

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. 19 of 2010

In the matter of:

Jamir Ali and others
..... Plaintiffs-Appellants

Versus

Bangladesh, represented by Deputy
Commissioner, Dhaka, Collectorate Building, P. S.
- Kotwali, District-Dhaka and another
..... Defendants-respondents

Mr. Md. Faruque Ahammed, Advocate with
Mr. M. A. Mannan Bhuiyan, Advocate
..... For the plaintiffs-appellants
Ms. Ainun Naher, D.A.G. with
Mr. Asikuzzaman Nazrul, A.A.G. with
Mr. Md. Mozammel Hossain, A.A.G. with
Mr. Md. Rejaul Islam Reaz, A.A.G.
.... For the defendant-respondent No. 1

Heard on 6th January & 2nd February, 2025

and

Judgment on 19th February, 2025

Mohi Uddin Shamim, J.

This appeal, at the instance of the plaintiffs-appellants, is directed
against the judgment and decree dated 26.07.2009 (decree signed on

02.08.2009) passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 221 of 2005 dismissing the suit.

Facts relevant for disposal of the appeal are that one Paku Bepari originally owned 4.29 acres of land in C.S. Plot No. 1131 under Khatian No. 514 of Vanderkhola Mouza. He sold 52 decimals to Ashraf Ali, and 19.50 decimals each to Warish Ali and Mohammad Ali. After his death, his remaining 3.375 acres of land passed in ejmali to his five sons namely Wahed Ali, Chunnu Miah, Lal Miah, Nannu Miah, and Mojibor. Out of the said 375 acres of land, 1.43 acres were recorded in the name of Nannu Miah in S.A. Plot No. 1416 under S. A. Khatian No. 675, while 1.94 acres remained unrecorded. However, each of the sons of Paku Bepari effectively received 67.50 decimals land. Thereafter, Chunnu Miah and Lal Miah together orally gifted their 1.33 acres to Wahed Ali, in this way Wahed Ali became owner of 202.5 decimals of land, out of which 1.95 acres were recorded in his name in Plot No. 716 under S.A. Khatian No. 763. Wahed Ali died leaving behind a son Abbas Uddin and a daughter Edon Nessa as of his legal heir. Abbas Uddin and Edon Nessa together transferred 91 decimals of land by registered Deed No. 2874 on 26.06.1980 to the plaintiffs' No. 1 - 4 .They also transferred 1.04 acres of land to plaintiff No. 5 on the same date by registered Deed No. 2875. On 19.04.1999, Mohammad Ali transferred 19.50

decimals of land by registered Deed No. 2393 from S. A. Khatian No. 677 to Chunnu Miah. In this way Chunnu Miah became the owner of 87 (67.5+19.5) decimals of land. On 02.03.2002, Chunnu Miah transferred 65 decimals of land to plaintiff No. 1 by registered Deed No. 2225. On 14.05.2002, one of the sons of Paku Bepari namely Mojibur Rahman transferred 26 decimals to plaintiffs No. 1 - 4 by registered Deed No. 5439. As a result, plaintiff No. 1 became the owner of 94.25 decimals of land and plaintiffs No. 2, 3 and 4 each held 29.25 decimals of land and plaintiff No. 5 held 1.04 acres. On 29.09.2002, the plaintiffs being owner of 2.86 acres land mutated the property in their names. It is claimed that 100 acres land, including the suit land, were eroded by the river Dhalweshory before the R.S. survey, and hence the same were recorded in the name of the Government in Khatian No. 1 in RS Khatian, prepared and published in the year 1970. The land reappeared in 1974 and became arable, but the R.S. record remained unchanged, clouding plaintiffs' title. Hence the suit seeking a declaration of title and that the R.S. record in the Government's name is illegal, collusive, and fraudulent.

Defendant No. 1 contested the suit by filing written statements denying the material claims made in the plaint, claiming that 4.29 acres of land in S. A. Plot No. 1416 appertaining to Khatian No. 763 , corresponding

to R. S. Plot No. 2686 were rightly recorded in the Government's name i.e. in Khatian No. 1 after physical verification. It was alleged that plaintiffs have created some false and fabricated documents to grab Government property and filed the suit after 24 years, making it barred by limitation.

