

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.519 of 2019

S. K. Sadek being dead his heirs- Safia Proma and others

... Appellants

-Versus-

Chief Engineer, Roads and Highway Division, Sarak Bhaban, Ramna, Dhaka and others

... Respondents

Mr. Montu Chandra Gosh, Advocate

... For the appellants.

None appears....For the Respondents.

Heard on 07.01.2026 and Judgment on 18.01.2026

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 06.05.2019 passed by the learned Joint District Judge, 4th Court, Dhaka in Civil Suit No.407 of 2006.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 0.065 acres land and structures thereon as described in the schedule to the plaint and for further declaration that R.S. Khatian No.2 prepared in the name of the defendant No.1 for above property is erroneous, unlawful and not binding upon the plaintiffs alleging that above land and other land belonged to Raghunath Dash and in his name C. S. Khatian No.183 was correctly

prepared who died leaving one son Ramanath Das who gave settlement of above land to Kalikumar Saha by a registered deed of settlement dated 20.01.1941. Above Kalikumar leased out above land to Surendra Chandra Das by a registered deed of lease on 25.06.1957. Above Surendra Chandra Das died leaving heirs who transferred above land to Ambia Khatun by a registered kabla deed and plaintiffs purchase above land from above Ambia Khatun and her heirs by several registered kabala deeds and possessing the same by constructing shops and dwelling house. Above property was erroneously recorded in R. S. Khatian No.2 and on the basis of above erroneous record defendants denied plaintiff's title in above property.

Defendant No.1 contested above suit by filing written statement alleging that above property was acquired by the Government by L. A. Case No.3/50-51 and handed over possession to defendant No.1 for construction of Dhaka-Munshigonj Highway and compensation money was paid to the owners of the above property. Above R. S. Khatian was rightly prepared in the name of the defendant No.1 and plaintiffs are trying to grab above Government property by creating several ineffective and fraudulent deeds.

At trial plaintiffs examined three witnesses but defendants did not examine any witness. Documents of the plaintiffs were marked as Exhibit No.1 to 12 series but the defendants did not produce and prove any document.

On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge dismissed above suit holding that the plaintiffs could not substantiate their claim of title and possession in above property by legal evidence.

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. Montu Chandra Gosh, learned Advocate for the appellants submits that the plaintiffs claimed title and possession in above property on the basis of purchase by registered sale deeds from the successive heirs of Kalikumar Saha in whose name relevant S.A. Khatian was rightly prepared. PW1 Sk. Sadek produced all registered kabla deeds and relevant khatians at trial and two witnesses gave consistent and mutually corroborative oral evidence in support of possession. The learned Joint District Judge on analysis of above evidence held that plaintiffs have succeeded to prove their possession in above land but the learned Judge did not decree the suit holding that above property was acquired by the appellants and a highway has been constructed through above land. As such the appellants do not seek declaration of title for above land but they want to get compensation money which was allotted by the Government for acquisition of above land. The learned Advocate further submits that at the time of taking possession of above land an Officer assured the appellants of getting

compensation. But the appellants were not given any compensation for acquisition of above land. In support of above submissions the learned Advocate has submitted a Supplementary Affidavit stating that the relief sought by the plaintiffs in above suit needs to be changed and instead of declaration of title for above land the plaintiffs want a decree for compensation money for acquisition of above land. In order to make above amendment in the plaint and adduce further evidence the learned Advocate submits that the ends of justice judgment will be met if the impugned judgment and decree passed by the learned Joint District Judge is set aside and above suit is remanded to the trial Court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

No respondent entered appearance in this First Appeal nor anyone was found available on behalf of the respondents at the time of hearing of this appeal although this appeal appeared in the list for hearing on several dates.

As mentioned above although defendant No.1 entered appearance in above suit and submitted a written statement no evidence oral or documentary was adduced by the defendant to substantiate the claims and allegations as set out in the written statement.

We have considered the submissions of the learned Advocate for the appellants and carefully examined all materials on record.

It is admitted that disputed 1.60 and other land belonged to Raghunath Das and in his name C. S. Khatian No.183 was correctly prepared and in R. S. Khatian No.2 above property has been recorded in the name of defendant No.1.

It has been alleged by the appellants that disputed land was recorded in the name of Kalikumar Saha in the relevant S. A. Khatian but the plaintiffs could not substantiate above claim by production of relevant S. A. Khatian or a certified copy of the same. The plaintiffs claimed that Surendra Chandra Das the leasee of above land died leaving heirs namely Jogomoya Dashi and others who transferred above land by registered kabla deed No.1246 dated 06.02.1969. But it appears from above document that the predecessor of above Jogumoya and others was Suresh Chandra Das not Surendra Chandra Das. The plaintiffs did not adduce any evidence to substantiate their claim that Jogomoya and others were the heirs of Surendra Chandra Das. The learned Judge of the trial Court on analysis of the evidence on record held that the plaintiffs were in possession in above land but in the same breath the learned Judge found that R. S. Khatian No.2 which stand in the name of defendant No.1 was correctly prepared.

Defendant No.1 stated in his written statement that above property was acquired by the Government by L. A. Case No.3/50-51 but did not adduce any evidence oral or documentary to substantiate above claim. Above conduct of defendant No.1 is highly deplorable.

Above responsible Government Officer should have produced the record of above L. A. Case or the relevant Gazette notification to substantiate the claim of acquisition of above land.

The learned Advocate for the appellants admits that the disputed land was acquired by the Government and possession was taken and plaintiffs were dispossessed and a highway has been constructed. But the appellants did not mention by which L. A. Case and when above property was acquired by the Government. If above property was acquired by the Government in 1951 then it is not understandable as to how above property could be transferred so many times thereafter as stated in the plaint.

As mentioned above the appellants no more seeks declaration of title for above land but they seeks compensation money for acquisition of above land.

In above view of the 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, if any.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 06.05.2019 passed by the learned Joint District Judge, 4th Court, Dhaka in Civil Suit No.407 of 2006 is set aside and above suit is remanded to the trial Court for retrial

after giving both the parties an opportunity for amendment of pleadings and adduce further evidence.

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