

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

Present

**Mr. Justice Md. Iqbal Kabir**

**And**

**Mr. Justice Md. Riaz Uddin Khan**

**First Appeal No. 171 of 2020**

**IN THE MATTER OF:**

Md. Osman Goni and others

... Plaintiff-Appellants

Versus

Abdul Latif being dead his legal heirs:

Mahmuda Parvin and others

... Defendant-Respondents

Mr. Md. Kamrul Islam, with

Mr. A.F.M. Hakim, Advocates

... For the Plaintiff-Appellants

Mr. Sayid Golam Hafiz, Advocate

... For the Defendant-Respondents

**Judgment on: 13.08.2025**

**Md. Riaz Uddin Khan, J:**

The Plaintiff preferred the instant First Appeal being aggrieved by and dissatisfied with the judgment and decree dated 23.05.2019 (decree signed on 23.05.2019) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Narayanganj in Title Suit No. 241 of 2014.

Facts in brief for disposal of this appeal is that the appellants as plaintiffs filed Title Suit No. 47 of 2003 (renumbered as Title Suit No. 132 of 2006) which has again been renumbered as Title Suit No. 241 of 2014 claiming *inter alia* that Meher Baksh and Khoda Baksh were the owners of the scheduled property measuring 39 decimals with other properties located at Mouza Khorda Ghoshpara apartaining to CS Khatian No. 116, SA Khatian No. 131, RS Khatian No. 117, CS and SA Plot No. 29, RS Plot No. 51 under Narayanganj district. CS Khatian had been published in the names of

Meher Baksh and Khoda Baksh. Meher Baksh got the scheduled property through compromise with other co-owners. Thereafter, Meher Baksh died leaving behind three sons namely Ismail, Ishaq and Yasin, whose names were recorded in the SA Khatian. Thereafter, Ishaq died leaving behind two sons Ambar Ali and Abed Ali and two daughters Aysha Bibi and Kadbanu Bibi. Ismail died leaving behind three sons Azgar Ali, Abbas Ali and Razzab Ali and one daughter Tuku Bibi. Yasin died leaving behind two sons Alam Chan and Rahman and one daughter Hartan Bibi. Thereafter, Abdul Ali, son of Ishaq, died leaving behind four sons who are Plaintiff No. 1 to 4 and one daughter i.e. plaintiff No. 5 and wife plaintiff No. 6. Ambar All died leaving behind one son, Plaintiff No. 7 and two daughters Plaintiff No. 8 & 9 and wife, plaintiff No 10. Then Aysha Bibi died leaving 3 sons and 4 daughter, plaintiff nos. 17-23. Alam Chan died leaving four sons and wife, Plaintiff No. 11 to 15. Rahman survived by his daughter, plaintiff no.16 and Hartan Bibi died leaving three sons and three daughters, Plaintiff Nos. 32 to 37. Razzab All died leaving two sons, plaintiff Nos. 25-26 and Abbas Ali died leaving three sons and wife i.e. Plaintiff Nos. 28-31 and Tuku Bibi died leaving behind one son, Plaintiff No. 38. The plaintiffs are co-owners of the scheduled land and they are jointly in possession of the same peacefully through cultivating different crops in different seasons, within the knowledge of everybody. The defendant nos.1-6 claimed title in the scheduled land on 30.10.2002 and also informed that the name of the defendant no.6 and predecessor of the defendant nos.1 to 5 had been recorded in the RS Khatian of the scheduled land, hence the plaintiffs filed the present suit with a prayer for declaration of title in the scheduled land.

The Defendant Nos. 1 & 2 filed written statement contending *inter alia* that the suit land along with non suit land of CS Khatian No. 116 originally belonged to Safaruddin who died before CS operation leaving behind 3 sons namely Meher Baksh, Khoda Baksh and Jabbar Ali and by amicable settlement Meher Baksh got the suit land measuring 39 decimals of CS Dag no.29 under CS Khatian No.116. Meher Baksh died leaving behind three sons namely Ishak, Ismail and Yasin as his heirs. Thereafter, the heirs of Meher Baksh transferred the suit land to one Amina Khatun by registered sale Deed No. 2733 dated 12.08.1938 and handed over possession. On the other hand Khoda Baksh got non suited land of CS Dag no.28 under CS Khatian No.116 measuring 36 decimals while Jabbar Ali got other non suited land. Khoda Baksh died leaving 3 sons namely Chan Meah, Lal Meah and Suruj Meah, one daughter Amina Khatun and wife Golbarhan Bibi as his heirs. Thereafter Chan Meah, Lal Meah and Suruj Meah (minor) and Golbarhan Bibi transferred the said non suited land measuring 36 decimals to one Hazi Mohammad Mohsen by registered sale Deed No.3502 dated 17.10.1938 who then sold it to one Manaruddin by registered sale Deed No.2025 dated 14.03.1939. Then Manaruddin, Amina Bibi, Jabbar Ali and Suruj Meah transferred 39 decimals from Dag No.29 and non suited 36 decimals from Dag No.28 under CS Khatian No.116, in total 75 decimals to one Fazar Ali Bhuiyan by registered sale Deed no.1373 dated 01.02.1943 who then sold the same by registered sale Deed no.1155 dated 24.01.1952 to Yakub Ali Poddar and his wife Munnehar @ Munnessa Bibi and accordingly SA record was published in their names. Then Yakub Ali purchased her wife Munnehar @ Munnessa Bibi's share by registered Deed no.5035 dated 01.05.1956 and became owner of entire 75 decimal land

as aforesaid who sold the same to Fulmoti Bibi and Abdus Sattar by two sale Deed nos.4791 and 4792 both dated 14.06.1967 and handed over the possession. Thus Abdus Sattar and Fulmoti Bibi while owning and possessing the suit land along with non suit land, their names were rightly recorded in RS Khatian No.117 in RS Dag nos. 51 (the land of CS/SA Dag no.29) and 52 (the land of CS/SA Dag no.28) measuring 39 and 36 decimal respectively. They had been enjoying the same as owners through constructing boundary wall, erecting tin-shed houses with electricity connection and by letting the houses to the tenants and also by cultivating seasonal crops. The defendant Nos. 1-5 is the sons and daughters of them while defendant no.6 Fulmoti is RS recorded owner. Abus Sattar died leaving the above mentioned defendants as his heirs. Thereafter, Fulmoti gifted her share to defendant nos.1 & 2 by Heba-bil-Ewaj Deed no.7108 dated 29.06.1999. By an amicable settlement defendant Nos.1 & 2 got the suit land measuring 39 decimals of CS/SA Dag no.29 along with non suit land measuring 36 decimals of CS/SA Dag no.28 and defendant Nos.3-5 got other properties of their father Abdus Sattar. The plaintiffs have no title and possession over the suit property hence the suit is liable to be dismissed.

The defendants did not adduce any witness for which the trial court decreed the suit *ex parte* by its judgment and decree dated 02.09.2009 (decree drawn on 08.09.2009) against which the defendants filed Title Appeal No.101 of 2010 before the District Judge, Narayangonj who allowed the appeal and sent back the same to the trial court for retrial.

Thereafter, the suit was sent back to the court of Assistant judge, Bandar, Narayangonj for retrial. However,

defendant challenged the valuation of the suit and ultimately valuation was refixed and the suit was transferred for trial to the court of Joint District Judge, 1<sup>st</sup> Court, Narayangonj for trial and renumbered as Title Suit no. 241 of 2014. During trial both the plaintiffs and the defendants adduced 3 witnesses each and produced exhibited documents to prove their respective case. After conclusion of trial considering the evidence on record the trial court by its impugned judgment and decree dated 23.05.2019 dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree the plaintiffs filed the instant First Appeal before this Court.

