

Present:**Mr. Justice Sheikh Abdul Awal****and****Mr. Justice Md. Mansur Alam**In the Matter of:

Memorandum of appeal from the original decree.

First Appeal No. 606 of 2018

Assistant Commissioner (land) Upazilla: Gazipur Sadar, Gazipur and others.

.....Defendant-appellants.

-Versus-

Md. Kashem being dead his legal heirs

Rokshana Begum and others.

...Plaintiff-respondents.

With**First Appeal No. 607 of 2018**

Assistant Commissioner (land) Upazilla: Gazipur Sadar, Gazipur and others.

.....Defendant-appellants.

-Versus-

Md. Abul Hasem

...Plaintiff-respondent.

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

Ms. Kamrunnahar Lipi, A.A.G with

Ms. Israt Jahan, A.A.G.

..... For the appellants.

Mr. Muhammad Ashraf Ali, Advocate with

Mr. Saidul Alam Khan, Advocate

.....For the respondents.

**Heard on 03.03.2025 and 06.03.2025
and Judgment on 13.03.2025.****Sheikh Abdul Awal, J:**

As common question of law and facts are involved in these two First Appeals, parties are same arising out of the same judgment and decree dated 08.07.2015, they are taken up together for hearing and are being disposed of by this common judgment.

Both these First Appeals are directed against the judgment and decree dated 08.07.2015 (decree signed on 13.07.2015) passed by the learned Joint District Judge, 1st

Court, Gazipur in Title Suit No. 69 of 1989 and Title Suit No. 70 of 1989 analogously decreeing the suits.

Material facts relevant for disposal of the Rule, briefly, are that the respondent, Md. Kashem as plaintiff filed Title Suit No. 69 of 1989 and respondent Md. Hashem as plaintiff filed Title Suit No. 70 of 1989 in the court of the learned Joint District Judge, 1st Court, Gazipur impleading the Government appellant as defendant and others praying declaration of title in the suit land measuring 3.30 acres and 2.31 acres. The plaintiffs of both the suits are full brothers, sons of late M. A. Majid Mia and they are claiming for declaration of title in the suit land as described in "A" schedule land to the plaints of both the suits and also for a further declaration that the notice dated 18.8.1989 issued by the Tahasilder, Konabari Tahasil office (defendant No. 2) is illegal, collusive, inoperative and not binding upon the plaintiffs. The case of the plaintiffs as per averments made in their respective plaint in short is that the suit land originally belonged to the land lord Atul Proshad Roy Chowdhury, who filed an Objection Case being No.03 under section 40(1) of the East Bengal State Acquisition and Tenancy Act, 1950 and the same objection case was settled in his favour by order dated 04.04.1955 resulting the land lord was allowed to retain 100 standard bighas of land in his own name including the suit land in question. Sree Atul Prashad Roy Chowdhury died leaving behind only son Anami Prashad Roy Chowdhury. While he was in due possession having right, title and interest, transferred 6.76 acres of land in favour of the plaintiffs father

Abdul Majid by three sale deeds, namely sale deed No.13336 dated 12.9.1969 measuring 3.50 acres, sale deed No.13335 dated 19.09.1969 measuring 2.64 acres and sale deed No.39855 dated 12.10.1979 measuring .62 acres of land (Ext. 2, Ext. 2-ka and Ext. 3) and also delivered possession in his favour. The said Abdul Majid got his name mutated and paid taxes to the Government and thereafter, Abdul Majid transferred .99 acres land vide sale deed No. 24300 dated 26.12.1972 and 1.32 acres of land through sale deed No.21268 dated 21.11.1972 in total 2.31 acres land in favour of his son Abul Hasem, who later on got his name mutated and paid taxes to the Government. Abdul Majid again transferred 1.65 acres of land through deed No.29027 dated 18.12.1972 and 1.65 acres of land through deed No.21206 dated 21.11.1972 in total 3.30 acres of land in favour of his son, Abul Kashem who also got his name mutated and paid taxes to the Government. The further case of the plaintiffs is that they have been in possession over the suit land since long time and they have set up brickfield, industry and fruit trees in the suit land by paying taxes and duties to the Government in accordance with law. The SA and RS record of the suit land was erroneously prepared in the name of Government and the Forest Department as khas land. Against which Anami Ray Chowdhury filed Title Suit No. 02 of 1967 impleading the Government and others and also got a decree in his favour. The defendant No.1 issued notices through Memo no. 1078 and 1079/88-89 dated 13.04.1989 which was served on 19.04.1989 stating that the suit property was recorded in SA and RS Khatian in the name of the Government and Forest

