

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Tamanna Rahman Khalidi

FIRST APPEAL NO.52 OF 2017

Md. Abdul Hannan Gazi and another

... Appellants

-Versus -

Mustari Begum and others

... Respondents

Mr. M. A. Azim Khair, Senior Advocate with

Mr. Mohammad Hossain, Advocate

Mr. Mohammad Saifuddin Khokon, Advocate

.... For the appellant Nos.2 and 3.

Mr. Abul Kalam Chowdhury, Advocate with

Mr. Iqbal Kalam Chowdhury, Advocate

.... For the respondent Nos.2-8.

Mr. Md. Tawhidul Islam, Advocate with

Mr. Md. Mamunur Rashid Chowdhury, Advocate

.... For the respondent No.20.

Heard and Judgment on 10.06.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 05.02.2017 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.72 of 2011 decreeing the same.

Facts in short are that respondent Nos.1-8 as plaintiffs instituted above suit for recovery of possession of 90 decimal land appertaining to Plot No.54 of S. A. Khatian No.10 and for further declaration that two deeds of power of attorney Nos.1855 and 1305 dated 31.03.2010 and dated 20.02.2011 and registered kabla deed No.3653 dated 14.06.2010 as

described in "Kha" schedule to the plaint an ineffective and not binding upon the plaintiffs alleging that Kalu Sheikh and Wazed Sheikh acquired 3.60 acre land by registered deed of patta No.4123 dated 25.11.1933 and Wazed Sheikh gave settlement of his 90 decimal land to Kalu Sheikh by registered deed dated 15.04.1953. Above Kalu Sheikh also acquired 1.80 acres land from Amin Uddin by a registered deed of patta dated 15.04.1953. Thus Kalu Sheikh became owner of 4.50 acre land and Wazed Sheikh 90 decimal land. Kalu Sheikh transferred 90 decimal to Wazed Sheikh by a registered deed of patta dated 22.05.1962. Above Wazed Sheikh transferred his total 1.80 acre land to Arman Ali by a registered kabla deed dated 30.03.1981 and by successive purchase plaintiff acquired above 1.80 acre land by purchase registered kabla deed. The plaintiff purchased total land of Kalu Sheikh from his successive heirs by several registered kabla deeds. Thus the plaintiffs were in lawful possession of 5.36 acre land and established an agricultural farm namely Focus Farm Complex in above land. On the basis of erroneous R. S. Khatian in the name of Wazed Sheikh his heirs executed a collusive registered deed of power of attorney on 31.03.2010 to defendant No.11 who on the basis of above deed transferred 90 decimal land to defendant No.10 who disposed the plaintiff from above land on 20.02.2011.

Defendant Nos.12, 13 and 14 contested above suit by filing two separate written statements wherein they have stated that Kalu Sheikh and Wazed Sheikh acquired 5.36 acre land by registered deed of patta

dated 25.11.1933. Wazed Ali had title and interest in 2.70 acre land Kalu Sheikh had title in 90 decimal land. A dispute arose between Kalu Sheikh and Wazed Sheikh as to the extent of their share in above land and Wazed Sheikh filed Title Suit No.465 of 1958 for declaration of title in the 1st Court of Khulna which was decreed on compromise on 07.10.1965 and Wazed Sheikh was allotted 2.70 acre land and Kalu Sheikh got 90 decimal land. Above Wazed Sheikh transferred 1.80 acre land to Arman which was subsequently acquired by the plaintiffs by purchase. The heirs remaining 90 decimal land which was rightly recorded in relevant R. S. Khatian in the name of Wazed Sheikh whose heirs lawfully transferred above land to the defendants by registered kabla deeds and defendants are in peacefully possession in above 90 decimal land and they did not dispossess the plaintiffs from above land.

At trial plaintiffs and defendants examined two witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1-7 series and those of the defendants were marked as Exhibit Nos."Ka" Series, "Kha" series and "Ga" series.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above defendants as appellants moved to this Court and obtained this Rule.

Mr. M. A. Azim Khair, learned Advocate for the appellant Nos.2 and 3 submits that Kalu Sheikh and Wazed Sheikh jointly acquired 5.36

acre land by registered deed of patta dated 25.11.1933 and in above settlement Wazed Sheikh had title in 2.70 acre land and Kalu Sheikh had ownership in 90 decimal land. Above Wazed Sheikh transferred 1.80 acre land to Arman by registered kabla deed dated 30.03.1981 which has been subsequently purchased by the plaintiffs by several registered kabla deeds. Wazed Shiekh had title in disputed 90 decimal land which was rightly recorded in his name in the relevant R. S. Khatian and after his demise his heirs appointed defendant No.9 Jamal Uddin as their constituted attorney by registered deed of attorney dated 31.03.2010 who transferred above land to defendant No.10 by registered kabla deed who subsequently transferred above land to the contesting defendants. Above title of Wazed Sheikh in 2.70 decimal land was proved in the compromise decree dated 07.10.1961 passed in Title Suit No.65 of 1958. Defendants are in peaceful possession in above 90 decimal land and the plaintiffs did not have any title and possession in above land nor the defendant No.11 has dispossessed him from above land. The learned Joint District Judge most illegally held that compromise decree of Title Suit No.465 of 1958 was a forged document. The plaintiffs could not prove their possession and subsequent dispossession by legal evidence but the learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and evidence on record and most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Abul Kalam Chowdhury, learned Advocate for respondent Nos.2-8 submits that Kalu Sheik and Wazed Sheikh jointly acquired 3.60 acre land by registered deed of patta dated 25.11.1933 and they had equal title and possession in above 3.60 acre land. Wazed Sheikh transferred his 1.80 acre land to Arman by registered kabla deed dated 30.03.1981 which was subsequently purchased by the plaintiffs by registered kabla deed. Above Wazed Sheikh having no subsisting interest in any land of above khatian his heirs did not inherit anything nor the defendants acquired any title in land of Wazed Sheikh by alleged purchase by registered kabla deed. The plaintiff was in peaceful possession in above 90 decimal land but defendant No.11 has unlawfully and forcibly dispossessed him from above land on 20.02.2011. As far as the compromise decree dated 07.10.1961 of Title Suit No.665 of 1958 is concerned on examination of evidence produced at trial the learned Joint District Judge rightly held that above document was forged. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly decreed above suit which calls for no interference.

Mr. Md. Tawhidul Islam, learned Advocate for the respondent No.20 adopted the submissions made by Mr. M. A. Azim Khair, learned Advocate for the appellant Nos.2 and 3 as stated above and submits that the learned Joint District Judge most illegally decreed above suit without any legal evidence on record which is not tenable in law.

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

As mentioned above the plaintiffs have filed this suit for recovery of possession of 90 decimal land, a decree for permanent injunction for above land and for further declaration that two registered deeds of power of attorney and registered kabla deed executed by the heirs of Wazed Sheikh to defendant Nos.9 and 10 as described in the schedule to the plaint are unlawful and not binding upon the plaintiffs. The plaintiffs have admitted that they are out of possession of disputed 90 decimal land. It is not understandable as to how the plaintiffs could seek a decree for permanent injunction for above land in which they do not have possession.

Sections 8 and 9 of the Specific Relief Act, 1877 provides for recovery of possession of immovable property. In Section 8 a plaintiff is granted a decree for recovery of possession on the basis of his lawful title provided the suit is filed within 12 years from the date of dispossession. On the other hand recovery of possession is granted to a plaintiff under Section 9 of the above Act on the basis of his previous possession if he was dispossessed unlawfully. In such a suit a plaintiff is required to prove that he was in possession in the disputed property and the defendant has dispossessed him from the same without his consent and the suit is filed within six months from the date of dispossession. Such a suit is tried summarily without consideration of lawful title in above property.

In the plaint no specific mention has been made if above suit was filed under Section 8 or Section 9 of the Specific Relief Act, 1877. But the averments made in the plaint shows that the plaintiffs claimed recovery of possession on the basis of their purchase of 1.80 acre land of Wazed Sheikh from Arman. The plaintiffs did not claim recovery of possession on the basis of previous possession alone. The plaintiffs also sought a declaratory decree against three registered documents to which they were no parties. But the plaintiffs did not place their title for examination and determination by the Court by way of seeking a decree for declaration of title. The learned Advocate for the respondent submits that above suit was filed under Section 9 of the Specific Relief Act, 1877 but in such a suit possession cannot be claimed on the basis of lawful title nor declaratory relief can be sought against registered documents of the defendants. In view of above materials on record we are of the view that above suit was totally misconceived and the plaintiffs instead of filing a suit under Section 8 of the Specific Relief Act, 1887 most illegally filed above suit for contradictory reliefs which was not tenable in law.

It is admitted that Wazed Sheikh transferred 1.80 acres land to Arman by registered kabla deed dated 30.03.1981 which was subsequently purchase by the plaintiffs by several kabla deeds. Plaintiffs claimed that Wazed Sheikh had title only in above 1.80 acre land and after above transfer to Arman he had not subsisting interest in any land. On the other hand defendants claimed that Wazed Sheikh

had title and possession in 2.70 acre land and Kalu Sheikh had title and possession in 90 decimal land which was established in the compromise decree dated 07.10.1961 of Title Suit No.465 of 1958 of the 1st Court of Munsef, Khulna. The defendants produced and proved certified copy of above judgment and decree which were marked as Exhibit No."Ka16". In view of above specific of claim of the defendants the plaintiffs should have amended the plaint and challenged the legality and propriety of above judgment and compromise decree but the plaintiffs did not do that. In spite of no specific denial by the plaintiffs and in the absence of any relief for declaration of title the learned Joint District Judge travelled beyond the scope of the suit and held that above judgment and decree were fraudulent and collusive which is not tenable in law.

It has been admitted in the plaint that disputed 90 decimal land was recorded in relevant R. S. Khatian in the name of Wazed Sheikh and his heirs transferred above land to the defendants. Above admission shows that whatever title the plaintiffs claim in above land was seriously clouded and disputed but the plaintiffs did not seek any relief for determination of title.

In a suit for possession the plaintiff is required to prove his previous possession and subsequent dispossession by legal evidence. The plaintiffs examined two witnesses to substantiate their claims and allegations as set out in the plaint. PW1 Samir Ahmed gave evidence in Court in support of the plaint but he could not be cross examined by the defendants due to his death. If a witness is not cross examined by

the defendant against whom he gives evidence that evidence does not attain the status of legal evidence nor above evidence can be used against above defendants. As such the evidence of PW Samir Ahmed cannot be treated as legal evidence nor the same can be taken into consideration for determination of above suit. PW2 Selim Ahmed did not reiterate any claim and allegation as set out in the plaint but he merely produced a bench of documents which were marked as Exhibit No.9 series to 10 series. Above witness did not mention anything about the previous possession and subsequent dispossession from above land by the defendants. He stated that his father knew everything he did not know anything of above suit. As such the case of the plaintiff was in fact a case of no evidence. The plaintiffs miserably failed to prove their claim of previous possession in above land and subsequent dispossession the defendants by legal evidence.

On consideration of above facts and circumstances of the case and evidence on record we are of the view that the learned Joint District Judge totally failed to appreciate above evidence on record and most illegally decreed above suit which is not tenable in law.

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 05.02.2017 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.72 of 2011 is set aside and above suit is dismissed on contest against

defendant Nos.12, 13 and 14 and ex-parte against the rest without any cost.

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