Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 191 of 2017

Haji Jahurul Haque (Babul) and others
.....appellants

-Versus-

Government of People's Republic of Bangladesh and others ..... respondents

Mr. Probir Neogi, Senior Advocate with
Mr. Tanvir Ahmed Al Amin and
Mr. Sumon Ali, Advocates
..... for the appellants

Mr. Bodiuzzaman Tapadar, Deputy Attorney General with K M Rezaul Firoj Rintu, Mr. Mohammad Saiful Islam Miajee, Ms. Anjuman Ara Lima and Mr. Md. Montu Alam, Assistant Attorney Generals ..... for the respondents

Judgment on 12.11.2025

Bhishmadev Chakrabortty, J:

The plaintiffs have preferred this appeal challenging the judgment and decree of the Joint District Judge, 1st Court, Dhaka passed on 20.04.2017 in Title Suit 936 of 2012 dismissing the suit for declaration of title in the suit land with further prayer that the City Jarip khatian prepared in the name of defendant-government is erroneous.

The plaint case in brief, is that, Maran Chand Gope purchased the suit land from Manmatha Guha Thakurda and others, the CS recorded tenants. During possession and enjoyment Maran Chand Gope sold the suit land measuring 1 bigha to Shahajada Miah son of Manar Uddin through a registered *kabala* dated 30.07.2023. Purchaser

Shahajada Miah remained in possession of the suit land by erecting shops and letting those to the tenants by paying rent to the concerned authority. During his possession and enjoyment ⅓ of land from 1 bigha went on Sharat Gupta road. Thereafter State Acquisition and Tenancy Act, 1950 (SAT Act, 1950) came into force and SA khatian 3853 plot 9291 in respect of .2104 acres was prepared in the name of Shahajada Miah correctly. Subsequently RS khatian 3909 plot 14083 was also prepared in his name. The aforesaid SA and RS recorded tenant Shahajada Miah died leaving behind his son Shamsul Haque alias Ratan Miah. The tahsildar of Sutrapur informed Shamsul Haque that Shahajada Miah had due tax of Taka 9,000/- (nine thousand) to be paid to the government for the said suit land and directed him to pay the amount within 26.06.1983. He paid the aforesaid amount. Shamsul Haque subsequently died leaving his 5 sons and 4 daughters, the plaintiffs as heirs who inherited the suit land and remained in possession. The holding number of the suit property is 31, Dayaganj Road in the name of Shahajada Miah, grandfather of the plaintiffs. The electricity connection, water supply and sewerage line are in the name of Shahajada Miah. The plaintiffs have been possessing the suit land through their predecessors-in-interest for more than 89 years. But when plaintiff 4 went to the tahshil office to mutate their names on 08.07.2012 he came to learn that the suit land has been recorded in City Jarip in the name of government in khatian 1. Plaintiff 4 collected certified copy of the khatian and found that the property has

been recorded in the name of the government erroneously, hence the suit for declaration of title with further prayer that City Jarip khatian so prepared in the name government is erroneous.

Defendants 1-3, the government filed written statement in the suit and denied the fact made in the plaint. They contended that the suit is not maintainable in the present form and manner and it is bad for defect of parties. They further contended that the suit land is the *khas* land of the government and they have right, title and possession over it and as such the suit would be dismissed.

On pleadings the trial Court framed 5 issues. In the trial the plaintiffs examined 2 witnesses and produced their documents exhibits-1-8 and 8(ka) but defendants examined none. However, the Joint District Judge deciding issues 4 and 5, i.e., the material issues against the plaintiffs dismissed the suit. Being aggrieved by the plaintiffs approached this Court with the present appeal.

