

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 2836 of 2009

Md. Shajahan and others

...petitioners

Nur Nabi and others

...opposite parties

With

Civil Revision No. 4195 of 2009

Government of Bangladesh

.....petitioners

-Versus-

Md. Shahjahan and others

.....opposite parties

Mr. Md. Yousuf Ali, Deputy Attorney General with
Mr. Rakib Hossain,

Mr. Mohammad Salah Uddin Sikder and

Mr. Kamrunnahar Lipi, Assistant Attorney Generals
...for the petitioners

Ms. Syeda Nasrin with

Mr. Baharul Alam,

Ms. Salma Kulsum and

Mr. Ziaur Rahman, Advocates

...for petitioners 68, 94, 120, 130, 131, 133, 138

Mr. Abul Kalam Chowdhury, Advocate

...for the opposite parties 1-82

Heard on: 10.12.2025, 11.12.2025,

14.12.2025, 17.12.2025, 18.12.2025,

12.01.2026, 13.01.2026, 14.01.2026 and

15.01.2026

Judgment on: 28.01.2026

In Civil Revision 2836 of 2009 Rule was issued on 17.08.2009 and in Civil Revision 4195 of 2009 Rule was issued on 15.11.2009. Both the rules were issued calling upon the opponents to show cause as to why the judgment and

decree dated 22.07.2009 passed by the Additional District Judge, Laxmipur in Title Appeal 133 of 2000 allowing the appeal thereby reversing the judgment and decree dated 20.08.2000 passed by the Subordinate Judge, 1st Court, Laxmipur in Title Suit 96 of 1985. Since both revisions are preferred against the same judgment and decree those are heard analogously and disposed of by this common judgment.

Defendants 68, 94, 120, 130, 131, 133, 138 as petitioners preferred Civil Revision 2836 of 2009 and they are claiming under defendant 1 who preferred Civil Revision 4195 of 2009. Opposite parties 1-82 of Civil Revision 2836 of 2009 and opposite parties 1-72 of Civil Revision 4195 of 2009 as plaintiffs filed Title Suit 122 of 1965 for declaration of title and the same was withdrawn on 22.08.1973. Then plaintiffs filed Title Suit 142 of 1974 but the record was missed (lost) and reconstructed on 01.03.1979 and thereafter the instant Title Suit 405 of 1979 started and was transferred to the Court of Subordinate Judge, 1st Court, Laxmipur on 18.02.1985 and renumbered as 96 of 1985 and the suit was for declaration of title.

The case of the plaintiffs is that Mongazi was owner of the suit land in 10 annas share by pattani taluk number 2798.

Mongazi orally gifted the said land to his son named Kazem Bhuiyan who leased out the same with other lands to Hamid Mia on 30th Agrahayon 1288 B.S. After expiry of the tenure of lease Kazem and his heirs used to possess the land. Plaintiffs are successive heirs of Kazem Bhuiyan. The land of pattani taluk of Mongazi was diluviated 7 to 8 years prior to D.S. operation. After alluviation the said land was again diluviated in 1337-38 B.S. and remained so for a period of 13(thirteen) years. After reappearance from the bed of the river the plaintiffs were in possession of the suit land by constructing homestead thereon. At present the suit land contains plaintiffs' homestead, garden, graveyard, pond, mosque and other appurtenances. In MRR survey the suit land was primarily recorded in the names of the plaintiffs against which defendant 1 filed objection and the same was recorded in the name of defendant 1-government. Then plaintiffs filed Miscellaneous Case 1019 of 1962 which was allowed but charge officer rejected the said order as the case was not filed under proper section of the law relating thereto. Plaintiffs thereafter filed Title Suit 127 of 1965 before the Court of Subordinate Judge, Noakhali. During pendency of the suit since Diara Khatian was not prepared in their names plaintiffs withdrew the suit

and filed Title Suit 142 of 1974 which was renumbered as Title Suit 405 of 1979 and lastly as Title Suit 96 of 1985. Plaintiffs further stated that the suit land having been diluviated again in 1937-38 remained under the bed of the river for 10-11 years and upon reappearance in *situ* in 1949-50 the plaintiffs rendered the same fit for cultivation by demarcating boundaries and have since been possessing the same by continuous cultivation as owners. The subsequent records of right prepared in the name of defendant 1 are wrong. Defendant 1 had no authority to settle the land to other defendants who got no possession and all the papers of lessees are forged, fraudulent and paper transaction. The records in the name of defendant 1 cast cloud on the title of the plaintiffs. Hence suit.

