

**Present:**  
**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**

**First Appeal No. 105 of 2021**

**In the Matter of:**

Memorandum of appeal from the original decree.  
-and-

**In the Matter of:**

Md. Mahabub Alam and others.

.....Plaintiff-appellants.

-Versus-

Bangladesh, represented by the

Deputy Commissioner, Dinajpur and others

...Defendant-respondents.

Mr. Khalilur Rahman, Advocate with

Mr. Md. Zahedul Haque Zahid, Advocate

..... For the appellants.

Mr. Md. Yousuf Ali, D.A.G. with

Ms. Kamrunnahar Lipi, A.A.G with

Ms. Golam Akter Zakir, A.A.G with

Ms. Israt Zahan, A.A.G.

.....For the respondent Nos. 1 and 2

**Heard on 27.10.2024, 03.11.2024**  
**and Judgment on 11.12.2024.**

**Sheikh Abdul Awal, J:**

This First Appeal at the instance of the plaintiff-appellants is directed against the judgment and decree dated 10.03.2019 (decree signed on 18.09.2019) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Dinajpur in Other Class Suit No. 13 of 2001 dismissing the suit.

The short fact relevant for disposal of this appeal is that the appellants as plaintiffs instituted Other Class Suit No. 13 of 2001 in the Court of the learned Joint District Judge, 1<sup>st</sup> Court,

Dinajpur against the defendant-respondents praying the following reliefs:

- ক) তফশিল সম্পত্তিতে বিবাদীর বিরুদ্ধে বাদীপক্ষ অনূকূলে স্বত্বের ঘোষণা মূলক ডিক্রী দিতে ।
- খ) আদালত ব্যয় ডিক্রী দিতে ।
- গ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে, যে, প্রতিকার পাইতে হকদার তাহাওদিতে আজ্ঞা হয় ।

The plaint case in short is that the plaintiffs got right, title and possession in the suit schedule land by way of successors. The Government never declared the suit land as forest land through Gadget Notification, 1954 for hundred years as per section 7 of the East Bengal Forrest Act 1949. The suit land have been possessing chronologically by the plaintiffs over a period of 60 years by planting and cutting trees. The defendants on 15.11.2000 at 10 a.m. restrained the plaintiffs from cutting trees claiming Government's title over 8.40 decimals of suit land and hence the suit.

The Government defendant Nos. 1-2 entered appearance in the suit and filed written statements denying all the material averments made in the plaint stating, inter-alia, that the suit is not maintainable in its present form and manner, the suit is barred by limitation and barred section 42 of the Specific Relief Act. Plaintiffs have/had no right, title and possession in the suit land. Government declared the land as forest land through Gadget Notification of 1954 for hundred years as per section 7 of the East Bengal Forrest Act 1949. Plaintiffs filed the suit on false averments and as such, the suit is liable to be dismissed.

The learned Joint District Judge on the pleadings of the parties framed the following 5 issues for determination.

- 1) Whether the suit is maintainable or not?
- 2) Whether the suit is barred by limitation or not?
- 3) Whether the plaintiffs have right, title and possession in the suit land or not?
- 4) Whether the suit land is forest land or not?
- 5) Whether the plaintiffs are entitled to get any reliefs or not?

At the trial the plaintiffs examined in all 4 witnesses and defendants examined 1 witness and adduced some documentary evidence to prove their respective cases.

The trial court on consideration of the facts and circumstances of the case and evidence on record dismissed the suit by the impugned judgment and decree dated 10.03.2019.

Being aggrieved by the aforesaid the impugned judgment and decree dated 10.03.2019, the unsuccessful plaintiffs preferred this first appeal before this court.

Mr. Khalilur Rahman, the learned Advocate appearing for the appellants submits that the trial court has failed to appreciate that the C.S. record bears presumption of ownership of the plaintiffs in the suit land in view of the provision of section 103(B) of the Bangal Tenancy Act and since the defendants have totally failed to rebut the presumption of the C.S. record, the trial Court ought to have decreed the suit and as such, the impugned judgment is liable to be set aside. The learned Advocate further submits that it is the settle principle of law that the record of

right is the evidence of possession and the C.S. and the S.A. Khatian that stand in the name of the predecessor of the plaintiffs, PWs testified in one voice that the plaintiffs are in possession over the suit land although the trial court without considering all these aspects of the case mechanically dismissed the suit and as such, the impugned judgment is not sustainable in law.

Mr. Yousuf Ali, the learned Deputy Attorney General appearing on behalf of the respondent Nos. 1 and 2 supports the impugned judgment, which was according to him just, correct and proper.

Having heard the learned counsels for both the sides and having gone through memo of appeal and other materials on record including the impugned judgment.

To cut short the matter at the very outset, we like to mention that in this case at the time of hearing of the appeal both the parties filed 2 separate applications under Order 41 Rule 27 of the Code the Civil Procedure for acceptance of additional evidence.

Mr. Khalilur Rahman, the learned Advocate appearing for the appellants submits that the plaintiffs having not been properly advised in the trial court and thereupon failed to submit any rent receipts in course of trial. That the plaintiffs lastly paid the rent of the suit land on 16.04.1990. C/C No. 48/89-90, vide serial No. B 888134.

Mr. Md. Yousuf Ali, the learned Deputy Attorney General submits that due to wrong advice of the local Government pleader the defendant-respondents could not prove rent receipts

of the suit land and two official Gazettes which needs to exhibit for proper adjudication of the matter.

On a close perusal of the impugned judgment it appears that the learned Trial Judge, in fact, did not consider the evidence of PWs both oral and documentary particularly on the point of possession. Since both the parties have filed 2 separate applications under Order 41 Rule 27 of the Code for acceptance of additional evidence, we are of the view that the suit should be decided by taking into consideration the case of the parties for the purpose of complete adjudication and for the said purpose the suit may be remanded to the trial Court for fresh trial by giving an opportunity to the parties to adduce fresh evidence in support of their respective cases.

In the result, the appeal is allowed. The impugned judgment and decree dated 10.03.2019 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Dinajpur in Other Class Suit No. 13 of 2001 are set aside and the suit is sent back to the trial Court for fresh trial and both the parties will be at liberty to adduce fresh evidence in support of their respective cases and thereafter the learned trial Court shall dispose of the suit on merit in accordance with law.

Let a copy of this judgment along with lower Courts record be sent down at once.

**Md. Mansur Alam, J:**

I agree.