

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No.364 of 2003

Shreemoti Malati Rani Malakar and others

..... appellants

-Versus-

Sudhir Chandra Malakar being dead his heirs-1(a)

Kamala Rani Malakar and others respondents

with

Civil Rule No.32(F) of 2003

Shreemoti Malati Rani Malaker and others

..... petitioners

-Versus-

Ala Uddin Ahmed and others

..... opposite parties

And

First Appeal No.15 of 2003

Shree Sudhir Chandra Malakar being dead his heirs-

1(a) Kamala Malakar and others appellants

-Versus-

Shreemoti Pramila Malakar and others

..... respondents

with

Civil Rule No.31(F) of 2003

Shree Sudhir Chandra Malakar and others

..... petitioners

-Versus-

Shreemoti Pramila Malakar and others

..... opposite parties

Mr. Surojit Bhattacharjee with Mr. Monishankar

Sarkar, Advocates

..... for the appellants

(in FA 364/2003, respondents in FA
15/2003 and petitioners in Civil Rule 32(f)/2003)

Mr. Golam Ahmed, Advocate

..... for the appellants

(in FA 15/2003, respondents in FA 364/2003
and petitioners in Civil Rule 31/2023)

Judgment on 29.07.2025

Bhishmadev Chakrabortty, J:

The appeals have arisen out of the judgment and decree passed in two different suits heard analogously. The Rules have arisen out of the aforesaid appeals. The parties in the appeals and the Rules are almost same and

common question of fact and law are involved in all. Therefore, these have been heard together and are being disposed of by this judgment.

First Appeal 364 of 2003, at the instance of the plaintiffs, is directed against the judgment and decree of the Joint District Judge, Court 2, Sylhet passed on 29.08.2002 in Title Suit 19 of 1993 dismissing the suit.

First Appeal 15 of 2003, at the instance of the plaintiffs, is directed against the judgment and decree of the same Court passed on the same day as aforementioned in Title Suit 12 of 1996 dismissing the suit.

Facts relevant for disposal of the appeals and the Rules, in brief, are that in Title Suit 19 of 1993 the plaintiffs claimed that Shree Shree Radha Gobinda Jeu Deity was the original owner of the suit land measuring .5581 acres of different *khatians* and plots described in the schedule to the plaint. Sebayet Roy Bahadur Baidyanath and others settled the land to Ramesh Malakar, Jogendar Malakar, Ramen Mali and predecessor of plaintiffs 1-5 Sushila Malini and Sonai Malini. During their possession and enjoyment Ramen Mali died leaving behind his wife Monai Malini, 2 minor sons plaintiff 1 Rasomoy Malakar and Makhan Malakar as heirs. Plaintiff 1, his mother Manoi Malini, bother Makhan Malakar, Ramesh Malakar, predecessor of the plaintiffs 2-5 and the predecessor of defendants 1-5 Sushil Malini and Soani Malini remained in its possession. During their possession and enjoyment, the superior landlord instituted a suit against them for arrear of rent. The suit was subsequently transferred to the then Court of Additional Subordinate Judge, Sylhet and numbered as Title Suit 18 of 1943 which was decreed on compromise on 23.03.1943 and accordingly they again took its settlement. Thereafter, Jogendra Malakar died leaving his wife Kheroja

Malini who became owner of the share and sold out it to Indramohan Malakar through a *kabala* dated 01.07.1947. Sonai Malini sold his share to Surendra Malakar. Plaintiff 1 and his brother Makhan Malakar defaulted in paying rent and accordingly Sebayet instituted Money Suit 64 of 1955 against the plaintiffs and the predecessor of defendants 1-5. The suit was ended in a compromise on 07.02.1966 and a *solenama* was executed where plaintiff 1, the predecessor of other plaintiffs and predecessor of defendants 1-5 undertook to pay arrear rent of Taka 60/- in 4 installments. Ramesh Malakar died leaving behind sons plaintiffs 2-5. Makhan Malakar died leaving behind plaintiffs 6-7 as heirs. In this way the plaintiffs became owner of $\frac{3}{5}$ share of the property by way of inheritance. Sushila, the predecessor of defendants 1-5 died leaving behind them as heirs and they are in possession of the share. The suit property was never partitioned by metes and bounds. Defendants 1-5 claimed more land than they were entitled to. They refused to partition the suit land. The plaintiffs came to learn that record of right was prepared in the name of plaintiffs 1-2 and defendants 1-5 in part but some lands were recorded in the names of defendants 6-8 and Binod Lal, Provaboti Das and Parul Bala, the predecessors of defendants 9 and 10. SA *khatian* in respect of a part of the suit land was prepared in the names of defendants 11-38 erroneously which clouded plaintiffs' title in the suit land, hence the suit for declaration of title and partition claiming $\frac{3}{5}$ shares in the land described in the schedule to the plaint.

