

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

First Appeal No. 388 of 2009

In the matter of:
Memorandum of appeal from original decree.
-and-

In the matter of:

Government of Bangladesh represented by
the Deputy Commissioner, Gazipur and
others

...Defendants-appellants

Versus

Most. Anowara Begum

... Plaintiff-respondent

Mr. Md. Yousuf Ali, D.A.G with
Ms. Israt Jahan, A. A.G. with
Mr. Md. Siddik Ali, A.A.G. and
Ms. Sabina Yeasmin Nira, A.A.G.
... for the appellants

Mr. Mostafa Niaz Mohammad with

Mr. Md. Belal Hossain, Advocates

... for the respondent

Heard on: 27.04.2025, 30.04.2025,
07.05.2025, 08.05.2025 & 22.05.2025
Judgment on: 28.05.2025

Md.Mansur Alam, J

This appeal is directed against the judgment and decree dated 18.05.2008 (decree signed on 25.05.08) passed by learned Joint District Judge, 2nd Court Gazipur in Title Suit No. 182 of 2007 decreeing the suit.

The facts, relevant for disposal of this appeal, in brief are that the plaintiff-respondent filed suit No. 182 of 2007 for declaration of title to the suit land described in the plaint. The suit 12.00 acres land out of 20.15 acres land of sabek plot no 28 measuring 8 acres, sabek plot no 39 measuring 3.30 acres, sabek plot no. 46 land measuring 4.80 acres, sabek plot no 407 measuring 2 acres and sabek plot no 166 measuring 2 acres appertaining to C S khatian no 1/30 corresponding to S A Khatian Khatian no 18(Ka), plots no 28, 407, 166 corresponding to R S Plot no 61, 54, 542, 543, 544, 545, 546, and 273 of Mouza South Panisail, P.S Sadar, Gazipur originally belonged to Kasimpur Zaminders namely Shashi Prasad Roy Choudhury, Abani Prasad Roy Choudhury, Babu Atul Prasad Roy Choudhury who settled the same to Anwara Begum, on 25th Ashin 1353 B S through amalnama, taking salami thereof and handed over possession to her. To this effect deposit receipt was issued from Kashimpur Zaminder estate accepting the settlement. Thereafter Anwara Begum paid rent for the suit land and rent receipts were issued from Zaminder sheresta receiving rent from her. While Anwara begum had been owning and possessing the suit land paying rents, S A khatian no 18(Ka) was prepared in her name. In this background while Anwara went local Tahsil office to pay rent,

was refused by Tahsilder to receive rent. Anwara Begum Applied to A D C (Rev) Dhaka on 6.9.76 for receiving rents from her and a misc case no 21/76 was started following her petition. Thereafter A D C Rev directed Thana revenue officer and Tahshilder to receive rent and the plaintiff respondent paying rent from that time accordingly. It is worth mentioning that Plaintiff could not communicate with local Tahsil office for long time due to her illness. In this situation on last of October local Tahsil office informed them that they could not receive rent from them without any Court Order. They informed them that the suit land has been recorded in the khas khatian 1. On obtaining certified copy of porcha on 9.11.06 the plaintiff first time came to know about the wrong R S record but she is all along possessing the suit land erecting houses and planting trees thereon. Owing to the wrong R S record of the suit land, the plaintiff's right title having been clouded, she brought this suit.

Defendant appellant entered appearance in the suit by filing written statement contending inter alia that the suit is not maintainable and there is no cause of action to file the suit, the suit is barred by limitation. The suit land is under the control and management of the Government. It is contended by the defendant appellant that the C S suit plots no. 28, 407 and 166

appertaining to C S khatian no. 1/30 belonged to monarch of India, land of C S plot no. 28 being R S plot no. 61 and land of C S plots no. 54, 542, 407 and 166 being R S plots no. 54, 542, 543, 544, 545, 546 and 273 recorded in khas khatian no 1 in the name of the Government. Plaintiff's claim is false, baseless and story of settlement by pattannama, rent receipts and S A khatian are forged. Hence the suit is liable to be dismissed.

It is further contended that 1.00 acres of land from R S plot no. 54 have been allotted to one Amzad Hossain, 1.00 acres to Jewel Aich which they possess now. In addition to that, defendant Government has been proposed to allot 1.81 acres of land in favor of Shafiuddin, Ashulia, Dhaka. Rest properties are proposed to settle in favour of freedom fighters, 5.41 acres land from R S plot no. 61 have been proposed to settle in favor of one Jasimuddin Ahmed, 1.28 acres land of R S plot no. 273 have been proposed to settle in favour of one Amran Hossain Choudhury and 2.00 acres land have been proposed to settle in favour of one Lutfunnesa. Plaintiff has no possession over the suit land. Government defendant himself has been possessing the suit land and on its behalf proposed lessee are now possessing the suit land.

Upon consideration of the pleadings of the parties, learned Joint District Judge framed the following issues:-

1. whether the suit as framed is maintainable?
2. whether there is any cause to bring the suit?
3. whether the plaintiff has title to and possession in the suit land?
4. whether the plaintiff is entitled to get the decree of declaration as prayed for?
5. To what relief, if any is the plaintiff entitled?

At the trial plaintiff examined three witnesses and the defendant examined 1 witness. The plaintiff respondent submitted documents marked as Exbts 1-8 and the defendant-appellant submitted C S, S A and R S khatians marked as Exbt A, A1 and A2.

The learned Joint District Judge upon hearing the parties and on considering the evidence and materials on record by his judgment dated 18.05.2008 decreed the suit mainly on the ground that the plaintiff-respondent by adducing evidence became able to prove his right, title and possession over the suit land and also held that Anwara Begum owned the scheduled land through amalnama by paying salami thereof and got possession over the suit land. To this effect deposit receipt was issued from Kashimpur Zaminder estate accepting

the settlement. Thereafter Anwara Begum has been possessing the suit land and S A khatian has duly prepared in her name.

Being aggrieved and dissatisfied by the impugned judgment and decree dated 18.05.08 passed by the learned Joint District Judge, Gazipur, Dhaka in Title Suit No. 182 of 2007, the defendant-appellant preferred this First Appeal.

Mr. Md. Yousuf Ali Deputy Attorney General for the defendant-appellants in the course of argument takes us through the impugned judgment, plaint of the suit, written statements, deposition of the witnesses and other materials on record and then submits that the trial Court below without applying its judicial mind into the facts of the case and law bearing on the subject most illegally decreed the suit on the finding that the plaintiff-respondent have been able to prove his right, title and possession over the suit land. Learned Deputy Attorney General further submits that the trial Court erroneously held the view that the impugned Amalnama is valid and is acted upon since the then Jaminder accepted salami from the plaintiff Anwara and accordingly Anwara got possession over the suit land. Learned Deputy Attorney General further argued that the suit land was recorded in the name of Bharat Samrat in khas khatian no 1 and C S plot no 407 and 166 was also prepared in khas khatian no1. Learned

Deputy Attorney General referring documents annexed as X 9 and as 10 in additional evidence that the government has been possessing the suit land and R S khatian no 1 is rightly prepared in the name of the Government. Learned Deputy Attorney General further contended that Government Appellant allotted some land by way of settlement to the different people and they now are in possession. The pattannama, S A khatian and rent receipts in the name of the plaintiff are fake and created and in support of this claim, defendant appellant submitted annexure 1 to annexure 10 as additional evidences. Learned Deputy Attorney General further argues that those documents might have been brought before the court during trial but unfortunately defendant appellant had been failed to submit those documents before the court. Learned Deputy Attorney General in this context submits that the defendant appellant brought those appropriate documents as additional evidence which is shown as annexure 1 to 10. Learned Court can consider those documents in this appeal or can send the suit on remand for fresh trial. Also he argued that the plaintiff though claimed some of the land from R S plots no. 54, 542, 543, 544, 545, 546 and from R S plot no. 273 but there is no any specification in the plaint to the effect

that how much and in which direction does the plaintiff have possession over the same.

On the other hand, the learned Advocate appearing for the plaintiff-respondent submits that the plaintiff respondent has established her right title and possession in the suit land through amalnama given by zaminder since 1946 A D by paying salami. S A khatian is duly prepared in the name of the plaintiff finding the physical possession of the plaintiff respondent. R S khatian is wrongly prepared in the name of the defendant Government. Defendant Government might have allotted some of its land to others through settlement but those are not within the boundary of the scheduled land, as such there would be no any clash with the land belonged to the plaintiff respondent. The plaintiff respondent has successfully proved her right, title and possession in the suit land, so the impugned judgment of the learned trial Court is just and proper and as such this appeal be dismissed

Having heard the learned Advocates from both the sides and having gone through the materials on record including the impugned judgment of the trial Court, the only question that calls for our consideration in this appeal is whether trial Court below was justified in arriving at the findings that the defendant-appellant have been able to prove that the land in

question is government khas property and defendant appellant has control and management over the suit land and claims of the plaintiff respondent is not based on any evidence. Similarly the other question that calls for our consideration is whether learned trial Court rightly decreed the suit relying the alleged amolnama, S A khatian and evidences as produced by the plaintiff respondent.

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

Plaintiff-respondent examined 3 witnesses namely plaintiff Fazlul Karim Khan as Pw1, Osman Gani as Pw2 and Moinul Khan as Pw 3.

P.W.1 Fazlul Karim Khan deposed that “ নালিশী সম্পত্তি দক্ষিণ পানিশাইল মৌজার জমি। সাবেক ১ নং খতিয়ানের এবং উহার খতিয়ান SA ১৮/ক। SA ১৮/ক নং খতিয়ান আনোয়ারা বেগমের নামে নয়। উহা দাখিল করিলাম (প্রদঃ ৩)। আনোয়ারা বেগম কাশিমপুর জমিদার এর নিকট হতে ১৩৫৩ সনে পত্তন নেয়। পত্তননামা দাখিল করিলাম (প্রদঃ ৪) পত্তননামা মূলে আনোয়ারা বেগম ২০.১৫ একর ভূমি পত্তন নেয়। পত্তন নেয়ার পর আনোয়ারা বেগম জমিদার বরাবর খাজনা দেয়। ৪ ফর্দ খাজনার দাখিলা দাখিল করিলাম (প্রদঃ ৫ সিরিজ)। পত্তন দেয়ার পরে বন্দোবস্ত জমার রশিদ দাখিল করিলাম (প্রদঃ ৬)। আনোয়ারা বেগম ১৩৬২ সন পর্যন্ত খাজনা দেই। খাজনা নিতে অস্বীকার করিলে বিগত ০৬/০৯/৭৬ সনে ADC (Rev.) অফিসে ঢাকায় বরাবর ০৬/০৯/৭৬ তারিখে খাজনা দেয়ার জন্য আবেদন করি। Misc. ২১/৭৬ নং হয়। Misc. case দায়ের করার পরে ADC (Rev.)

তহশিল অফিস রাজস্ব অফিসারকে নালিশী সম্পত্তি বাবদ একটি তদন্ত প্রতিবেদন চান। সেই তদন্ত প্রতিবেদনের সহমোহর নকল দাখিল করিলাম (প্রদ। ৭)। প্রতিবেদন দাখিল করিলাম। ২১/৭৬ নং মামলার খাজনা নেয়ার জন্য নির্দেশ দেওয়া হয়। ”

PW 2 Osman Gani stated that “ আমি মোকদ্দমায় বাদীপক্ষ এবং নালিশী জমি চিনি। দক্ষিণ পানিশাইল মৌজার জমি নিয়া মোকদ্দমা। সম্পত্তির মালিক ছিল আনোয়ারা বেগম। বর্তমানে দুলাল হাজী দখল করে। নালিশী জমিতে ঘর আছে। আম গাছ, বাড়ীঘর আছে, পুকুর আছে। ঘর দুয়ার বাদী ভাড়া দিয়াছে ও ভোগ দখল করিতেছে। নালিশী জমির মধ্যে (অস্পষ্ট) আমার বাড়ী, আমার দোকান আছে। সরকারের কোন লোককে নালিশী জমি দখল করিতে দেখি নাই। ”

