

Bench:

**Mr. Justice Bishmadev Chakrabortty**

And

**Mr. Justice Md. Akhtaruzzaman**

First Appeal No. 454 of 2019

Selim Reza Chowdhury (Babu) and another  
.....appellants

-Versus-

Ahaduzzaman Chowdhury and others  
..... respondents

Mr. Probir Neogi, Senior Advocate with

Mr. Sumon Ali, Advocate

.....for appellants

Ms. Rahima Khatun, Deputy Attorney General

with Mr. Md. Ruhul Amin, Assistant Attorney

General ..... for respondent No.4

Heard on 07.12.2023 and 11.12.2023

Judgment on 17.12.2023.

**Md. Akhtaruzzaman, J.**

This first appeal under section 96 of the Code of Civil Procedure (in short, the Code) is directed against the judgment and decree dated 29.05.2019 passed by the learned Joint District Judge, Court No. 1, Faridpur in Title Suit No. 19 of 2016 dismissing the suit.

Facts relevant for disposal of the appeal, in short, are that the present appellants being plaintiffs filed Title Suit No. 19 of 2016 before the learned Joint District Judge, Court No. 1, Faridpur for declaration of title along with confirmation of possession stating, *inter alia*, that the suit property along with other properties appertaining to R.S. Khatian No. 175 corresponding to plot Nos. 2052, 2053 and 2054/2146 with an extent of land measuring 0.1188 acres, 0.8500 acres and 0.3100 acres of Faridpur Mouza was originally belonged to

Hem Chandra Naha Roy, Khitish Chandra Naha Roy, Akhil Chandra Naha Roy and Nikhil Chandra Naha Roy who proportionately owned the same and by an amicable settlement Hem Chandra Naha Roy got 0.2069 acres of land. Subsequently, by virtue of a Kabala deed dated 06.10.1962 Hem Chandra Naha Roy sold out 10.06 decimals of land from the above mentioned plots to Moulvi Monsurul Huq Chowdhury, Moulvi Mohammad Ali Chowdhury and Moulvi Ebadul Huq Chowdhury. They got possession in the purchased land and by an amicable settlement Moulvi Monsurul Huq Chowdhury alone got the entire 10.06 decimals of land. During the S.A. operation the land was erroneously recorded in the name of Hem Chandra Naha Roy. Moulvi Monsurul Huq Chowdhury died leaving behind 5 (five) sons and 5 (five) daughters. Aliuzzaman Chowdhury, the predecessor in interest of the plaintiffs was an Advocate of Faridpur District Judge's Court who exchanged his lands located in the rural area with his brothers and sisters and obtained the entire 10.06 decimals of land and erected buildings and other establishments therein, paid land development taxes, municipality taxes and electricity bills. Aliuzzaman Chowdhury died in 1981 leaving behind his wife Zakia Begum, 2 (two) sons, namely, Tarik Akter Chowdhury and Selim Akter Chowdhury and 1 (one) daughter Selina Rahman. Tarik Akter Chowdhury died on 02.08.2010 leaving behind the plaintiffs as his brother and sister and mother Zakia Begum. Subsequently, Zakia Begum died leaving behind the plaintiffs as her legal heirs and in this

way they obtained the disputed property. But the B.S. record was wrongly prepared in the name of the government. The plaintiffs have been possessing the property by paying taxes to the government, but on the basis of erroneous Khatian the local Tahsilder denied to receive taxes. Then the plaintiffs applied to the Assistant Commissioner (Land), Faridpur for mutating their names who upon hearing allowed the same and directed the Tahsilder to accept the taxes of the property, but the Tahsilder on 16.08.2016 denied to accept the same and hence the suit.

Defendant Nos. 1, 2 and 23 filed a joint written statement, but finally did not contest the suit and filed petition of compromise with the plaintiffs.

Defendant No. 35, the government contested the suit by filing a separate written statement contending that the suit is not maintainable under section 42 of the Specific Relief Act. In the written statement it is further stated that the original owners of the disputed property left this country for India during the war between Pakistan and India in 1965 and, as such, the said property was treated as enemy property and subsequently it was treated as vested property of the government. 0.713 acres of land of plot No. 2052 and 0.0350 acres of land of the same plot had been leased out to Abdur Rashid and Sajeda Begum vide Miscellaneous Case Nos. XII-V.P.20/70-71 and XII-V.P.18/74-75 respectively and the lessees have been possessing the property. The B.S. Khatian No. 1/1 in respect of plot Nos. 2052, 2053 and

2054/2146 measuring an extent of 0.0125 acres, 0.0850 acres and 0.0031 acres of land has been correctly prepared in the name of the Deputy Commissioner and the rest of the property of suit land has been possessed by the plaintiffs as well as other persons.

