

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.311 OF 2016**

Mohammad Hanif being dead his heirs- Rubaiyat Hanif  
and others

.... Appellants

-Versus-

Government of Bangladesh represented by the Deputy  
Commissioner, Dhaka and others

.... Respondents

Mr. Mohammad Moyeen Alam Firozee, Advocate

.... For the appellants.

Mr. Arshadur Rouf, Additional Attorney General with  
Mr. Mohammad Rashadul Hassan, Assistant Attorney  
General

Ms. Bilkis Nasema Rahman, Assistant Attorney General

Mr. Md. Abdus Salam, Assistant Attorney General

Mr. Mohammad Nazmul Hassan Siddique, Assistant  
Attorney General

.... For the respondents.

**Heard on 19.07.2026 and 24.08.2026.**

**Judgment on 25.08.2026.**

**S M Kuddus Zaman, J:**

This First Appeal at the instance of the plaintiff is directed against  
the judgment and decree dated 17.08.2016 passed by learned Joint  
District Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No.247 of 2012 dismissing  
the suit.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 0.46725 ajutansha land and for further declaration that preparation of City Survey Khatian No.1 for above land in the name of the defendants is erroneous and not binding upon the plaintiffs stating that above land and other land was acquired by the Government in 1920 and handed over to Dhaka Municipality for construction of drainage system. The Dhaka Municipality auction sold above land since the same was not required for above project which was purchased by Amir Uddin Khalifa and Abdus Salam Sarder on 20.03.1925. Above auction sale was confirmed on 09.03.1927 and Dhaka Municipality executed and registered transfer deed to above purchasers. By amicable partition Abdus Salam Sarder alone was in exclusive possession in above land and after his demise his heirs transferred above land to Kazi Abdur Rashid by registered kabla deed dated 21.07.1928 and the successive heirs of above Kazi Abdur Rashid transferred above land to the plaintiffs by four separate registered kabla deeds dated 12.01.1984. Above land was rightly recorded in the the predecessors of the plaintiffs in the name of relevant S. A. Khatian and R. S. Khatian No.2041 but in the City Survey Khatian above land has been erroneously recorded in the name of the Government in Khatian No.1 and on the basis of above erroneous record defendants refused to receive rent.

Defendant Nos.1-5 contested above suit by filing a joint written statement alleging that disputed land has been rightly recorded in the

name of the Government in City Survey Khatian No.1 and the plaintiff does not have any lawful title and possession in above land.

At trial plaintiffs examined four witnesses and documents of the plaintiffs were marked as Exhibit Nos.2-8. Defendant Nos.1 and 2 partially cross examined PW1 Md. Sarwar Alam but they did not cross examine remaining plaintiffs witnesses nor above defendants adduced any evidence oral or documentary.

The learned Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as appellants moved to this Court and preferred this First Appeal.

Mr. Mohammad Moyeen Alam Firozee, learned Advocate for the appellants submits that above land and other land was acquired by the Government in 1920 for construction of drainage system of Dhaka Municipality but disputed land was not required for above project. Dhaka Municipality auction sold disputed land which was purchased by Amir Uddin Khalifa and Abdus Salam Sarder on 23.05.1927 and by successive transfer by registered kabla deeds plaintiffs acquired above land in 1984 by four separate registered kabla deeds. Relevant S. A. and R. S. Khatians of above land was rightly prepared in the names of the predecessors of the plaintiffs and above land comprises a pacca dwelling house and plaintiffs are residing in above house by paying municipal taxes and electricity bills. Defendant Nos.1-5 did not dispute the correctness and genuinity of above registered kabla deeds of the

plaintiffs or S. A. and R. S. Khatians of above property. Defendants did not mention the basis of City Survey Khatian which stands in their names. Plaintiffs examined four witnesses and produced registered kabla deeds, relevant R. S. Khatian and information slip as to the S. A. Khatian but the learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and evidence on record and most illegally dismissed above suit which is not tenable in law. The learned Advocate lastly submits that the plaintiffs have purchased 8.30 decimal land by four registered kabla deeds in 1984 but erroneously one kabla deed could not be produce in the trial Court and in the schedule of the plaint relief was sought only for 4.67 decimal land. The plaintiffs sought a copy of the S. A. Khatian but the concerned office could not supply a copy of the same. Now the plaintiffs are in possession of above S. A. Khatian. The learned Advocate submits that the plaintiffs are required to make amendment of the plaint and adduced further evidence to make up above deficiencies and submits that the ends of justice will be met if the erroneous judgment and decree of the trial Court is set aside and above suit is remanded to the trial Court for retrial.

On the other hand Mr. Arshadur Rouf, learned Additional Attorney General for the respondents submits that defendant No.1-5 filed written statement but did not mention the basis of disputed City Survey Khatian which stands in their names. PW1 was partially cross examined by the defendants but other PWs could not be cross examined. On consideration of above materials on record the learned Additional

Attorney General submits that the suit may be remanded for retrial and the defendants may also be given an opportunity to file additional written statement and cross examine above PWs and adduce further evidence.

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

The plaintiffs admit that the disputed property was acquired by the Government in 1921 and handed over to the Dhaka Municipality for construction of drainage system and the Dhaka Municipality auctioned sold disputed land which was found to be unnecessary which was purchased by the plaintiff's predecessor. As such the plaintiff was not required to establish the right, title and interest of the C. S. recorded tenants. It has been further alleged by the plaintiffs that relevant S. A. Khatian and R. S. Khatian were prepared in the names of their predecessors. The plaintiffs have submitted an information slip which shows that the certified copy of the S. A. Khatian could not be supplied due to partial damage of the document. Plaintiffs have produced a certified copy of R. S. Khatian No.2041 (Exhibit No.3) which shows that 1660 ajutansha land including the disputed land was recorded in the name of Kazi Abdus Sarwar and Haroon Or Rashid and Kazi Abdul Anowar Aminur Rashid in equal shares and the nature of the land was a pacca dwelling house. In their written statements defendants did not challenge the legality and propriety of the registered kabla deeds of the plaintiffs or R. S. Khatian No.2041. Since R. S. Khatian of disputed

property stands in the name of Kazi Abdus Sarwar and other predecessors of the plaintiffs the defendants were required to mention the basis of the CitySurvey Khatian which stands in their names.

The learned Advocate for the appellants has submitted a petition for amendment of the plaint stating that total land of the plaintiffs was not incorporated in the schedule to the plaint and they were required to adduce further evidence to establish their title and possession in 8.30 decimal land. The learned Advocate for the respondents concedes that the written statements filed by the defendants were also incomplete and the defendants could not cross examine plaintiff witnesses nor they could adduce any evidence in the trial Court.

On consideration of above facts and circumstances of the case and evidence 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 parties an opportunity to amend their respective pleadings and adduce further evidence.

In the result, this First Appeal is allowed.

The judgment and decree dated 17.08.2016 passed by learned Joint District Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No.247 of 2012 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

The learned Joint District Judge is directed to dispose of above suit in accordance with law expeditiously 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 record immediately.

**Tamanna Rahman Khalidi, J:**

I agree.

**MD. MASUDUR RAHMAN  
BENCH OFFICER**