

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL APPELLATE JURISDICTION)

*Present:*

*Mr. Justice S M Kuddus Zaman*

*And*

*Mr. Justice Sayed Jahed Mansur*

**First Appeal No. 670 OF 2018**

Md. Alal Khan and others

... Appellants

-Versus-

Md. Fazlul Kabir Talukder and others

... Respondents

Mr. Md. Mainul Islam, Advocate

... For the appellants.

Mr. Md. Aktaruzzaman with

Mr. Syed Altaf Hossain, Advocates

... For the respondent Nos.1-3.

**Heard on 29.10.2025 and Judgment on 30.10.2025**

**S M Kuddus Zaman, J:**

This First Appeal is directed against the judgment and decree dated 23.03.2016 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Sunamgonj, in Title Suit No.63 of 2011 dismissing the suit, the plaintiffs as appellants to file the memorandum of Appeal on the following amongst others.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 2.38 acres land as described in schedule No.1 to the plaint and for further declaration that registered kabala

deed dated 01.02.2011 executed by defendant Nos.4-5 to defendant Nos.1-3 is illegal, collusive and not binding upon the plaintiffs. It was alleged that above 2.18 acres land and other land belonged to Gojendra Kumar Das and his name was correctly recorded in S. A. Khatian Nos.505 and 236 who died leaving three daughters namely Sreemoti Bina Pani Purokaiosta, Kabi Rani Das and Bina Rani Das and one wife who also died leaving above three daughters as heirs. Above Kabi Rani Das died leaving two sisters namely Bina Pani Purokaista and Rina Rani Das as heirs. Above Rina Rani Das died leaving daughter Junu Rani Das and husband Gopal Das as heirs. Mahamaya sister of Gojendra Kumar Das died leaving one son Nogendra Das and husband Rabin Das. Above Bina Rani Das transferred 1.3 acre land by a registered kabala deed No.5629 dated 28.03.1974 and again transferred 80 decimal land by a registered kabala deed No.56 dated 28.03.1974 to Surat Khan predecessor of the plaintiffs. Above Jugomaya Das, Nani Gopal Das and Nogendra Kumar Das transferred 47 decimal land by registered kabala deed No.5647 dated 28.03.1974 to above Surat Khan. Above Surat Khan while owning and possessing above 2.38 acres land

died leaving the plaintiff as heirs who are in continuous possession in above land. In the first part of Mag 1417 defendant Nos.1-3 disclosed that they have purchased above land from defendant Nos.4-5 and asked the plaintiffs to hand over possession. Above kabala deed of the defendants are without consideration and any legal effect since the executants of above deed did not have the lawful title and possession in above land. The plaintiffs discovered that in above three kabala deeds of Surat Khan S. A. Khatian No.1232 and Plots No.1472 were erroneously written instead of Khatian No.236 and 505 and plot No.1472.

Defendant Nos.1-3 entered appearance in above suit and submitted joint written statement alleging that Bina Pani Purokaista had limited interest in above property and plaintiff purchased above property from defendant Nos.4-6 by three kabala deeds in 1974 and there was no cause or reason for inclusion of erroneous khatian number and plot number in above deeds. On the basis of above purchase defendants got their names mutated vide Mutation Case No.1195 of 1992-93 and in R. S. survey above land has been recorded in the name of

defendants. It was further stated that defendant Nos.4-5 being the reversioner heirs of Gazandra Kumar Das they lawfully transferred above land to above defendants by a registered kabala deed dated 23.03.2011. It was lastly stated that the registered kabala deed to Surat Khan by Bina Pani Purokaista did not mention of legal necessity for transfer of above property.

But the defendants abandoned above written statement and they did not contest the suit at trial. As such the learned Joint District Judge fixed above suit for ex-parte hearing. The plaintiffs examined three witnesses and produced and proved documents which was marked as Exhibit Nos.1-5.

On consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit holding that since the plaintiffs did not seek rectification of their three registered kabala deeds dated 28.03.1974 their title cannot be declared for above suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Mainul Islam, learned Advocate for the appellants submits that undisputedly Gozendra Kuamr was the lawful owner and possessor of disputed 2.38 acres land who died leaving one son Genendra and three daughters namely Bina Pani Das, Renu Bala @ Kabi Rani and Rina Rani Das. Above Genendra Kumar Das died in his childhood and the wife of Gajendra Das also died leaving above three daughters as heirs. Above Kabi Rani Das died leaving two sisters Rina Rani Das and Bina Pani Purokaista as heirs. Defendant Nos.1-3 have admitted in the written statement that plaintiffs predecessor Surat Khan purchased 2.11 acres land from Bina Rani Purokaista mother of defendant Nos.4-5 by two registered kabla deeds dated 28.03.1974 (Exhibit Nos.3 and 4 respectively). Plaintiffs also claimed to have purchased 47 decimal land from the heirs of two sisters of Gazandra Das namely Jugomaya Das and Mahamaya Das.