Mr. Md. Kamrul Islam, learned advocate appearing for the appellants submits that the plaintiffs are the successors of CS recorded tenant Meher Baksh in the suit land measuring 39 decimals in CS Dag no.29 who are in possession hence they are entitled to get decree as prayed for.

The learned advocate then submits that the defendants made an ambiguity in mixing up the suit land with non suit land and submitted a series of documents/deeds which are nothing but paper transaction and never acted upon hence by those deeds the defendants did not acquire any title and possession over the suit property.

The learned advocate finally submits that the trial court committed wrong in disbelieving the PW-1 who was corroborated by PWs-2 & 3 that the plaintiffs are in possession of the suit land for more than 50 years as heirs of CS recorded tenant Meher Baksh.

On the other hand Mr. Sayid Golam Hafiz, the learned advocate appearing for the defendant-respondents submits

that the plaintiffs claimed in the plaint that they are the owners of the suit land by way of inheritance being legal heirs of Ismail, Ishaq and Yasin, sons of CS recorded owner Meher Baksh. Defendants claimed that Ismail, Ishaq and Yasin sold the suit land to Amina Khatun by sale Deed No. 2733, dated 12.08.1938 which was produced before the court and marked as exhibit-Ka but the plaintiffs did not challenge the said deed rather in his deposition, PW-1 admitted that they never challenged the title deeds as well as the deeds of the defendants before any court.

The learned advocate then submits that the sale Deeds produced and exhibited by the defendants are acted upon and SA Khatian No.131 was rightly recorded in the names of Yakub Ali and Munnessa and RS Khatian No.117 in RS Dag nos. 51 (the land of CS/SA Dag no.29) and 52 (the land of CS/SA Dag no.28) measuring 39 and 36 decimal respectively is also rightly recorded in the names of Abdus Sattar and Fulmoti, the parents of the defendants.

The learned advocate next submits that in the plaint the plaintiffs asserted that they are in possession of the suit land jointly by cultivating crops but in his deposition PW-1 claimed that there are dwelling houses on the suit land and crops are not grown over there and subsequently on recall the PW-1 stated in his deposition that they are in possession of the suit land by constructing boundary wall, tin shed house, which are contradictory to the plaint and supports the case of the defendants. PW-2 also stated in his deposition on 16.06.2013 that boundary wall was built 8-10 years back which means as per PW-2 boundary wall was in existence since 2003-2005 and the original suit was instituted in 2003. Therefore, the manner of possession claimed by the

plaintiffs is contradictory in between plaint and depositions of the PWs as such the depositions of PWs cannot be relied upon.

The learned advocate further submits that under section 144A of the State Acquisition and Tenancy Act, there is presumption of correctness of the entry, made in the RS Khatian and as such presumption of possession of the suit land is in favour of the defendants and the plaintiffs having failed to displace the said presumption by proving their title and possession in the suit land, the plaintiffs are not entitled to any decree, therefore the learned Judge of the trial court rightly dismissed the suit.

The learned advocate further submits that the plaintiffs miserably failed to prove their possession in the suit land, therefore, simple suit for declaration of title by the plaintiffs in the absence of prayer for partition/recovery of possession in the suit land is barred under the proviso of section 42 of the Specific Relief Act and as such the present suit is not maintainable.

Oposing the application filed under Order-XXIII Rule-1 of the Code of Civil Procedure for withdrawal of the suit the learned advocate for the respondents submits that instant suit has been dismissed by the trial court on merit and not on formal defects, therefore, withdrawal of suit cannot be allowed at the appellate stage. The failure of the plaintiffs to conduct the suit with due care and diligence and to substantiate his case by evidence should not be amounted as formal defects. The mere statement that there is a formal defects in framing of the suit is not enough, plaintiff has to specifically pointed out the formal defect for asking a permission to sue a fresh suit, hence the applicant failed to make out a case of formal

defect. Moreover, one of the several plaintiffs cannot withdraw a suit without the consent of the other plaintiffs, and as the instant application has been filed by Appellant no.1 is liable to be dismissed. On this point the learned advocate cited the decisions reported in 41 DLR (AD) 156; AIR 1986 P&H 228; CWN Vol-XVI page 1027 and AIR 1933 Madras 824.

We have heard the learned advocates for both the parties and perused the memorandum of appeal, lower court records along with the plaint, written statement, depositions and exhibited documents. We have also examined the impugned judgment along with applications and other materials on record available before us.

It may be mentioned here that at the fag end of hearing the learned advocate for the plaintiff-appellants filed two applications one under Order-XXIII Rule-1 and another under Order-XLI Rule-28 of the Code of Civil Procedure. We shall deal both the applications along with this appeal.

The case of the plaintiff-appellants are very simple that they are the heirs/successors of CS recorded tenant Meher Baksh. To prove their case plaintiff no.1 examined himself as PW-1 who in his examination in chief supported the plaintiff case and denied the defendant's case. He produced the certified copies of CS Khatian No.116, SA Khatian No.131 and RS Khatian No.117 which are marked as exhibits-2 series. In cross examination he admitted that in SA Khatian no.131 is recorded in the names of Yakub and Munnessa amongst others and Yakub and Munnessa are not their co-sharers. In plaint as well as in chief the PW-1 claimed that SA record is correct and on the other hand in cross he denied the correctness of the SA record. In cross he

admitted that he did not submit any rent receipts or mutation khatian by the plaintiffs or their predecessors. In the plaint the suit plot is claimed in a single plot but in cross he claimed the suit plot is divided in 6 parts and could not say from when it was divided. In plaint suit plot was claimed as crop land while in cross PW-1 claimed that there are dwelling houses on the suit land and crops are not grown over there anymore and subsequently on recall the PW-1 stated in his deposition that they are in possession of the suit land by constructing boundary wall, tin shed house, which are contradictory to the plaint and supports the case of the defendants. PW-1 further claimed that entire suit land measuring 39 decimals are bounded by boundary wall. PW-1 claimed the registered deeds submitted by the defendants are forged but admitted that he did not inquire it in Registrar office. PW-2, a cousin of the plaintiff no.1 in examination in chief claimed that the plaintiffs are in possession of the suit land measuring 39 decimals of Dag no.29 while defendants are in possession of land of Dag no.28 but in cross he admitted that inside the boundary of Dag no.28 the land of Dag no.29 situated. If that is true then how plaintiffs possess the land of Dag no.29 while it is inside the boundary wall of Dag no.28 which is admittedly possessing by the defendants? PW-3 claimed himself as lessee (bharatia) of plaintiff no.1 and claimed that there are 5 houses on suit land which is contradictory to the statements of plaint as well as PW-1.

On the other hand, to prove their case defendant no.2 examined himself as DW-1 who in his examination in chief supported the case of the written statements and produced a series of registered deeds which are marked as Exhibits-Ka to Jha. He also submitted certified copies of CS Khatian

no.116, SA Khatian no.131 and RS khatian no.117 along with some other RS khatan which are also marked as exhibits-Nio to Da series. He was not cross examined by the plaintiffs. DW-2 in his deposition claimed that the defendants are in possession of the suit land by constructing boundary wall and dwelling house. They are in possession since 1967 after purchase. He was not cross examined. DW-3 deposed as like as DW-2. He also was not cross examined. In fact the plaintiffs refrained themselves from cross examining any witness of the defendants.

We have carefully examined the exhibited registered deeds produced by the defendants, especially sale deed no.2733 dated 12.08.1938 (exhibit-ka), deed no.3502 dated 17.10.1938 (exhibit-kha), deed no.2025 dated 14.03.1939 (exhibit-Ga), deed no.1373 dated 01.02.1943 (exhibit-Gha), deed no.1155 dated 24.01.1952 (exhibit-Uma), deed no.5035 dated 01.05.1956 (exhibit-Cha), deed no.964 dated 20.03.1964 (exhibit-Chha), deed no.4791 dated 14.06.1967 (exhibit-Ja), deed no.4792 dated 14.06.1967 (exhibit-Jha). It appears from the sale deed no.2733 dated 12.08.1938 (exhibit-ka) that Ismail, Yasin and Eshak all sons of CS recorded tenant Meher Baksh sold 39 decimals land from CS Dag No.29 under CS khatian No.116 to one Amina Khatun, wife of Manaruddin. This is a registered document of more than 80 years old when it was produced in court in 2019. According to section 90 of Evidence Act an old documents of more than 30 years has a presumptive value. This deed has been produced from proper custody and though the plaintiffs abruptly claimed it forged but did not take any endeavour to prove it as such there is strong presumption that the deed is a genuine one. On our scrutiny we find that sale Deed No. 2733 dated 12.08.1938 executed by the heirs of CS

recorded tenant Meher Baksh to one Amina Khatun, sale Deed No.3502 dated 17.10.1938 by Chan Meah, Lal Meah and Suruj Meah (minor) and Golbarhan Bibi heirs of Khoda Baksh to Hazi Mohammad Mohsen, sale Deed No.2025 dated 14.03.1939 by Mohsen to Manaruddin, sale Deed no.1373 dated 01.02.1943 by Manaruddin, Amina Bibi, Jabbar Ali and Suruj Meah to Fazar Ali Bhuiyan who then sold the same by registered sale Deed no.1155 dated 24.01.1952 to Yakub Ali Poddar and his wife Munnehar @ Munnessa Bibi were acted upon and accordingly SA record was published in the names of Yakub Ali Poddar and his wife Munnehar @ Munnessa Bibi in SA Khatian no.131 alongside others. We further hold the view that registered Deed no.5035 dated 01.05.1956 executed by Munnehar @ Munnessa Bibi to Yakub Ali Poddar who sold the same to Fulmoti Bibi and Abdus Sattar by two sale Deed nos.4791 and 4792 both dated 14.06.1967 are also acted upon and their names were rightly recorded in RS Khatian No.117 in RS Dag nos. 51 (the land of CS/SA Dag no.29) and 52 (the land of CS/SA Dag no.28) measuring 39 and 36 decimal respectively. Thus the defendants successfully proved their chain of title in the suit land.

Since the plaintiffs claim the suit land as successors of CS recorded tenant Meher Baksh and the entire suit land is sold out by the 3 sons of that Meher Baksh and became title less, the subsequent successors succeeds nothing. The plaintiffs though claimed possession but on cross examination their claimed was shaken and could not stand firmly. So, the plaintiffs' case has no legs to stand and the suit is destined to fail. On the other hand the defendants successfully prove their chain of title by producing series of registered deeds and also their possession by oral evidence. Neither party submitted any

rent receipts before the court as exhibited documents. When both parties claimed possession by oral evidence in that case the legal position is *in view of the conflicting evidence by the parties with regard to possession, the possession should be found with the party having the title.* In the present case the trial court found title and possession in favour of the defendants. In our scrutiny we also found that the plaintiffs failed to prove their title and possession in the suit land.

In the facts and circumstances discussed above and the position of law we are of the firm view that by dismissing the suit the trial court committed no wrong and hence there is no reason to interfere.

Accordingly, the appeal is **dismissed with cost.**

We have considered both the applications filed by the plaintiff-appellants at the fag end of the hearing, one under Order-XXIII Rule-1 and another under Order-XLI Rule-28 of the Code of Civil Procedure. Since the suit was dismissed on merit and the appellants failed to show any formal defect in filing the suit, the application seeking permission to withdraw the suit for filing afresh under Order-XXIII Rule-1 is rejected. The appellant also failed to produce any new evidence before this court for taking additional evidence, hence the application filed under Order-XLI Rule-28 is also rejected.

Send down the Lower Court Records and communicate the judgment and order at once.

**Md. Iqbal Kabir, J:**

I agree.