Defendants 1-5 filed written statement denying the statements made in the plaint. They further contended that 4 annas share of the suit land was with Shree Shree Radha Gobinda Jeu Deity and 12 annas with Prashad

Chakraborty and Nirmal Chowdhury. Mukul Ram Mali, the predecessor of the defendants took settlement of 2 *kedars* of land from zaminders on 8th Boishakh, 1950 BS. He died leaving behind Bihari Ram Mali, the son and his wife. Bihari Ram died leaving his wife Sushila Malini (the predecessor of the defendants) and his mother. Subsequently the mother died and Sushila got the right and title in the suit land. Sushila was issueless and accordingly he permitted Jogesh, Ramesh, Ramen and Monoi, the predecessor of the plaintiffs to reside in the suit land. The landlord sent a notice to Sushila for ejection and thereafter instituted Title Suit 18 of 1943. Subsequently, landlord instituted Money Suit 64 of 1955 against the plaintiffs' predecessor but Suhsila paid rent through her tadbirkar and order was passed in his favour. During SA operation plaintiffs 1 and 2 filed an objection case against Sushila and a *bata* plot was opened in respect of .1650 acres of land. The remaining part of the suit land measuring .1369 acres was recorded in the name of Sushila. She gifted .1369 acres to defendants 1-3 on 14.09.1961 and plaintiffs 4 and 5 were minors and all of the above 5 were in its possession. Sushila subsequently died in 1985 leaving behind defendant 1-5 as heirs. The defendants came to learn that the land of plot 3757 was erroneously recorded in the names of defendants 6-8 and 9-10 but they have no right and title in the suit land. They further came to learn that defendants 6-10 and 11-38 transferred some suit lands on the basis of the aforesaid wrong record of rights. Defendants 11, 12, 18, 19, 26, 30 and 38 forcefully entered into the suit land of plot 3763 and erected a semi pucca tinshed house therein but the defendants are in possession the lands of plot 3757. Ramesh Malakar, the predecessor of the plaintiffs did never take settlement of the suit land. Indramohan Malakar was a tenant of Sushila who created a collusive deed in

his name in respect of the suit land. Those deeds were not binding upon these defendants. Since the plaintiffs' predecessor is the permissive possessor of Sushila, they are not entitled to get *saham* in the suit land. Therefore, the suit would be dismissed.

Defendants 11, 12, 14-16, 18-22, 24-32, 35 and 39 also filed a set of written statement denying the contention made in the plaint. They claimed that Binode Lal, Provabati Das, Parul Bala, Bimalendu Das, Amelendu Das, Birendra Das and Binode Lal Das sold the suit land of plot 3757 to the predecessor of these defendants executing *bainapatra* to Amir Ali and others. On the death of Birendra his sons Amalendu and Bimalenda sold the same to Amir Ali and others. These defendants are the heirs of Syed Amir Ali. The lands of plot 3757 do not attract the suit land. The plaintiffs were not in possession of the full land. SA record has been prepared correctly according to their share, therefore, the suit would be dismissed.

Defendants 6-10 in their written statement stated that the suit land described in the schedule to the plaint is unspecified and do not match physically. In some plots of SA *Khatian* 3757 Banwary Lal Das, the predecessor of the defendants was the original owner in part and Baikuntha Nath as Sebayet of Radha Gobinda Jeu Deity was not in possession and Ramesh Chandra was not his tenant. Banku Bihari Das was the possessor of some of plots of SA *Khatian* 3757. He died leaving behind 4 sons who settled 12 nols from east-north and 9 nols from south-north of the suit land to Mojaffer Hossain Chowdhury in 1357 BS. The lands of southern part of SA *Khatian* 3757 are the *khas* land of these defendants which has been recorded correctly in their names. The plaintiffs or other defendants

have no right, title and interest in the suit land and as such the suit would be dismissed.

Defendant 40 filed written statement admitting the case of defendants 1-5. He claimed himself as heirs of Sushila and that on the death of Sushila defendants 1-5, 39 and 40 inherited the property. Since Sushila was entitled to life estate on the property of her deceased husband, therefore, any deed of gift by her was illegal. He has been in possession of the suit land with other co-sharers and as such he claimed *saham* for his share.

In Title Suit 12 of 1996 the plaintiffs stated the same fact as they made as defendants 1-5 in Title Suit 19 of 1993. They claimed title in respect of .5878 acres as gift and by way of inheritance, for confirmation of possession in respect schedule 2 and for eviction of defendants 1-7 and 18-59 from schedule 3. They further prayed that the decree passed in Title Suits 64 of 1955 and 18 of 1943 were not binding upon them and the *kabala* dated 01.04.1947 in the name of Indramohan Malakar is collusive, inoperative and not binding upon them. In this suit defendants 1-7 filed written statement similar to the case made out as plaintiffs in the plaint of Title Suit 19 of 1993.

Both the suits were tried analogously. On the pleadings, the trial Court framed as money as 11 issues. In the trial, the plaintiffs (plaintiff in Title Suit 19 of 1993) examined 5 witnesses and produced their documents exhibits-1-4. On the other hand, the defendants (plaintiffs in Title Suit 12 of 1996) in all examined 7 witnesses and their documents were exhibits-Ka-Na. However, trial Court dismissed both the suits on the findings that the plaintiffs of the suits failed to prove their title in the suit land. Against which plaintiffs of

Title Suit 19 of 1993 preferred First Appeal 364 of 2003 while the plaintiffs of Title Suit 12 of 1996 preferred First Appeal 15 of 2003 in this Court.

In FA 364 of 2003 the appellants filed an application praying for injunction against the respondents upon which Rule was issued in Civil Rule 32 (f) of 2003 and an order directing the parties to maintain *status quo* in respect of the suit land was passed. In FA 15 of 2000 the appellants also filed an application praying for temporary injunction against the respondents upon which Civil Rule 31(f) of 2003 was issued and an order to maintain *status quo* in respect of the possession of the suit land was also passed.

Mr. Surojit Bhattacharjee, learned Advocate for the appellants in First Appeal 364 of 2003 and respondent in First Appeal 15 of 2003 taking us through the materials on record submits that the trial Court in disposing the suit did not at all discuss the oral evidence of the parties. He then takes us through exhibit-1(Ka) and submits that the finding of the learned trial Judge about it is erroneous because it is a part of exhibit-1, the compromise decree passed in Title Suit 18 of 1943 which bears the number of title suit. He made similar submission in respect of exhibits-2 and 2(Ka). He adds that it has been proved that the plaintiffs' predecessor took settlement of the suit land from the landlord and the plaintiffs as the successors in interest of original settlement holder are in possession of the suit land and SA record in part has been prepared in their names. The witnesses of the plaintiffs proved that they are $\frac{3}{5}$ owner of the suit property. They further proved their right, title and possession in the suit land. The trial Court ought to have decreed the suit declaring plaintiffs' title in the suit land and allocating them *saham* of 60% share therein as claimed by them and by not doing so erred in law which is

required to be interfered with by this Court in appeal. Therefore, First Appeal 364 of 2003 would be allowed and First Appeal 15 of 2003 preferred by the defendants be dismissed.

Mr. Golam Ahmed, learned Advocate for the appellants in First Appeal 15 of 2003 and respondents in First Appeal 364 of 2003 takes us through exhibit-Ka series, *i.e.*, a notice served by the landlord upon tenant Sushila Malini, the plaint of Evection Suit 276 of 1941 exhibit-‘Kha’ and other materials on record and submits that those documents were used as evidence but not at all considered by the trial Court. The aforesaid exhibits prove that Mulluk Ram Mali, the predecessor of Sushila took the land yearly settlement from the then landlord. The documents also shows that Susila’s predecessor took settlement the whole suit land and the plaintiffs’ predecessors were permissive possessor over .065 acres of land. Although, the plaintiffs of Title Suit 12 of 1996 failed to produce the documents in support of settlement from the landlord but the aforesaid documents exhibits-‘Ka’ and ‘Kha’ and the oral evidence of the witnesses conclusively proves that Sushila’s predecessor took settlement of the suit land. The plaintiffs of Title Suit 19 of 1993 managed to record their names partly in SA *Khatian* in respect of the suit land. Since the settlement in favour of Sushila’s predecessor has been proved by oral and documentary evidence, therefore, the possession of the plaintiffs of Title Suit 19 of 1993 over a part of the suit land is illegal. Therefore, the judgment of the rent suit in favour of the predecessor of the plaintiffs cannot be sustained. The Court below ought to have decreed the suit of these defendants declaring their title in schedule 1 suit land, confirmation of possession for schedule 2 and evection from schedule 3 land and that the deeds in the name of different persons were not

binding upon them. The trial Court, therefore, erred in law in dismissing Title Suit 12 of 1996 of the plaintiffs. The First Appeal 15 of 2003 therefore, would be allowed and First Appeal 364 of 2003 would be dismissed.

We have considered the submissions of both the sides and gone through the materials on record. It appears that the plaintiffs (meaning plaintiffs in Title Suit 19 of 1993) claimed that the suit land belonged to Shree Shree Radha Gobinda Jeu Deity and Ramesh Malakar, Jogendra Malakar, Raman Mali and Sushila Malini, the predecessor of defendants 1-5 and Sonai Malini took settlement of it from the Sebayet of the deity. On the other hand, defendants 1-5 (meaning plaintiffs of Title Suit 12 of 1996) claimed that in the suit schedule the deity had 4 annas share and Kali Prashad and Nirmal Chowdhury had 12 annas share with other lands. Defendants 1-5 claimed that their predecessor Muluk Ram Mali took settlement of 2 *kedars* of suit land from the landlord. Muluk Ram died leaving behind his son Behari Ram and Behari Ram died leaving behind his wife Sushila who had no issue and the present defendants 1-5 being nephew of Behari Ram inherited the property. In this or that way both the parties agreed that the suit property was debottor property. The plaintiffs stated that the whole property is debottor and defendants claimed 1/4 in the name of deity. The plaintiffs did not mention when they took settlement of the suit land from the Sebayet of the deity and whether it was oral or written. No documents in support of their claim was produced in the Court. They did not produce any rent receipt (*dakhila*) to show that they paid rent to the superior landlord. Mr. Bhattacharjee although claimed that exhibit-1(Ka) is a part of exhibit-1 and exhibit-2(Ka) is a part of exhibit-2 and those are *solenamas* in two different suits but a *solenama* cannot be filed in any Court to obtain a compromise

decree without mentioning the case number. We find no case numbers in exhibits-1(Ka) and 2(Ka). Therefore, the Court below rightly disbelieved those exhibits which are the basis of plaintiffs' claim in absence of any documentary proof of taking settlement from the Sebayet. The chain of genealogy of the plaintiffs is incomplete and broken only preparation of SA record in respect of a part of the suit land in plaintiffs' name do not create any title to them over it. Moreover, it is found that settlement to the predecessor of the plaintiffs or defendants was on yearly basis which did not create any right of the predecessors of the parties over the suit land. In the plaint defendants 1-5 although mentioned a date of taking settlement by their predecessor from the landlord and stated that it is an unregistered *kabuliyat* but they did not produce it in evidence. Even in the written statement they did not state that the document was lost or missing. Taking us through exhibit-Ka series Mr. Ahmed tried to convince us that in those documents there are endorsement of the *kabuliyat* taken by the predecessor of these defendants. But those documents cannot fill up the gap of the *kabuliyat*. In the endorsement as aforestated it is found that the original settlement was for yearly basis. Although, subsequently Rent Suit and Title Suits were filed against Sushila and others but such kind of settlement did not create any title of the settlement holders in the suit land. In the evidence, it is found that plaintiffs and defendants both are partly in possession of the suit land. Since the defendants' predecessor did not acquire any right and title in the suit land, therefore, their case that the plaintiffs' predecessor were a permissive possessor do not stand. The possession of the parties in the suit land in part is found illegal. They are to be treated as unauthorized occupants.

Since both the parties failed to prove their title in the suit land by adducing oral and documentary evidence, the trial Court rightly dismissed the suits. We find nothing wrong in the impugned judgments for which those can be interfered with.

Therefore, we find no merit in the appeals. Consequently, the appeals are dismissed. No order as to cost. The judgments passed by the Court below are affirmed.

Consequently, the Rules issued in Civil Rules 31(F) of 2003 and 32(F) of 2003 are disposed of and the interim order passed therein stand vacated. .

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.