The case of the defendants is that in Diara Survey the suit land was recorded in the name of the government (hereinafter called as defendant 1) in khas khatian number 1. The suit land was under river for more than 20 years and after alluvion defendant 1 became owner of the suit land and has been maintaining title and possession in the same. Earlier Title Suit 333 of 1977 and Title Suit 54 of 1984 were filed in respect of the suit land. Diara plot number 7160 has been

using as public road and the rest of the suit land has been settled to different local people and they have been maintaining possession in the suit land upon payment of rent to defendant 1 by opening separate khatian. The plaintiffs are not the lessees under defendant 1. Defendant 1 gave settlement to other defendants through registered kabuliyats. The land which has been mentioned as pattani taluk number 2798 does not correspond to the suit land recorded in the name of defendant 1 in Diara Survey. The suit being false is liable to be dismissed with cost.

Trial Court framed as many as 5 issues. During the course of trial plaintiffs examined 3 witnesses and defendants examined 15 witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

Trial Court upon perusal of the pleading and hearing the parties and considering both oral and documentary evidence dismissed the suit by judgment and decree dated 20.08.2000. As against the same plaintiffs preferred Title Appeal 133 of 2000 before District Judge, Laxmipur. The appeal was transferred to the Court of Additional District Judge who heard the same and was pleased to allow the appeal by judgment and decree dated 22.07.2009. Feeling aggrieved by

the judgment passed by the appellate Court defendant 1 preferred Civil Revision 4195 of 2009 and other defendants preferred Civil Revision 2836 of 2009 before this Court and obtained Rule on 15.11.2009 and 17.08.2009 respectively.

Learned Deputy Attorney General Mr. Yousuf Ali along with Mr. Rakib Hossain, Mr. Mohammad Salah Uddin Sikder and Ms. Kamrunnahar Lipi, Assistant Attorneys General appeared on behalf of defendant 1-petitioner and learned Advocates Ms. Syeda Nasrin along with Mr. Baharul Alam, Ms. Salma Kulsum and Mr. Ziaur Rahman appeared on behalf of defendants 68, 94, 120, 130, 131, 133, 138-petitioners and they supporting each other made identical submissions. They submit that the Court of appeal committed error of law resulting in an error in such decree occasioning failure of justice in decreeing the suit upon misreading and non-consideration of material evidence and also upon misconstruction of document and the impugned judgment being perverse and misconceived is liable to be set aside. They further submit that the impugned judgment is not a proper judgment of reversal and since appellate Court failed to follow the provisions laid down in order 41 rule 31 of the Code of Civil Procedure the impugned judgment suffers illegality and

cannot be sustained in accordance with law. They also submit that the material finding of the trial Court on the report of the Commissioner having not been dislodged by the appellate Court by showing any acceptable reason the impugned judgment is bad in law and the appellate Court committed error of law occasioning failure of justice. They lay emphasis on the contention that after introduction of large number of documents by defendants plaintiffs did not challenge the same and in the event of leaving those outstanding this simple suit for declaration of title without challenging those documents and showing any satisfactory document of title in their favour and preparation of record of right thereof there is no wind beneath the wings of the case of plaintiffs and these Rules having merit may be made absolute.

Learned Senior Advocate Mr. Abul Kalam Chowdhury takes through the entire record on material issues and supporting the judgment passed by the appellate Court submits that the trial Court disbelieving the acquisition of property by Mongazi's son Kazem Bhuiyan by deed dated 20.12.1881 and also disbelieving the recording of the said property in the District Survey in the names of 3 sons of Kazem Bhuiyan and further disbelieving that the heirs and successive heirs of

Kazem namely the present plaintiffs have been preserving title and possession in the suit land has delivered the judgment in clear disregard of the evidence on record and such judgment is wholly erroneous and unsustainable in law thus the trial Court committed error of law occasioning failure of justice in dismissing the suit upon fanciful consideration. He very candidly submits that the suit land was never lost in the river bed for a continuous period exceeding 20 years and upon reformation the plaintiffs became possessors thereof and the decision given by revenue officer on 24.12.1962 in favour of the plaintiffs in respect of record of right was set aside by the charge officer on 25.03.1963 on the plea of misquotation of law which cancellation was entirely erroneous and untenable in the eye of law but the lower Court completely failed to take this material aspect into consideration. In support of this contention he relied upon the decision of the case of Col. Md. Hashmat Ali (Retired) of Bangladesh Army Medical Corps Vs. Government of Bangladesh and another reported in 47 DLR(AD) 1. He referring to the evidence on record contends that plaintiffs have adduced sufficient evidence in support of their case but defendants could not make out any definite case on diluvion and alluvion and the subsequent records of right in

the name of defendant 1 having no basis are liable to be corrected in accordance with law. He finally submits that the appellate Court since passed the impugned judgment upon its own independent finding it is a proper judgment of reversal according to the provisions laid down in Order 41 Rule 31 of the Code of Civil Procedure and these Rules having no merit are liable to be discharged.

