

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

**Present:**

**Mr. Justice Sheikh Abdul Awal**

**And**

**Mr. Justice S.M. Iftekhar Uddin Mahamud**

**First Appeal No. 253 of 2010**

**In the matter of:**

Ashok Kumar Dutta being dead his legal heirs

Alok Kumar Datta and others

**.....Plaintiff-appellants.**

**-Versus-**

Abandoned Property Management Board and others

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

Mr. Moinul Islam, Advocate with

Mr. Md. Hasan Abdul Quium, Advocate

**..... For the plaintiff-appellants.**

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

**.....For the Government-respondents.**

**Heard and judgment on: 12.03.2026**

**S.M. Iftekhar Uddin Mahamud, J.**

This first appeal has been preferred by the plaintiff-appellants before this court against the impugned judgment and decree dated 11.05.2010 (Decree signed on 16.05.2010) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chattagram in Other Suit No. 52 of 1998 dismissing the suit.

The facts of the case of the plaintiff-appellants, in short, are that the suit land originally belonged to their predecessor Kali Mohon Datta and Dakkhina Ranjan Datta. On the basis of their right

and title R.S. Khatian Nos. 462, 601, 351, 499, 12 and 193 were prepared and finally published in their names. Dakkhina Ranjan died leaving his widow Hema Malini Datta, Kali Mohon died leaving his two sons namely, Joy Kumar Datta and Anil Kumar Datta. Thereafter, Hema Malini died leaving half portion of the suit property that she obtained from her husband. As she has only life interest in the property which returned to the Joy Kumar and Anil Kumar that being reversioner of Dakkhina Ranjan's share. Joy Kumar Datta died leaving his 3 sons namely, Ashok Kumar Datta, Alok Kumar Datta and Shib Sankar Datta who are the plaintiffs to the suit. The plaintiffs are owners of the suit property by inheritance. At the time of P.S. and B.S. operation the records was not prepared in their names or in the names of their predecessors. The plaintiff-appellants prayed for declaration of title along with their saham.

That the defendant Nos. 1-7, 11, 23, 12, 15 and 16 entered appearance in the suit and filed written statement denying all the material facts of plaint and contending *inter-alia* that the defendant Nos. 1-7, 11 and 23 filed compromise petition admitting right, title and possession of the plaintiffs to the suit land. Whereas defendant Nos. 12, 16 though filed written statement but did not appear before the learned trial Court to place their case.

That the abandon property management, Deputy custodian, vested and non-resident property and Government of Bangladesh as defendant Nos. 20, 21 and 22 contested the suit by filing a joint written statement contending *inter-alia* that the suit property belong to non Bangali person. At the time of Liberation War in 1971, they left this part of the land leaving their property uncared and at the time of B.S. Survey, the property left by them recorded in Khatian Nos. 94, 710 and 711 showing their present address in Pakistan. The property is under the possession of Government and managed by the Government appointing administrator time to time. Hence, the plaintiff-appellants are not entitled to have any remedy against the Government.

On the pleadings of the parties trial Court framed the following issues for determination:-

- 1) Whether the suit maintainable in its present form and manner?
- 2) Whether the suit is barred by limitation?
- 3) Whether the plaintiffs have right, title and possession to the suit land?
- 4) Whether the plaintiffs are entitled to have the decree, as prayed for?

At the trial the plaintiffs examined 3 witnesses as PWs while the defendants examined the sole witness and both the parties also exhibited some documents to prove their respective cases.

The Joint District Judge, 1<sup>st</sup> Court, Chattagram upon hearing the parties and on considering the materials on record by his judgment and decree dated 11.05.2010 (Decree signed on

16.05.2010) dismissed the suit against which the instant appeal has been filed before this court.

At the very outset, Mr. Moinul Islam, the learned Advocate appearing for the plaintiff-appellants, submits that admittedly the property in questions belonged to the predecessor of the plaintiffs and it is on record that R.S record has been prepared in the name of the predecessor of the plaintiffs and that plaintiffs at the time of trial exhibited all their respective documents in support of their right, title and possession over the suit land but the trial Court mechanically dismissed the suit on the finding that the plaintiffs could not prove his case by adducing sufficient oral and documentary evidence.

He further submits that P.W-2 and P.W-3 categorically stated in their evidence that the plaintiffs are in ejmali possession over the suit land.

He also submits that the government could not prove that the property in question was abandoned by adducing any evidence whatsoever although the trial Court most illegally dismissed the suit.

The learned Advocate next submits that the plaintiffs claimed their saham measuring an area 36.6 decimals from B.S. plot Nos. 896, 895 and 905 under B.S. Khatian No. 94, Exhibit-3, under Khatian No. 710, Exhibit-3(Ka), under Khatian No. 711, Exhibit-3(Kha), under Khatian No. 712, Exhibit-3(Ga), under Khatian No. 403, Exhibit-3(Gha).

He also submits that the Appellants is in possession and is able to prove his case by deposition of P.W-1, P.W-2 and P.W-3 and that Respondent could not prove their case by showing oral and documentary evidence.

On the other hand, Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General appearing for the Government-respondents, submits that in the facts and circumstance it appears that plaintiff Nos. 2 and 3 struck out their names from the suit although the plaintiffs by way of amendment did not amend the plaint resulting the suit itself is defective in nature.

He further submits that the scheduled land is unspecified and vague in nature and on the basis of such schedule it is difficult to adopt saham of title in favour of the plaintiffs, whatsoever.

He also submits that admittedly the appellant has got interest in suit land and that they may have their claim after proper verification and assessment, if the appellant has any.

Finally, the learned Deputy Attorney General submits that B.S. Khatian Nos. 94, 710 and 711 was rightly recorded in the name of the government as an abandoned property and it is on record that

government possesses the suit land and the trial Court on assigning some reasons rightly dismissed the suit.

However, in reply Mr. Moinul Islam, the learned Advocate for the plaintiff-appellants contends that the suit land is referring the schedule of the suit land from the plaint which is specific.

We have gone through the memorandum of appeal and perused the materials available in the paper book and the impugned judgment and decree of the trial Court. We have also perused and examined the same and heard the learned Advocates for the respective parties at length. We have also considered the submissions advanced by the learned Advocates for the respective parties with the best of our wit and wisdom.

After scrutinizing the record it appears that B.S khatian Nos. 94, 710, 711, 712 and 403 contain the area of land as described in the schedule of the suit property. That D.W-1 in his deposition stated that government is in possession as per record of B.S. Khatian Nos. 94, 710 and 711 and during the hearing learned Deputy Attorney General also conceded the same.

Upon a query from this Court the learned Deputy Attorney General submits that the appellants may have their right and interest

in the schedule land of the suit land as described in the schedule, if they have any.

The learned trial Court in his observation held that the suit land originally belonged to the predecessor of the appellants who are also the R.S. recorded owners and the same has also been admitted by the learned Deputy Attorney General during the hearing. That plaintiff-appellants produced the exhibit-1 series under the R.S. Khatian but the trial Court held in its finding that the appellant failed to produce any evidence to prove his case.

Further the Court below in his judgment held that Kali Mahon Dutta and Dakkhina Ranjan Dutta are the predecessor of the appellant but on the other hand the learned trial Court negates their right of ownership in the findings which is contradictory.

It is also transpired from record that the plaintiff-appellants produced some rent receipts dated 04.05.1990, 05.02.1991 and 04.07.1991, etc. as evidently disclosing that the suit land was rented out to Nasir Uddin, arguably showing the basis of appellant's possession over the suit land but it was totally ignored and not considered by the trial Court below at the time of pronouncement of judgment.

Today while the matter was fixed for pronouncement of judgment, however, the learned Advocate for the appellants having realized the difficulties referring an application for remand submits that in the admitted fact and circumstances as well as in view of the learned Deputy Attorney General in order to adjudicate the matter properly the case be sent on remand to the trial Court.

It is further submitted that the plaintiffs in his plaint categorically stated his case and it is on record that the suit land is specific and the plaintiffs have had clear title and possession in a portion of the ejmali suit land which is also admitted by the learned Deputy Attorney General and that to meet the ends of justice the case may be sent down for remand.

In reply, the learned Deputy Attorney General concedes the submission of the learned Advocate for the plaintiff-appellants and submits that in the facts and circumstance the case may be remanded to the trial Court in order to adjudicate the matter properly allowing the parties for adducing evidence both in oral and documentary. Since the suit land originally belonged to the predecessor of the Appellants namely, Kali Mohon Datta and Dakkhina Ranjan Datta and that the learned Deputy Attorney General for respondent and the

learned Advocate for the appellants finally jointly prays for sending the case for remand.

In the attending facts and circumstances of the case, we find merit in the submissions of the learned Advocate for the plaintiff-appellants and the learned Deputy Attorney General and accordingly, accept the same.

In the result, the appeal is allowed with the suit is remanded.

In consequence thereof, the impugned judgment and decree dated 11.05.2010 (Decree signed on 16.05.2010) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chattagram in Other Suit No. 52 of 1998 dismissing the suit, is set-aside.

The suit is remanded to the trial Court for fresh trial in taking evidence both oral and documentary as well as amendment of the plaint it's so required in accordance with law. The learned Advocate for the plaintiffs shall be at liberty to implead the heirs of the dead persons/defendants in the suit if so advised.

Meanwhile, the trial Court concerned is directed to expeditiously hear and dispose of this old matter, preferably within 06 (six) months from the receipt of a copy of this judgment.

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.

**Sheikh Abdul Awal, J:**

I agree.