Department and the mutation khatian was also illegally obtained by them. It was also asserted that the land was included in the Gazettee notification in favour of Forest Department, who disclosed to lease out the same in favour of landless peoples on 31.5.1989, as a result of which a cloud has been cast upon the title of the plaintiffs and hence the suits.

The defendant Nos. 1-3 and defendant No. 4 entered appearance in the suit and filed separate written statements denying all the material averments made in the plaints of both suits contending inter-alia that the suit property was vested with the Government after publication in the Gazette Notification dated 13.4.1955 as Forest land and that the transfer made by Atul Prashad Roy Chowdhury was illegal and he had no right, title and interest in the suit land. The plaintiffs obtained collusively mutation of the suit land. The S.A and R.S record were duly prepared in the name of the Government. It is the further case of the defendants that the defendant No. 4 was not impleaded in the earlier Title Suit No. 2 of 1967. The suit property is now under the exclusive possession of the Forest Department. The plaintiffs have/had no right, title and possession in the suit land. The plaintiffs have filed the suit on false averments and as such, the suits are liable to be dismissed.

The learned Joint District Judge on the pleadings of the parties framed the following issues for determination:-

1. Are the suits maintainable in the present form and manner?

2. Are the suits barred by the limitation?

3. Whether the plaintiffs have got any right, title and interest in the suit properties?

4. Whether the notices dated 13.4.1989 vide Memo No. 1078 and 1079/88-89 issued by the defendant No.1 are illegal and inoperative?

5. Are the plaintiffs entitled to get the decree in declaratory form?

At the trial plaintiff side examined as many as 3 witnesses and exhibited some documents while the defendant side examined 2 witnesses namely DW1 and DW-2 to prove their respective cases.

The learned Joint District Judge, 1st Court, Gazipur after hearing the parties and on considering the materials on record by his judgment and decree dated 08.07.2015 decreed both the suit in favour of the plaintiffs.

Aggrieved thereby, the Government of Bangladesh represented by the Deputy Commissioner, Gazipur and 3 other Government officials have preferred these two first appeals.

Mr. Md. Yusuf Ali, the learned Deputy Attorney General appearing for the appellants in the course of his argument takes us through the evidence and materials on record and thereafter, submits that the suit land was recorded in the name of the than Zaminder in C.S record and thereafter when the SAT Act came into force the suit land was vested in the Government, under section 3(1) of the state Acquisition and Tenancy Act, 1950 and thereafter, S.A khatian and R.S

khatian was recorded in the name of the Government and thereafter, on 13.09.1955 and 04.07.1957 Gazette notification was published in Dhaka Gazette under section 4 and 6 of the forest Act, 1927 and in this way the suit land was declared as reserved forest land from the year 1955 by Gazette notifications and thus, the forest land cannot be transferred or sold out to any private person by any other persons. He further submits that under the admitted facts and circumstances of the case all the registered deeds of transfer of the Plaintiff-Respondents, mutation khatians and rent receipts which were prepared after the year 1955 are illegal, baseless and the same cannot be the documents of title and possession of the plaintiff-respondents.