PW 3 Md. Moinul Khan stated that “মামলার বাদীকে চিনি। নালিশী জমি চিনি। নালিশী জমি দক্ষিণ পানিশাইল এলাকায়। নালিশী জমির মালিক আনোয়ারা বেগম। বর্তমানে দুলাল সাহেব ভোগ দখল করে। নালিশী জমিতে ঘর আছে। মসজিদ আছে, (অস্পষ্ট) পুকুর আছে। কিছু ঘরে দুলাল সাহেবের ভাড়াটিয়া থাকে। নালিশী সম্পত্তি কখনও সরকার দখল করেনা। ”

On the contrary defendant-respondent examined 1 witnesses namely Abdul Latif Mian who deposed that “ আমি ভূমি সহকারী কর্মকর্তা, কাশিমপুর ইউনিয়ন ভূমি অফিস। আমি সরকার পক্ষে জবানবন্দি দিতেছি। নালিশী জমির মালিক ছিল কাশিমপুর জমিদার। খতিয়ান নং ১। ১৯৫০ সনে জমিদারী প্রথা বিলুপ্ত হলে নালিশী জমি ১ নং খাস খতিয়ানে রেকর্ড হয়। ইহার পর নালিশী জমি সরকার এর উপর বর্তায়। SA রেকর্ড ১ নং খাস খতিয়ানে রেকর্ড হইয়াছে। SA খতিয়ান ১ দাখিল করিয়াছি (প্রদঃ A)।

RS খতিয়ান ১ নং খাস খতিয়ানে রেকর্ড হইয়াছে সরকার নামে। সরকার নালিশী জমি দখল করিতেছি। সরকার আমজাদ হোসেন, জুয়েল আইচ সহ অন্যান্য

দোকানে lease দেয়ার জন্য প্রক্রিয়াধীন আছে। নালিশী জমি সরকার এর দখলে আছে। কিছু জমি বরাদ্দ প্রাপ্তদেরকে বুঝিয়ে দেয়া হইয়াছে। সত্য নহে যে, নালিশী জমি বাদী পত্তন নিয়া দখলে আছে। সত্য নহে যে, বাদী ADC (Rev.) এর বরাবর দরখাস্ত করায় ADC (Rev.) সাহেব যাদেরকে নির্দেশ গুলো নেয়া সত্য নির্দেশ করিয়াছে। সত্য নহে যে, আমরা ২০০৬ সনে খাজনা নেই নাই। সত্য নহে যে, নালিশী জমিতে বাদীর ঘর আছে, পালা পুকুর আছে। সত্য নহে যে, নালিশী জমি বাদী দখল করে। ”

On careful perusal of the evidences and materials on record, we find that the plaintiff-respondent brought the original Title Suit No. 182 of 2007 for a prayer of declaration of title over the suit land and for a further declaration that the impugned R S khatian is wrong and not binding upon the plaintiff. The plaintiff respondent's positive case is that she took settlement 20.15 acres of land from Kashimpur Zaminder under the monarch of India. The plaintiff respondent submitted Pattannama, S A khatian, 4 copies of rent receipts of Zaminder sheresta, hukum letter etc. Ld trial judge placed high importance on these documents. Learned Deputy Attorney General categorically stated that these pattannama, rent receipts and S A khatian in the name of the plaintiff respondent are totally fake and forged. Learned Deputy Attorney General further contended that the plaintiff respondent tried to pay rent to the Government sheresta but as

