

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Rafizul Islam
First Appeal No. 443 of 2017

In the Matter of:
Memorandum of appeal from the original
order.

Md. Shahidur Rahman
.....Plaintiff-appellant.

-Versus-

Monjurul Huq and others.
.....Defendant-respondents.

Mr. Sherder Abul Hossain with
Mr. Uzzal Bhounick, Advocates
..... For the appellant.

None appears.
.....For the respondent Nos. 1-3.
Mr. Abdul Mannan Abid, D.A.G with
Ms. Papia Sultna, A.A.G

Heard on 11.06.2026, 24.06.2026 and
Judgment on 24.06.2026

Sheikh Abdul Awal, J:

This First Appeal at the instance of plaintiff, Md. Shahidur Rahman is directed against the impugned judgment and decree dated 20.06.2017 (decree signed on 24.06.2017) passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 335 of 2014 dismissing the suit.

Facts of the case in brief are that the appellant as plaintiff filed Title Suit No. 335 of 2014 in the Court of the learned Joint District Judge, 2nd Court, Dhaka praying the following reliefs:

ক) বাদী পূর্ববর্তীগণক্রমে তফশিল বর্ণিত সম্পত্তির বৈধ মালিক ও নিরবিচ্ছিন্ন দখলকার হওয়া সত্ত্বেও উক্ত সম্পত্তি ঢাকা মহানগর জরীপে বাদীর পূর্ববর্তগণের নামে লিপিবদ্ধ না হইয়া ৩৪১৩ নং খতিয়ানে ১০৯০৫ নং দাগে ১ ও ২ নং বিবাদীর নাম, ১৯১৬ নং খতিয়ানে ১০৯০৬ নং দাগে ৩ নং বিবাদীর নাম ও ১নং খতিয়ানে ১০৯১১ নং দাগে ৪নং বিবাদীগণের নাম লিপিবদ্ধ হওয়া ভ্রমাত্মক, অশুদ্ধ ও ফলহীন, বলহীন মর্মে ঘোষণামূলক ডিক্রী দিতে;

খ) তফশিল বর্ণিত সম্পত্তিতে বাদী ২ (ষোল আনা) মালিক স্বত্ববান মর্মে ঘোষণামূলক ডিক্রী দিতে;

গ) মোকদ্দমার যাবতীয় খরচ প্রতিদ্বন্দ্বিতাকারী বিবাদীর বিরুদ্ধে ডিক্রী দিতে; এবং

ঘ) ন্যায় বিচারের স্বার্থে বাদী আর যে, যে প্রতিকার পাইতে হকদার সেইমর্মে ডিক্রী দিতে হুজুরের মর্জি হয়।

The defendant Nos. 4-5 contested the suit by filing written statement denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner, the suit is barred by limitation, the plaintiff has no, right, title and possession over the suit land, the plaintiff filed suit on false averments and as such, the suit is liable to be dismissed.

At the trial the plaintiff side examined 3 witnesses namely, PW-1-3 and the defendant side examined only one witness namely, DW-1 and both the parties also exhibited some documents to prove their respective cases.

The learned Joint District Judge, 2nd Court, Dhaka upon hearing the parties and on considering the evidence and materials on record by his judgment and decree dated

20.09.2017 (decree signed on 24.09.2017) dismissed the suit on the finding that the schedule land is unspecified and the suit land appears to be a canal.

Being aggrieved by the aforesaid impugned judgment and decree dated 23.06.2019 passed by the learned Joint District Judge, 2nd Court, Dhaka the plaintiff-appellant preferred the First Appeal.

Mr. Sherder Abul Hossain appearing with Mr. Uzzal Bhounick for the appellants at the very outset after placing an application for sending back the case on remand to the trial Court submits in this case due to gross laches and fault of the learned Advocate in the Court below the plaintiff could not state the exact schedule of the property in the plaint and could not produce the pantograph of the suit land at the trial and thereupon the suit was dismissed. The learned Advocate further submits that proposition of law is by now well settled that for the laches or fault of the lawyer the innocent litigant should not be suffered.

Mr. Abdul Mannan Abed, the learned Deputy Attorney General on going through the application for remand filed by the plaintiff-appellant found it difficult to oppose the application for remand.

Having heard the learned Advocates for appellant and the learned Deputy Attorney General and having gone through memo of appeal and other materials on record including the impugned judgment as well as application for remand dated 21.06.2026.

To cut short the matter at the very outset, we like to quote hereunder the relevant portion of the application for remand:

At the time of hearing, it is detected that the instant suit is for declaration of title and also for declaration that the entry of city survey Khatian No. 3413, 1 and 1916 is erroneous. It is also detected that the alleged city survey Khatain has been described in the prayer of the plaint but erroneously those are not described in the schedule to the plaint. In the schedule to the plaint the C.S., S.A. and R.S. Khatian and plot nos. have been described and the boundary also described but for the misunderstanding of the learned Advocate the city survey Khatian and plot nos. have been written in the prayer of the plaint instead of the schedule to the plaint as such, there have been accrued a formal defect in the plaint which is amendable and also need to be amended.

Further, the contesting defendant appeared in the suit and stated in their written statement that the suit land and the land recorded in city survey name of the defendant No.4 are not same and identical. Moreover, the city survey plot no. 10911 came from R.S. Plot Nos. 460, 461. That this matter in dispute needs to be decided by producing in the pantograph of the work sheet of survey department and thereupon, the plaintiff appellant has to amend the schedule of the plaint and also to produce those pantograph as evidence and also has to substantiate by adducing witnesses.

In view of the above statements together with the submission of the learned Advocate for the appellant and the learned Deputy Attorney General, we are led to hold that the appellant has been succeeded to make out a case for remand.

In the result, the appeal is allowed. The judgment and decree dated 20.09.2017 (decree signed on 24.09.2017) passed

by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 335 of 2014 dismissing the suit is hereby set-aside and the suit is sent back on remand to the trial Court for open trial with a direction both the parties will be at liberty to adduce fresh evidence both oral and documentary in support of their respective cases, if any and thereafter, the learned trial Court shall dispose of the suit on merit in accordance with law.

However, at the end of the day the learned Advocate for the appellant submits that in the facts and circumstances of the case a direction may kindly be given to the trial Court to hear and dispose of the suit within a period of 4 (four) months. On a query from the Court he undertakes that his party will take no adjournment rather he will file the application for amendment of the plaint within 15 (fifteen) days.

In view of the above submission of the learned Advocate for the appellant, the trial Court concerned is directed to hear and dispose of the suit within 6 (six) months from the date of receipt of this judgment.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Rafizul Islam, J:

I agree.

Present:
Mr. Justice Sheikh Abdul Awal
and
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ক) বাদী পূর্ববর্তীগণক্রমে তফশিল বর্ণিত সম্পত্তির বৈধ মালিক ও নিরবিচ্ছিন্ন দখলকার হওয়া সত্ত্বেও উক্ত সম্পত্তি ঢাকা মহানগর জরীপে বাদীর পূর্ববর্তগণের নামে লিপিবদ্ধ না হওয়া ৩৪১৩ নং খতিয়ানে ১০৯০৫ নং দাগে ১ ও ২ নং বিবাদীর নাম, ১৯১৬ নং খতিয়ানে ১০৯০৬ নং দাগে ৩ নং বিবাদীর নাম ও ১নং খতিয়ানে ১০৯১১ নং দাগে ৪নং বিবাদীগণের নাম লিপিবদ্ধ হওয়া ভ্রমাত্মক, অশুদ্ধ ও ফলহীন, বলহীন মর্মে ঘোষণামূলক ডিক্রী দিতে;

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Md. Rafizul Islam, J:

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