Heard the learned Advocates of both sides and perused the materials on record and the laws relating thereto.

This is a suit of declaration of title. From schedule-Ka of the plaint it appears that the total area of land has been shown as 88.33 acres. According to paragraph 1 of the plaint it is pleaded that 10 annas share measuring 4 drones 7 kanis 13 gondas 1 kora 1 kranti 19 tils were orally gifted by Mongazi to his son named Kazem Bhuiyan who is the predecessor of the plaintiffs out of 7 drones 5 kanis 13 gondas 1 kora 1 kranti 15 tils. From para 11(ka) of the plaint it further appears that the plaintiffs claim only that 10 annas share of Kazem out of the land described in schedule-Ka. In view of such pleadings it is wholly incomprehensible as to whether the land measuring 88.33 acres represents the gifted land to Kazem or the entire holding of Mongazi. Although the plaint was amended more

than once the description of the suit land remains vague, uncertain and inconsistent. Nowhere in the plaint does the expression pattani taluk number 2798 clearly appear although it is claimed that the suit land appertains to the said pattani taluk.

In paragraph 8 of the plaint plaintiffs assert that suit land was lost by diluvion 2-3 years prior to the District Survey and remained under water for 8-9 years and thereafter reformed *in situ*. According to the Calcutta Gazette the C.S. record of the relevant area was finally published on 29.01.1920. In order to prove pattani taluk 2798 plaintiffs produced C.S. khatian 1135 marked as exhibit-2(ka) which on its face shows a total area of only 5.41 acres including the land of under tenants. Plaintiffs according to exhibit-2(ka) claim that except 5.41 acres the remaining land was lost in the river. But in the remarks column of exhibit-2(ka) nothing is recorded except the reference of taluk number 2798. From exhibit-2(ka) two legal inferences clearly arise. Firstly that only a small area measuring 5.41 acres together with under tenancy rights was recorded in the names of the heirs of Kazem Bhuiyan. Secondly that the assertion made in the plaint in respect of diluvion of 2-3 years prior to the District (Cadastral) Survey is

not at all credible. Moreover plaintiffs have not mentioned nor described nor relied upon this C.S. khatian exhibit-2(ka) in any part of the plaint or in any schedule thereto. Consequently this khatian with reference to exhibit-2 is clearly beyond pleading. Furthermore the plaintiffs have failed to produce any reliable and admissible documentary evidence to establish any link between the land recorded in exhibit-2(ka) and the land claimed in the schedule as diara survey land. In absence of such proof the plaintiffs' claim remains unsubstantiated in law.

In the present suit plaintiff number 16 deposed as PW 1 on behalf of the plaintiffs. In course of cross-examination at one stage on 01.06.1995 he admitted that Kazem Bhuiya having acquired ownership by way of oral gift used to pay rent to the landlord and all such rent-receipts were washed away in the river and were lost at the time when the homestead was dismantled 2 or 3 years prior to Bengali Year 1322. But after 26 days when he was recalled on 27.06.1995 he stated in his deposition that he had produced 6 rent receipts of Tewari Estate which were marked as Exhibit-5 series. Plaintiffs offered no explanation whatsoever as to how the said allegedly

washed away rent receipts were subsequently recovered or procured.

Three aspects of the matter are of considerable significance. Firstly on perusal of Exhibit-5 it appears that the first rent was paid on 29th Chaitra 1335 B.S. and the last rent receipt as reflected in exhibit-5(Uma) shows payment of rent on 30th Chaitra 1362 B.S. meaning thereby that rent for a period of 27 years was allegedly paid through 6 receipts. The scribe of said receipts is shown as one Sree Nagendra Kumar Paul and in order to prove that the said receipts were written by Nogen PW 4 named Ishaq Molla deposed in support thereof. PW 4 claimed that he could identify the handwriting of Nogen because he himself was a tenant of the said estate and therefore was familiar with his handwriting. A close scrutiny of the said receipts reveals that all of them have been written with the same ink and with the same pen and bear an identical handwriting style without any variation whatsoever which is wholly improbable and virtually impossible over a prolonged span of 27 years. Secondly both exhibit-5 and 5(Gha) bear the same serial number 27 which further creates serious doubt as to genuineness because although the receipts were written at the same time different receipt books were

cleverly used to dispel suspicion with calculated ingenuity. Thirdly it has been observed in the case of Jaynal Abedin Molla Vs. Aliar Rahman and others reported in 3 BLD(AD) 105 that education cess was introduced from the Bengali year 1356. But on perusal of exhibit-5(Ga), 5(Gha) and 5(Uma) it is evident that no education cess was realized and no column relating to education cess exists in the said receipts although payment of education cess was mandatory.

