

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.5 OF 2021**

Government of peoples Republic of Bangladesh,  
represented by the Deputy Commissioner, Jhenaidah.

.... Appellant

-Versus-

Hedaetulla and others

.... Respondents

Mr. Md. Shaif Uddin Raton, Deputy Attorney General  
with

Mr. Junaed Hossen Khan, Assistant Attorney General

.... For the appellant.

Mr. Md. Rashed Khan, Advocate

.... For the respondent Nos.1-16.

**Heard on 17.05.2026 and Judgment on 19.05.2026.**

**S M Kuddus Zaman, J:**

This First Appeal is directed against the judgment and decree dated 29.10.2017 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Jhenaidah in Title Suit No.72 of 2013 decreeing the same.

Facts in short are that the respondent as plaintiff instituted above suit for declaration of title for 1.72 acres land alleging that 15.73 acres land including above disputed land belonged to Matilal Chandra Ghosh and Jagadish Chandra Ghosh and the same was rightly recorded in C. S. Khatian No.450 and by amicable partition Matilal Chandra Ghosh alone possessed disputed 1.72 acres land. Above Motilal who

died leaving one son Modon Chandra Ghosh who gave settlement of above land to Mariam Nessa predecessor of the plaintiffs by registered deed of patta dated 11.08.2052 and delivered possession. The Government acquired 32 decimal land out of 1.30 acre land of Plot No.523 for construction of power grid office for the Power Development Board. The plaintiff is in continuous possession in above 1.72 decimal land but in S. A. Khatian No.532 only 4 decimal land was erroneously recorded instead of 1.72 acres and the remaining land of above plots were omitted in the S. A. survey. The local Tahshilder denied title of the plaintiff in above land and claimed that above land has vested to the Government.

Defendant No.1 contested above suit by filing written statement alleging that 15.73 acres land of C. S. Khatian No.450 belonged to Matilal Chandra Ghosh and Jagadish Chandra Ghosh. During S. A. operation out of 1.01 acre land of Plot No.527 only 1 decimal land and out of 1.03 acre land of Plot No.523 only 3 decimal were recorded in the name of Mariam Nessa and Afjal Hossain. As such 1 acre land of Plot No.527 and 1 acre land of Plot No.523 were omitted in S. A. survey record and by operation of law above 2 acre land vested in the Government and plaintiff does not have any title and possession in above land. It was further stated that 32 decimal land of Plot No.523 was acquired for Power Development Board vide L. A. Case No.3 of 1962-63.

At trial plaintiff examined two witnesses and defendants examined one. Documents of the plaintiff were marked as Exhibit Nos.1 and 2 but the defendants did not produce any document.

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 defendant as appellant moved to this Court and preferred this First Appeal.

Mr. Md. Shaif Uddin Raton, learned Deputy Attorney General for the appellant submits that the plaintiff has totally failed to prove his title and continuous possession in 1.72 acre land by legal evidence but the learned Judge of the trial Court most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Md. Rashed Khan, learned Advocate for the respondent Nos.1-16 submits that admittedly 15.73 acre land including disputed 1.72 acre belonged to Matilal Chandra Ghosh and Jagadish Chandra Ghosh in equal share and the same was rightly recorded in C. S. Khatian No.450 and by amicable partition Matilal Ghosh alone possessed total land of Plot Nos.527 and 523 and he died leaving only son Modon Chandra Ghosh who transferred above land to plaintiff's predecessor Mariam Nessa by registered deed of patta dated 11.08.1952. Plaintiff No.5 while giving evidence as PW1 produced a certificate copy of above deed of patta before the trial Court but the learned Judge erroneously omitted to mark above document as an

Exhibit. Admittedly 32 decimal land of Plot No.523 was acquired by the Government by L. A. Case No.3 of 1962-63 for Power Development Board and plaintiff does not claim above land and above land is being used by the Power Development Board. Plaintiff is in possession in 1.01 acre land of Plot No.527 and 1.03 acre land of Plot No.523 but in S. A. Khatian No.515 only 1 decimal land of Plot No.527 and 3 decimal land of plot No.523 were recorded in the name of Mariam Nessa and remaining 2 acres land was erroneously omitted. During B. S. survey above total land has been rightly recorded in the names of the plaintiffs in three B. S. Khatians Nos.1183, 1184 and 1185 and plaintiffs are paying rent to the Government for above land. The plaintiffs have produced above finally published three B. S. Khatians in the additional paper book. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge rightly decreed above 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 15.73 acre land including disputed 1.72 acre belonged to Matilal Chandra Ghosh and Jagadish Chandra Ghosh in equal sharers and the same was rightly recorded in C. S. Khatian No.450.

It has been claimed by the plaintiff that by amicable partition Motilal Chandra Ghosh alone possessed total land of Plot No.523 and 527 and he died leaving only son Modon Chandra Ghosh as heir.

Above claims of the plaintiff as set out in the plaint has not been specifically denied by the defendant in their written statement nor the only witness examined by defendant No.1 has been stated anything about above claim. Plaintiff No.5 while giving evidence as PW1 has reiterated above claims of the plaint and stated that by amicable partition Matilal Ghosh alone possessed total land of Plot Nos.523 and 527 and after his demise above land was inherited by his only son Modon Chandra Ghosh. The defendant did not cross examine above witness as to his above evidence. As such the claims of the plaintiff that Motilal Ghosh alone possessed total land of Plot Nos.523 and 527 by amicable partition and after his demise above property devolved upon his only son Modon Chandra Ghosh stand proved by admission.

It is admitted that 32 decimal land of Plot No.523 was acquired by the Government by L. A. Case No.3 of 1962-63 and the plaintiff claims title in remaining 71 decimal land of above plot. It is also admitted that S. A. Khatian No.515 was recorded in the name of Mariam Nessa and her husband Md. Afzal Hossain on the basis of registered deed of patta dated 11.08.1952 for 1 decimal land of Plot No.527 and 3 decimal land of Plot No.523. It is admitted that 1 acre land of Plot No.523 and 1 acre land of Plot No.527 were omitted in the S. A. record which means that above plots were not recorded in any other khatian in the name of any other person.

It turns out from the evidence of PW1 Aman Ullah that he produced a certified copy of above patta deed dated 12.08.1952 but the

same was not erroneously marked as an exhibit by the learned Judge of the trial Court. The plaintiff has produced a certified copy of above patta deed to this Court by an additional paper book which was marked as Annexure-“A”. Above deed shows that Modon Chandra Ghosh gave settlement of 1 acre land of Plot No.527 and 1.03 acre land of Plot No.523 alongwith other land to Mariam Nessa. On consideration of above facts and circumstances of the case and materials on record we hold that the plaintiffs have succeeded to prove by legal evidence that their predecessor Mariam Nessa acquired disputed 1.72 acre land by registered patta deed dated 12.08.1952 from Modon Chandra Ghosh.

As mentioned above admittedly 2 acre land of Plot Nos.523 and 527 were omitted from S. A. Khatian due to the error committed by the concerned Survey Officer. A Khatian is not a deed of title nor a khatian is prepared by the owner of the land. A Khatian is prepared by the Survey Officers by the Government who committed above error and omitted above land from the S. A. survey but above omission does not in any way affect the ownership of the land. A rightful owner of land can not suffer for the error or misdeed of a callous Survey Officer.

It is surprising to note that defendant No.1 a responsible Government Officer has preferred this appeal on a complete misconception of law that if any land is left out from survey record that comes under the ownership of the Government. There is no law which deprives a lawful owner of land from his lawful title in land due to the error the Survey Officers of the Government and not for any fault of the

land owner. Defendant No.1 has claimed title in above land on the basis of omission of above land from S. A. Khatian but admittedly above land has not been recorded in the name of defendant No.1 in the S. A. Khatian.

On consideration of above facts and circumstances of the case and materials on record we are unable to find any illegality in the impugned judgment and decree nor we find any substance in this First Appeal. On correct appreciation of materials on record the learned Joint District Judge rightly decreed above suit which calls for no interference.

In the result, this First Appeal is dismissed.

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