

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

**Present:**

**Mr. Justice Sheikh Md. Zakir Hossain**

**And**

**Mr. Justice A.F.M. Saiful Karim**

**FIRST APPEAL NO. 157 OF 2017.**

**IN THE MATTER OF :**

Abdul Ali alias Dhayennuddin.

**.... Plaintiff-appellant.**

**-Versus-**

Deputy Commissioner and others.

**..... Defendant-respondents.**

Mr. Gazi M. Mohsin, Advocate with

Ms. Anjuman Ara Begum, Advocate with

Mr. Md. Mosarof Hossain, Advocate

**.....For the Plaintiff-appellant.**

Mr. Khan Md. Peer-e-Azam Akmal, DAG with

Ms. Sufia Begum Luna, AAG with

Mr. Mohammad Mozammel Hossain, AAG with

Mr. Abul Fazal (Palash), AAG

**....For the Defendant-respondents.**

**Heard On: 28.10.2025 and**

**Judgment on: 27.11.2025.**

**A.F.M. Saiful Karim, J:**

This appeal at the instance of the plaintiff is directed against the judgment and decree dated 25.10.2011 (decree signed on 01.11.2011) passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jamalpur in Other Class Suit No. 25 of 2009 dismissing the suit.

The present appellant as plaintiff filed the suit praying for a decree of declaration of title to the disputed land measuring 44.30 acres as described in the 'Ka' and 'Kha' schedules of the plaint against the defendants-respondents i.e. Deputy Commissioner, Jamalpur; Additional Deputy Commissioner, Jamalpur and Assistant Commissioner (Land), Mathergonj, Jamalpur as defendant Nos. 1, 2 and 3 respectively.

Brief case of the plaintiff as stated in the plaint is that the owner of the suit land along with other land was the Zaminder of Dighapatia Raja Pronath Roy; In 1907 the suit land sub-merged into the river by diluvion and in 1923 the same was reappeared and then from the successor of the upper tenant the plaintiff's predecessor Moyez Uddin and Nazir Hossain obtained Pattan and gave a Registered Kabuliyat in favour of the successor-in-interest of the upper tenant Raja Sree Protiva Nath Roy and Moyez Uddin had been possessing the same and Moyez Uddin being childless took son's son of full brother Nazir Hossain i.e the plaintiff as foster grandson

and obtained settlement of 45.60 acres of land by dint of dakhila in favour of foster grandson from the Manager, Sree Jogendralal Pakrashi, of the owner of the Raja Estate of Nowkhila (Dighapatia), Zaminder Sree Kumar Shah Chowdhury; Moyezuddin and the plaintiff duly obtained Dakhila after making payment of tax; Bangladesh Government has no right, title and possession over the suit land and on the contrary plaintiff has proper title and interest and full possession of suit land and due to the mistake of survey employees during B.R.S survey the suit land was recorded in the name of the Government of Bangladesh instead of plaintiff and the plaintiff got knowledge of the same from the local land tahshil office on 18.01.2009 and as the title of the plaintiff was clouded because of the fact that the land was recorded in No. 1 Khas Khatian, the plaintiff filed the instant suit for declaration of title.

Defendant Nos. 1 and 2 appeared and filed a written statement jointly contending, *inter alia*, that while the suit land was occupied by the CS recorded owner, the rent was

due, and thus they surrendered the land to the upper tenant and while the upper tenant had been possessing the land as Khas, that land sub-merged into the Zamuna river; then, when the suit land reappeared the same was recorded in the government's Khas Khatian No. 1 in the R.O.R. and B.R.S. surveys; the suit land is under the control of the government; while the suit land had been in possession of the government, the government provided settlement of the land as Khas land to various landless people; the story of pattan in favour of the plaintiff is false and fabricated; with a view to misappropriate the suit land the plaintiff fabricated a false story in filing the suit; plaintiff has no title interest and possession over the suit land thus suit be dismissed.

The trial court below framed following issues at the time of drawing up judgment for proper disposal of the suit:

1. Is the suit is maintainable in the present from?
2. Whether the plaintiff has got any right, title and possession over the suit property?

3. Whether the plaintiff is entitled to get relief in pursuance of his prayer?

That during trial the plaintiff examined as many as three witnesses and the defendants examined one witness only to prove their respective cases. After hearing the parties and perusing the material evidences on record the learned Joint District Judge, 2<sup>nd</sup> Court, Jamalpur dismissed the suit. Being aggrieved by the judgment and decree of the learned Joint District Judge, the plaintiff preferred this First Appeal.

Mr. Gazi M. Mohsin, learned Advocate with Mrs. Anjumanara Begum, Advocate appearing on behalf of the Appellant submits that the learned trial Court below erroneously disbelieved that the suit land was given settlement in favour of the plaintiff i.e the foster grandson of Moyez Uddin by dint of dakhila in 1954 and the fact that plaintiff had been possessing the suit land for about 80 years by generations and therefore the impugned

judgment may kindly be set aside and the appeal may kindly be allowed.

Mr. Mohsin next submits that in 1923 Mr. Moyez Uddin with his brother Nozir Hossen obtained Pattan and gave a registered kabuliyat in favour of the successor-in-interest of the upper tenant Raja Sree Protiva Nath Roy and from that time he had been possessing the suit land till 1954 when he obtained settlement by way of Dakhila in favour of the plaintiff thus the plaintiff had been continuing to possess the suit land but the learned trial court below failed to consider this aspect of the case in dismissing the suit and thus the appeal may kindly be allowed.

Mr. Mohsin further submits that the plaintiff submitted 4 copies of Dakhila before the trial Court below but those were not exhibited due to the mistake of the learned advocate of the trial court below and thus the plaintiff-appellant filed an application for additional evidence at this stage and submits that the same may kindly be allowed.

Mr. Khan Md. Peer-e-Azam Akmal, learned Deputy Attorney General representing the Deputy Commissioner, Jamalpur have filed a counter affidavit in the instant appeal stating that Government of Bangladesh has established Shuknagari No. 1 Cluster Village (গুচ্ছ গ্রাম) and No. 2 Cluster Village (গুচ্ছ গ্রাম) for the residence of the homeless people within the land of the plot mentioned in the plaint. It is also stated in the counter affidavit that there are 220 houses in 44 barracks in the said 2(two) Cluster Village under the supervision of the Upazilla Execution Officer, Madargonj on behalf of the Deputy Commissioner, Jamalpur.

Mr. Akmal also annexed the relevant BRS Khatian in his counter affidavit. He also raises the maintainability of the suit referring section 87(3) of the State Acquisition and Tenancy Act, 1950.

The learned Deputy Attorney General submits that the plaintiff hopelessly failed to prove the right, title, interest and possession in favour of the plaintiff and thus

the learned trial court below rightly dismissed the suit and therefore the appeal may kindly be disallowed.

Mr. Akmal submits that after reappearance of the suit land from the River by alluvion the land vests with the government and after properly recording the land in the name of the government in R.O.R. and B.R.S. survey on various occasion government gave settlement of the part of the alluvion land to different people including the plaintiff as well and the story of the plaintiff regarding pattan is antdated and false and fabricated and drawing a proper inference the trial court below rightly dismissed the suit and therefore the appeal may kindly be disallowed.

Mr. Akmal also submits that government has been possessing the suit land and in the deposition the DW-1 stated that after alluvion of the suit land from the river Zamuna the government has been possessing the same and R.O.R and BRS record has been duly prepared in the name of the government and upon proper consideration of the evidence of the PW's and DW's the trial court below

rightly dismissed the suit and therefore, the appeal may kindly be disallowed.

Mr. Akmal also submits that it is not a believable story that such a huge quantity of land owner plaintiff did not know about the ROR and BRS survey for such a long period of over 40 years at least after the plaintiff became major and therefore the trial court below rightly dismissed the suit.

Whether or not the learned Joint District Judge was justified in dismissing the suit in the facts and circumstances of the case and on the evidence on record is the main issue before us.

Let us examine the deposition of the respective witnesses of the parties first.

The PW-1, the plaintiff himself in his examination-in-chief stated that- “.....আমার দাদা মইজ উদ্দিন সি/এস রেকর্ডীয় মালিকের পরবর্তী ওয়ারিশ থাকে বাংলা ১৩৩০ সালে নালিশী জায়গা কবুলিয়ত পত্তন নেন। বাংলা ১৩/৫/১৩৩০ ইংরেজি ৩০/৮/২৩ইং তারিখ ৪৮৯৬ নং মূল কবুলিয়ত দাখিল করলাম। এটি প্রঃ ১ (আপত্তিসহ) আমার দাদা নজির ও মইজ উদ্দিন কবুলিয়ত মূলে ঐ সম্পত্তিতে স্বত্ববান দখলকার থাকাবস্থায় নিঃসন্তান মইজ উদ্দিন আমার ২ বৎসর বয়স আমাকে পালক নেন এবং পরবর্তীতে দাখিলা

মূলে ঐ সম্পত্তিতে দাখিল মূলে আমার নামে বন্দোবস্ত নেন। এ রকম ৪টি দাখিলা দাখিল করলাম পুরস্বানুক্রমে প্রায় ৮০ বৎসর যাবত আমি নালিশা সম্পত্তি ভোগ দখল করে আসছি। নালিশী জায়গার ROR খতিয়ান নং-১ দাগ- ১ ও ২০। BRS অপাঠ্য নালিশা জায়গা ১নং খতিয়ানে লিখা হয়েছে এবং BRS তারিখে ঐ জায়গা ১০০১-১০৯১ পর্যন্ত দাগে এবং ১৩৩২-১৩৩৮ পর্যন্ত দাগে লিপি হয়েছে। ১৮/১/০৯ ইং তাং- মাদারগঞ্জ তহশিল অফিসে গিয়ে অপাঠ্য নালিশা জায়গা আমার নামে রেকর্ড না হয়ে ROR ও BRS তারিখে পরস্পর ১নং খতিয়ান রেকর্ড হয়েছে.....।”

In his cross examination he stated that- “.....পত্তন নামা এবং দাখিলা আমার বাক্সে পেয়েছি। ১৮/১/০৯ইং তাং- বাক্সে ঐ কাগজাত গুলো পেয়েছি। দাখিলা ও পত্তন নামা আমি চিনি না। পরে বলে চিনি। দাখিলা পত্তন নামাটি কে লিখেছে তা জানি না। আমার দাদা নজির ও মইজ উদ্দিন কবুলিয়াত দিয়েছে। ১৩৩০ বাংলা সনে তারা কবুলিয়াতে দেয়। দাখিলা কে লিখেছে তা বলতে পারব না। সত্য নয় নালিশা জায়গায় আমার কোন দখল নেই কি আমি মিথ্যা কাগজাত সৃজন করে মিথ্যা মামলা করেছি।”

PW-2 Stated in his cross examination that- “.....নালিশা জায়গার পরিমান বলতে পারব না। নালিশা জায়গা হতে আধা মাইল দূরে আমার জমি আছে। সত্য নয় আমি মিথ্যা সাক্ষ্য দিলাম.....।”

PW-3 Stated in his cross examination that- “বাদী কয়টি দাগ ও কয়টা খতিয়ানের জমি নিয়ে মামলা করেছে তা বলতে পারব না। নালিশা জায়গার পরিমান বলতে পারব না। নালিশা জায়গা হতে অনুমান ৩০০ গজ পূর্ত আমার জমি ঐ জমির দাগ খতিয়ান বলতে পারব না। সত্য নয় সরকারের পক্ষে তার কর্মচারীরা নালিশা জায়গা দখল করে। নালিশা জায়গার চৌহদ্দি বলতে পারব না। সত্য নয় নালিশা জায়গা বাদী দখল করে না কি তা সরকার দখল করে কি আমি নালিশা জায়গা চিনি না কি বাদী পক্ষে মিথ্যা সাক্ষ্য দিলাম।”

DW-1 Stated in his deposition stated that-  
“.....অতঃপর জমিদার ঐ জমিতে ভোগ দখলদার থাকাবস্থায় নালিশা জমি নদীগর্ভে বিলীন হয়ে যায়। পরে নালিশা জমি নদীগর্ভে থেকে জেগে উঠলে এর ROR ও BRS রেকর্ড ১নং খতিয়ানে লিখিত হয় নালিশা জমি বর্তমানে সরকারের নিয়ন্ত্রণ ও দখলে আছে। সরকার নাঃ জমিতে ভোগ দখলকার থাকাবস্থায় পরবর্তীতে তা বাদীসহ বিভিন্ন লোকের নিকট বন্দোবস্ত দিয়েছে। বাদীপক্ষের পত্তনের কাহিনী **Antidated** এবং জাল। বাদীপক্ষ মিথ্যা পত্তনের অপার্ট সৃষ্টি করে নাঃ জায়গা আত্মসাতের জন্য সরকারের বিরুদ্ধে মিথ্যা মোকদমা করেছে। আমি মোকদমাটি খারিজ চাই।”

DW-1 in his cross-examination stated that- “.....নাঃ জায়গার পরিমান ৪৪.৩০ একর। ROR ১নং দাগের অপার্ট্য ২২.৯২ একর এবং ২০ নং দাগের অপার্ট্য ২১.৩৮ একর। ২২.৯২ ও ২১.৩৮ একর জমির চৌহদ্দি বলতে পারব না। সত্য নয় নাঃ জায়গা চিনি। বাদী বন্দোবস্ত চায়। মর্মে কোন কাগজাত দাখিল করিনি। নাঃ ভূমি আবাদ কারীদের নাম বলতে পারব না। সত্য নয় সাকুল্য নাঃ জায়গা বাদী তার পূর্বপুরুষদের আমল থেকে প্রায় ৮০ বৎসর যাবত দখল করেছে কি অন্য কোন লোক নাঃ জায়গা দখল করে না।”

It appears from the PW’s deposition that they tried to establish the plaintiff’s case as stated in the plaint but the PW-1 exhibited the Kabuliyat dated 30.08.1923 as exhibit ‘1’ which appears to be the foundation of plaintiff’s claim of title and possession of the suit land. It appears that as the foundation of the plaintiff’s claim of title over the suit

land four photocopies of Dakhilas were submitted but not exhibited by the plaintiff. It also appears that the plaintiff did not file the original copies of Dakhilas as proof of settlement though plaintiff claimed in the plaint that suit land has been given settlement by way of Dakhila on 10.04.1954.

It appears from the Khajna Rasid (Dakhila) that payment of tax has been made lastly in 1958.

As per the plaint cause of action of the suit occurs on 18.01.2009 when the plaintiff came to know about the wrong record from the office of Tahsil Kachari. It appears that from 1958 to 2009 no steps had been taken by the plaintiff for making payment of Khajna. Trial Court below after assessing the deposition of PW's and DW reached to a conclusion that the plaintiff had no possession over the suit land.

For consideration of the submission of the learned Deputy Attorney General regarding maintainability of the suit under section 87(3) of the State Acquisition and

Tenancy Act, 1950 the relevant provision is reproduced herein below:-

**“All suits, applications, appeals or other proceedings for the assertion of any claim to hold, as an increment to any holding, any land gained or alleged to have been gained from the recess of a river or of the sea, pending before any court or authority on the date of commencement of the said order shall not be further proceeded with and shall abate and no court shall entertain any suit, application or other legal proceedings in respect of any such claim.”**

It appears to us that no question of application of the provision of section 87(3) of State Acquisition and Tenancy Act, 1950 has arisen in the instant case because of the facts that the plaintiff's claim of title is based on settlement by way of dakhila in 1954 and in the plaint there is no assertion regarding occurrence of alluvion and diluvion after 1954 and as per the plaint the plaintiff's

case neither based on accretion nor based on reformation in situ rather the plaintiff's claim of title is based on settlement by way of dakhila and thus in our view suit is not barred under the provision of section 87(3) of State Acquisition and Tenancy Act, 1950.

Defendant-Respondents case is that for the purpose of misappropriation of the suit land the plaintiff made a story of pattan by way of Dakhila which is false and fabricated and in the deposition DW-1 stated that the suit property has been duly recorded in R.O.R and BRS survey in the name of Government and in his cross-examination he stated the quantum of suit land with plot Nos. 1 and 20 of R.O.R survey.

The learned Deputy Attorney General by way of counter affidavit submitted BRS Khatian No. 1 in respect of suit land though it is admitted fact that suit land has been recorded in ROR and BRS survey in the name of the Government.

Considering the facts and circumstances we find no reason to allow the application for additional evidence filed by the appellant only referring the photocopies of dakhilas which were filed but not exhibited earlier and thus the said application is disposed of in negative.

Considering the evidence on record both oral and documentary we find substance in the submission of the learned Deputy Attorney General in respect of the defendant i.e. government's possession over the suit land and thus we hold that the learned Joint District Judge on proper weighing of the evidence on record has rightly come to the conclusion that plaintiff has no right title and possession over the suit land.

In the result, we find that the present appeal has no merit and there is nothing to disturb the judgment and decree passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jamalpur. Accordingly, the appeal is dismissed. Considering the circumstances there shall be no order as to costs.

Let a copy of this judgment and decree together with LCR be sent down to the learned Judge of the concerned Court below, at once.

A.F.M. Saiful Karim, J:

Sheikh Md. Zakir Hossain, J:

I agree.

Sheikh Md. Zakir Hossain, J: