

IN THE SUPREME COURT OF BANGLADESH  
Appellate Division

PRESENT

*Mr. Justice Obaidul Hassan, C. J.*  
*Mr. Justice M. Enayetur Rahim*  
*Mr. Justice Md. Ashfaqul Islam*  
*Mr. Justice Md. Abu Zafor Siddique*

CIVIL APPEAL NO. 07 OF 2012

(From the judgment and order dated 3<sup>rd</sup> of March, 2009 passed by the High Court Division in Civil Revision No. 982 of 2000).

Government of Bangladesh, represented by the Deputy Commissioner, Gopalganj and another .....Appellants.

=Versus=

Saleha Begum and others .....Respondents.

For the Appellants : Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Mohammad Saiful Alam, Assistant Attorney General, instructed by Ms. Sufia Khatun, Advocate-on-Record

For Respondent Nos. 1-8 : Mr. B. M. Elias, Advocate with Mr. Mrinal Kanti Biswas, Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record

For Respondent Nos. 10(a)- 10 (h) : Mr. Satya Ranjan Mondal, Advocate-on-Record

Respondent Nos. 9 &11-32 : Not represented

**Date of hearing and judgment : The 1<sup>st</sup> day of November, 2023**

JUDGMENT

**M. Enayetur Rahim, J:** This civil appeal, by leave, is directed against the judgment and order dated 03.03.2009 passed by the High Court Division Civil Revision No. 982 of 2000 making the Rule absolute.

The facts, relevant for disposal of the appeal, are that the plaintiff-respondent Nos.1 to 8 filed Title Suit No.126 of 1996 in the Court of the Assistant Judge, Muksudpur, Goplaganj for declaration of title in the suit land described in schedule to the plaint and for further declaration that the recording of the suit land in khas

khatian No.1 in the name of the Government was wrong and illegal.

The case of the plaintiffs, in short, is that the suit land originally belonged to their predecessor Md. Bala Mia who used to possess the same personally. But in the R.S. khatian of the suit land the name of Md. Bala Mia was wrongly recorded as "middle interest holder (মধ্য স্বত্ব ভোগী)" instead of as tenant. In view of this wrong recording in R.S. khatian the S.A khatian also was prepared wrongly showing the suit land as the khas land of the Government appertaining to khas khatian No.1. In the first part of Baishakh, 1403 B.S. when the plaintiffs went to local Tahsil Office for paying rent of the suit land they came to know about this wrong recording of the suit land for the first time. The defendants also disclosed that they would lease out the suit land to others and also threatened the plaintiffs with dispossession and thus the plaintiffs were, compelled to file the suit.

The defendant Nos. 1 and 2 contested the suit by filing written statement contending, *inter alia*, that the plaintiffs' predecessor Md. Bala Mia was the "middle interest holder" only of the suit land and as such after the promulgation of the State Acquisition and Tenancy Act the suit land vested in the Government and the Government has also leased out the suit land to different persons and that the plaintiffs have got no right, title and possession in the suit land.

At the trial, the respective parties adduced both oral and documental evidence.

The trial Court dismissed the suit. The appellate court also affirmed the judgment of the trial Court. The

plaintiffs then moved before the High Court Division by filing Civil Revision No.982 of 2000. Upon hearing, a single Bench of the High Court Division by the impugned judgment and order dated 03.03.2009 made the Rule absolute.

Being aggrieved by the said judgment and order, the Government filed Civil Petition for Leave to Appeal No. 1296 of 2009 before this Division and, leave was granted on 28.00.2011. Hence, this appeal.

Mr. Sk. Md. Morshed, Additional Attorney General, appearing on behalf of the appellants submits that the plaintiffs having claimed that their predecessor-in-interest was a raiyat in the suit land recording of (মধ্য স্বত্ব ভোগী) against his name was wrong and no material having been filed in support of their aforesaid claim and suit having been dismissed for want of materials in support of their case, the High Court Division erred in law decreeing the suit without reversing the findings of the courts below.

Mr. Morshed also submits that the R.S Khatian having a presumptive value and in the said khatian the status of the predecessors of the plaintiffs having shown as holder of the intermediately interest and as there was no materials to rebut the said presumption, the High Court Division acted illegally in making the Rule absolute without arriving at a finding regarding status of the predecessor of the plaintiffs.

Per contra Mr. B.M. Elias, learned Advocate, appearing for the respondents made submissions in support of the impugned judgment and order of the High Court Division. The learned Advocate further submits that the plaintiffs adduced as many as 5 witnesses as PW-1 to PW-5 and also proved some documents which were marked as Exhibit Nos. 1 to 1 (Uma) and

a number of certified copies of the R.S. Khatian and by which proved the title and possession of the plaintiffs' and considering those, the High Court Division rightly made the Rule absolute.

The learned Advocate also submits that in the R.S. Khatians the name of Bala Miah was wrongly recorded as holder of the intermediate interest. He submits that if the intermediate interest is abolished by enacting the State Acquisition and Tenancy Act, then the land can never be recorded in the name of the Government but should be recorded with the raiyati holder and there was no raiyati holder in the record and thus the R.S. record was wrong.

The learned Advocate also submits that the trial Court, as well as, the Court of appeal below erred in law in failing to construe the effect of the State Acquisition and Tenancy Act and as such committed an error in the decision in holding that the R.S. record was wrong and failed to decree the suit.

The learned Advocate lastly submits that 23 decimals of land out of 47 decimals of land of R.S. Plot No. 915 under R.S. Khatian No.178 was recorded in the names of the plaintiffs as S.A. Plot No.1014 under S.A. Khatian No. 669 and on the other hand, part of those R.S. suit Khatian was recorded in the name of the predecessor interest of the plaintiffs but the Government did not claim those land thus the appeal is liable to be dismissed.

We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgment and order passed by the High Court Division as well as the Courts below and other connected papers on record.

In the instant the trial Court dismissed the suit holding that the plaintiffs' predecessor Bala Miah was the 'middle interest holder' (মধ্য স্বত্ব ভোগী) and R.S. record was duly prepared and after promulgation of the State Acquisition and Tenancy Act the suit property has been vested in the Government. Said Bala Miah was not a tenant or raiyat under the original land-lord, as such Bala Miah did not acquire any right, title and interest in the suit property.

The above finding of the trial Court was affirmed by the Court of appeal below.

However, the High Court Division in revision, without reversing the above concurrent finding of the Courts below made the Rule absolute and thereby decreeing the suit holding that the plaintiffs are in possession in the suit land.

We have perused the R.S. Khatian No. 171. It transpires that the name of Bala Miah has been mentioned in the column of 'অত্র স্বত্বের বিবরণ ও দখলকার', but in the column 'অত্র স্বত্বের শ্রেণি এবং বিশেষ নিয়ম ও অনুযুক্ত' it has been mentioned 'মধ্য স্বত্বাধিকারী চিরস্থায়ী মোকররী'. In the Bengal Tenancy Act, 1885 certain settlement and vernacular terms were commonly used and the term 'Mokarari' means a fixed lump rent which is not based on calculation. In view of the above, the Mokararee (মোকররী) right is nothing but a right of collecting rent on behalf of the superior landlord, which was not a tenancy or raiyati right and that right has been acquired by the Government after promulgation of State Acquisition and Tenancy Act.

The High Court Division without considering the said vital legal aspect most illegally decreed the suit finding the possession of the plaintiffs in the suit land. The High Court Division failed to appreciate that mere possession of

the plaintiffs is not enough to declare title of the plaintiff, when admittedly the S.A. Khatian has been prepared in the name of the Government as khas land. Moreover, the plaintiff did not claim title on the plea of adverse possession.

Having considered as above, we find substance in this appeal.

Accordingly, the appeal allowed.

The judgment and order passed by the High Court Division is set aside.

No order as to costs.

**C. J.**

**J.**

**J.**

**J.**