exhibit-5 and thereafter on 04.09.1994 local Tashil office refused to take rent saying that the property in question recorded in the name of the Government. This witness produced B.S. Khatian as exhibit-6 series. This witness further stated that the property in question was wrongly recorded in the name of Government-defendant in B.S. Khatian; the plaintiffs have possessing the suit land but due to wrong record a cloud has been cast on them, the defendants never possessed the suit land. In cross examination the defendant side could not able to discover anything as to the credibility of the witness on the matter to which she testifies.

PW-2, Syed Ahammed, stated in his deposition that-“আমি বাদীকে চিনি। নাঃ সম্পত্তি চিনি। নালিশী সম্পত্তির পার্শ্ব আমার দোকান আছে। ১০/১২ বৎসর হইতে আমি চিনি। নাঃ সম্পত্তি বাদী হাজী ১০/১২ বৎসর হইতে ভোগ দখলে আছে। নাঃ সম্পত্তির পরিমান ৪/৫ কানি হবে। সরকারকে নাঃ সম্পত্তি ভোগ দখলে দেখি নাই।”

PW-3, Shankar Kanti Shil, stated in his deposition that-“আমি নকল

নবীস জেলা রেজিস্ট্রি অফিস। ২১/০৫/৪৮ ইং তারিখে ১৯৪৭ দলিল দাতা শ্রী বদিউর রহমান চৌধুরী গ্রহিতা হামিদুল হক ও ছৈয়দুল হক, উক্ত বালামের মৌজা বাকুলিয়া, এই দলিলের তফশিলের সাথে বালামের তফশিলের মিল আছে। বালামের ২৪ নং ভলিউমের ১৪৬-১৪৯ পৃষ্ঠায় আছে। যাহা প্রদর্শনী-৭, ১২-৮-৮৫ইং তারিখে ১২৯২৫নং কবলা দলিল মূল দলিলের দাতা গ্রহীতা। তফশিলের মিল আছে দেখা যায়। যাহা প্রদর্শনী -৭(ক)। তাহা বালামের ২২৮ পৃষ্ঠা ১৫৯-১৬২নং পৃষ্ঠায় আছে। সদর সাব রেজিস্ট্রি অফিস ছটগ্রামের। ” On going through the above quoted evidence, it appears that all the pws categorically testified that the plaintiffs are in possession in the suit land and the plaintiffs to prove their case exhibited a series of registered deeds, rent receipts, old Boinama of 1930.

Now, let us advert to the evidence of DW-1, Serajul Haque, Assistant Tashilder of Chandgau office. This witness in his deposition stated that-“বাদী কখনো নালিশী জায়গার খাজনা দেয় নাই। নাঃ সম্পত্তি বাদীর কোন স্বত্ত্ব দখল ছিল না। বা এখনো নাই।” This witness also stated that B.S. record was correctly prepared in the name of Government, he proved B.S. record as Exhibit-ka. This witness denied the suggestion in the following language that- “সত্য নহে যে বাদীদের খরিদা দলিল মূলে মিউটেশন খতিয়ান হইয়াছে।” This witness in his cross-examination stated that-“শিকস্তির প্রমাণ দাখিল করিতে পারিব না। ৩৮ শতক নাল জমি সরকারের নিয়ন্ত্রনে আছে তবে কোন চাষাবাস করে না।” Evidence presented in court By DW-1 did not find corroboration from any other testimony. This can create doubts about the reliability of D.W. 1's testimony and weaken the overall defendant's case.

On a reading of the entire evidence of PWs and DW-1, it is very difficult to hold that the Government has been

possessing the suit land or the suit land is under the control of the Government. In this case, we have already noticed that the plaintiffs to prove their right, title and possession over the suit land exhibited a series of old registered deeds and rent receipts, mutation, old Boinama of 1930. All the Deeds are more than 30 years old and therefore, the Court is entitled to presume that it is a genuine document. The trial Court as first Court of fact on due consideration of the entire evidence and materials on record came to its conclusion that- “বিবাদীদের জবাব, সাক্ষ্য এবং দাখিলী প্রদর্শনী কাগজাদি পর্যালোচনায় দেখা যায় যে, বিবাদী পক্ষের নামে বি,এস খতিয়ান প্রচারিত হওয়ার কোন ভিত্তি পরিলক্ষিত হয় না। পূর্বেই উল্লেখ করা হইয়াছে যে, নালিশী সম্পত্তির সংশ্লিষ্টতায় বহুল পুরাতন আর,এস খতিয়ান হইতে আরম্ভ করিয়া হালনাগাদ নালিশী সম্পত্তিতে বাদী পক্ষের স্বত্ব দখলের সমর্থনে বিভিন্ন রেজিস্ট্রিকৃত দলিলাদী সহ নাম জারী খতিয়ান খাজনা রসিদ ইত্যাদি দাখিল হয়। বাদী পক্ষের দাখিলী এই সকল স্বত্ব সংক্রান্ত দলিল পত্রাদি দৃষ্টে নালিশী সম্পত্তিতে বাদীর স্বত্ব দখল একটি প্রমাণিত তথ্য হিসাবে প্রতিষ্ঠিত হয়।”

This being the finding of fact based on proper appreciation of the evidence and materials on record. The learned subordinate Judge appears to have considered all the material aspects of the case and justly decreed the suit in favour of the plaintiffs.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant first Appeal must fail.

In the result, the appeal is dismissed without any order as to costs. The Judgment and decree dated 26.06.1999 (decree signed on 05.07.1999) passed by the learned

Subordinate Judge, 3rd Court, Chittagong in Other Suit No. 382 of 1994 decreeing the suit is hereby maintained.

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

Md. Mansur Alam, J:

I agree.