In order to prove the case, the plaintiffs examined 1 (one) witness, the submitted documents of this side have been marked as Exhibit No. 1 series. To the contrary, the contesting defendant No. 35 examined 1 (one) witness. The documents produced by this side were marked as Exhibit Nos. 'Ka'-'Gha' series.

The trial Court upon considering the oral as well as documentary evidences dismissed the suit vide judgment and decree dated 29.05.2019.

Being aggrieved by and dissatisfied with the impugned judgment and decree the plaintiffs as appellants preferred this appeal contending, amongst others, that the trial Court made out a third case holding that since one of the suit plots i.e. S.A. plot No. 2052 corresponding to B.S. plot No. 1895 appears in the vested property list, the land has already vested in the government and without seeking remedy before the Arpita Sampatti Pratyarpon Tribunal, the plaintiff could not get any remedy in respect of 0.0125 acre of land out of 0.1188 acres of the disputed plot.

Mr. Sumon Ali, learned Advocate appearing for the plaintiff-appellants submits that the trial Court failed to appreciate the worth of the evidence lead by the plaintiffs including the order of the Assistant

Commissioner (Land), Faridpur Sadar directing the respective Union Assistant Land Officer to receive taxes of the disputed plot and subsequently could not understand that if the suit land were listed as vested property the plaintiffs could have mutated the lands and paid taxes. The learned Advocate next submits that the impugned judgment and decree deserves to be interfered with since the same suffers from gross error and non-application of mind inasmuch as the property be at a portion of a specific plot which is included in the list of vested property, so far it relates to the remaining portion of the said plot, can never be treated as vested property, and there is no scope or necessity to apply to the tribunal for releasing such property. The learned Advocate finally contends that the impugned judgment and decree based on extraneous contention and amongst preponderance of evidence, as such the same is liable to be set-aside.

On the flip side, Ms. Rahima Khatun, learned Deputy Attorney General appearing on behalf of the respondent No. 4- government submits with vehemence that the plaintiffs have failed to prove their title and possession over the disputed property by adducing clinching evidence both oral as well as documentary and, as such, the trial Court has correctly dismissed the suit. She further submits that the suit land is unspecified and without specification by boundaries suit for declaration of title and confirmation of possession is not at all maintainable. The learned Deputy Attorney General also submits that the disputed property is the vested property of the government and it

was accordingly recorded as the vested property and the respective Khatian was correctly prepared. Ms. Rahima Khatun finally submits that without filing suit before the vested property tribunal for releasing the property from the vested property list, the plaintiffs have no *locus standi* to file the instant suit and the impugned judgment and decree being well founded both in law and facts does not warrant any interference by this Court. The learned Deputy Attorney General put reliance on the decision in the case of *Sova Rani Gupta v. Abdul Awal Mia and others* reported in 14 BLD (AD) 257.

We have heard the submissions advanced by the learned Advocate of the plaintiff-appellants as well as by the learned Deputy Attorney General, perused the impugned judgment and order along with other connected materials available in the Paper Book and also considered the facts and circumstances of the case explicitly.

With a view to arrive at a correct decision in the instant appeal, we are now required to scrutinize and weigh the relevant witnesses together with the surrounding facts and circumstances of the case.

P.W.1 Selina Rahman deposed on behalf of the plaintiffs and in her testimony, this witness asserts that the disputed property measuring 0.0269 acres of land appertaining to R.S. Khatian No.175 bearing plot Nos. 2052, 2053, 2054. 2146 was originally belonged to Hem Chandra Naha Roy and others. Subsequently, on 06.10.1962 he transferred 10.06 decimals of land through Kabala Deed No. 3764 to Moulvi Munsurul Huq Chowdhury and others. Thereafter, by an

amicable settlement Moulvi Munsurul Huq Chowdhury alone obtained the property and was in exclusive possession therein. After the demise of Moulvi Munsurul Huq Chowdhury his heirs inherited to the said property and eventually by way of inheritance the plaintiffs got the same. B.S. Khatian No. 1/1 was erroneously prepared against which they filed a petition and it was allowed. They have been possessing the property paying rents to the government. Her father was an Advocate who constructed buildings and other establishments in it and paid municipality taxes regularly. In her evidence P.W.1 also states that on the basis of an exchange, her father got the disputed land. On 16.08.2016 defendant No. 1 denied their title in the suit land. Subsequently, defendant Nos. 1, 2 and 22 made compromise on the matter. P.W.1 in her evidence submitted the certified copy of R.S. and S.A. Khatian, certified copy of deed No. 3764 dated 06.10.1962, rent receipts, certified copy of the disputed khatian, index of B.S. plot, receipt of realization of municipality taxes, certified copy of case No. XII-VP-27/16 dated 18.05.2016 and a copy of rent receipt which have been marked as Exhibit No. 1 series.

In cross-examination she states that the land was released by an order of the Assistant Commissioner (Land). She denied the suggestions that the disputed land is not possessed by them or that the government has title and possession therein.

In his evidence D.W.1 Md. Abul Kalam Azad, Assistant Land Officer, Faridpur gives out that the original owner of the suit land was

Hem Chandra Naha Roy who left this country in 1965 and accordingly the land was vested to the government. Out of 0.1181 acre of land of plot No. 2052 an area to the extent of 0.0713 acre was leased out to Abdur Rashid and 0.0350 acre of the same plot was leased out to Saheb Ali by virtue of V.P. Case Nos. 12-VP-20/70-71 and 12-VP-18/74-75 and 0.1006 acre was recorded in B.S. Khatian No. 1/1 in the name of the government.

He submitted the photo copy of B.S. Khatian No. 1/1 (Exhibit No. 'Ka'), photocopy of the relevant pages of V.P. lease Case (Exhibit No. 'Kha' series), photocopy of index of B.S. record (Exhibit No. 'Ga') and photocopy of the Gazette of Arpita Sampatty relating to the disputed land (Exhibit No. 'Gha' series).

In reply to cross-examination he states that there is a 2 (two) storied building in the suit land. Plaintiffs have been illegally residing in the said building. He further states that it is true that there are boundary walls on the 4 (four) corners of the suit land. According to his further evidence, the entire property of the suit plot was not leased out in favour of lessee Abdur Rashid or Saheb Ali. It is not known to him whether the Assistant Commissioner (Land) vide Memo No. 508 dated 18.05.2016 directed the Tahsil Office to receive taxes of the suit land or not.

In cross-examination the D.W.1 further states:

“এ/সি ল্যান্ড সাহেব বাদীদের নিকট থেকে ভূমি উন্নয়ন কর গ্রহণে বাধা নেই মর্মে বলেছেন কি না বা বাদীদের স্বত্ত্ব রয়েছে মর্মে বলেছেন কি না জানা নেই; তবে বাদীপক্ষের আদালতে দেখানো



কাগজ অনুসারে তেমনটি দেখা যায় । ১৪০১ সন থেকে ১৪২৩ সনের জন্য ৩৩৯৭/- টাকা গ্রহণে খাজনা দাখিলা প্রদান করা হয়েছে আমাদের তহসিল অফিস থেকে সত্য । ১৩৯৭ সনের বাবদ খাজনা গ্রহণ করা হয়েছে সত্য বটে । বি.এস ১/১ খতিয়ানের মাঠ পর্যায়ের রেকর্ডে বাদীদের দখল বিষয়ে নোট প্রদান করা হয়েছে সত্য বটে । ০৬/১০/১৯৬২ খ্রিঃ তারিখের বাদীদের দলিল দেখে এ/সি ল্যান্ড সাহেব খাজনা গ্রহণের নির্দেশ প্রদান করে থাকতে পারেন সত্য । যে জমির খাজনা নেয়া হয় সে জমি সাধারণত ভিপি তালিকাভুক্ত হওয়ার কথা নয় সত্য বটে।”

He denied the suggestions that the plaintiffs have been possessing the suit land since 1962 or that the suit land is not vested property.

These are all about the evidences that have been adduced by the parties in a bid to prove their respective cases.

There is no dispute that the suit land was originally belonged to Hem Chandra Naha Roy, Khitish Chandra Naha Roy, Akhil Chandra Naha Roy and Nikhil Chandra Naha Roy. It is further admitted that by a family partition Hem Chandra Naha Roy got the suit land. It is the definite case of the plaintiffs that on 06.10.1962 vide Kabala Deed No. 3764 Hem Chandra Naha Roy transferred 10.06 decimals of land to Moulvi Monsurul Huq Chowdhury, Moulvi Mohammad Ali Chowdhury and Moulvi Ebadul Huq Chowdhury. The plaintiffs filed certified copy of this deed and it was admitted in evidence and marked as Exhibit No. 1 (Kha).

In the plaint it is also stated that by an amicable settlement between the 3 (three) brothers Moulvi Monsurul Huq Chowdhury obtained entire 10.06 decimals of land and possessed the same

peacefully and, thereafter died leaving behind 5 (five) sons and 5 (five) daughters. The predecessor in interest of the plaintiffs Aliuzzaman Chowdhury was an Advocate of Faridpur Judge's Court who exchanged his properties located at the village with his brothers and obtained entire 10.06 decimals of land and constructed buildings and other structures therein. Aliuzzaman Chowdhury paid land development taxes and other taxes regularly who died in 1981 leaving behind wife Zakia Begum, 2 (two) sons, namely, Tarik Akter Chowdhury and Selim Akter Chowdhury and 1 (one) daughter Selina Rahman. Tarik Akter Chowdhury died on 02.08.2010 leaving behind his brother and sister and mother as his legal heirs. Subsequently, Zakia Begum died leaving behind 1 (one) son and 1 (one) daughter and in this way the plaintiffs have been inherited in the said property and are in possession of the said land. P.W.1 in her testimony chronologically gave a detailed account of possessing the land as well as payment of taxes to the government and other local bodies.

On the other hand, the contesting defendant No. 35 in the written statement states:

“... জমিতে লীজ মূলে আঃ মালেক গং বাংলাদেশ সরকার পক্ষে ভোগ দখলে আছে এবং নালিশী দাগে অন্যান্য জমিতে বাদীগন সহ বিভিন্ন ব্যক্তিবর্গ ভোগ দখলে আছে।”

In support of the contention of the written statement D.W.1 Md. Abul Kalam Azad, who, as we observed, virtually admitted the case of the plaintiffs.

On perusal of Exhibit 1 (Cha), the office Order dated 18.05.2016 issued by the Assistant Commissioner (Land), Faridpur Sadar, it appears that by virtue of that letter, the Assistant Commissioner (Land) has admitted the case of the plaintiffs stating that the plaintiffs have title and possession over the land measuring 0.0850 acres, 0.0031 acres and 0.0125 acres of land appertaining to S.A. plot Nos. 2053, 2054/2146 and 2052 respectively.

The exact text of Exhibit No. 1 (Cha) is reproduced below in verbatim:

“মৌজা : ১১৮ নং ফরিদপুর ।

এস এ খতিয়ান	বি এস খতিয়ান	এস এ দাগ	বি এস দাগ	জমির পরিমাণ (শতাংশ)
১৫১	-	২০৫৩	-	০৮.৫০
	-	<u>২০৫৪</u> ২১৪৬	-	০০.৩১
	-	২০৫২	-	০১.২৫
			মোট =	১০.০৬

নথি পর্যালোচনা এবং দলিলাদি পরীক্ষান্তে উপরের তপসিল বর্ণিত সম্পত্তিতে আবেদনকারীগণের মালিকানা স্বত্ব সঠিক পাওয়া গেল । এমতাবস্থায়, আবেদনকারীগণের অনুকূলে বর্ণিত সম্পত্তির ভূমি উন্নয়ন কর পরিশোধের অনুমতি প্রদানে কোনরূপ প্রতিবন্ধকতা পরিলক্ষিত হয় না । এমতাবস্থায়, অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ এবং ভূমি মন্ত্রণালয়ের আইন অধিশাখা-৪ এর ২২/০৫/১৪ খ্রিঃ তারিখের ৩১.০০.০০০০.০৪৫.৫৩.০৬৫.১২(অংশ)-২৪২/(১২৩৫) নং স্মারক পত্রের নির্দেশনা মোতাবেক আবেদনকারীগণের অনুকূলে বকেয়া ভূমি উন্নয়ন কর পরিশোধ সাপেক্ষে বিধি মোতাবেক উপরের তপসিল বর্ণিত ১০.০৬ (দশ দশমিক শূন্য ছয়) শতাংশ জমির ভূমি উন্নয়ন কর পরিশোধের অনুমতি প্রদান করা হলো ।”

Then he directed the Union Land Assistant Officer to receive land development taxes from the plaintiffs regarding the property in dispute.

The plaintiffs contends that they have no claim over rest of the property of S.A. Plot No. 2052 except an area of 0.0125 decimals of land which has been admitted by the report [Exhibit No. 1(Cha)] of the Assistant Commissioner (Land), Faridpur Sadar.

The learned Deputy Attorney General submits that the entire property of S.A. plot No. 2052 has been included in the schedule of the Arpita Sampatti Pratyarpon Ain and without seeking relief before the concerned Tribunal the plaintiffs are not entitled to get any relief in the instant suit. Moreover, the suit land is not specified as such the same is not maintainable-she added. But on perusal of the testimony of D.W.1 it appears that according to his admission the suit land is demarcated with boundaries which ultimately proves that the suit land is specified.

The contesting defendant No. 35 in the written statement contends that total 0.1063 acres of land of S.A. plot Nos. 2052, 2053 and 2054/2146 corresponding to B.S. plot No. 1895 has been possessed by the plaintiffs whereas 0.0712 acres of land of S.A. plot No. 2052 corresponding to B.S. plot No. 1896 is being possessed by the government through its lessee, named, Abdur Rashid and Abdul Malek. Admittedly S.A. plot Nos. 2053 and 2054/2146 are not disputed plots.

It appears from Exhibit No. 1 (Kha), the kabala deed No. 3764 dated 06.10.1962 that the predecessors-in-interest of the plaintiffs obtained 0.0125 acres of land out of 0.1188 acres from S.A. plot No. 2052 (B.S. plot No. 1895). On the other hand, it is evident from Exhibit Nos. Gha, Gha-1, schedule of the Gazette of Arpita Sampatti Pratyarpon Ain that  $(0.0713+0.0350)=0.1063$  acres of land of S.A. plot No. 2052 ( B.S. plot No. 1896) was leased out by the government through proceeding Nos. XII-V.P-120/70-71 and XII-V.P-18/74-75. On calculation, it is found that in S.A. plot No. 2052 there is total  $(0.1063+0.0125)=0.1188$  acres of land out of which 0.1063 acre is listed in the schedule of the Arpita Sampatti Pratyarpon Ain whereas 0.0125 acre of land is not included therein which was purchased by the predecessors-in-interest of the plaintiffs vide Exhibit No. 1 (Kha) including 0.850 acres of land from S.A. plot No. 2053 and 0.031 acres from S.A. plot No. 2054/2146.

In respect of title and possession in the suit land the learned Joint District Judge observed as under:

“০৬/১০/১৯৬২ খ্রিঃ তারিখের ৩৭৬৪ নং কবলা দলিল মূলে খরিদকৃত ১০.০৬ শতক জমিতে ক্রেতাগণের সকল ওয়ারেশদের মধ্যে আপোষ বন্টন মূলে বাদীপক্ষ ভোগ দখলে রয়েছে মর্মে বাদীপক্ষের দাবী সঠিক রয়েছে মর্মে বিবেচিত হলো।”

It is on record that the plaintiffs have been paying land development taxes [Exhibit No. 1 (Ga) and 1 (Chha)], municipality taxes (Exhibit No. 1 (Uma) and electricity bills of the disputed land. D.W.1 in his testimony admitted that upon receiving the land

development taxes they had issued the rent receipts in favour of the plaintiffs. In respect of presumptive value of rent receipts in the case of *Erfan Ali v. Joynal Abedin Mia* reported in 35 DLR (AD) 216 the Appellate Division observed that:

“Rent receipts, though not documents of title, are important items of evidence of possession and may be used as collateral evidence of title since possession generally follows title.”

We have observed from Exhibit Nos. 1 (Kha), 1 (Ga), 1 (Uma), 1 (Cha) and 1 (Chha) that the plaintiffs by adducing oral as well as documentary evidences have been able to prove their title and possession in 0.1006 acres (10.06 decimal) of land including 0.1250 acres of land of S.A. plot No. 2052 (B.S. plot No. 1895). But the trial Court falling into error has made out a third case holding that since one of the suit plots appear in the schedule of Arpita Sampatti Pratyarpon Ain, the land has already vested to the government and without seeking remedy before the Arpita Sampatti Pratyarpon Tribunal, plaintiffs case is not maintainable and accordingly dismissed the suit. In our view, the observations made by the learned Joint District Judge is not at all correct.

In the light of the foregoing discussions, we are of the compassionate view that the submissions put forward by the learned Deputy Attorney General does not bear any substance and the impugned judgment and decree is interferable by this Court.

Therefore, we find merit in this appeal.

Accordingly, the appeal is allowed. No order as to costs.

The impugned judgment and decree dated 29.05.2019 passed by the learned Joint District Judge, Court No. 1, Faridpur is set aside.

Title Suit No. 19 of 2016 is decreed on contest against the defendant No. 35 and *exparte* against the rests without costs. Plaintiffs title in the disputed land is declared. Moreover, possession of the plaintiffs in the suit land is also confirmed.

The order of *status quo* granted earlier by this Court is re-called and vacated.

Send down the lower Courts record along with a copy of this judgment to the Court concerned at once.

**Bhishmadev Chakrabortty, J.**

I agree.