

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Appeal No. 102 of 2019**

**In the matter of:**

Md. Shamsul Alam, son of Md. Minnat Ali and another.

... Appellants

-Versus-

Kalim Uddin Chowdhury, son of Mounshi Mohammad Arif Chowdhury of Village-Karergram, Post Office-Karergram, Police Station-Kulaura, District-Sylhet and others.

... Respondents.

Ms. Rumana Hoque, Advocate

... For the appellants

None represented

... For the respondents

**Heard on 03.01.2024 and  
11.01.2024.  
Judgment on 11.01.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

**Md. Mozibur Rahman Miah, J.**

At the instance of the plaintiffs in Title Suit No. 275 of 2014, this appeal is directed against the judgment and decree dated 11.07.2017 (decree signed on 18.07.2017) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka in the said suit dismissing the same *ex parte*.

The case of the plaintiffs in short is that, one, Abdul Aziz Molla, the predecessor of the plaintiffs got the property by registered sale deed and subsequently, he sold out 0.0825 acres of land in favour of the plaintiff no. 1 dated 21.07.1981 and on the same date, said Abdul Aziz Molla also transferred similar quantity of land that is, 0.0825 acres of land to the plaintiff no. 2. After purchasing the property by the plaintiffs, they got their names mutated in the khatian vide Mutation Case Nos. 13233 of 1982 and 13236 of 1982 and kept on paying rent to the government. However, when the City Survey came into operation, the said property though recorded in City Khatian No. 11498 subsequently, it was recorded mistakenly in Plot No. 20422 instead of Plot Nos. 20420 and 20416. The plaintiffs came to learn about the said wrong recording on 01.03.2014 as the plaintiffs would reside out of Dhaka City so out of ignorance, they could not take proper steps in getting the said wrong recording corrected in their name and hence, the suit.

Though the summons of the suit have duly been served upon the defendants but none appeared to contest the same. The suit was ultimately taken up for hearing by the learned Judge of the trial court and it was dismissed vide impugned judgment and decree.

It is at that stage, the plaintiffs as appellants came before this court and preferred this appeal.

Ms. Rumana Hoque, the learned counsel appearing for the appellants upon taking us to the impugned judgment and decree at the very outset submits that, the learned Judge of the trial court erred in law innot taking into consideration of the evidence adduced and produced by the plaintiffs

through their two witnesses and relevant documents which were also marked as exhibit nos. 1-12 and therefore, the impugned judgment and decree cannot be sustained in law.

The learned counsel next contends that, the learned Judge of the trial court has failed to appreciate the very facts that the plaintiffs have still been possessing the suit land by mutating their name in the khatian and have been paying rent regularly and therefore, they acquired indefeasible title and possession over the suit property and therefore, the impugned judgment and decree cannot stand.

The learned counsel lastly contends that, since the evidence led by the plaintiffs have not been discussed and observed in the entire judgment to find that, the plaintiffs have been enjoying title and possession in the suit property and the suit has been filed for declaration of title and therefore, the suit should have been decreed and finally prays for allowing the appeal on setting aside the impugned judgment and decree.

Record shows that, notices have duly been served upon the respondents yet none represented the respondents.

We have considered the submission so advanced by the learned counsel for the appellants and perused the impugned judgment and decree including the documents so appeared in the paper book.

However, on going through the impugned judgment, we find that, though the learned Judge of the trial court in the judgment found that the plaintiffs in support of their case adduced two witnesses who were testified as P.W-1 and P.W-2 and series of documents were also produced which were also marked as exhibits-1-12 but none of those evidences have ever

been discussed in the entire judgment to find the plaintiffs to have substantiated their case in acquiring title and possession in the suit property.

Furthermore, though there has been mandatory provision provided in order XX, rule 4(2) as well as 5 of the Code of Civil Procedure to frame separate issues and to determine each and every issue separately basing on the evidence led by the plaintiffs in order to come to a decision but in the impugned judgment and decree that very mandatory provision has palpably been flouted and therefore, the impugned judgment bears no legal substance. Further, on going through the impugned judgment, we find that, the learned Judge in a very slipshod manner passed the judgment without taking into account as to whether the plaintiffs have been able to prove their case as per the assertion made in the plaint as well as the evidence advanced before the trial court which clearly demonstrates non-compliance of the provision provided in order XX, rule 4(2) and 5 of the Code of Civil Procedure as those very two rule starts with the very word “**shall**” making it mandatory provision of law.

Given the above facts and circumstances, we are of the view that, the impugned judgment and decree cannot be sustained until and unless, specific issues have been framed by the trial court and the evidences so led are taken into consideration by the learned Judge of the trial court. Against the above backdrop of having such legal loopholes we are of the view that, justice will be best served if the suit is sent back to the trial court asking the trial court to hold re-trial on framing separate issues and taking into considering of the evidence already taken as has been observed hereinabove.

As a result, the appeal is allowed however without any order as to cost.

The impugned judgment and decree dated 11.07.2017 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No. 275 of 2014 is thus set aside.

Let the Title Suit No. 275 of 2014 be sent back on remand to the trial court for holding re-trial with the above observation and discussion.

The learned Joint District Judge, 1<sup>st</sup> Court, Dhaka is hereby directed to dispose of the Title Suit No. 275 of 2014 as expeditiously as possible preferably within 6(six) months from the date of receipt of the copy of this judgment positively.

Let a copy of this judgment along with the lower court records be sent to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka forthwith.

**Mohi Uddin Shamim, J.**

I agree.