Mr. Probir Neogi, learned Senior Advocate for the appellants taking us through the materials on record submits that the findings and decision of the learned Judge on issue Nos. 4 and 5 are wrong. He refers to the copy of the registered *kabala* dated 30.07.1923 exhibit-6 as well as the certified copy of the same submitted in this Court with the application for taking additional evidence and submits that the above deed was registered in the year 1923 and true copy of it was produced in evidence as exhibit-6 which is 30 years old and has its

presumptive value under section 90 of the Evidence Act and section 60(2) of Registration Act also proves its correctness. He then takes us through the CS Khatian exhibit-2 and 2(Ka), SA and RS Khatian exhibits- 3 and 4 and referring to the provision of sections 103 of Bengal Tenancy Act and 144A of the SAT Act submits that the preparation of the aforesaid record of rights are to be considered correct unless such suspresumption is rebutted by the defendants. The defendants only filed written statement stating the facts that the land is the khas land of the government and correctly recorded in khatian 1 in City Jarip. If the aforesaid records (SA and RS) prepared in the name of the predecessor of the plaintiffs and the rents paid by him to the government is considered together the right, title and possession of the plaintiffs in the suit land is found to be well proved. Therefore, the City Jarip khatian prepared in the name of the government is totally incorrect. Mr. Neogi refers to the case of Government of Bangladesh represented by the Additional Deputy Commissioner vs. AKM Abdul Hye and others, 56 DLR (AD) 53 and Akrab Ali and others vs. Zahiruddin Kari and others, 30 DLR (SC) 260 and relied on the *ratio* laid therein that presumption as regards the entries in the RS khatian so attached under section 144A of SAT Act is rebuttable by leading evidence from the side questioning correctness of the entry made therein. The defendant government totally failed to do it in this case. He finally submits that rent receipts are evidence of possession and is to be treated as collateral evidence of title which has been decided in

the case reported 35 DLR (AD) 181. The Court below has gone wrong in fact and law and dismissed the suit which is required to be interfered with by this Court in this appeal. The appeal, therefore, would be allowed.

Mr. Badiuzzaman Tapadar, learned Deputy Attorney General for respondents 1-3 on the other hand opposes the appeal and supports the judgment and decree passed by the trial Court. He submits that the plaintiffs are to prove their case by adducing evidence both oral and documentary. There may be thousands of defects of defence case but those cannot be the grounds of decreeing the suit. He pointed us the CS khatians exhibits- 2 and 2(Ka) and submits that those are found faulty. The quantum of land in exhibit- 2 is found .3455 acres while in exhibit- 2(Ka) it is found .8451 acres. Those do not disclose actual land of two khatians or which one attract the land of the plaintffs. He then refers to the deed exhibit-6 through which the plaintiffs claimed their title in the suit land by way of purchase from Maran Chand Gope and submits that the plaintiffs did not produce any document that how Maran Chand became owner of the suit land. The chain of genealogy claimed by the plaintiffs is found broken and incomplete. The trial Court correctly disbelieved exhibit- 6 and dismissed the suit. The SA khatian and rent receipts at best may be considered as to the possession of the plaintiffs in the suit land. But those do not create their title in the suit land. Since the plaintiffs failed to prove their title

in the suit land they are not entitled to get any decree in the suit. The appeal, therefore, would be dismissed.

We have considered the submissions of both the sides, gone through the materials on record and principle laid in the cases as referred to by the appellants.

CS khatians exhibit-2 and 2(Ka) show that Akshay Kumar Basu, Manorama Guha Thakurda, Manmatha Guha Thakurda, Promathanath Guha Thakurda and Bakul Chanda Guha Thakurda were the CS recorded tenants under the government of India. In the last column of the aforesaid CS khatians it has been written "Lakheraj B class, Railway 8 annas owner" which prove that the CS recorded tenants, the private parties had 8 anas share therein amounting to more or less .3455 acres. The plaintiffs claimed that their predecessor grandfather Shahajada Miah purchased 1 bigha land from Maran Chand Gope who had tenancy right in the suit land. In the plaint the plaintiffs claimed that Maran Chand Gope was the owner of suit land by way of purchase from CS recorded tenant Manmatha Guha Thakurda and others but no document to that effect was produced. In the deed exhibit-6 it has been described that the aforesaid vendor Maran Chand Gope had tenancy right it the suit land. We have gone through exhibit-6 to find out the legality of the findings of the trial Court as to the non production of the certified copy of the aforesaid deed. It is found that of course the aforesaid document produced in the Court is a true copy of a registered *kabala* dated 30.07.1923 which

