0IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present:

Madam Justice Kazi Zinat Hoque

Civil Revision No. 4345 of 2023

In the matter of :
An application under section 115(1) of the of the Code of Civil Procedure, 1908.

-And-

In the matter of :

The Government of the People's Republic of Bangladesh, represented by the Solicitor Wing, Law and Justice Division, Ministry of Law and Justice Parliamentary Affairs.

..... Petitioner

-VERSUS-

Shawpan Banerjee and others

.....…Opposite parties

Mr. Aneek R. Haque, Addl. Attorney General with
Ms. Mahbuba Akter Jui, DAG with
Mr. Rasheduzzaman Majumder, AAG and
Ms. Fatema Noor Nazmoon, AAG

.....For the petitioners

Mr. Sukumar Biswas, Advocate with
Ms. Benojir Shakina, Advocate

.....… For the opposite party Nos. 1, 4-6

Date of Hearing : 19.05.2026, 08.06.2026, 11.06.2026 and 05.07.2026.

And

Date of Judgment: 16th July, 2026.

Kazi Zinat Hoque, J :

This Civil Revision is directed against the impugned judgment and decree dated 22.05.2019 (decree signed on 29.05.2019) passed by the learned District Judge, Jhenaidah, in Civil Appeal No. 52 of 2017, whereby the judgment and decree dated 24.09.2017 (decree

signed on 28.09.2017) passed by the learned Senior Assistant Judge, Jhenaidah Sadar, Jhenaidah, in Title Suit No. 423 of 2007 were reversed.

Relevant Facts

The relevant facts, necessary for disposal of the Rule, are that the disputed land was originally owned by one Durga Das. The disputed land was subsequently recorded in the names of Barek Ali Mondol, Khorshed Ali Mondol, Khuki Nesa, Moyna Bibi, Thanda Bibi and Chabirannesa Bibi. Thereafter, around B.S. 1337/1338, the disputed land was restored to Durga Das as the aforesaid persons failed to pay the revenue (khajna). Since then, the disputed land remained in the khas possession of Durga Das and was accordingly recorded in his name under C.S. Khatian Nos. 458, 302 and 113.

Durga Das Moulik died leaving behind his only son, Narendra Bhushan Moulik, as his heir. On 19.06.1934 (B.S. 1341), Narendra Bhushan Moulik transferred the disputed land to Mrinalini Devi by registered Deed No. 1084. Thereafter, Mrinalini Devi distributed the disputed land among her sons, who continued to enjoy khas possession thereof.

The disputed land was subsequently recorded in the names of the six sons of Mrinalini Devi, namely Kalidas, Mrigank, Shaymadas, Ramkrishna, Narayan Bandyopadhyaya and Shomesh Banerjee, under S.A. Khatian Nos. 393, 263 and 95. Since then, the plaintiffs

have been enjoying khas possession of the disputed land and have been paying revenue (khajna) to the concerned land authority for more than 12 years.

None of the aforesaid owners resided in India either before or after 1965. Consequently, the disputed land could not legally be treated either as enemy property or as vested property.

On 20.11.2007, during the survey, the plaintiffs first came to know that the disputed land had been declared as vested property. The concerned authority consequently refused to record the land in the names of the plaintiffs in the R.S. Khatian.

The defendant-Government contested the suit by filing a written statement.

Both parties examined witnesses and produced documentary evidence in support of their respective claims.

Upon hearing the parties and considering the evidence on record, the learned trial court, by its judgment and decree dated 24.09.2017 (decree signed on 28.09.2017), dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Civil Appeal No. 52 of 2017 before the learned District Judge, Jhenaidah. Upon hearing the parties, the Court of Appeal below allowed the appeal and set aside the judgment and decree of the trial court.

Feeling aggrieved by and dissatisfied with the said judgment and decree of the Court of Appeal below, the Government-respondent filed the instant Civil Revision.

Submission of the Learned Counsels

Mr. Aneek R. Haque, learned Additional Attorney General, appearing with Ms. Mahbuba Akter Jui, learned Deputy Attorney General, and Mr. Rasheduzzaman Majumder, learned Assistant Attorney General, representing the petitioner, argued that the burden of proving that the original owner of the suit property migrated to India during the Indo-Pakistan War of 1965 lies upon the claimant. However, he fairly conceded that the Government has not included the suit property in the list of vested properties by any gazette notification nor could he show the basis of inclusion of the suit property in the record in the name of the Government.

The Rule has been opposed by opposite party Nos. 1 and 4–6. Mr. Sukumar Biswas, learned Advocate, appearing with Ms. Benojir Shakina, learned Advocate, argued that the Government failed to establish the legal basis of its title and wrongly recorded the suit property in R.S. Khatian No. 1/1 as vested property. He further submits that the original owner of the suit property never left Bangladesh either before or after 1965 and that the trial court failed to properly consider this aspect. The learned Advocate submits that the Court of Appeal below rightly set aside the judgment of the trial court and decreed the suit. He accordingly prays for discharge of

the Rule and places reliance upon several decisions of the Supreme Court of Bangladesh.

Historical Significance

The Enemy Property regime and the subsequent Vested Property regime have been the subject of considerable judicial, legislative and academic scrutiny because of their significant impact on property rights and, in particular, on the property of minority communities. The enactment of the Vested Property Return Act, 2001 reflects the legislative recognition of the necessity of providing a statutory mechanism for the restoration of properties that had been wrongly vested, subject to the provisions of law.

Findings of the Trial Court

The trial court found that the S.A. Khatian had been recorded in the name of the predecessors of the plaintiffs. However, as the plaintiffs instituted the suit on 29.11.2007 before the final publication of the R.S. record, the trial court held that the suit was premature. It further held that the plaintiffs had failed to establish their chain of title.

The finding that the suit was premature merely because it had been instituted before the final publication of the R.S. record was erroneous. The plaintiffs were constrained to institute the suit after the Settlement Officers refused to record their names in the R.S. record and after their title was disputed.

The trial court also found that the plaintiffs had failed to establish their complete title. At the same time, upon consideration of the documents and evidence on record, it found that the plaintiffs had established their possession over at least a portion of the suit property and that there was insufficient evidence to establish how the Government had acquired title to the property. The trial court ultimately dismissed the suit.

Findings of the Court of Appeal Below

The court of appeal below considered the documentary and oral evidence in detail and came to a different conclusion.

From Exhibit-1 and Exhibit-1/Ka, it appeared that the original owners of the suit property were Durga Das Moulik and Barek Ali Mondol and others were tenants under Durga Das Moulik. Exhibit-3 showed that Narendra Bhushan Moulik, son of Durga Das Moulik, transferred the property in favour of Mrinalini Devi by a registered Patta Deed dated 19.06.1934.

The S.A. Khatian Nos. 263 and 95, marked as Exhibits-2 and 2/Ka, showed that the property had been recorded in the names of six sons of Mrinalini Devi, namely Mrigank, Kalidas, Shyamadas, Ramkrishna, Narayan and Shomesh. S.A. Khatian No. 393, marked as Exhibit-2/Kha, was recorded in the names of Mrigank and Kalidas Bandyopadhyay.

During cross-examination, P.W.1 stated that Mrigank Bhushan died in Bangladesh. He denied the suggestion that Mrigank had migrated to India during the Indo-Pakistan War of 1965, had died there issueless, and that his five brothers were therefore not his heirs.

On the other hand, D.W.1 admitted during cross-examination that he had not seen Mrigank and had no document relating to his alleged migration to India. In these circumstances, the Court of Appeal below rightly found that the S.A. Khatian constituted evidence of the existence of Mrigank and his five brothers as co-owners.

P.W.1 further stated that Mrinalini Devi had six sons. Although there was no reference to Ramkantho in one portion of the evidence, the defendants neither disputed the statement nor cross-examined P.W.1 on that issue. The Court of Appeal below accordingly held that the inclusion of seven persons was a typographical error and that the trial court had erred in treating the suit as bad for defect of parties.

The plaintiffs also claimed that they were the heirs of Mrigank and that Mrigank died in Bangladesh in 1970, leaving behind his five brothers. Although the defendants alleged that Mrigank had migrated to India during the 1965 War, they failed to produce any documentary or oral evidence in support of that allegation. The court of appeal below therefore held that the absence of a death

certificate, by itself, was not sufficient to disbelieve the evidence of the plaintiffs.

The court of appeal below further observed that the plaintiffs, being the brothers of Mrigank, were competent witnesses regarding his death and succession. It also considered the definition of “owner” under section 2(ঙ) of the Vested Property Return Act, 2001.

With regard to possession, the rent receipts produced by the plaintiffs, marked as Exhibit-4 series, showed that the concerned authority had accepted rent in respect of the property covered by S.A. Khatian Nos. 263 and 95 in the name of Kalidas Digor. P.W.1 stated that the plaintiffs were in possession of the suit property, and this statement was supported by P.W.2.

The Government, despite cross-examining the witnesses, failed to establish that the plaintiffs were not in possession of any portion of the suit property. Nor did the Government challenge the finding that it was not in possession of the property.

The court of appeal below therefore held that the plaintiffs, being the heirs of Mrigank and having established their possession, had proved their interest in the suit property. It consequently found that the recording of the R.S. Khatian in the name of the Government was erroneous.

The court of appeal below also rejected the findings of the trial court that the suit was bad for defect of parties and that it was premature.

As regards limitation, the court of appeal below found that the defendants had not raised any specific objection that the suit was premature. Rather, in the written statement, the Government asserted that Khatian No. 1/1 had correctly been recorded in its name.

The plaintiffs instituted the suit after their lawful title had been clouded by the claim of the Government. The court of appeal below therefore held that the suit had been instituted within the period of limitation and that the finding of the trial court that the suit was premature was erroneous.

Accordingly, the court of appeal below rightly allowed the appeal, set aside the judgment and decree of the trial court and decreed the suit.

Applicable Principles of Law

It is a settled principle of law that where the Government seeks to treat property as enemy or vested property on the ground that the original owner migrated to India, the burden lies upon the Government to establish such migration.

In *Abul Khair Miah being dead, his heirs: Abul Kashem and others vs. Bangladesh and others*, 32 DLR (AD) (1980) 29, the Appellate Division held that before property could be treated as enemy property, the authority concerned was required to establish that the appellant or his vendors had migrated to India before the Enemy Property law came into operation in 1965.

In *Arati Rani Paul vs. Sudarshon Kumar Paul*, 56 DLR (AD) 73, the Appellate Division held that following the repeal of the Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969, no property could thereafter be enlisted as vested property on the basis of that repealed law.

In *Benoy Bhusan Bardhan, being dead, his heirs, Pronoy Bhushan Bardhan and others vs. The Sub-Divisional Officer, Brahmanbaria and another*, 30 DLR (SC) (1978) 139, the Court explained the nature of the possession and rights of co-sharers in joint property and held that the possession of one co-sharer is, in law, also the possession of the other co-sharers until partition by metes and bounds.

In *Government of Bangladesh vs. Paresh Chandra Gharami and others*, 50 DLR (AD) (1998) 70, the Appellate Division held that where the Government failed to establish the legal foundation for enlisting the suit property as vested property and the plaintiffs produced evidence in support of their interest, the decree in favour of the plaintiffs was justified.

Similarly, in *Maran Mondal, being dead, his heirs Dayal Chandra Mondal and others vs. The Assistant Custodian of Vested and Non-Resident Properties and others*, 18 BLD (HC) (1998) 21, it was held that where a V.P. case was initiated after the lifting of the emergency, the Government was required to satisfy itself, upon proper inquiry, that the recorded tenant had migrated to India before 1965. A mere stray note or unverified report could not by itself establish such migration.

Decision

In the present case, the Government has failed to produce sufficient evidence establishing that Mrigank migrated to India during or after the Indo-Pakistan War of 1965. No reliable documentary evidence of such migration has been produced. On the contrary, the evidence on record supports the finding that Mrigank died in Bangladesh and that the plaintiffs are his surviving brothers and successors in interest.

The documentary evidence, including the S.A. Khatians and rent receipts, together with the oral evidence, establishes the plaintiffs' interest and possession in the suit property. The Government has also failed to establish the legal foundation upon which the property was recorded as vested property.

In view of the facts and circumstances of the case and the principles of law laid down in the decisions referred to above, I am of the

view that the court of appeal below rightly allowed the appeal and set aside the judgment and decree of the trial court.

The Rule, having no merit, is liable to be discharged.

In the result, the Rule is discharged without any order as to costs. The judgment and decree of the trial court are set aside and those of the Court of Appeal below are affirmed.

Let the lower court records, along with a copy of this judgment, be sent down to the concerned court forthwith.

(Kazi Zinat Hoque, J)

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