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 and bad for defect for parties?
- iii. whether the plaintiffs have right, title, interest and possession in the suit property?
- iv. Has the suit property re-appeared after being diluviated in the river Dholeshwory?
- v. whether the plaintiffs can get any relief as prayed for?

After hearing the parties and perusing the materials on record, the learned Joint District Judge, 4th Court, Dhaka dismissed the suit by his judgment and order dated 26.07.2009 (decree signed on 02.08.2009).

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 26.07.2009, passed by the learned Joint District Judge, 4th Court, Dhaka the plaintiffs as appellants preferred the instant First Appeal.

Mr. Md. Faruque Ahammed, learned Advocate along with Mr. M. A. Mannan Bhuiyan appearing for the plaintiffs-appellants, at the very outset

submits that the documentary evidence and witness testimonies clearly establish that the plaintiffs' predecessors were the rightful owners of the suit land, and that the plaintiffs acquired valid title through lawful transfers. He contends that the trial Court committed serious errors of law and fact by failing to consider these material aspects of the suit and thereby reached an erroneous decision, occasioning a failure of justice. He further submits that, under the principle of reformation, the plaintiffs' right, title, and interest in the suit land remain unaffected and the plaintiffs being in possession thereof till date, the trial Court erred in law holding that their right, title and interest over the suit land stood extinguished. He next submits that the R. S. record prepared in 1970 indicates that the suit land had already been reappeared in its original position prior to the enforcement of sections 86 and 87 of the State Acquisition and Tenancy Act, 1950 ("hereinafter referred to as 'Act, 1950'), and thus the plaintiffs' case does not fall within the mischief of those provisions. And the trial Court, he argues, failed to properly interpret and apply the relevant provisions of the Act. He lastly submits that, Exhibits 1 - 10 establish the plaintiffs' valid title and interest over the lands, while Exhibit "Ka" disproves the claim that the land reappeared only after section 86 came into force. The trial Court, by disregarding these crucial facts, again reached an incorrect and erroneous decisions, resulting in manifest injustice. In

support of his submission, the learned Advocate for the plaintiffs-appellants cited a decision in the case of ***Abi Abdullah (Md) and others Vs. Government of Bangladesh, represented by the Secretary, Ministry of Land and others***, reported in ***58 DLR 250*** wherein their lordship's held to the effect that;

“ The intention of amending section 86 of the State Acquisition and Tenancy (Amendment) Act, 1994 is public interest and for benefit of the tenants who owned and possessed land as of own right before diluvion and also after alluvion and, as such, retrospective operation of the Act may be attracted in appropriate cases. The petitioner's case is a fit one to receive such interpretation. ”

He lastly submits that the trial Court failed to consider the above legal and factual aspects and the material documentary evidences of the case and therefore the impugned judgment and decree is liable to be set aside and he finally prays for allowing the appeal.

In reply, Ms. Ainun Naher, learned Deputy Attorney General, with Mr. Md. Mozammel Hossain, learned Assistant Attorney General appearing for the defendant-respondent No. 1, takes us through the impugned judgment, written statement, and other materials available on record, and submits that, it is admitted by the contesting parties that 4.29 acres of land in S.A. Khatian No. 1416 of Vandarkhola Mouza has been recorded in R.S. Plot No. 2786 in Khatian No. 1. She also submits that, the plaintiff No. 1, as

P.W.1, admitted in his deposition stating as “আমাদের এলাকায় ১৯৭০ ইং সনে R S রেকর্ড হয়। ১৯৬৭ ইং সনে না: জমি নদীগর্ভে বিলীন হয়। ১৯৭৪ সনে উহা নদী হতে ফেরত আসে।”.

She submits that the core legal issue needs to be addressed here is the application and interpretation of the State Acquisition and Tenancy Act, 1950 and its various amendments, particularly the Fourth Amendment by President Order, namely the Bangladesh State Acquisition and Tenancy (Fourth Amendment) Order, 1972 (hereinafter, referred as ‘P O No. 135 of 1972’). Ms. Naher further contends that under the amended section 86 introduced by P.O. No. 135 of 1972 the right, title, and interest of a tenant in land lost by diluvion stands extinguished, whether the loss occurred before or after the amendment came into force. Since the land in question was lost by diluvion in 1967 and reappeared in 1974, thus the plaintiffs’ claim is barred by the clear language of the statute. In this context, the learned Deputy Attorney General has cited a decision in the case of ***the Government of the Peoples Republic of Bangladesh and others Vs. Md. Kazemuddin Miah, reported in 21 BLC (AD) 186***, wherein their lordship’s held that;

“The right, title and interest of the tenant or his successor-in-interest shall subsist during the period of loss if the land re-appear in situ within thirty years of loss is so clear and unambiguous that the legislature intended this provision to have prospective operation. The use of the word ‘shall’ is taken to

indicate that the statute is to be construed as prospective only. The words 'within thirty years of loss' means if the diluvion takes place after 13th July, 1994, the tenant or his successor's right to re-possession shall subsist if the diluviated land re-appear within thirty years of loss and not otherwise. The amendment is prospective in operation."

She finally submits that, under the facts and circumstances and considering the amended provisions of the Act, 1950 and P.O Order No. 135 of 1972 the trial Court rightly and legally passed the impugned judgment and decree and therefore the appeal may kindly be dismissed.

We have heard the learned Advocates for the contending parties, perused the memorandum of appeal, the impugned judgment and order as well as relevant laws and decisions relied upon by the parties as mentioned above.

It appears from the record that the present appellants as plaintiffs instituted the suit for declaration of title in the suit land and also for declaration that R.S. record of right of the suit land prepared in the name of the defendant-Government is illegal, collusive and fraudulent. The claim of the plaintiffs is that they are owners of the suit land by purchase and they mutated the same in their names on 29.09.2002. Their case is that 100 acres of land including the suit land were diluviated in the river Dhalwesshory and consequently, during the preparation of R.S. record of right the suit property was recorded in the name of the Government in 1970. It is stated in the

plaint that, the suit property along with other properties re-appeared in 1974 and became arable for cultivation.

On the other hand, the defendant-Government claimed that 4.29 acres of land of S.A. Plot No. 1416 appertaining to Khatian No.763 corresponding to R.S. Plot No.2686 has been recorded in Khas Khatian No.1, in the name of the Government after physical inquiry. Accordingly, the defendant prayed that the claim of the plaintiffs is not tenable in law.

The trial Court on examination of the evidence of PWs came to a finding that the suit property was diluviated in the river Dholwesshory in 1967 and the same re-appeared in 1974. Accordingly, the trial Court held that since the land deluviated reappeared of the land took place after 1963 i.e. after coming into force of Part-V of the State Acquisition and Tenancy Act, 1950; the right, title and interest of the suit land has been vested to the Government and extinguishes those right, title and interest of the original owners as per section 86(3) of the said Act. On such findings the trial Court dismissed the suit.

Upon detailed examination of the testimonies, it appears that P.W.1, Jamir Ali, testified in support of the plaintiffs' case, identifying himself as plaintiff No. 1 and a close relative of the other plaintiffs. He provided a detailed narration of the chain of title starting from the original owner Paku

Bepari and described various transfers by inheritance and registered sale deeds, including Deeds No. 2873, 2874, 2393, 2225, and 5439, by which the plaintiffs allegedly acquired a total of 2.86 acres. He stated that mutation was completed in their names and referred to certified copies of mutation and relevant Khatians. He claimed that the suit land was lost to river erosion in 1967, reappeared in 1974, and that the plaintiffs took possession thereafter by identifying boundaries and cultivating the land. P.W.1 denied fabricating any documents or filing the suit to harass the government and grab the lands and asserted that their ownership and possession had continued uninterrupted after the land's reappearance. He also stated that R.S. recording in Khatian No. 1 in the name of the Government was erroneous, as at the time of R.S. survey, the land was submerged, and thus recorded as government khas land by default.

P.W.2, Md. Momin Ali, aged approximately 70 years, testified as a local resident familiar with the suit land and the surrounding area. He stated that the suit land, locally known as Naa: jomi, was situated beside the Dhalessshori River and was lost to river erosion around 1967 - 68. According to him, the land reappeared in 1974, after which the owners conducted measurement and resumed possession. He affirmed that the present plaintiffs, identified as four brothers, have since been in possession of the

land. He denied that the land remained submerged beyond the relevant period, or that it had been wrongly claimed by the plaintiffs. He also denied that the land was ever in Government possession or recorded validly in the R.S. as khas land. He clarified that he is not related to the plaintiffs but gave his testimony as a local witness.

P.W.3, Abdur Latif, aged approximately 65 years, testified as a resident of the same locality as the suit land. He stated that the suit land was eroded by the river Dhaleshwari around 1968 and that the R.S. survey was conducted around 1970, during which time the land was under water. He stated that the land reappeared around the middle of 1974, and thereafter local residents, including the present plaintiffs, measured and identified the land, and have since cultivated it by growing paddy and jute. He denied that the land never submerged or that it was validly recorded in the name Government. He also denied that the Government had ever taken possession of the suit land.

D.W.1, Md. Shafiqul Rahman, a Sub-Assistant Land Officer of Banajira Land Office, Keraniganj, testified on behalf of defendant No. 1. He stated that the suit land (Naa: jomi) was recorded in R.S. Khatian No. 1 as "river-eroded land" (sikasti) under the Government's Khas Khatian. He affirmed that the land had been submerged in the Dhalessshori River and

that, at the time of R.S. survey in 1970, it was treated as part of the riverbed and recorded accordingly. He exhibited a certified copy of the R.S. Khatian as Exhibit “Ka”. He denied that the plaintiffs had acquired the suit land by purchase or that they were in lawful possession. However, he admitted that he had been in his current post for only about nine months, and that he had no personal knowledge of the C.S. or S.A. records. He also conceded that he did not know the exact boundaries of the suit land nor had he personally visited the land during the R.S. survey.

The learned Advocate for the plaintiffs-appellants submitted that after reappearing (aluvion) of the suit land, the predecessor of the plaintiffs was in possession and thereafter the plaintiffs have been in possession of the same. Since they have owned and possessed the suit land after aluvion the provision of section 86 of the State Acquisition and Tenancy (amendment) Act, 1994 may be applicable in the present case giving retrospective operation of such section. The learned Advocate for the plaintiffs-appellants in this regard has relied upon the case of *Abi Abdullah (Md) and others Vs. Government of Bangladesh, represented by the Secretary, Ministry of Land and others* reported in **58 DLR 250**.

In reply, the learned Deputy Attorney General submitted that by now the law is settled by our Apex Court in the case of *Government of the*

People's Republic of Bangladesh and others Vs. Md. Kazemuddin

Miah reported in 21 BLC (AD) 186 wherein the amended section 86 by the State Acquisition and Tenancy (Amendment) Act, 1994 shall have prospective operation.

Having gone through the decision of the Hon'ble Appellate Division it appears that the Hon'ble Appellate Division has given as many as 09 guidelines in the concluding part of the judgment. In guideline-(ix) it has been spelt out that, "*Section 86 substituted by the State Acquisition and Tenancy (Amendment) Act, 1994 (Act XV of 1994) shall have prospective operation.*" The Hon'ble Appellate Division settled the point on 02.12.2014. As such, the submissions made by the learned Advocate for the appellants based on the decision of 58 DLR 250 cannot be maintainable in the present case before us.