was obtained on 25.07.1963. But it was marked as exhibit without any objection from the defendant. The findings of the trial Court that the deed was not entered into the volume although the copy was taken in the year 1963, is not correct because in exhibit-6 deed number is found 3781, volume number is 38 and pages numbers 115-116. In the application for taking additional evidence submitted by the appellants, certified copy of the aforesaid *kabala* has been produced as annexure-A which also bears the same volume number, deed number and page numbers. Therefore, the certified copy submitted by the plaintiffs in support of their claim being a copy of public document can safely by taken into consideration to hold that the deed was registered correctly which also entered into the volume. In consequence of the aforesaid deed of purchase exhibit-6, the purchaser paid rent to the government through exhibits-7, 7(ka) and 7(Kha). It is found in the aforesaid rent receipts that the plaintiffs predecessor Shahajada Miah paid rent on 27.03.1958, 15.02.1959 and 13.06.1960 for .3450 acres i.e., for 50% of the land mention in exhibits-2 and 2(Ka). Therefore, if it is taken as true that 50% of the land of khatians 2 and 2(Ka) was in the name of the railway authority, it no way affects the claim of the plaintiffs in respect of remaining .3450 acres.

It is further found that in consequence of the said purchase by Shahajada Miah, plaintiffs predecessor SA khatian exhibit- 3 has been prepared in his name in respect of .2104 acres. The plaintiffs claimed that ⅓ of the land of 1 bigha which their predecessor purchased

through deed exhibit-6 went on Dayaganj Road. If it is calculated, the facts as claimed by the plaintiff is found correct because out of .3450 acres SA khatian has prepared for .2104 acres, i.e., for the remaining lands after deducting the land which went on road. It is found that RS khatian exhibit-4 has been prepared in the name of Shahajada Miah. The plaintiffs paid rent to the government in respect of .2104 acres on 05.03.2003 exhibit-7(Kha). It is further found that the electricity connection and water supply line exhibit-8 series are in the name of the plaintiffs' predecessor Shahajada Miah in the municipality holding number as claimed by the plaintiffs. The aforesaid facts, i.e., payment of rent, taxes and preparation of SA, RS khatians in the name of plaintiffs predecessor Shahajada Miah prove that the purchase deed exhibit-6 has duly been acted upon. The defendants only filed written statement stating the facts that the land has been recorded in khas khatian 1 and government is its owner. But did not lead any evidence in support of their claim. The preparation of record of right in the name of the plaintiffs' predecessor have presumptive value under section 144A of the SAT Act, 1950 and section 103 of the Bengal Tenancy Act which is rebuttable. But in the present case the defendant government failed to rebut such presumption by adducing evidence.

It is by now well settle by our apex Court in numerous cases that the rent receipts are evidence of possession and is to be treated as collateral evidence of title and that possession follows title. The defendant government received rent from the plaintiffs and their

predecessor in interest, now they cannot disown their title only on the basis of preparation of City Jarip khatian in their name which is totally unfounded. Apart from the documentary evidence the plaintiffs proved their possession in the suit land by oral evidence of PWs 1 and 2. They proved that they are in possession of the suit land which was not in fact denied or shaken in cross-examination by the defendants. It is pertinent to mention here that DW 2 is a tenant of the plaintiffs and he produced agreement for tenancy as exhibit-8.

In view of the aforesaid discussion, we find that the plaintiffs proved their title and possession in the suit land. But the trial Court on misconception of fact and law dismissed the suit which is required to be interfered with by this Court in this appeal.

In the premises above, we find merit in this appeal. Accordingly the appeal is allowed. No order as to costs. The judgment and decreed passed by the trial Court is hereby set aside and the suit is decreed.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J:

I agree.

Rajib