

Bench:
Mr. Justice Mahmudul Hoque
And
Mr. Justice Md. Ali Reza

First Appeal No. 106 of 2021
Government of the People's Republic of Bangladesh
represented by the Deputy Commissioner, Dhaka.

.....defendant-appellant

-Versus-

Hazi Md. Alek Mia and others

.....plaintiff-respondents

Mr. Apurba Kumar Bhattacharjee, Deputy Attorney
General with Mr. Md. Kamal Haider, Mr. Md. Faruk
Hossain and Mr. M. Nazrul Islam Khandaker, Assistant
Attorney Generals

.....for the defendant-appellant

Mr. M. Sadekur Rahman, Advocate

.....for the plaintiff-respondents

Judgment on 24.01.2024

Md. Ali Reza, J:

Defendants 1-3 have preferred this appeal against judgment and decree dated 10.02.2019 passed by the Joint District Judge, Court No. 2, Dhaka in Title Suit No. 117 of 2017 decreeing the suit.

Suit was filed on 13.02.2017 for declaration of title and for further declaration that the RS and City Survey records prepared in the name of the defendants are wrong.

The case of the plaintiffs is that the CS tenants and their successive heirs in whose names SA record also stands sold 0.49 acres out of 0.55 acres from plot 447 and 0.49 acres out of 0.55 acres from plot 448 to Arab Ali, Romizuddin, Motaleb Fakir, Moyezuddin by

registered kabala dated 19.02.1965 and inducted them into possession. The suit land measuring 0.98 acres is a pond in which purchasers maintain joint possession by rearing fish. They while trying to transfer the same came to learn on 05.12.2016 that the suit land was not recorded in their names and upon collecting the printed copies of RS and City Survey records on 22.01.2017 and 23.01.2017 they came to know that those were wrongly prepared in the name of defendant 1. Hence the suit was filed.

The contention of defendants 1-3 is that the suit is barred by limitation and 0.76 acres of CS and SA plots 447, 448 corresponding to RS plots 952, 953 as well as City Survey plots 2024, 2025 are correctly prepared in the name of defendant 1 in khas khatian 1 in which defendant 1 maintain possession and control. Plaintiffs have no title and interest in the suit pond. Suit was filed with *malafide* intention to grab the pond. The suit being false is liable to be dismissed.

The lower Court framed as many as five issues as to maintainability; limitation; whether plaintiffs have title, interest, right and possession in the suit property; whether the RS record and City Survey record have been wrongly prepared in the name of defendant 1 in respect of the suit property; whether plaintiffs can get the relief as prayed for.

During the course of trial plaintiffs examined 02(two) witnesses and defendants examined 01(one) witness and both the parties adduced documentary evidence in order to prove their respective cases.

The Joint District Judge decreed the suit on 10.02.2019 on the finding that the suit is not barred by limitation and plaintiffs have acquired title by purchase and PW 2 supported possession and further found that since transfer was made in favour of plaintiffs before RS operation the subsequent records prepared in the name of defendant 1 are wrong and defence failed to prove the basis of the record so prepared.

Being aggrieved by and dissatisfied with the judgment passed by the Joint District Judge defendants preferred the instant appeal before this Court.

Mr. Apurba Kumar Bhattacharjee, learned Deputy Attorney General appearing on behalf of the appellants submits that the Court below erred in law in passing the impugned judgment and decree upon wrongful consideration and failed to apply its judicial mind. The impugned decree was passed upon mere surmise and conjecture and Court failed to reach to a correct conclusion. He further submits that plaintiffs have failed to prove their title and possession in the suit pond by adducing proper and lawful evidence. Court failed to consider that weakness of defense is no ground for granting decree in

favour of plaintiffs. He submits that the alleged true copy of the deed dated 19.02.1965 is a forged deed created by the plaintiffs showing the same registered in the office of sub-registrar, Islamkati, Khulna which was burnt into ashes.

Mr. Sadekur Rahman, learned Advocate appearing on behalf the respondents submits that the Joint District Judge upon proper appreciation of evidence and law has correctly decreed the suit. He then submits that the finding of the trial Court that plaintiffs have proved their title and possession in the suit property is based on evidence and since the impugned decree is lawfully passed the same is immuned from interference in appeal.

We have heard the learned Advocates of both sides and perused all the materials on record and gone through the impugned judgment and the grounds taken in appeal.

Plaintiffs filed the suit on the strength of kabala dated 19.02.1965 claiming as transferees from the CS and SA tenants. The true copy of the kabala which is certified by sub-registrar, Islamkati, Khulna on 25.05.1966 with a heading of words like “residential certificate issued by First Class Magistrate duly submitted Khulna” was tendered by the plaintiffs in evidence and marked as Exhibit-9. The document was produced by PW-1 on 13.08.2018 who is plaintiff No. 8 in the suit and the same was admitted without objection. PW 1 was examined on commission on behalf of all the plaintiffs by virtue

of a power of attorney, Exhibit-1 dated 26.07.2018. The suit was filed on 13.02.2017. In the plaint there is no explanation as to why the original of the document could not be filed. Law says that when a party desires to prove a document the best evidence rule requires that the party should produce the original of the primary evidence under Section 62 of the Evidence Act. But if he fails to meet such requirement he can file a certified copy of the same under Sections 63 and 65 of the Evidence Act and in such a case it is his duty to explain away in his pleading and evidence as to why he failed to produce the original. In the instant case pleading and evidence do not say so. Law is settled that a party producing a secondary evidence of a document is not exempted from explaining why the original could not be produced even though no objection was raised when it was tendered and marked in evidence. It seems that the writing on Exhibit-9 has been lately done on old stamp papers. The document was not at all proved in evidence because either the executants or their descendants or any scribe, attesting witness, identifier came before the Court to prove the same. Moreover Exhibit-9 shows that the second schedule of the document contains 0.08 acres of land of Police Station Tala of Islamkati sub-registry office of District Khulna but plaint is silent about it and respondents could not submit any document showing the property mentioned in 2nd schedule to the deed belonged to the vendors. Thus it is clear that the document contains fictitious land and

is an invalid document being barred under Section 28 of the Registration Act. It also appears from perusing the seal given on the reverse side of the second page of the document that the copy was prepared, sealed, signed and delivered on 23.05.1966 but on the last page the date is 25.05.1966. The document was prepared on 25.05.1966 but read over by a person on 27.04.1965. Moreover it is detected with the naked eye that the signatures of sub-registrar differ from each other. The stamps used in the deed have no number at the back side and serious anomalies led us to believe that the deed is forged and fictitious one. We have asked the learned Advocate for the respondent as to why the deed was shown to be registered in the office of sub-registrar, Islamkati, Khulna where there is no averment in the pleading in respect of schedule-2 property but he failed to reply to satisfaction. All those facts and circumstances clearly establish that the deed in question has been manufactured by the plaintiffs in suit. Similarly, another group of people came with an application for addition of party as respondents by showing a true copy of the sale deed. On scrutiny and calling volume from the sub-registry office, Tejgaon it was found that the same was forged one and consequently application was rejected imposing penalty and directing the District Registrar, Dhaka to file criminal case. Exhibit-9 as has been discussed above is a fake, forged, fraudulent document and the same does not confer any title to the plaintiffs. Since plaintiffs failed to prove their

title they are not entitled to challenge the subsequent record of rights prepared in the name of defendant 1 under Section 144(7) of the State Acquisition and Tenancy Act and such records bear presumptive value under Section 144(A) of the same Act and cannot be dislodged until found incorrect.

Paragraph 6 of the plaint shows that the suit land is pond in nature in which plaintiffs have been maintaining possession by rearing fish. In chief PW 1 also stated the same. Neither plaint nor evidence discloses as to how and by whom such possession was maintained by the plaintiffs. PW 1 admitted in cross that they have not paid rent after the suit land was recorded in RS khatian. The revisional survey was completed in the concerned area before 1976. Plaintiffs even did not file any rent-receipt showing earlier payment since their purchase or by their transferors. PW 2 admittedly lives in a different place and his evidence is not sufficient to prove possession of the plaintiffs being unconvincing and incredible. Plaintiffs have miserably failed to prove their possession in the suit land. Exhibits 10, 11, Kha, Ga are good evidence of possession of defendant 1 and the presumption of such entry in the name of defendant is never dislodged by any cogent and reliable evidence.

The instant case falls under Sections 101-103 of the Evidence Act. Plaintiffs want the Court to believe that the kabala Exhibit-9 is a genuine document but as discussed above this Court found the same

as fake, forged, fabricated and invalid. Plaintiffs failed to discharge their initial onus on proving title and possession in the suit land. Exhibits- Kha, Ga, 10, 11 show that defendant 1 has got possession in the suit land. Plaintiffs having failed to prove their title are not entitled to challenge Exhibits-Kha and Ga prepared in the name of defendant 1. The Joint District Judge misconceived the law and facts of the case and arrived at a wrong conclusion and the impugned judgment and decree being perverse are liable to be set aside. Claim of title by plaintiff based on a forged document showing the same registered in a different sub-registry office is highly deprecated. Since we found the deed is forged and used in Court as evidence the plaintiffs are liable to be punished for committing forgery. It is to be mentioned that a group of land grabbers in collusion with the staffs and officers of the registration office are engaged in forging various sale deeds and using the same successfully manage to achieve decree from the Court and grab the Government properties which cannot be allowed to continue.

Therefore, we find merit in the appeal and accordingly the same is allowed.

The impugned judgment and decree dated 10.02.2019 passed by the Joint District Judge, Court No. 2, Dhaka in Title Suit No. 117 of 2017 is set aside and the suit is dismissed with costs.

The District Registrar, Dhaka is directed to lodge a complaint under Sections 468 and 471 of the Penal Code against the plaintiffs in suit.

Send down the lower Court's record.

Communicate this judgment to the concerned Court.

The deed (Exhibit-9) in question is hereby forfeited and the office is directed to retain the same. A copy of the judgment and the disputed deed be sent to the District Registrar, Dhaka for doing needful.

Mahmudul Hoque, J:

I agree.