

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No.70 of 2019

In the Matter of:

Memorandum of appeal from original decree.

In the Matter of:

The Government of Bangladesh, represented by
the Deputy Commissioner, Sirajgonj and others
....Defendant-appellants.

-Versus-

Md. Abdul Latif Pramanik

....Plaintiff-respondent.

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

.... For the appellants.

Mr. A. Y. Moshuuzzaman, Advocate

....For the respondent.

Heard on: 25.11.2024 and 02.12.2024.

Judgment on: 10.12.2024.

Md. Mansur Alam, J:

This appeal is directed against the judgment and decree dated on 07.11.2017 (decree signed on 13.11.2017) passed by the learned Joint District Judge, 2nd Court, Sirajgonj in Other Class Suit no. 18 of 2016.

The facts relevant for disposal of this appeal, in brief, are that the plaintiff-respondent filed Other Class Suit No. 18 of 2016 in the Court of learned Joint District Judge, 2nd Court, Sirajgonj, impleading the defendant-appellant for the prayer of declaration of right, title and possession over the suit land. The scheduled land measuring 125.06 acre is originally belonged to Wazed Ali Khan Ponna. The predecessor of the plaintiff Daud Ali purchased .24 decimal from the scheduled land by way

of an Auction Case no. 2360 of 1957-58 and got possession over the suit land. But the S.A. Khatian is wrongly prepared in the name of Government. Thereafter Daud Ali gifted the suit land by way of a unregistered deed on 12.10.1970 to the plaintiff. The plaintiff thereafter transferred some portion of the suit land by way of kabala deeds to the people whom the R.S. record is duly prepared for but the R.S. record for the suit land is wrongly prepared in the name of the Government in khas khatian. The plaintiff being present at Tahshil office for the payment of rent on 20.12.2015 became aware about the R.S. khatian no. 1 that is wrongly prepared in the name of the government. Hence the plaintiff brought this case praying for declaration of right, title over the suit land.

Defendant-appellants entered into the suit filing written statement denying all the materials allegations made in the plaint contending inter alia, that there is no cause of action for filing the suit, and this case is not maintainable in its present form and manner, learned Joint District Judge without considering the facts and circumstances, evidences and the provisions of law most illegally decreed the suit. So the suit was liable to be dismissed and this appeal is worthy to be allowed.

The learned Joint District Judge upon considering the pleadings of both the parties framed the following issues:

1. Whether the suit is maintainable in its present form and manner?
2. Whether the suit is barred by limitation?
3. Whether the suit suffers from defect of parties?

4. Whether the plaintiff has right, title and possession over the suit land?
5. Whether the plaintiff is entitled to get relief as prayed for?

At the trial the plaintiff examined 3 witnesses and the defendant examined 1 witness. Plaintiff submitted some documents Exhibited as '1' to '6' and the defendant submitted their documents Exhibited as 'Ka' to 'Uma'.

The learned trial Judge upon hearing the parties and considering the evidences and materials on record decreed the suit mainly on the ground that the predecessor of the plaintiff Daud Ali purchased .24 decimal land on an auction case and this plaintiff got the suit land from his predecessor by way of a gift deed. Plaintiff got mutated the suit land and paying rent accordingly. So the plaintiff has got right, title and possession over the suit land.

Being aggrieved and dissatisfied by the aforesaid judgment and decree dated 07.11.2017 passed by the joint District Judge, 2nd Court, Sirajgonj, the defendant-appellant preferred this instant appeal.

Learned Deputy Attorney General Mr. Md. Yousuf Ali appearing for the defendant-appellant in course of arguments takes us through the impugned judgment, plaint, written statement of the suit, deposition of witnesses and other materials on records and submits that the learned trial court below without applying its judicial mind into the facts of the case and law bearing subject most illegally decreed the suit on the findings that

the plaintiff-respondent has been able to prove his case by adducing sufficient evidence.

Learned Deputy Attorney General for the appellant further argues that the scheduled land originally was belonged to zaminder as recorded in C.S. khatian no. 1350, plot no. 5538. The nature of land is hat bazar. The government took possession over the scheduled land when the State Acquisition and Tenancy Act came into force in 1950. As a result S/A. and R/S khatian was correctly recorded in khas khatian no. 1 in the name of the government and admittedly the suit land is Dariapur hat bazar land. Learned Deputy Attorney General further contended that the government is possessing the suit land by giving yearly lease in every year till date, though the plaintiff-respondent claimed that they purchased the suit land on auction vide Certificate Case No. 2360/1957-58 on 17.08.1958 but the plaintiff-respondent could not submits any acceptable documents to that effect, the boynanama and dokholi porwana submitted as Exhibit '3' by the plaintiff-respondents is totally created and false, date of issuing the DCR is seen to be signed before the execution of boynanama, no dag number is mentioned in the rent receipt and the same were written by various colour of ink, Learned Deputy Attorney General finally submits that as an appeal is continuation of a original suit, this court can consider all the annexures submitted under section 41 rule 27 for proper adjudication of this instant appeal.

Reversely, learned counsel appearing for the plaintiff-respondent Mr. A. Y. Moshiuzzaman submits that as the S.A survey was ongoing, the

land in question was not recorded in Daud's name but was prepared in the name of government, Daud purchased the land by way of Certificate Case no. 2360/1957-58 (Exhibit-'3'), Daud Ali transferred the suit land to the plaintiff by way of a gift deed on 12.10.1970, plaintiff-respondent got the possession and paying rent till date, the witnesses of the plaintiff-respondent proved the possession of the plaintiff-respondent over the suit land, R.S. khatian is prepared in the name of the purchaser of .1575 ojutansho land appertaining to the land of plot no. 5696. Learned counsel lastly submits that the defendant-appellants did not submit the Miscellaneous Case No. 1979-80 to prove the suit land as hat periphery. Also the plaintiff-respondent's counsel argues that Advocate Survey Commissioner submitted a commission report where the contention of plaintiff-respondent is well reflected. Plaintiff-respondent paying municipality tax and pollibiddut electricity bills, D P khatian is prepared in the name of the plaintiff-respondent seeing the possession of the plaintiff.

Now let us scrutinize the relevant evidences adduced by both the parties.

Pw 1 Md. Abdur Rauf as power of attorney deposed in favour of the plaintiff that the suit land was originally belonged to Wazed Ali Khan Ponni. The land measuring .05 decimal out of .90 decimal in plot no. 5538, .10 decimal in plot no. $\frac{5538}{5818}$ and .24 decimal out of 1.02 in plot no. 5696 was sold in auction by way of Auction Case no.2360/1957-58, Daud Ali purchased that land by way of auction on 17.08.1958, but suit land

was wrongly recorded in S.A. khatina no. 1, Daud Ali transferred the suit land by way of a unregistered deed to this plaintiff, R.S. record for the other purchaser's of the scheduled land is recorded duly by their name, but R.S. record for the suit land is wrongly recorded in khatian no. 1. To cross he admits that the suit land under C.S. khatian 1305 was originally belonged to Zaminder. Pw 2 stated that there is market in the suit land and plaintiff has a shop in that market, that market is of plaintiff Latif, plaintiff possesses the suit land, the government does not possess the same. He denied the suggestion that the suit land is a land of hat periphery or government possess the suit land. Pw 3 deposed that the suit land .10 decimal is possessed by the plaintiff. Government does not possess the same. To cross he admits that it is true that the suit land is of Dariapur hat. On the contrary Dw 1 stated that C.S. owner Zaminder set up hat bazar on the suit land for the use of public at large. Thereafter that hat bazar included in hat periphery by way of the Miscellaneous Case no. 8(hat)/1979-80, Defendant Government has been possessing the suit hat bazar by giving yearly lease to the people, renowned Dariapur hat is sitting on the suit land, government has right, title and possession over the suit land. To cross Dw 1 stated that he did not adduce the file of Miscellaneous Case no. 08/1979-80 before the court, the total suit land is included in hat periphery. There are shops in the suit land. These are given yearly lease to the different people, he did not bring registrar II with him etc.

On meticulous and close perusal of the entire evidence both oral and documentary, we found that the plaintiff-respondent claims that he has right, title and possession over the suit land. It is a settled principle of law that the plaintiff must prove his plaint case to succeed in the suit, the weakness of the defence case cannot be the ground to succeed or to prove the plaint case. Now let us see how far the plaintiff-respondent has been able to prove his case.

The first contention of the plaintiff-respondent is that the predecessor of the plaintiff-respondent Daud Ali purchased the suit land on auction on 17.08.1958. Thereafter the dokholi porwana was issued on 20.10.1958 which was Exhibited as '3'. This Exhibit '3' discloses that on the same day on 20.10.1958 Nazir handed over the possession of the suit land to the plaintiff-respondent on the basis of 'dokholi porwana and on the same day Nazir submitted the execution report to the certificate court. It is very unusual to have all the things done in a single day which gave rise to great suspicion regarding nilami boynanama, dokholi porwana and execution of the impugned certificate case.

