

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.639 of 2019

S. M. Jahangir Habib

....Appellant

-Versus-

Assistant Commissioners (Land), Khulna and others

.... Respondents

Mr. Ahmed Nowshed Jamil, Advocate with

Ms. Sayeda Shoukat Ara, 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 Nizamul Hassan Siddique, Assistant
Attorney General

.... For the respondents.

Heard on 18.08.2026 and Judgment on 06.09.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 29.08.2019 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.50 of 2015 dismissing the suit.

Facts in short are that the appellant as plaintiff filed above suit for declaration that the defendants do not have any right, title, interest and possession in disputed 3.50 acres land appertaining to S. A. Khatian Nos.199 and 206 alleging that 5.79 acres land including disputed 3.50 acres land belonged to Pachu Mondal and others who transferred above land to Dr. Hasanuzzaman by registered kabla deed dated 19.08.1969 and Umme Rahat Asia and Md. Mosharaf Hossain by registered kabla deed dated 16.10.1996 who in their term transferred above land to Nasimul Alam by registered kabla deed dated 09.02.1998 and above purchasers got their names mutated for above land and paid rent to the Government. Above Nasimul Alam transferred disputed 3.50 acres land to the plaintiff by registered kabla deed dated 26.01.2003. In the last survey khatian above land was recorded in the name of the Government and the plaintiff filed a suit against above erroneous record and obtained a decree. The defendants filed an appeal against above judgment and decree obtained by the plaintiffs in Title Suit No.38 of 2005 which was disallowed. On 07.03.2015 the plaintiff went to get his name mutated for above land but the defendants refused to mutate his name and denied his title.

Defendant Nos.1-3 contested above suit by filing a joint written statement alleging that above land was dilluviated in the Kazibacha river and reappeared after 20 years. As such above land vested to the Government and the plaintiff did not have any lawful title and

possession in above land. The B. R. S. Khatian was rightly prepared in the name of the Government and the plaintiff should have filed a suit in the Land Survey Tribunal for correction of khatian.

At trial plaintiff examined two witnesses and documents of the plaintiff were marked as Exhibit Nos.1-9 series. On the other hand the defendants did not examine any witness nor produced any document.

The learned Joint district Judge dismissed above suit holding that above suit was not tenable in law for not seeking a relief for declaration of his title.

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. Ahmed Nowshed Jamil, learned Advocate for the appellant concedes that the plaintiff acquired valid title and possession in disputed 3.50 acres land by successive purchase by registered kabla deeds from the S. A. recorded tenants but above land has been erroneously recorded in the name of the defendants in B. S. Khatian No.1 and on the basis of above erroneous record defendants denied plaintiff's title and refused to receive rent. The plaintiff filed Title Suit No.38 of 2005 for declaration of title against the defendants and obtained a judgment and decree on contest on 24.03.2008. Defendants preferred an appeal against above judgment and decree which was also disallowed. But in the cause of action of Title Suit No.38 of 2005 no

specific mention was made that above land was recorded in B. R. S. Khatian No.1 in the name of the Government. In the body of the plaint of above suit there is mention that draft B. R. S. Khatian was published in the name of the defendants. The learned Judge of the trial Court rightly pointed out that since final B. R. S. Khatian stands in the name of the defendants the plaintiff should have sought declaration of title to establish their title before seeking any remedy against the defendants. The learned Advocate submits that above deficiency in the plaint occurred due to lack of legal skill of the appointed Advocate for the plaintiff and the plaintiff should not make to suffer for the same. The ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial for retrial after giving the plaintiff an opportunity to amend the plaint and adduce further evidence.

On the other hand Mr. Mohammad Rashadul Hassan, learned Deputy Attorney General submits that disputed 3.50 acres land was dilluviated in the Kazibacha river and reappeared after 20 years. As such above land vested in the Government and B.R.S. Khatian No.1 was rightly prepared in the name of the Government and the learned Joint District Judge on correct appreciation of materials on record rightly dismissed above suit which calls for no interference.

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

It is admitted that 5.79 acres land including disputed 3.50 acres was rightly recorded in S. A. Khatian Nos.199 and 206 in the names of Pachu Ram Mondal, Kalu Ram Mondal, Satish Chandra Mondal, Jatish Chandra Mondal, Moharaj Mondal and others. It is also admitted that in B. R. S. Khatian No.1 disputed 3.50 acre land has been recorded in the name of the defendant in B. R. S. Khatian No.1. Plaintiff claims title and possession in above land on the basis of successive purchase from above S. A. recorded tenants by registered kabla deed dated 26.01.2003.

The plaintiff has filed above suit for negative declaration that the defendants do not have any right, title, interest and possession in above 3.50 acres land. As mentioned above disputed 3.50 acres land stands in the name of the defendants in finally published B. R. S. Khatian No.1. The learned Judge of the trial Court rightly pointed out that since disputed 3.50 acres land was not recorded in the name of the plaintiff but the same was recorded in the name of the defendants in B. R. S. Khatian No.1 the title of the plaintiff was seriously clouded and without establishing lawful title the plaintiff did not have any locus standi to maintain above suit for above negative declaration. It is true that the appellant as plaintiff previously filed Title Suit No.38 of 2005 against the self-same defendants for declaration of title but above suit was filed against the draft publication of the B. R. S. Khatian. There was no specific mention in the plaint that B. R. S. Khatian was finally published in the name of the defendants and on the basis of finally published B. R.

S. Khatian the defendants have denied plaintiff's title or refused to receive rent. In fact no Civil Suit is tenable in law against Draft Publication of any survey khatian and the remedy of the aggrieved person lies in filing an objection case under the State Acquisition and Tenancy Rules. The Civil Court also have no jurisdiction to adjudicate the legality or illegality of a finally published survey khatian. The land Survey Tribunal has been established for determination of correctness of B.R.S. Khatians. But if any person fails to approach the Land Survey Tribunal for correction of the erroneous B. R. S. Khatian within the stipulated period of limitation he may approach a competent Civil Court for establishment of his title and other remedies. The learned Advocate for the appellant has pointed out that the above deficiency in the plaint was caused due to the lack of legal skill of the appointed Advocate who should have made clear mention that B. R. S. Khatian No.1 has been prepared in the name of the defendants and on the basis of above erroneous record title of the plaintiffs has been denied. On the other hand the defendants did not make specific mention of the date or year when above land went under the Kazibacha river and when reappeared.

On consideration of above 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 pleadings and adduce further evidence.

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

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 29.08.2019 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.50 of 2015 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 pleadings and adduce further evidence if any.

The learned Joint District Judge is directed to dispose of above suit expeditiously in accordance with law within a period of six months from the date of receipt 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.