It has been stated in the plaint that in above kabala deeds of the plaintiffs S. A. Khatian No.232 was erroneously written instead of Khatian No.236 and 505 and Plot No.1472 was also erroneously written instead of Plot Nos.1481, 1429 and 1431. In above three kabla deeds besides mentioning the khatian number and plot number boundaries of above land were mentioned.

Mr. Md. Aktaruzzaman, learned Advocate for the respondent Nos.1-3 submits that the plaintiffs purchased 2.11 acres land by two registered kabla deeds from Bin Rani Purokaista in 1974 who had limited interest in above land. Above Bina Pani Purokaista did not have any legal necessity to transfer above land and defendants have purchased above land from two sons of Bina Rani Purokaista being defendant Nos.4-5 who are reversioner heirs of Gojendra Nath. Learned Advocate for the respondent Nos.1-3 have admitted the lawful execution and registration of above three kabla deeds of Surat Khan predecessor of the plaintiffs for 2.11 acres land from Bina Rani Purokaista and others admitted plaintiffs possession in above land.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

We have carefully examined above three kabla deeds and found that besides mentioning above erroneous S. A. khatian and plot numbers the transferred land was also described by boundaries. As mentioned above defendant Nos.1-3 submitted a joint written statement admitting the correctness and genuinity of above three registered kabla deeds of Surat Khan.

It was stated that Bina Pani Purakaiosta did not have legal necessity to transfer above property and defendants claimed above land by subsequent purchase from defendant Nos.4-5 two sons of above Bina Pani Purakaista. During the lifetime of the limited interest holder a reversioner heir cannot claim possession of the property. Above reversioner heirs of Gazandra did not institute any suit for avoidance of above three kabla deeds of Surat Khan on the ground of lack of legal necessity or illegality.

At the instance of the plaintiffs an Advocate Commissioner relayed above land of above three registered kabla deeds and submitted

a report stating that the land of above three kabla deeds correspondence to the land of S. A. Khatian Nos.236 and 505 and Plot No.1481, 1429 and 1431 as has been alleged by the plaintiff.

The learned Advocate for the appellants submits that the plaintiffs are in continuous and peaceful possession in above land since 1974 so they have acquired good title by adverse possession. But the learned Judge of the trial Court committed serious illegality in refusing to consider the Advocate Commissioner's report.

It is true that the plaintiffs possession in above land since 1974 has been proved both by legal evidence as well as by admission of defendant Nos.1-3 as mentioned above. But the plaintiff did not make out in the plaint a case of title by adverse possession. Nor any evidence was adduced by the plaintiff as to when their lawful entry into above land became adverse when above possession matured into valid title by adverse possession.

It is admitted that S. A. Khatian number and Plot number of above land were erroneously written in all above three registered kabla deeds of Surat Khan of the plaintiffs and since above kabla deeds are



the title deeds of the plaintiffs they should have sought a remedy for rectification of above documents.

It turns out from the Advocate Commissioner's report that the quantity of the land in S. A. Plot Nos.1481, 2429 and 1431 have reduced to 2.28 acres land. But the plaintiffs did not amend the plaint and reduce the quantity of land from 2.38 to 2.28 acres.

In view of above deficiencies in the plaint and in evidence learned Advocate for the plaintiff submits that the impugned judgment and decree may be set aside and the suit may be remanded to the trial Court for retrial after giving the plaintiff an opportunity to amend the plaint to reflect the quantity of the land as has been found by the Advocate Commissioner and seek declaration of title by adverse possession as well as for rectification of above three kabla deeds. The learned Advocate for the respondents frankly concedes that since the defendants abandoned the suit at trial Court they will get an opportunity to contest the suit if the suit is remanded for retrial.

On consideration of above facts and circumstances of the case and submissions of the learned Advocates for the respective parties we hold

that the ends of justice will be met if the impugned judgment and decree passed by the learned Joint District Judge, 1<sup>st</sup> Court, Sunamgonj in Title Suit No.63 of 2011 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

In the result, the First Appeal is allowed on contest against respondent Nos.1-3 and ex-parte against the rest without cost.

The impugned judgment and decree dated 23.03.2016 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Sunamgonj in Title Suit No.63 of 2011 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

However, there is not order as to costs.

Send down the lower Court's record immediately.

**Sayed Jahed Mansur, J:**

I agree.