The learned Deputy Attorney General further submits that the trial court below erred in law holding that suit land was not acquired as forest land, though the Gazette notification under section 4 of the forest Act-1927 was published but it was not finally settled under section 20 of the Forest Act, and accordingly decreed the suit but the learned trial court failed to understand that after the Gazette notification under section-4 and the proclamation by forest settlement officer under section-6 was also published in the year 1957 by giving 90 days time to claim right of any persons although none claimed within specific period of time and it is in record that the first Gazette notification was published on 13.09.1955 and 04.07.1957 and that Gazette notifications were in force but the predecessor of the Plaintiff-Respondent transferred the suit land in the year 1969 without challenging

the said Gazette notifications, which occasioned a failure of justice. He adds that after exhausting all the formalities of law gazette notification under section-20 of the Forest Act was published on 27.05.2012 but inadvertently that Gazette notification was not exhibited before the trial court and now the said gazette notification under section-20 of the Forest Act published on 27.05.2012 is produced before this court in order to proper adjudicate the matter. The learned Deputy Attorney General further submits that objection case No. 3 under section 40 (1) of the SAT Act filed by Babu Atul Prasad Roy Chowdhury and it is evident that in the schedule of the Judgment of objection case C.S Dag No. 201, total land was mentioned 4.64 Acres and by that Judgment Babu Atul Prasad Roy Chowdhury got only 0.46 Acre but in the sale deed No. 13335 dated 15.09.1969 the son of Babu Atul Prasad Roy transferred total 2.64 acres of land to Abdul Majid, who is the father of present Plaintiff-Respondents in the instant Appeals. Furthermore, C.S Dag No. 142 was not included in the schedule of the Judgment of objection case No.3, but it is found from sale deed No. 13336 dated 15.09.1969 the son of Babu Atul Prasad Roy Chawdhury transferred 3.50 acres of land to the father of present Plaintiff-Respondents, MA Majid which proves that the deeds submitted before the trial court are illegal, false and created. He further points out that the trial court in his finding mentioned that Dw-2 in his cross examination stated that "সরকার পক্ষে কোন কাগজপত্র দেইনি।" This observation of the trial court is palpably wrong inasmuch as the learned trial court did not mention the full sentence of

cross examination of Dw-2 which are as follows:- "বন বিভাগ কাগজপত্র দাখিল করেছে। সরকারের পক্ষে কোন কাগজপত্র জমা দেইনি"। And, accordingly it can safely be said the impugned judgment is not based on proper appreciation of the evidence on record. The learned Deputy Attorney General further submits that on 1st May, 1968, while the forest department possessed the suit land the divisional forest officer published tender to sell out the marked trees of suit forest land which is evident from the exhibit 'Ga', the said public tender proves that the Government has been possessing the suit land from the year 1968 till date and as such the instant suit for declaration of title without a prayer for recovery of khash possession is not maintainable and barred under section 42 of Specific Relief Act, 1877. He further submits that the trial court wrongly found that title suit No. 02 of 1967 was decreed in favour of the plaintiffs and against the defendants although in that suit the forest department was not a party and that decree was not acted upon against them.

Finally, the learned Deputy Attorney General submits that it is apparent from Annexure "ka" of First Appeal No. 607 of 2018 that suit land has been acquired by the Government under section 4 and 6 of the forest Act, 1927, thus the suit land is protected with effect from date of publication of the notification in the Gazette as a result of which the deeds of the plaintiffs as to the suit land registered in 1969 are invalid documents in the eye of law inasmuch as without delisting the suit land from the notification under section 4 dated 13.04.1955 published in gazette on 05th May, 1955, the said

land cannot be transferred legally by any person. Besides, it is in record that PW-1 stated in his chief that the plaintiffs paid rent of the suit land to the Government although rent receipt Ext. 8 (kha) shows that plaintiff paid rent of dag No. 201 but no rent was paid of suit dag No. 142, on the other hand appellant paid rent to the Government up to year 1429 B.S. (Annexure X-7) and thus, the plaintiffs never possessed the suit land although the trial court below without considering all this material aspects of the case most illegally decreed the suit, which is liable to be set-aside. The learned Deputy Attorney General to strengthen his submission has relied on the decisions reported in 9 ADC -944, 17BLD (AD) 91 and II ADC 476.