It is more even surprising is in this case that according to the plaintiffs claim, the land in question was purchased on auction on 17.08.1958 whereas the DCR for the said auction was issued on 17.04.1958. Moreso it appears that the DCR is written on an old paper by new ink. Also the D P khatian is presumed to be written in an old paper by new ink. It is observed that suit dag number is not mentioned in the

rent receipt and these rent receipt also written by using various colour of ink.

Defendant-appellant filed an application with a prayer to accept the additional evidences attached with the application. Learned Deputy Attorney General referring the Apex Court's decision reported in 35 DLR at page 1 contentent that an appeal is a continuation of the original suit. So for the proper adjudication of this instant appeal the additional evidences submitted by the appellant may be considered here in this appeal. The appellant submitted attested copy of concerned Certificate Registrar 1957-58. On perusal of these attested copy of the certificate registrar, the name of the plaintiff's vendor Dawood Ali is not found in that registrar. Appellant-defendant submitted some DCR with the name of leasee who got yearly lease from the government appellant. They are Arif Hossain, Prodip Kumar Datto, Hazrat Ali Sheikh, Abdul Alim, Faisal Hossain, Bacchu Mia, Dilip Kumar Moyargi, Sree Malik Kumar Sarkar, Md. Lokman Hossain, Brindabon Kumar Saha, Md. Rakib Hasan. Appellant also submitted the order sheet, official letter and map of the suit hat bazar in Miscellaneous Case no. 08 of 2007 corresponding to the management of the suit land. Appellant-defendant also submitted attested copy of the judgment of Other Suit no. 540 of 2021, where the scheduled land under P.S. Shahajadpur Mouja Dariapur, C.S. khatian 1305 is seen to have been proved as government khas property. All these papers are attested by a responsible Assistant Commissioner working in the Collectorate of Sirajgonj Deputy Commissioner's office. So these papers

are worthy to be reliable. Learned Advocate for the plaintiff-respondent contend that the plaintiff-respondent has been possessing the suit land by paying rent but we observed as above that the rent receipt submitted by the plaintiff-respondent is not genuine and not related with the suit land, no dag number are mentioned in these rent receipt. Learned counsel further contend that the defendant-appellant submitted some additional evidences which are irrelevant to this appeal and contrary to the issues framed by the trial court. It is to be mentioned here that the additional evidences submitted by appellant is most relevant for the proper adjudication of instant appeal and for the determination of right, title and possession over the suit land. It is further observed that this court as a first appellate court has the jurisdiction to look into the fact of the case and relevant law as well.

In the aforesaid context, we can refer here the case of Hussain fabrics Ltd. vs Momena Khatun reported in 67 DLR AD(2015) at page 119. Their Lordship observed in the appeal is:

“Order IXL rule 27 of CPC does not confer any right to the party to adduce additional evidence. The need for additional evidence must be felt by the court itself. When evidence was not adduced by the defendant at the trial stage he cannot claim as of his right, an opportunity to adduce evidence.”

Their Lordship in the aforesaid appeal referred a case of Syed Abdul Khader vs Romi Reddy reported in AIR 1990, SC at page 553 which reads as follows:

“Order IXL rule 27 CPC enables the appellate court to admit additional evidence in the circumstances or situation therein mentioned one such being where the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause.”

So from the above decisions of the higher court we found that this court has jurisdiction to permit additional evidence to be produced before us as in the trial court defendant-appellant claimed the alleged auction, certificate case, boynanama, dokholi porwana are forged and created. The additional evidences submitted by the appellant-defendant thus helped this court to determine the accuracy of the auction purchased by the plaintiff-respondent, which learned trial judge failed to appreciate in his judgment.

As we observed that the DCR, rent receipts are very doubtful regarding the genuineness and correctness and seen to be have been created subsequently, so on that basis it cannot be presumed that the alleged auction is acted upon.

In view of the discussions made in above, we are constrained to hold that impugned judgment of the learned trial court does not deserve to be sustained. The learned trial judge erred in law and facts as he failed to properly evaluate the evidence on record as to the right, title and possession over the suit land. Learned trial judge erroneously concluded that the plaintiff-respondent has been able to prove his case and is entitled to get relief.

In the above observations by now it is clear that the instant appeal must succeed.

As a result the appeal is allowed. The impugned judgment and decree dated 07.11.2017 passed by the learned Joint District Judge, 2nd Court, Sirajgonj in Other Class Suit No. 18 of 2016 is set aside.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.

Sheikh Abdul Awal, J:

I agree.