In view of the foregoing discussions it is held that the rent receipts Exhibits 5 series are fabricated, forged and fraudulently manufactured and were produced before the Court by the plaintiffs by fraudulent means and methods and by practicing fraud upon the Court. The plaintiffs have utterly failed to discharge the initial onus cast upon them by law to prove their title.

It is an admitted position that the suit land was subject to diluvion and reformation. The plaintiffs contend that the suit land remained under water from the year 1914 to 1918 whereas the contesting defendants assert that the suit land remained in the river bed from 1914 to 1959 for a period exceeding 30 years. The appellate Court accepted the contention of the plaintiffs and held that since the suit land

was transferred by way of patta in the year 1931 the land could not have been under water at that time. The surprising aspect however is that the alleged patta of 1931 finds no mention whatsoever either in the plaint or in the evidence adduced by the plaintiffs. It is therefore incomprehensible as to how the appellate Court arrived at such a finding in absence of any pleading or proof.

On perusal of exhibit-6 it clearly appears that in respect of the entire land measuring 88.33 acres claimed in the schedule of the plaint appertaining to Pattani Taluk Number 2798 the Revenue officer did not pass any order recognizing plaintiffs' claim over the entire land except in respect of a very small portion. In other words exhibit-6 does not help to establish the title of the plaintiffs over the entire suit land. Furthermore it is an admitted fact that a mosque exists upon the suit land and a separate record of right has been prepared in the name of the mosque which further negates the plaintiffs' claim on title and possession of the entire suit land.

In order to prove that the suit land appertains to pattani taluk number 2798 the plaintiffs caused a local investigation to be held by appointment of a Commissioner who submitted his report on 31.03.1986. Although the plaintiffs did not examine

the Commissioner and tender the report in evidence but the Court below in accordance with the Rule 400 of the Civil Rules and Orders took the said report into consideration and marked as exhibits and upon scrutiny found that the investigation had not been conducted on the basis of tri-junction boundary pillars with fixed points or any ancient or permanent structures and the map annexed thereto was prepared by superimposing or carbon imposing the diara map. Subsequently another Commissioner submitted a further report dated 08.07.1991 which was also taken into consideration by the trial Court under Rule 400 of Civil Rules and Orders. Upon objective analysis of the said report trial Court found that the land shown therein does not correspond with the suit land. Upon such findings the Court below arrived at the conclusion that the plaintiffs are not in exclusive and unequivocal possession of the land described in the plaint schedule appertaining to diara khatian. The maps contained in the material exhibits II(a), I(b), II, II(b) thus have got no presumption of accuracy under section 83 of the Evidence Act read with section 4(3) of the Alluvial Lands Act, 1920.

The plaintiffs have failed to discharge the initial onus cast upon them under section 101 of the Evidence Act to prove

their case. In the written statements defendants have specifically disclosed the reasons for recording the suit land in the khas khatian and in support thereof have referred to a series of registered documents obtained from defendant 1. After such disclosure plaintiffs did not amend the plaint to seek any relief challenging or impeaching the said registered documents. The kabuliyats have lawfully created a jural relationship between defendant 1 and other defendants and those documents stand as a legal impediment to the claim of title set up by the plaintiffs. Plaintiffs have also failed to place before the Court any coherent and acceptable chain of facts or credible evidence to establish that they are the successive heirs of Kazem Bhuiya. Moreover as already discussed the suit land is indefinite and not clearly identifiable and in such circumstances no decree can legally be passed in favour of the plaintiffs. Their claim is barred under Section 51(a) read with Order 7 Rule 3 of the Code of Civil Procedure.

The judgment of the appellate Court has not been passed upon sound legal reasoning and the findings of the trial Court have not been reversed in conformity with the mandatory requirements of Order 41 Rule 31 of the Code of Civil Procedure. Consequently the impugned judgment and decree

passed by the appellate Court are set aside and those of the trial Court are hereby affirmed.

Therefore I find merit in both the Rules.

In the result both Rules are made absolute.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: