

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL No.18 of 2018

Mohammad Asif

....Appellant

-Versus-

Government of the people's Republic of Bangladesh,
represented by the Deputy Commissioner, Dhaka and
others

.... Respondents

Mr. Mohammad Nazmul Hossain, Advocate

.... For the appellant.

Mr. Mohammad Rashadul Hassan, Deputy Attorney
General with

Ms. Bilkis Nasema Rahman, Assistant Attorney General

Mr. Md. Abdus Salam, Assistant Attorney General

Mr. Mohammad Nazmul Hassan Siddique. Assistant
Attorney General

..... For the respondents.

Heard on 25.08.2026 and Judgment on 10.09.2026.

S M Kuddus Zaman, J:

This First Appeal at the instance of the plaintiff is directed against the judgment and decree dated 15.06.2017 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.245 of 2012 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 6740 ajutansha land and for further declaration that recording of above land in City Survey Khatian No.1 in the name of the defendant is erroneous and not binding upon the plaintiff alleging that above land belonged to Prasanna Kumar Basu and others and the same was correctly recorded in C. S. Khatian No.2715. Above C. S. recorded tenants transferred above land by registered deed of patta dated 18.06.1952, 17.09.2952 and 28.08.1952 to Kazi Abu Sayed who in his turn transferred the same to Hazi Salahuddin and Khalil Miah by registered kabla deed dated 13.01.1964 and above Khalil Miah transferred his share to above Hazi Salahuddin by registered kabla deed dated 06.10.1964. Above Salahuddin transferred 6764 decimal land to the plaintiff by registered kabla dated 31.05.1989 and plaintiff is in possession in above land by setting up a factory but above land has been erroneously recorded in the name of the defendants in City Survey Khatian No.1 and on the basis of above erroneous record the local Tahshilder refused to accept rent from the plaintiff.

Defendant Nos.1-5 contested above suit by filing a joint written statement alleging that above 6740 ajutansha land belongs to the defendants and the same has been rightly recorded in City Survey Khatian No.1 and the plaintiff does not have any right, title and possession in above land.

At trial plaintiff examined five witnesses and defendants examined one. Documents of the plaintiff were marked as Exhibit Nos.1-16 and those of the defendants were marked as Exhibit No."Ka".

The learned Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Mohammad Nazmul Hossain, learned Advocate for the appellant submits that admittedly disputed 4760 ajutansha land and other land appertaining to C. S. Khatian No.2715 belonged to Prashanna Kumar Basu and others and by transfer by registered deeds from above C. S. recorded tenants above land was acquired by Kazi Abu Sayed and Tajuddin who transferred above land to Kazi Salahuddin Khalil and Khalil transferred his share to Kazi Salahuddin. Thus Kazi Salahuddin became the sole owner and possessor of 67.40 acre land and the same was rightly recorded in R. S. Khatian No.4074 and the plaintiff purchased above land from above R. S. recorded tenant Kazi Salahuddin by registered kabla deed dated 31.05.1989. The defendants did not challenge the genuinity and correctness of above C. S. and R. S. Khatians or the registered deeds of the predecessors of the plaintiff as stated above but they have claimed title in above land on the basis of City Survey Khatian. The defendants could not show any basis of above City Survey Khatian nor the defendants have claimed that

they are in possession of above land either by themselves or by giving lease to others. But in above R. S. Khatian instead of 6740 ajutansha land only 5868 ajutansha land was erroneously recorded in the name of Kazi Salahuddin but above important aspect of the suit escaped the sight of the concerned Advocate. Kazi Salahuddin predecessor of the plaintiff lawfully acquired title and possession in disputed 6740 ajutansha land but above total land was not recorded in his name in the R. S. Khatian. The appellant has submitted a petition under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint in order to make up above deficiency in the plaint. The ends of justice will be met if above petition is allowed and the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial.

On the other hand Mr. Mohammad Rashadul Hassan, learned Deputy Attorney General for the respondents submits that on consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge rightly dismissed above suit which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It turns out from the plaint and the evidence of PW1 Md. Sarwar Alam that disputed 6740 ajutansha land and other land appertaining to C. S. Khatian No.2715 stood in the names of Prashanna Kumar Basu and others and by transfer by several deeds during 1952 above land

was acquired by Kazi Abu Sayed and Tajuddin and who transferred above property to plaintiff's predecessor Kazi Salahuddin and Khalil. Above Khalil transferred his share to Kazi Salahuddin who in his turn transferred above land to the plaintiff by a registered kabla deed dated 31.05.1985.

The defendants did not challenge the legality and correctness of above claims of the plaintiffs as to the C. S. Khatian and subsequent transfers by registered instruments.

It is admitted that in R. S. Khatian No.4074 only 5868 ajutansha land out of disputed 6740 ajutangsa was recorded in the name of Kazi Salahuddin, the predecessor of the plaintiff. The defendants did not challenge the legality and propriety of above R. S. khatian or the registered kabla deed of the plaintiff from above R.S. recorded tenant Kazi Salahuddin. It is admitted that disputed 6740 ajutansha land has been recorded in the name of the defendants in City Survey Khatian No.1.

A Khatian or record of right is not a document of title. It merely provides a presumption as to the possession of the property. But when the correctness of a khatian is challenged in a competent Court the onus shifts on the person in whose name the khatian stands to prove the basis of the khatian. A record of right or khatian must be prepared in the names of the tenants or heirs or transferees of immediately past or previous khatian not otherwise. Admittedly R. S. Khatian was the

previous khatian of the City Survey Khatian. As such the City Survey Khatian should have been prepared in the names of the tenants of the R. S. Khatians or their heirs or transferees. Above property does not stand in the name of the Government in the relevant C. S., S. A. or R. S. Khatians. As such defendant Nos.1-5 was required to show the basis of preparation of City Survey Khatian in their name. Defendant Nos.1-5 could not show any basis of City of Survey Khatian No.1 which stands in their names.

The plaintiff of a suit has to prove the claim of his title independently by production of evidence oral and documentary and a suit cannot be decreed on the basis of failure of the defendant to prove the defense case. The plaintiff has claimed that R. S. Khatian of above property was correctly recorded in the name of Kazi Salauddin but it turns out from the certified copy of R. S. Khatian that only 5868 decimal land was recorded in the name of Kazi Salahuddin. As such plaintiff was required to explain as to how he claims 67.40 ajutansa land on the basis of purchase from above Kazi Salahuddin. The plaintiff could not provide any explanation in the plaint nor any evidence was adduced to substantiate above claim. Learned Advocate for the appellant submits that plaintiff's predecessor Kazi Salahuddin purchased 67.40 ajutansha land by registered kabla deeds dated 06.10.1964 and 14.09.1966 but erroneously in above R. S. Khatian only 5.5868 ajutansha land was recorded. The plaintiff should have mentioned above facts as to

erroneous R. S. Khatian and seek appropriate remedy for the same. The appellant has submitted a petition for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure and sought remand of the suit to the trial Court for retrial.

It is clear from above submissions of the learned Advocate for the appellant and evidence of PW1 that above errors have been committed at the time of preparation of plaint by the concerned Advocate of the and the plaintiff did not have any contribution in the same and the plaintiff should not made to suffer for above error or mistake of his appointed Advocate.

In above view of the facts and circumstances of the case and materials on record we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleading and adduced further evidence if any.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed. The impugned judgment and decree dated 15.06.2017 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.245 of 2012 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an

opportunity to amend their respective pleadings and adduced further evidence if any.

The learned Joint District Judge is directed to conclude the trial of the suit expeditiously within a period of 6(six) months from the date of received of this order.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**