It is an admitted fact that the suit land was lost by diluvion in 1967 and re-appeared in situ by aluvion in 1974. Section 86 of the State Acquisition and Tenancy Act, 1950 is relating to abatement of rent on account of diluvion and determination of right in land re-appeared on account of aluvion. This provision of section 86 is provided in Chapter XIII of Part - V and the date of effect of this Part - V was given from 01.08.1963 with regard to 09 districts namely, Jessore, Pabna, Chittagong, Dacca, Sylhet,

Rajshahi, Mymensingh, Rangpur and Bogra by Gazette notification on 01.08.1963. Thereafter, section 86 was amended by State Acquisition and Tenancy (Fourth Amendment) Order, 1972 (President's Order No.135 of 1972) giving effect from 4.11.1972. Since it is claimed by the plaintiff that the land reappeared in 1974, provision of this substituted section 86 will be applicable in the case of the plaintiffs appellants.

Let us appreciate the provision of section 86. Relevant provision is thus quoted below:

“86 (2). Notwithstanding anything contained in any other law for the time being in force, the right, title and interest of the tenant or his successors-in-interest shall be extinguished in such lands or portion thereof, whether the loss of such lands or portion by diluvion took or takes place before or after the commencement of the State Acquisition and Tenancy (Fourth Amendment) Order, 1972.

(3) All lands, so lost by diluvion under sub-section(2), which re-appeared before the date of commencement of the said Order, but in respect of which the right of tenant, whose land was so lost, or his successors-in-interest, to repossession was not finally recognized or declared by a competent authority or Court under any law for the time being in force and also all lands, so lost by diluvion under the said sub-section, which may re-appear on or after the said date, shall vest absolutely in the Government free from all encumbrances and shall be at its disposal.”

(Underlined for emphasis)

In view of the provisions of sub-section (2) of section 86 as quoted above, the lands lost by diluvion before or after the commencement of State

Acquisition and Tenancy (Fourth Amendment) Order, 1972 and reappeared on or after the said date of commencement of the said Order, 1972 shall vest in the Government. In the instant case, the suit lands were lost by diluvion in 1967 as claimed by the plaintiff appellants and the same reappeared in 1974 i.e. after the commencement of the State Acquisition and Tenancy (Fourth Amendment) Order, 1972 and as such, the lands vest in the Government. However, as per sub-section (5) of section 86 of the amendment to the Act on 1994, those re-appeared lands may be settled/allotted to the owners of the lands if they fulfill the condition attached there in section 86 (5).

Upon consideration of the oral testimonies of P.W.1 to P.W.3 and D.W.1, it appears that the plaintiffs have attempted to establish their claim through a chain of title (P.W.1) and corroborative testimony regarding the land's diluvion in 1967 - 68 and reappearance in 1974 (P.W.2 and P.W.3). Since the plaintiff's themselves admitted alluvion in 1974, the title to land, admittedly vests in the Government upon clear extinguishment of the rights of all other previous owners of land. The submission made by the learned Advocate for the Appellant to the effect that the land alluviated before 1970 is incorrect and not supported by evidence on record. The absence of

corroboration from competent land authorities regarding the appellant's alleged "continuous" possession also weakens the plaintiff's claim.

The plaintiffs' claim of continued possession of the suit land after its reappearance in 1974, in the absence of any lawful recognition of the same by the Government extinguishes their claim in accordance with Section 86 (3) of The Bangladesh State Acquisition and Tenancy (Fourth Amendment) Order, 1972. The evidence adduced was insufficient to establish that such possession was ever regularized or recognized by any competent authority in terms of settlement, mutation, or administrative sanction as required under the statutory framework.

Further, the suit was filed in 2005, approximately 31 years after the alleged reappearance of the land in 1974 and 35 years after the R.S. record was prepared in 1970. The plaintiffs-appellants have not offered any credible explanation for this inordinate delay. As such, the suit is also liable to fail on the ground of limitation, particularly given the nature of declaratory relief sought against a long-standing government record.

In the view of the facts and circumstances, the finding and decision arrived at by the trial Court being based on proper appreciation of law and fact, does not call for any interference by this Court. Accordingly, we do not find any merit in this appeal.

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

The judgment and decree dated 26.07.2009 (decree signed on 02.08.2009) passed by the Joint District Judge, 4th Court, Dhaka in Title Suit No. 221 of 2005 is hereby affirmed and maintained.

Let a copy of this judgment along with the lower Court records be transmitted to the learned Joint District Judge, 4th Court, Dhaka forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree