

**IN THE SUPREME COURT OF BANGLADESH**  
**HIGH COURT DIVISION**  
**(Civil Appellate Jurisdiction)**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo  
and  
Mr. Justice Mohi Uddin Shamim

**FIRST APPEAL NO. 341 OF 2010**

IN THE MATTER OF:

Government of the People's Republic of  
Bangladesh, represented by the Deputy  
Commissioner, Sherpur.

... Defendant No.1-appellant

-Versus-

Md. Abul Hashem being died his legal heirs  
1(Ka) Kamrun Nahar Hashem and others

... Defendants-proforma-respondents

Mr. Mohammad Mohsin Kabir, DAG with  
Ms. Mina Begum (Mini), AAG with  
Mr. Md. Asikuzzaman Nazrul, AAG with  
Mr. Md. Mozammel Hossain, AAG

... For the defendant No.1-appellant

Mr. Mohammad Musa, Advocate

.... For the respondent Nos.1(Ka)-1(Gha)

Heard on 27<sup>th</sup>, 30<sup>th</sup> October & 7<sup>th</sup>, 10<sup>th</sup> November, 2024

and

Judgment on 1<sup>st</sup> December, 2024

Mohi Uddin Shamim, J

At the instance of defendant No.1, this appeal is directed against

the judgment and decree dated 09.07.2008 (decree signed on 15.07.2008)

passed by the learned Joint District Judge, 1st Court, Sherpur in Other Class Suit No.01 of 2007 decreeing the suit.

The facts relevant for the disposal of the appeal, in brief, are that the present respondent Nos.1-6, as plaintiffs, filed Other Class Suit No.01 of 2007 against the Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Sherpur and others, as defendants, before the learned Joint District Judge, 1st Court, Sherpur seeking a declaration of title to the suit land.

The plaintiffs' case is that one Rama Sundary Dassya, the C.S. recorded tenant of the disputed land under C.S. Khatian No.298, sold the land to one Gopal Chandra Das Chowdhury Zamindar through a registered sale deed (No.3323) dated 24.04.1937 and delivered possession to him. Subsequently, Gopal Chandra Das Chowdhury, while owning and possessing the land, transferred it to Gobinda Kumar High School on 20.12.1946 through an oral settlement for using as a playground, formalized with a "pattani rukka." Since the settlement, the said school had been possessing the suit land by mutating its name and opening a new Mutation Khatian (No.729) under Mutation Case No.43(I-IX)60-61 and paying rent and taxes to the Government. The

school, represented by a managing committee of seven members headed by the Upazila Nirbahi Officer (UNO), sold portions of the scheduled suit land; - 40 decimals to Md. Idris Meah (Sale Deed No.13105), 25 decimals to Md. Yunus Ali (Sale Deed No.13104), and 30 decimals to Md. Abul Hashem (plaintiff No.1, Sale Deed No.13106). All three deeds were registered on 23.09.1986. The plaintiff-respondents had been in possession of the lands, building houses, shops, and vitas. However, during the R.O.R. survey, the said lands were erroneously recorded in the name of the Government as Government 'Khas land' instead of Gobinda Kumar High School's land.

As a result of this wrongful recording, Idris Meah, Yunus Ali, and Abul Hashem (plaintiff No.1) filed Title Suit No.5 of 1987 against defendant No.1-appellant. The suit was decreed on contest on 07.09.1987 against defendant No.1, following which the plaintiffs in Title Suit No.5/87 mutated their names by opening Khatian No.1104. Subsequently, Idris Meah transferred 7 decimals of the suit land to his wife Sajeda Begum through a registered 'Heba Bil Awaz' deed (No.14385) dated 30.11.1992, and Sajeda Begum, in turn, transferred the same to plaintiff No.2 Kamrun Nahar through a registered saf kobala deed

(No.3369) dated 18.03.1997. While the plaintiffs were owning and possessing the suit lands separately through family partition and paying government taxes and rents, on 12.02.2007 defendant No.2 informed them that the scheduled land belonged to the Government and was recorded in the B.R.S. record as such. Thus, the cause of action for the suit arose.

Defendant-appellant Nos.1 and 3-24 contested the suit by filing two separate written statements denying all material allegations made in the plaint. The contesting defendants asserted that the land in question, i.e., 0.96 acres in S.A. Dag No.500, corresponding to C.S. Dag No.444, had been recorded in the name of the Collector, Mymensingh on behalf of the Province of East Pakistan under Government Khas Khatian No.1. In the B.R.S. record, S.A. Dag No.500 was converted into B.R.S. Dag Nos.2173 and 2174, with 0.10 acres recorded as a road under Dag No.2173 and 0.86 acres recorded as khanda land under Dag No.2174 in B.R.S. Khas Khatian No.1 in the name of the Deputy Commissioner, Sherpur on behalf of the Government of Bangladesh.

There is an existing 3'x5' road on Dag No.2173 used daily by hundreds of local people. The plaintiffs allegedly encroached on part of

Dag No.2173 by constructing a boundary wall on the road. Since the scheduled land is Government Khas land and Dag No.2173 is a public road, the defendants argued that public interest is involved there. They contended that decreeing the suit in favour of the plaintiffs or granting a temporary injunction would result in the Government losing valuable land and causing irreparable harm to the public. The defendants also alleged that the plaintiffs filed the case with forged and fabricated documents to grab valuable Government property and prayed for dismissal of the suit.

On the above pleadings of the parties, the learned Judge of the trial Court framed the following issues in the suit: -

- i. whether the suit is maintainable in its present form and manner.
- ii. whether the suit is barred by limitation.
- iii. whether the plaintiff has right, title and interest in the scheduled land.
- iv. whether the plaintiffs can get their claimed declaratory decree.
- v. whether the plaintiffs could get any other relief.

The learned trial Court after hearing the contending parties decreed the suit by its judgment and decree dated 09.07.2008.

Being aggrieved by and dissatisfied with the said judgment and decree dated 09.07.2008 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Sherpur in Other Class Suit No.1 of 2007 the defendant No.1 as appellant preferred this appeal.

Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General for defendant No.1-appellant, refers to the memo of appeal, the impugned judgment and decree, and the evidences on record submits that, the trial Court wrongly passed the impugned judgment and decree without properly considering the facts, material evidences, witness depositions, and the relevant laws, nor did it discuss the defendants-appellant's case, leading to gross illegality, warranting its being set aside. He argues that the scheduled land is wasteland, Dag No.2173 is a public road used daily by locals, and Dag No.2174 is a playground. With the previous owner having migrated to India and no claimants, the land vested in the Government and was recorded in R.O.R. Khatian No.1 and successive B.R.S. records. Thus, the judgment and decree are liable to be set aside.

He further contends that the plaintiffs must prove their case based on title, and defendants' witnesses cannot suffice to establish the plaintiffs' claim. The trial Court failed to appreciate this settled principle and erroneously decreed the suit based on mere surmise. He also points out that the plaintiffs' claim that Gobinda Kumar High School received the land from Gopal Chandra Das Chowdhury lacks evidence, as possession was not transferred, and no transfer documents were produced. Lastly, he argues that the suit is barred by the principle of res judicata, as the predecessors of the respondents had already filed Other Class Suit No.5/87 against the same defendant for a declaration of title, which was decreed. Thus, he prays for the judgment and decree to be set aside by allowing the appeal.

On the contrary, Mr. Mohammad Musa, the learned Advocate for respondent Nos.1(Ka) to 1(Ga), refers to the impugned judgment, plaint, documents, and evidences. At the very outset, he submits that one Rama Sundary Dassya, the C.S. recorded tenant of the disputed land under C.S. Khatian No.298, sold the land to Gopal Chandra Das Chowdhury Zamindar via registered Sale Deed No.3323, dated 24.04.1937 and delivered possession to him. Gopal Chandra Das Chowdhury transferred

the land to Gobinda Kumar High School on 20.12.1946 through an oral settlement for use as a playground, formalized with a "pattani rukka."

Since then, the school has possessed the land, mutating its name and opening Mutation Khatian No.729 under Mutation Case No.43(I-IX)60-61, while paying rent and taxes to the Government. The school was represented by a managing committee of seven members headed by the Upazila Nirbahi Officer (UNO). The school's Headmaster sold portions of the suit land; i.e. 40 decimals to Md. Idris Meah (Sale Deed No.13105), 25 decimals to Md. Yunus Ali (Sale Deed No.13104) and 30 decimals to Md. Abul Hashem (plaintiff No.1, Sale Deed No.13106) and all 3 deeds were registered on 23.09.1986. The plaintiffs erected houses, shops, and vitas on the land. However, during the R.O.R. survey, the land was erroneously recorded as Government Khas land instead of Gobinda Kumar High School's land. As a result, Idris Meah, Yunus Ali, and Abul Hashem (plaintiff No.1) filed Title Suit No.05 of 1987 against the present appellant. The suit was decreed on 07.09.1987, and the plaintiffs mutated their names in Khatian No.1104. Subsequently, Idris Meah transferred 7 decimals of the land to his wife Sajeda Begum via registered 'Heba Bil Awaz' deed No.14385, dated 30.11.1992. Sajeda Begum then



transferred the same to plaintiff No.2 Kamrun Nahar through saf kobala deed No.3369, dated 18.03.1997. While the plaintiffs were in possession, paying taxes and rents, defendant No.2 informed them on 12.02.2007 that the land belonged to the Government as per the B.R.S. record and asked them to relinquish possession, giving rise to the cause of action. He further submits that although the earlier suit (Other Class Suit No.5/87) sought a declaration of title, the present suit (Other Class Suit No. 1 of 2007) was correctly filed to remove the cloud on the plaintiffs' title.

In this regard the learned Advocate for the respondent Nos.1(Ka) to 1(Gha) cited a decision in the case of *Government of Bangladesh Vs. A. K. M. Abdul Hye and others*, reported in 24 BLD (AD) 85 wherein their lordship's held that;

*"The person whose interest is affected by wrong record need not file suit questioning legality of the record of rights so prepared, but he is required to file a suit seeking declaration of title within six years."*

And as such there is no bar for the subsequent suit seeking declaration of title.

He further submits that the defendant-appellant's claim of res judicata is unfounded, as no such issue was framed regarding the subject matter of the present suit, nor was it considered during the trial or raised by the defendant-appellant. Moreover, the issue in the present suit was neither directly nor substantially the same as that in the previous suit, and therefore, the principle of res judicata does not apply. In this regard, the learned Advocate for the respondent Nos.1(Ka) to 1(Gha) cited a decision in the case of *The Oriental Bank Ltd. Vs. Mrs. Rina Alam and another*, reported in 25 BLD (AD) 108, wherein, their lordship's held that;

*“In the instant suit, the issue involved was not directly or substantially an issue in the previous suit so as to render the present suit barred by the principle of res-judicata.”*

However, the learned judge of the trial court with elaborate discussion discarded the issue of res-judicata in his judgment and decree which requires no intervention by this court.

He further submits that the plaintiff-respondents have successfully established their right and title over the suit land through documentary evidence and witnesses. Although the scheduled land was erroneously recorded in the Government's name, it is a settled principle of law that

ownership cannot be claimed based on a wrongful record. He concludes by praying for the appeal to be discharged.

We have heard and carefully considered the submissions so advanced by the learned counsels for the defendant no.1-appellant and the plaintiffs-respondent nos.1(Ka)-1(Gha) at length. We have also meticulously reviewed the impugned judgment and decree, along with all the documents appended in the paper books.

Moreover, to prove their title and possession to the suit land, the plaintiffs-respondents' also produced 4 witnesses and cross examined all 6 DWs produced and examined by the defendant No.1 Appellant.

PW-1 deposed as “আমরা নাঃ জমিতে ক্রয়সূত্রে ভোগ দখলকার আছি। আর.ও.আর ভ্রমাত্মক ভাবে প্রকাশিত হওয়ায় এর বিরুদ্ধে ৫/৮-৭ নং অন্য প্রকার মোকদমা দায়ের করি যাতে ৭/৯/৮-৭ ইং তারিখে দোতরফা সূত্রে ডিক্রী লাভ করি। উক্ত ডিক্রী মোতাবেক নাঃ জমি বাবদ খারিজ খতিয়ান প্রস্তুত করেছি।”

**In cross** he stated as “সত্য নয় নাঃ জমি-ত আমা-দর স্বত্ব দখল নাই। ..... এজমালী-ত ভোগ দখল করতাম। প-র রেজিস্ট্রার্ড ঘ-রায়া বন্টন করি । ..... দাবীকৃত সম্পূর্ণ আমার দখ-ল কোন রাস্তা নাই ।”

P.W.-2 “এই জমির ম-ধ্য সরকা-রর কোন দখল নাই। বাদীরা প্রায় ২২/২৩ বৎসর যাবৎ এই সম্পত্তি ভোগ দখল করে। এই ৯৫ শতক জমির ভিতর দিয়া কোন রাস্তা নাই ।”

in cross he was consistence with his examination.

PW-3 “এই জমি সম্পত্তি বাদীরা দখল করে। এই সম্পত্তির চারদিকে দেয়াল ঘেরা এবং ভিত-র বাসাবাড়ী, গুদাম, কর্মচারী-দের অফিস আ-ছ । এর মধ্য বিবাদী সরকারি কোন দখল নাই। এর ভিতর চলাচলের রাস্তা নাই।”

In cross “..... বাদীরা ২৩/২৪ বৎসর যাবৎ দখল ক-র ত-ব ক-ব দখল প্রাপ্ত হয় সঠিক তারিখ ম-ন নাই। “..... ইহা সত্য নয় নালিশী জমি সরকারী খাস জমি”

P.W.-4 “মামলার জমি চিনি। এই জমি বাদীরা দখল ক-র। এই জমি-ত ৩ তলা দালান, অফিস আ-ছ। এই জায়গা দেয়াল ঘেরা। নালিশী জমি-ত সরকারি কোন দখল নাই। বাদীরা এই জমি ২৩/২৪ বৎসর যাবৎ দখল ক-র।” In cross he stated as “ইহা সত্য নয় ইহা সরকারী খাস জমি ।”

Now, let's go for DWs ; -

In cross D.W.-1 stated as “আমি যখন সর্ব প্রথম এই জায়গায় আসি তখন উক্ত ১০ শতক ইদ্রিস এন্ড কোম্পানী দখল কর-তা । বর্তমান ৯৫ শত-কর ম-ধ্য বাদীপক্ষ দখ-ল আ-ছ । ওয়া-লর পশ্চিম পা-র্শ ১ শতক জায়গা হ-ব আ-ছ ।”

In his deposition D.W.-2 stated as “নালিশী জমি-ত বাদীর বাড়ীঘর, দেয়াল ও গাছপালা আ-ছ।”

In cross he stated as “নালিশী জমি-ত বাদীর বাড়ীঘর, দেয়াল ও গাছপালা আ-ছ।”

DW-3 in his cross stated as “ ..... ২১৭৩ দা-গর ১০ শতক জায়গা নিয়া আজ-কর মামলা। বর্তমা-ন ইহা বাদী ওয়াল দিয়া দখল ক-র। ইহা-ত বাদীর বাড়ী ঘর আ-ছ।

D.W.-4 stated as “..... পরিমা-প ২৫ ফিট প্রশস্ত ছিল রাস্তা বর্তমা-ন ২-  
২½ ফিট প্রশস্ত আ-ছ .....” ।

In cross he stated as “ ..... “১০ শতাংশ জমি নিয়া মামলা। ১০  
শতাংশ-র কিছু ওয়া-লর ভিত-র, কিছু বাই-র আ-ছ।”

D.W.-5 “..... পরিমা-প প্রথ-ম রাস্তা ২৫ ফিট প্রশস্ত ছিল বর্তমা-ন ২- ২½ ফিট  
প্রশস্ত আ-ছ ।.....”

In cross he stated “..... আমার জায়গা হই-ত মামলার জমি ২০/২৫ হাত  
উত্তরে মামলার জমি । বাদী ২৫ ফিট জায়গার জন্য মামলা করিয়া-ছ। এই জায়গা বাদীর  
ওয়া-লর ভিত-র পড়িয়া-ছ। এখা-ন হা-শম সা-বর বাড়ী ঘরও আ-ছ।”

In cross D.W.-6 stated as “বাদী ওয়াল দ্বারা কতটুকু দখল ক-র সঠিক কল-ত  
পারি না। প-র ব-ল ৮৬ শতক দখল ক-র। ..... ”

So, the deposition of both the witnesses through examination and cross  
examination by the concerned parties proved the possession of the plaintiffs  
upon the suit property leaving no confusion.

From the record, it is evident that the plaintiffs traced their title to  
the suit land through a chain of valid transactions, beginning with the  
transfer from the original recorded tenant, Rama Sundary Dassya (C.S.  
*Khatian No.298 as Exhibit-1*), to Gopal Chandra Das Chowdhury via a  
registered sale deed in 1937 (*Deed No.3323 dated 24.4.1937 as Exhibit-2*).

The subsequent oral settlement to Gobinda Kumar High School in 1946

for use as a playground, supported by mutation records, further strengthens their claim [*Mutation Khatian No.729 under Mutation Case No.43(I-IX)60-61*]. The plaintiffs also provided evidence of subsequent transfers to individual purchasers, accompanied by registered deeds, mutation records, D.C.R.s, and the payment of government taxes, thereby establishing their consistent possession and ownership of the suit land. In establishing the chain of title, the petitioners also exhibited the following documents as 1. *Sale deed Nos.13105, 13104 and 13106, and all 3 deeds were registered on 23.09.1986 as-Exhibit-3, 3 Ka & 3 Kha*; 2. *Certified copy of the judgment and decree in Title Suit No.5/87, dated 07.09.1987, passed by the Sub Judge, Sherpur as Exhibit-6 & 6Ka*; 3. *Mutation Khatian No.1104 as Exhibit-9*; 4. *Rent receipts as Exhibit-7 & 7 Ka*; 5. *DCR as Exhibit-8*; 6. *Heba bil Anwaṣ Deed No. 14385 dated 30.11.1992 as Exhibit-4*; 7. *registered saf kobala Deed No. 3369 dated 18.03.1997 as Exhibit-11*; 8. *DCR as Exhibit-12*; 9. *Mutation Khatian No.1498 as Exhibit-13*; 10. *Family settlement partition paper as Exhibit-5*; 11. *Information sleep as Exhibit-10*.

On the other hand, the defendant-appellant primarily relied on the erroneous entry in the B.R.S. record (*Exhibit-A*), claiming the land as Government Khas land. However, as a settled principle of law, no ownership can arise from a wrongful record, and the Government's

claim lacks supporting evidence to rebut the plaintiffs' title. The plaintiffs' witnesses corroborated the transactions and possession, which the defendant-appellant failed to disprove through cross-examination or contrary evidence.

The defendant-appellant's argument of *res judicata* is also untenable, as the issues in the present suit were neither directly nor substantially the same as in the previous suit. The trial Court rightly concluded that the present suit was necessary to remove the cloud over the plaintiffs' title created by the erroneous B.R.S. entry.

In light of the above findings of the trial Court appear to be well-founded, supported by evidence(s), and consistent with legal principles and thus, we find no reason to interfere with the impugned judgment and decree.

In the result, the appeal is dismissed without any order as to costs.

Let a copy of this judgment along with the lower court records (L.C.R.) be communicated to the respondents as well as the Court concerned forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree.