

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

**First Appeal No. 440 of 2019**

**In the matter of:**

Shahena alias Shahanara Begum and others  
... Appellants

-Versus-

Md. Shadkul Islam Chowdhury and others.  
... Respondents.

Mr. Md. Akram Uddin Shyamol, Advocate with  
Meharun Nessa, Advocate and  
Mr. Md. Faisal Miah, Advocate  
... For the appellants

Mr. Md. Hamidur Rahman, Advocate  
.... For the respondent no.1

**Heard on 12.03.2025 , 24.04.2025  
and Judgment on 30.04.2025.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah

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

At the instance of third parties namely, Shahena alias Shahanara Benum and 05(five) others, this appeal is directed against the judgment and decree dated 03.03.2019 passed by the learned Special Joint District Judge, and Environment Court, Dhaka in that Title Suit, decreeing the same on contest against the defendant no.1, Chairman, Rajdhani Unnayan Kartipakkha (briefly Rajuk) declaring right, title and possession in respect

of 23 decimals of land in favour of the plaintiff, herein the respondent no.1 .

Though as many as 05 (five) defendants were impleaded in the suit, but only the defendant no.1 Chairman, RAJUK contested the same.

The case of the plaintiff in precise is that:

That one, Kulsoom Bibi originally belonged to 1.66 acres of land and accordingly her name was recorded in CS khatian No. 912 corresponding to plot No. 92 who subsequently died leaving behind one daughter, Maleka Bibi. However, subsequently S.A record was wrongly prepared in the name of Cantonment Board, Dhaka defendant no. 4 in SA khatian no. 3. Then Maleka Bib died leaving behind two sons, Rajas Ali and Ayat Ali as her only descendants. Then on 08.02.1977 by several sale deeds transferred 15 decimals of land each to Helaluddin, Shamsuddin Ahmed, Keramat Kha, Haris Mia, Nurul Amin, Litoin Mia, Most. Amena Khatun, Abdul Malek and handed over possession to the vendees. Subsequently, in the R.S record, their name (Vandees) were rightly prepared in R.S khatian No. 3134 corresponding to R.S plot no. 713. Then, Nurul Amin, Lition got 30 decimals land mutated in their name and paid rent to the government. Thereafter, Samsuddin Ahmed, Helaluddin Ahamed, Keramat Kha, Harej Ali, Abdul Malek by different sale deeds transferred 4 decimals of land and that of Fazilatunessa transferred 4 decimals that is in total 8 decimals of land to one, Yunus Ahmed. Then Yunus Akondo died leaving behind four daughters, Most. Yanur Khanam, Mahinur Akter, Shahinoor Akter and Salma. Then RS recorded tenant, Md. Liton Mia, Samena Khatun, Abdul Malek on 19.08.2008 executed and

registered a Power of Attorney in favour of one, Md. Nurul Amin. In the same manner, RS recorded tenant Md. Liton Mia, Most Samina Khatun, Abdul Malek by registered Power of Attorney dated 25.11.1980 gave power to one Md. Yunus Akonda and on the same date the heirs of FAzulutunessa, Most, Yanur Khanam, Most Mahinur Akter, Most. Shahinur Akter by registered Power of Attorney gave power to one, Md. Nurul Amin to transfer their properties. While RS recorded tenant had been in possession over their land, City survey set in and accordingly City record was rightly prepared in the name of R.S recorded tenants in city khatian no. 14984 comprising city plot nos. 6002, 6035, 6032 and 6037 in respect of 7632 Ajutangsho of land. Thereafter, the constituted attorney of RS recorded tenants, Md. Nurul Amin, and Nurul Amin himself transferred 23 decimals of land to the plaintiff by registered sale deed dated 13.12.2012.

It has further been stated that on 30.03.2013 the defendants accompanied by some persons in the locality dispossessed the plaintiff from his purchased 23 decimals of land and prevented him to get his name mutated in the khatian and hence the suit.

The respondent no. 2 as defendant no. 1, RAJUK alone contested the suit by filing a written statement denying all the material averments made in the plaint contending, *inter alia* that, an area of 10.24 acres of land of CS and SA plot No. 92 was acquired by the government vide LA case NO. 26/59-60 and possession of the said land was handed over to this defendant which was gazetted on 13.08.2008. It has further been stated that 39 acres of land out of that CS and SA plot no. 92 was subsequently enlisted in 'ka'

list under V.P case No. 965/67 and therefore the plaintiff has got no right title and possession in the suit land and hence the suit is liable to be dismissed.

On the basis of the pleadings, the learned Judge of the Trial Court framed as many as 03(three) different issues and to prove his case, the plaintiff-respondent no.1, examined 03(three) witnesses and produced several documents which were marked as exhibit nos. 1-15 when the defendant no.1 did not produce any document. However, on conclusion of trial, the learned Judge of the trial Court, by impugned judgment and decree dated 03.03.2019 decreed the suit on contest against the defendant no.1 and ex-parte against the rest.

Being aggrieved by and dissatisfied with the said judgment and decree, the present appellants as third parties filed the appeal.

Mr. Mohammad Akram Uddin Shamol, 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 in not taking into consideration of the fact that, there has been no scope for the plaintiff to claim 23 decimals of land, out of four city survey plots out of City Khatian no.14988, because 15 decimals of land out of Plot No. 6032 as had wrongly been prepared in the name of the government so challenging that wrong recording, the appellants as plaintiffs earlier filed a suit being Title Suit No. 413 of 2016 and they obtained decree and accordingly they have been in possession of the said property having no scope for the plaintiff- respondent to claim 10 decimals of land from Plot No. 1032. The learned counsel further contends that after

obtaining the decree, the appellants also mutated their name in the khatian and have been in possession of the said property and therefore the plaintiff-respondent no.1 has got no title and possession in the suit land.

The learned counsel further contends that though the plaintiff claimed 10(ten) decimals of land out of City plot no. 6032, but there has been no specification on which side of the said plot, the plaintiff has been in possession and therefore the said claim of the plaintiff cannot sustain.

The learned counsel also contends that out of four different city plots, the plaintiff claimed a total area of 23 decimals of land from plot nos. 6032 and 6037 only but there has been no assertion with regard to manner of such possession over the lands as well as holding possession before alleged dispossession so there is no scope to pass a decree for recovery of kash possession as sought in prayer “৳” to the plaint. On those legal submissions, the learned counsel finally prays for allowing the appeal on setting aside the impugned judgment and decree.

On the contrary, Mr. Hamidur Rahaman, the learned counsel appearing for the respondent no.1 vehemently opposes the contention taken by the learned counsel for appellants and submits that the appellants have got no locus standi to challenge the impugned judgment and decree passed by the Trial Court because the plaintiff has not claimed any land enjoyed and possessed by the present appellants from the City survey Khatian no. 14988 as from exhibit no. 11, it shows that, the total quantum of land, of plot no. 6032 is 64.40 decimals out of which the predecessor of the appellants, Abdul Malek got one fifth shares thereof so they (the appellants) can easily get 15 decimals of land therefrom and thus there is

no nexus of the claim of the plaintiff -respondent no.1 with those of the appellants. The learned Counsel further contends that since there has been clear boundary of 23 decimals of suit land, in the schedule described in the plaint by specifying portion of the land the predecessor of the plaintiff transferred in his favour (Exhibit-1), so it is not true that there has been no specification in the suit land as claimed by the appellants. The learned Counsel further contends that the learned judge of the trial Court has very correctly by appreciating all the documents produced by the plaintiff and other oral evidence adduced, decreed the suit, so there has been nothing to challenged the same by the third parties-appellants. The learned counsel also contends that, though a positive declaration has been sought in the plaint through prayer "Kha" claiming *City jarip* to be prepared correctly in the name of the predecessors of the plaintiff, so he it construe got title and possession in the suit property through city *jarip*.

The learned counsel also contends that since the defendant no.1 only entered appearance and contested the suit and it has failed to prove its genealogy of acquiring title in the suit property by producing any document, so it alternatively proves that the plaintiff has got title and possession over the suit property. With those submissions, the learned counsel finally prays for dismissing the appeal.

We have considered the submission so advanced by learned counsel for the appellants and that of the plaintiff-respondent no.1 and also meticulously gone through the impugned judgment and decree and other documents appeared in the paper book. At the very outset, we would like to examine the prayer so have been made by the plaintiff- respondent no. 1 in

the plaint. On going through the prayer, we find that as many as 04(four) distinct reliefs have been sought by the plaintiff. It is the universal proposition also settled by our Hon'ble Appellate Division that hundreds of defects of the defendants' case will not cure the shortcoming of the case of the plaintiff. Going by the said settle proposition, we at the first instance have to see whether the plaintiff has been able to prove his exclusive right, title and possession in the suit property measuring an area of 23 decimals of land. On going through the schedule of the plaint, we find that the plaintiff claimed to have acquired title and possession over 23 decimals of suit property from 04(four) different city plots bearing nos. 6002, 6032, 6035 and 6037 out of which he (the plaintiff) claimed 23 decimals of land from city Plot nos. 6037 and 10 decimals of land from city Plot No. 6032 and what is the quantum of land his predecessors, Md. Liton Mia and others, had acquired has also been stated in his title deed which was marked as exhibit no.1. It is thus the assertion that the plaintiff has rightly claimed 23 decimals from their predecessors, which has been butted and bounded as described in the deed that “ যাহার উত্তরে বাড়ী, দক্ষিণে-বাড্ডা-গুলশান লিংক রোড, পূর্বে- নতুন রাস্তা, পশ্চি-ম-গুলশান লেক উক্ত চৌহদ্দির অন্দরে ২৩ শতাংশ সম্পত্তি নালিশী সম্পত্তি বটে।” But fact remains that very boundary has not been given solely for plot nos. 6032 and 6037, as plaintiff claimed, in the scheduled of the plaint. Furthermore, in paragraph no. 12 to the plaint, we find that the plaintiff has clearly asserted that on 30.06.2013 he has been dispossessed by the defendants stating that-

“ বিগত ৩০.০৬.২০১৩ ইং তারিখ বিবাদীগণ তাহা-দর লোকজন বাদী-ক বেদখল ক-রন এবং নাম জারি-ত বাধা প্রদান ক-রন ”

But curiously enough, on perusing the evidence of the plaintiff deposed as plaintiff witness no.1 (P.W1), we find nothing to that effect nor any official of the government or any other defendants has ever denied mutating the name of the plaintiffs in the khatian. Furthermore, with regards to holding possession, there has been nothing in the plaint but out of the blue, P.W-2 stated that the plaintiff has been enjoying title and possession by renting it to tenants erecting a tin-shed house but such alleged assertion has not been corroborated by P.W 3. So in absence of any assertion about holding possession in the plaint, such testimony of P.W2 is nothing but an exaggeration which is devoid of any basis. Furthermore, the suit has not only been filed for declaration of title, rather the plaintiff has also challenged the preparation of both S.A record as well as city survey (though the plaintiff did not claim to challenge City Jarip) as well as for recovery of khas possession. But before dispossession, the plaintiff was in possession in the suit property has not been asserted in the four corner of the plaint. In getting a decree of recovery of khas possession, the plaintiff must prove that, he/ she has been in possession before dispossession else, the Court cannot pass any decree for recovery of khas possession. As has been stated above, it is the claim of the plaintiff that S.A record was wrongly prepared in the name of Cantonment Board, Dhaka but why the plaintiff could not take any step to get it corrected on subsequent period of time, has also not been explained in the entire plaint. In our country, S.A record was finally published in different districts in different time, which has been finally concluded in the year 1952. But fact remains, the suit was filed in the year 2013, but nothing has been stated in the plaint as to what



prevented the plaintiff to challenge such S.A record soon after publishing it, yet after a long time, its recording has been challenged but when the plaintiff came to learn about such wrong S.A recording, has not been there in the entire plaint in absence of which the claim of the plaintiff about the wrong preparation of S.A record cannot be sustained. Furthermore, we have very meticulously gone through the entire judgment passed by the learned judge of the trial Court and on going through the impugned judgment, we find that in most part of the judgment, the learned judge tried to look into the loopholes of the defendant's case even though, the defendant no.1 did not file any documentary evidence nor adduce any witness in favour of its case and thus it proves that, the learned Judge of the trial Court in a very slipshod manner, passed the impugned judgment and decree without discussing the evidence of P.W-1 to P.W.3. Though the learned counsel for the plaintiff-respondent no. 1 vehemently submits that the appellants have got no locus standi to challenge the judgment and decree as they did not contest the suit before the trial Court. But we don't find any legal substance in the said submission as under section 96 of the Code of Civil Procedure, there has been nothing that only the defendant who contested the suit can file the appeal. On top of that, the appellants have got vested interest in the suit property as they obtained as decree by filling a suit against the government and on the basis of the decree, they even mutated their name in the Khatian, so certainly they became aggrieved with the impugned judgment and decree, and thus hold every right to prefer appeal which is thus sustainable in law. Furthermore, as has been stated hereinabove, the plaintiff is to prove his own case without

depending on the weakness of the defendants' case and even if the defendant fails to prove his/her case, the plaintiff will not get decree out of that until and unless he/she proves his/her own case in toto.

Given the above reasoning and observation, we find that in spite of failing to acquire title and possession in the suit and by the plaintiff through documentary and oral evidences, the learned Judge of the trial Court has most illegally decreed the suit which cannot be sustained in law.

Resultantly, we find no substance in the impugned judgment and decree which is liable to be set aside.

Accordingly, the appeal is allowed.

The impugned judgment and decree dated 03.03.2019 passed by the Special Joint District Judge, Bicharak, Paribesh Adalat, Dhaka in Title Suit No. 49 of 2018 is thus set aside.

Let a copy of this Judgment and decree along with the lower Court records be communicated to the court concerned forthwith.

**Md. Bashir Ullah, J.**

I agree.