Mr. Muhammad Ashraf Ali appearing for the plaintiff respondents in both the appeals, on the other hand, submits that in respect of the suit land as well as the same notice dated 13.04.1989 (exhibit-14) issued by the defendant no. 1, the father of the plaintiff, A. Mojid filed Title Suit No. 68 of 1989 in the court of learned Sub-ordinate Judge, 1 Court, Gazipur and his two sons namely, Md. Kashem and Md. Hashem filed Title Suit No. 69 of 1989 and Title Suit No. 70 of 1989 respectively in the same Court and the trial court by judgment and decree dated 13.05.1995 dismissed Title Suit No. 68 of 1989 and thereafter being aggrieved by the said Judgment and decree, A.Mojid filed First Appeal No. 278 of 1995 before the Hon'ble High Court Division and the said appeal was allowed by judgment and decree dated 27.02.2011 and thereafter neither the Government nor the Department of

Forest preferred any leave petition before the Hon'ble Appellate Division challenging the said judgment and decree passed in First Appeal No.278 of 1995, which denotes that the Government had waived their right by accepting the judgment and decree passed in First Appeal No. 278 of 1995 with regard to the land in question and thus in the facts and circumstances it can safely be said that instant First Appeals challenging the judgment and decree passed in Title Suit No. 69 of 1989 and Title Suit No. 70 of 1990 decreeing the suits are plainly barred by law and equity. He further submits that since the judgment and decree dated 27.02.2011 passed in First Appeal No.278 of 1995 is still in operation hence, the notification dated 27.05.2012 under section 20 of the Forest Act, 1927 is ex-facie illegal and inoperative so far relates to the land covered by the judgment decree passed in First Appeal No.278 of 1995.

Mr. Muhammad Ashraf Ali further referring Advocate commissioner's report submits that the Advocate commissioner, who also deposed in support of his report, the report clearly indicates that the plaintiffs possessed the suit land. Against the report of the Advocate Commissioner, the defendant-appellants did not prefer any objection. Moreover, all the PW's have categorically proved the possession of the plaintiffs over the suit land in question. The finding of the trial court regarding the possession of the plaintiff also corroborate with the findings of possession found by the Hon'ble High Court Division in the First Appeal No. 278 of 1995 in which the Hon'ble High Court Division clearly found that the

predecessors of the plaintiffs had right, title and possession over the suit land. He further submits that the trial court on assessing all the evidences and on considering the facts and circumstances found that the plaintiffs have been able to proof their title and possession over the suit land in question. The trial court further observed that by accepting rents followed by opening mutation in the name of the plaintiffs and their predecessors the Government cannot deny the title of the plaintiffs, hence, the defendant no. 1 has/ had no authority to issue notice dated 13.04.1989.

Finally, Mr. M. Ashraf Ali submits that the landlord, Babu Atul Proshad Roy Chowdhury filed an Objection Case No.03 under section 40(1) of the East Bengal State Acquisition and Tenancy Act, 1950, which was settled in his favour by order dated 04.04.1955 (Exhibit-12), which contains two different schedules of land, as Schedule-A and Schedule-B. Schedule-A's land was allotted to the land lord out of the Khas land under acquired estate, while Schedule-B's land was retained by the landlord, which he was possessing as Rayati land. Thus, by the objection case the landlord acquired land totaling 100 standard bigahas, including land totaling $(0.46 + 4.03) = 4.49$ acre under Mouza Kashimpur, J. L. No. 543 totaling 6.76 acre under Mouza Mirpur J. L. No. 536, which also have nexus with the C. S. khatian No. 127 (Exhibit-1 series) and in this way the predecessor of the plaintiffs, Abdul Mojid rightly owned title from Babu Anami Proshad Ray Chowdhury by three registered sale deeds (Exhibit 2, 2(ka), 3) under Mouza Mirpur J. L. No. 536 C. S. Khatian No. 127

and considering all these factual aspects of the case the learned Joint District Judge, 1st Court, Gazipur justly decreed the suit by the impugned the judgment and decree dated 08.07.2015 (decree signed on 13.07.2015), the same should not be disturbed.

Having heard the learned counsels for the parties and having gone through the materials on record, the only question that falls for our consideration in these appeals is whether the trial Court committed any error in decreeing the suits by the impugned the judgment and decree dated 08.07.2015 (decree signed on 13.07.2015).

On scrutiny of the record, it is found that the suit land was originally belonged to the landlord Atul Proshad Roy Chowdhury, who filed an Objection Case being No.03 under section 40(1) of the East Bengal State Acquisition and Tenancy Act, 1950 and the said objection case was settled in his favor by order dated 04.04.1955, consequence of which, the land lord was allowed to retain 100 standard bighas of land in his own name including the suit land in question. After the demise of Atul Proshad Roy Chowdhury, his son Anami Proshad Roy Chowdhury filed a suit being Title Suit No. 02 of 1967 for declaration of title and confirmation of possession, which was decreed by judgment and decree dated 23.07.1973. In that Judgment and decree passed in Title Suit No. 02 of 1967 (Exhibit - 9/9ka) the Government of Peoples Republic of Bangladesh was impleaded as defendant no.1, the Conservator of Forest, the Divisional Forest Officer and the Bit Officer of Kashimpur Forest Range were impleaded as

defendant Nos. 2-4. The said judgment and decree has not been challenged as yet, either by the Government or by the forest department and therefore, the decree passed in Title Suit No. 02 of 1967 by 2nd Court of Munsif, Dhaka is still in force against the Government as well as the Forest Department. It is also found that the plaintiffs' father Abdul Mojid purchased 6.76 acres of land from Anami Proshad Roy Chowdhury by different registered sale deeds and after purchasing the same, he mutated his name and paid rent to the Government (Exhibit-13 mutation Khatian prepared in the name of Abdul Mojid, Exhibit 13(ka) duplicate carbon receipt), which are evident of payment of rent by Abdul Mojid. Thereafter, the said A. Mojid transferred the suit land to the present plaintiff-respondents (sons of A. Mojid), who also mutated their name and paid rent to the Government and therefore, the Government by accepting the rent from the plaintiffs and their predecessors cannot challenge the title of the plaintiffs.

It is further found that in respect of the self-same suit land as well as the same notice dated 13.04.1989 (exhibit-14) issued by the defendant No. 1, the father of the plaintiffs, A. Mojid also filed Title Suit No. 68 of 1989 in the court of learned Sub-ordinate Judge, 1 court, Gazipur, which was dismissed by the trial court by judgment and decree dated 13.05.1995 and thereafter, being aggrieved by the said Judgment and decree, A. Mojid filed First Appeal being No. 278 of 1995 before the Hon'ble High Court Division and the said appeal was allowed by judgment and decree dated

27.02.2011. Neither the Government nor the Department of Forest preferred any leave petition before the Appellate Division challenging the said judgment and decree passed in First Appeal No.278 of 1995, which manifests that the Government had waived their right by accepting the judgment and decree passed in First Appeal No. 278 of 1995 with regard to the land in question.

By the way, it may be mentioned that during hearing of these appeals the appellants by filing an application for acceptance of additional evidence enclosed a gazette notification, which was published under section 20 of the Forest Act, 1927 and submits that the said gazette notification is conclusive proof that the suit land was vested in the department of forest. In this connection, we have already noticed that the High Court Division passed its judgment and decree in First Appeal No. 278 of 1995 on 27.02.2011 declaring the title of plaintiffs' predecessor in the suit land and the same judgment has remained unchallenged and still in force. Since the judgment and decree dated 27.02.2011 passed in First Appeal No.278 of 1995 is still in operation, the notification dated 27.05.2012 under section 20 of the Forest Act, 1927 being issued after pronouncement of judgment and decree dated 27.02.2011 of First Appeal is ex-facie illegal and inoperative so far relates to the land covered by the decree passed in First Appeal No.278 of 1995 and in that view of the matter the suit land does not fall under the definition of forest land or vested property. For having a better view of the dispute in question, we feel it necessary to quote hereunder a

few lines from the judgment and decree passed by a Division Bench this Court in First Appeal No.278 of 1995, which reads as follows:

“It appears that the preliminary Gazette notification was published but no compensation was paid by the Government to the land owner. In view of the above admission that no compensation was paid, we are of the view that on the basis of the said Gazette notification the property was not vested with the Government.

On careful reading of exhibit-7 it appears that Atul Proshad Roy Chowdhury filed objection case No. 3 against the publication of Gazette Notification No. 1953 and that objection was allowed in his favour on 4.4.1955. Exhibit 2 series shows that Anami Proshad Roy Chowdhury filed Title suit No. 2 of 1967 against the Government and others and that suit was decreed in his favour. Therefore issue no (a) and (b) are decided in favour of the plaintiff. We find right title and possession in favour of the plaintiff.”

The above quoted finding of this Court has remained unchallenged and still in force. In the facts and circumstances of the case, we find no valid ground to differ with view taken by a Division Bench this Court in First Appeal No.278 of 1995 that since no compensation was paid by the Government to the land owner on the basis of the said Gazette notification, the property was not vested with the Government.

From the evidence of PW-1, PW-2, PW-3 and DW-1, DW-2, it appears to us that the plaintiffs have title and possession in the suit property and the defendant having failed to prove that the suit land was vested in the department of forest in accordance with law.

All the registered deeds including the connected documents were properly proved and exhibited. A registered kabala is an evidence of title which will prevail over other records of rights until and unless such kabala is cancelled on specific allegation of fraud before any Civil Court in an appropriate civil suit and in this case the Government did not file any suit for declaration of title and cancellation of registered kabala dated 12.09.1969, 19.09.1969 and 12.10.1979 (Ext.-2, Ext.-2-ka & Ext. 3). Further, in this case the registered deeds (Ext.-2, Ext.-2-ka & Ext. 3) which were produced from the custody of the plaintiffs and those documents are more than 30 years old documents . At the trial no dispute was raised in the trial Court as to its registration and thus as per provisions of section 90 of the Evidence Act the Court is entitled to presume that it is a genuine document. Therefore, we are unable to accept the contention of the learned Deputy Attorney General that the exhibited deeds were created rather we find considerable merit in the submission of Mr. Mr. M. Ashraf Ali.

Another contention raised by Mr. M. Ashraf Ali, relying on the report produced by the Advocate commissioner, who also deposed in support of his report. He points out the report clearly indicates that the plaintiffs possessed the suit land. Against the report of the Advocate Commissioner, the defendant-appellant did not prefer any objection. Moreover, all the PWs have categorically testified in one voice about the possession of the plaintiffs over the suit land in question. Therefore, we are unable to accept the contention of the

learned Deputy Attorney General that the plaintiffs have /had no right, title and possession in the suit land.

On a close perusal of the impugned judgment and decree, it is found that the trial Court below after detailed discussions of the attending circumstances borne out by records observed that:-

“Exhibit -2 series, ext. 3, ext.4 ext.5, ext.6 and ext.7 prove that Abdul Majid purchased the suit property from Anami Prashad Roy Chowdhury and thereafter Abdul Majid transferred the suit property in favour of his two sons, namely the plaintiffs. Exhibit-8 series, ext.13 series also show that after purchase the said Abdul Majid mutated his name and also paid taxed to Government and the present plaintiffs also paid taxes to Government. By accepting taxes and giving mutation, the Government cannot deny the title and possession of the plaintiffs. Therefore, it is evident that notice dated 13.04.1989 issued by the defendant No.1 was not issued in accordance with law and as such it is said to be inoperative. It is evident that the plaintiffs have title and possession in the suit properties. Therefore issue Nos. 3 and 4 are decided in favour of the plaintiffs.”

This being purely a finding of fact based on proper assessment of the evidence and materials on record that the plaintiffs have been able to prove their unbroken possession and title in the suit land and notice dated 13.04.1989 (Ext.10)Issued by the defendant No.1 was not issued in accordance with law. Therefore, we find no substance in either of the contentions as raised by the learned Deputy Attorney General, rather we think there is a good deal of persuasion in the submissions of the learned Advocate for the respondents.

Here it may further be mentioned that the facts and circumstances of the cited cases are quite distinguishable from those of the present case and, as such, the cited cases are of no assistance to the appellants.

The learned Joint District Judge, 1st Court, Gazipur appears to have considered all the material aspects of the case and justly decreed the suits by his judgment and decree dated 08.07.2015, we find no reason to interfere therewith.

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

In the result, the appeal is dismissed. In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.