S A khatian in the name of plaintiff respondent is fake and forged, so the government did not receive rent from her. In this connection Defendant appellant submitted Annexure 9 where it transpires that the signature of Revenue officer does not match with the signature seen in the same S A khatian submitted by the plaintiff respondent. So defendant appellant government do not admits the preparation of alleged S A khatian which is seen in the name of plaintiff respondent. Learned trial Court inadvertently did not take into account the matter in his observation. Learned Advocate for the plaintiff respondent argued that the contention of such fake or forgery are not brought in the written statement in original title suit, so the defendant appellant cannot agitate this matter here in this appellate court. But on perusal of the written statement it is found that the defendant appellant categorically disclosed that the alleged pattannama, zamindari khazna dakhila and S A khatian are false and fabricated. D W 1 Abdul Latif stated in his chief that S A khatian no. 1 is prepared in the name of the government and he marked it as Exbt. 'A'. Learned trial court did not consider this aspect when S A khatian no 1 for the scheduled land is submitted by the defendant appellant before the court. Learned Trial court should have called for the concerned volume and to check properly which S A khatian is

genuine and which is forged, though the defendant appellant in his additional evidence brought some annexure's which reveal the actual position of S A porcha, rent receipts etc regarding suit land of the plaintiff respondent. Learned trial judge observed that the plaintiff respondent submitted Exbt. 5 series rent receipts which affirmed the possession of the plaintiff over the suit land. We closely perused that Zamindari rent receipts where the year (bengali or khristabdo), land description like dag, khatian etc are not found to be cited there. These rent receipts are also challenged by the defendant appellant. So before scanning the genuinity of the same Learned Trial court was misconceived to hold the view that these rent receipts affirmed the possession of the plaintiff over the suit land.

Learned Deputy Attorney General referring the memo no. 05.41.3300.013.03.007.25-237, dated 25.03.2025 by the Assistant Commissioner (land,) Gazipur dated 20.05.25 submits that there is no any record of paying rent is found in Kashimpur Union bhumi office paid by anybody. It is also revealed from the memo of concerned Assistant Commissioner that the paper of alleged pattannama is imperceptible and tears. It is also revealed that the volume of S A 1/30 khatian is found kept in District record room,

Gazipur. But officer in charge disclosed that the signature and page of S A 1/30 khatian that kept reserved in the record room, is distinct to the other khatian. The report of Record room deputy collector submitted as annexure 9 which reveals the fact the S A khatian 18 ka is created and Record room deputy collector on comparing with the original volume found that signature of khatian no 18ka is false and it does not match with the original volume, hand writing and ink of hand writing is different from the original volume which proves S A 18 ka khatian a created one. So the observation of Learned trial court is not correct that S A khatian no. 18/A is duly prepared by the name of the plaintiff. Learned trial judge had wide opportunity to call for the original volumes in this connection to determine the genuinity of S A khatian. The defendant appellant government submitted additional evidences under order 41 rule 27 of C P C where the appellant annexed a memo no. 05.41.3300.013.03.007.25-234 dated 25.03.2025 relating to the supply of certified porcha annexed as X-9 and another memo no 05.41.3300.013.03.007.25-235 dated 25.03.2025 relating to the settlement of the suit property to Justce Iman Ali and to Bangladesh Karmochari Kolyan Board where it is categorically stated their possession thereon on separate holding etc. Also it is disclosed in that memo that Dulal Hazi

and others have been possessing the suit land illegally and eviction process is now pending against these illegal occupier. This memo is annexed as X 10 at the time of filing additional evidence submitted on 13.04.2025.

Learned Advocate for the plaintiff respondent in this context submits that since the matters have not been brought before the trial Court, the same could not be proved by way of producing as additional evidence in the appellate stage but on perusal of the written statement it is found that the defendant appellant categorically disclosed that the alleged pattannama, zamindari khazna dakhila and S A khatian are false and fabricated. So there is no bar to produce the documents by the defendant appellant to determine the truth as to right and title over the suit land in the appellate stage also. The aforesaid memo's filed by the defendant's appellant are signed and issued by the government responsible officer of Deputy Commissioner's office, Gazipur. So those documents cannot be blown out without taking into account. Learned trial Judge ought to have considered this document on calling for the same to the Court at trial.

Learned Deputy Attorney General in one stage submits before us that this court can send the case on remand for fresh trial if Lordship thinks proper. Learned Deputy Attorney

General in this connection referred the decisions reported in 13 B L T (AD) 2005 at page 28 and 40 D L R(AD) 1988 at page 86 where it is decided that in the interest of justice and for proper adjudication of the matter in controversy, where the said documents was not considered by the trial Court, the case can be sent on remand for taking steps to prove those said documents. But at the same time Learned Deputy Attorney General submits that this Honorable appellate division has the authority to decide a case on merits under order 41 Rule 24 of C P C since this Court has sufficient evidence to decide the case on its own. Order 41 Rule 24 reads follows:

“Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds”

On reading the provisions of Order 21 Rule 24 it appears that C P C empowers Appellate Courts to decide a case on its merits, even if the trial courts judgment was based on different grounds. It means the Appellate Court can determine the case

without remanding it to the trial Court if it has enough evidence to do so. We also found on perusal of the evidence and materials on record that the defendant appellant has produced sufficient evidence at the time of submitting additional evidence. These evidences and materials are properly submitted from a public office signed and endorsed by the responsible officers of the Government.

Learned advocate for the plaintiff respondent though admitted that some persons got settlement the suit land but since the transfer was during pendency of this case, so those transfer is barred by the principle of lispendence as per section 52 of Transfer of property Act. It is settled principle of law that a transfer in such case will depend on the result of the suit pending before the Court with jurisdiction. The appellant government has proved by sufficient documents that the leasee Mr. Justice Iman Ali and Bangladesh Karmochari Kolyan Board took settlement of the portion of suit land and they got mutated the suit by opening separate jote number.

So in view of the aforesaid discussion that the defendant appellant has been able to prove their right, title and possession in the suit land where all the instruments of claiming right, title and possession by the plaintiff respondent is proved fake, false and fabricated and created subsequently

in the recent times, particularly after issuance of the letter to the plaintiff respondent to vacate the suit land as they are illegal occupier therein.

The plaintiff respondent described in the schedule that from R S plot no's 61 and 54 he possesses 8.00 acres of land, from R S plot no's 542,543,544, 545 and 546 he possesses 2.00 acres of land and from R S plot no 273 he possesses 2.00 acres of land. It is admitted that in R S plot no 61 and 54 total land area is 09.29, in R S plot no 542,543,544,545,546 total land is 2.47 acres and in R S plot no 273 total land area is 3.28 acres. The plaintiff respondent prayed for declaration of title for 12.00 acres of land out of 15.04 acres of land. We found that the plaintiff did not specify in which direction the plaintiff possess 8.00 acres of land out of 09.29 acres in R S plot no 61 and 54, in which direction the plaintiff possess 2.00 acres of land out of 2.47 acres of land in R S plot no 542,543,544,545 and 546, in which direction the plaintiff possess 2.00 acres of land out of 3.28 acres in R S plot no. 273. It is contended by the defendant that Justice Iman Ali took settlement 0.0675 acres land from R S plot no. 54, Karmochari kolyan Board also took settlement 3.3425 acres of land from R S plot no. 54. This two leasee took .0675 +3.3425 total 3.41 acres of land from the suit plot no. 54. The plaintiff claims 8.00 acres of

land from the plot no. 54 and 61. But the plaintiff did not clarify in which direction he has been possessing that land. So it is found that the plaintiff did not specify his land in the scheduled of the plaint. In this situation a court cannot pass a declaration decree over an unspecified land which Learned Trial Court did not take into his consideration.

From the discussion as made above and on meticulous perusal of the entire evidence both oral and documentary, it appears that learned trial Court erroneously observed that the plaintiff-respondent has been able to prove his right title and possession over the suit land. More so it is of the evident on record that the plaintiff respondent is an illegal occupier in the suit land and the defendant appellant issued several notices to evict the plaintiff from the suit land. A court cannot provide anybody with an equitable remedy who is proved an illegal occupier against the suit property. Therefore, we are constrained to hold that the impugned judgment of the trial Court below is liable to be interfered with. In view of our discussion made in the forgoing paragraph by now it is clear that the instant appeal must succeed.

In the result, the appeal is allowed.

The impugned judgment and decree dated 18.05.2007 passed by the learned Joint District Judge, Gazipur in Title Suit No. 182 of 2007 decreeing the suit is hereby 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