

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 452 of 2000

Government of Bangladeshappellant

-Versus-

A. Mannan and others respondents

Mr.A.K.M. Mukhter Hossain with

Ms. Anjuman Ara Lima, Assistant Attorney
Generals.

..... for the appellant

Mr. Mohammad Taifoor Kabir with

Mr. S.M. Alim, Advocates

..... for the respondents

Judgment on 21.05.2025

Bhishmadev Chakrabortty, J:

The defendant has preferred this appeal challenging the judgment and decree of the then Subordinate Judge, Court 1, Narsingdi passed on 29.02.2000 in Title Suit 46 of 1998 decreeing the suit for declaration of title in the suit land and that the RS khatian prepared in the name of the defendant is illegal and not binding upon the plaintiffs.

The plaint case, in brief, is that 8.66 acres of land of CS khatian 60 originally belonged to Dangu Mondal and CS khatian was correctly prepared in his name. He died leaving behind two sons Lolitmohan Sarkar and Dwarika Mohan Sarkar. Lalit Mohan during his possession and enjoyment through a registered kabala dated 29.10.1956 sold out .80 acres of land including the suit land to Md. Shamsul Huda and Md. Shamsul Alam and handed over possession

thereof. SA khatian was accordingly prepared in the name of aforesaid two purchaser along with other co-sharers. Md. Shamsul Huda and his co-purchaser through two separate registered *kabalas* both dated 4.01.1973 sold out .265 acres from suit plot 154 to Mosharaff Hossain, Md. Mozammel Huq and Kanchan Miah. Shamsul Huda and Shamsul Alam further sold .35 acres from the aforesaid plot to Mst. Afia Khatun through *kabala* dated 10.06.1977. Mohsaraff Hossain on behalf of his minor brother Kanchan Miah sold out $.06\frac{5}{8}$ acres to plaintiff 1 Abdul Mannan through registered *kabala* dated 08.03.1974 and handed over the possession thereof. On the same day he further sold out .065 acres to plaintiff 2 from same plot. Minor Kanchan Miah after attending majority did not raise any objection against the transfer. Mozammal Huq sold out $.06\frac{5}{8}$ acres to Md. Shaukat Ali through registered *kabala* dated 8.03.1974. He further sold .065 acres on the same day to Mst. Fatema Begum and handed over possession accordingly. Md. Shaukat Ali and Fatema Begum sold out the same to Shahajadi Begum and Md. Osman Goni through another *kabala* dated 12.05.1977 and Shahajadi Begum subsequently sold out her share measuring .065 acres to Md. Osman Goni through registered *kabala* dated 5.10.1985. Md. Osman Goni sold out .0325 acres to plaintiff 3 Abul Monsur Mohammad Shahidullah through *kabala* dated 18.10.1984. He further sold .0325 acres to plaintiff 4 Shamsunnahar and .0325 acres to Md. Ishrafil Miah and Most. Feroza Begum each and handed over possession thereof. Md. Ishrafil Miah subsequently

sold out .025 acres to plaintiffs 3 and 4 on 13.11.1985. Plaintiffs 3 and 4 thus got 09 acres in the suit plot and remained possession therein by erecting houses and implanting trees. Md. Ishrafil Miah and Mst. Feroza Begum sold out .04 acres from the suit plot to plaintiff 5 through *kabala* dated 30.11.1985. Afiya Khatun sold out her share measuring .0575 acres to plaintiffs 5 and 6 on 15.10.1995. Plaintiffs 5 and 6 in this way being owner and possessor of .0975 acres remained in possession by erecting house thereon. Afiya Khatun sold out her share measuring .09 acres to plaintiff 7 through *kabala* dated 15.10.1995. She further sold .07 acres to plaintiffs 8 and 9 and .03 acres to plaintiffs 10 and 11 through *kabalas* dated 30.12.1995 and 16.10.1995 respectively. In this way the plaintiffs became owner and possessor of .5075 acres in the suit plots and have been owning and possessing the same by erecting boundary wall and residential houses thereon. The land of CS plot 154 was recorded in different RS plots and khatians but it is found that RS khatian 254 in respect of .5075 acres in RS plots 467 and 383 has been prepared in the name of Government erroneously in khatian 1. The Government has no title and possession in the aforesaid suit land. RS record prepared in the name of the Government is erroneous which clouded title of the plaintiffs in the suit land. Hence, the suit for declaration of title in respect of .5075 acres of land as detained in the schedule to the plaint with further declaration that RS khatian bearing plots 383 and 467 in the name of the Government is erroneous.

Government as defendant 1-4 contested the suit by filing written statement. They stated that the suit land is “*halat*” land and it is in possession of the Government. They kept it for movement of public and use it in development work. RS record has been prepared in the name of Government in khas khatian. The plaintiffs have no title and possession in the suit land. The plaintiffs were aware of recording the land in RS khatian in the name of the Government from long ago but they did not take any step against it. The plaintiffs instituted the suit only to grab the Government property and as such the suit would be dismissed.

On pleadings the trial Court framed 5 issues. In the trial the plaintiffs examined 5 witnesses while the defendant examined 1. The document produced by the plaintiffs were exhibits 1-4(Ga). On the other hand, the defendant did not produce any document. However, the trial Court decreed the suit deciding all issues in favour of the plaintiffs giving rise to this appeal.

Mr. A.K.M. Mukhter Hossain, learned Assistant Attorney General appearing with Ms. Anjuman Ara Lima taking us through the materials on record submits that in a suit for declaration of title the plaintiffs are to prove their title in the suit land. The plaintiffs failed to prove their title in the suit land by producing documentary evidence. He then submits that Mosharaff Hossain transferred the suit land on behalf of his minor brother Kanchan Miah. The transfer in the above manner cannot be accepted. Moreover, it is found that Afiya

Khatun transferred land to plaintiffs 5, 6, 7, 8, 9, 10 and 11. She was a necessary party to the suit but was not implicated as defendant. Since RS record has been prepared in the name of the Government in khas khatian as per possession and it has been prepared long ago, therefore, the instant suit is hopelessly barred by limitation. The plaintiffs are not entitled to get decree in the suit and as such the judgment and decree should be interfered by this Court in appeal.

Mr. Mohammad Taifoor Kabir, learned Advocate for the respondents, on the other hand supports the judgment and decree passed by the trial Court. He submits that Mohsaraft Hossain being the elder brother of minor Kanchan Miah sold out the property on his behalf according necessary permission. This is a suit for declaration of title with prayer that the RS record prepared in the name Government is not binding upon the plaintiffs. Therefore, Afiya Khatun who has transferred her share to other plaintiffs is not a necessary party in the suit. The plaintiffs successfully proved their title and possession in the suit land and as such the judgment and decree passed by the trial Court would be affirmed and the appeal be dismissed.

We have considered the submissions of both the sides and gone through the materials on record. It appears that to prove title in the suit land the plaintiffs produced relevant CS khatian 60 exhibit-1. The sale deed of the predecessor of the plaintiffs as well as the plaintiffs from 1956-1995 have been produced and used as evidence as exhibits 2-2(Dha). The aforesaid 20 documents have been produced and marked

as exhibits without any objection from the defendant Government. The documents exhibited proved plaintiff's title in the suit land. The relevant khatian of the suit land has been produced as exhibit-3-3(Ga). Dakhila and DCRs exhibits- 4-4(Ga) proved that Government accepted rent from the plaintiffs for the suit land. Through oral evidence of 5 witnesses plaintiffs proved their possession in the suit land. It is found in their evidence that they have been residing in the suit premises by erecting boundary wall and houses thereon. The land in no way comes within the meaning of "*halat*" as claimed by the Government. It is found that the land has been recorded in RS khatian in the name of the Government in khatian 1 but the defendant Government failed to explain the reason for recording so. We find no basis of such recording. Mosharof Hossain accorded permission from the concerned Court and sold out the property on behalf of his minor brother Khanchan Miah and after attaining majority the latter did not raise any objection about the transfer. Moreover, Afiya Khatun transferred her entire share to the plaintiffs and as such she is not necessary party in the suit for declaration of title. Therefore, the submissions of the learned Assistant Attorney General on the aforesaid counts bears no merit. The Court below on correct assessment of fact as well as evidence on record decreed the suit declaring plaintiffs' title in the suit land and that the RS *khatian* prepared in the name of the Government is erroneous and not binding

upon the plaintiffs. We find no error in the impugned judgment and decree for which it may be interfered with by us.

Therefore, we find no merit in this appeal. Accordingly, the appeal is dismissed without any order as to costs. The judgment and decree of the then Subordinate Judge, 1st Court, Narsingdi passed on 29.02.2000 in Title Suit No.46 of 1998 is hereby affirmed.

Communicate the judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.