

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

**First Appeal No. 717 of 2019**

**In the matter of:**

Government of the People's Republic of Bangladesh represented by the Deputy Commissioner, Dhaka Police Station and District- Dhaka.

... Appellant

-Versus-

Md. Delwar Hossain, son of Rajjab Ali Bepari of Dadampur, Police Station- South Keraniganj, District- Dhaka represented by Am-mokternama Md. Abul Hossen, son of late Siddiq Sarder of 79/Ga, Hossni Dalan Road, Police Station- Chalkbazar, District- Dhaka and others.

...Respondents.

Mr. Arobinda Kumar Roy, DAG with  
Mr. Mohamad Abbas Uddin, AAG

...For the appellant

Mr. Niaz Murshed, Advocate

...For the respondent no. 1

**Heard on 03.01.2024.**  
**Judgment on 04.01.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

**Md. Mozibur Rahman Miah, J.**

This appeal is directed against the judgment and decree dated 31.08.2014 passed by the learned Joint District Judge, 4<sup>th</sup> Court, Dhaka in

Title Suit No. 543 of 2012 decreeing the suit on contest against the defendant nos. 1-14.

The short facts leading to preferring this appeal are:

The present respondent no. 1 as plaintiff filed the aforesaid suit seeking following reliefs:

- “(ক) নিম্ন তফসিল বর্ণিত নালিশী সম্পত্তিতে বাদীপক্ষের খরিদা .৫২ শতাংশ ভূমির মালিক স্বত্ববান আছে মর্মে স্বত্ব ঘোষণার ডিক্রি দিতে;
- (খ) নিম্ন তফসিল বর্ণিত নালিশী সম্পত্তিতে আর, এস, ১ নং খতিয়ানে ২০১৬ নং দাগে ৩৯ শতাংশ ও ২০১৮ নং দাগে ৮৮ শতাংশ সর্বমোট ১.২৭ শতাংশ ভূমি অন্যায়, বেআইনী ভাবে ভুলবশতঃ অত্র বাদীর পূর্ববর্তী মালিগণের নামে রেকর্ড লিপিবদ্ধ না হইয়া বাংলাদেশ সরকার পক্ষে ডেপুটি কমিশনারের নামে লিপিবদ্ধ হইয়াছে যাহা অশুদ্ধ ও ভ্রমাত্মক বটে। উক্ত বাদীপক্ষের উপর বাধ্যকর ও কার্যকর নহে মর্মে ঘোষণামূলক ডিক্রী প্রচার করিতে;
- (গ) মোকদ্দমার খরচ বিষয়ে বাদীপক্ষের অনুকূলে ও বিবাদীপক্ষের প্রতিকূলে এক আদেশ দিতে;
- (ঘ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে প্রতিকার পাইতে হকদার তাহার ডিক্রি দিতে হজুরের একান্ত মর্জি হয়।”

The case of the plaintiff in short is that, the suit land appertaining to C. S. Khatian No. 437 corresponding to S.A. Khatian No. 87 and R. S. Khatian No. 88 originally belonged to two brothers namely, Kala Chan Sheikh and Lal Chan Sheikh in equal share. During enjoying title and possession over the said land, they made an oral amicable partition among themselves through which Kala Chan Sheikh got  $63\frac{1}{2}$  decimals of lands

appertaining to C.S Plot No. 1408 which was subsequently recorded in S. A. Khatian No. 1043 where S.A. Plot remains as it is that is, Plot No. 1408. Kala Chan Sheikh also got property from non-suited S.A Plot No. 1396. Subsequently, after his demise, his brother namely, Lal Chan Sheikh got his share and on the demise of Lal Chan Sheikh his sons and daughters, Surerjamal, Shukur Ali, Buddu Miah and Hazera Khatun and others became S. A. recorded tenant and their names were duly published in the S.A. Khatian. When Kala Chan Sheikh had been enjoying title and possession over his share of land, he also transferred the same by way of registered deed of gift dated 02.03.1959 in favour of his two daughters namely, Mosammat Anguri Khatun and Mosammat Bedana Khatun who got 52 decimals of land out of 88 decimals of land in C. S. and S. A. Plot No. 1408. When the two daughters of Kala Chan Sheikh had been in possession over their land sold out the same by registered sale deed dated 10.10.1981 to Md. Nurul Islam, father of Darbesh Bepari and handed over possession in favour of the recipients. Subsequently, Md. Nurul Islam transferred his share of land in favour of the plaintiff vide registered sale deed dated 21.11.1988. After purchasing the said land by the plaintiff, he got his name mutated in the khatian vide Mutation Case No. 2304 of 1989-90 and kept on paying rent to the government by demarcating the same through pillar and by planting different kind of trees and sowing crops. Thereafter, when the government introduced provision to mutate the name as per the R.S. record issuing gazette notification, the plaintiff then went to the office of the defendant no. 4 on 20.11.2011 when the respective official then informed him that the property of R.S. Plot Nos.

2016 and 2018 measuring a total area of 1.27 acres of land was prepared in R. S. Khatian No. 1 in the name of the Deputy Commissioner of the Government though beforehand, the plaintiff was not informed about the said wrong recording. After coming to learn about the said wrong recording, the plaintiff obtained the certified copy of the R. S. record and became sure about the wrong recording of the suit land prepared in the name of the Government and hence, the suit.

On the contrary, the defendant nos. 1-4 in order to contest the suit filed a joint written statement denying all the material averments so made in the plaint contending *inter alia* that, an area of 1.27 acres of land comprising R.S. Plot No. 2016 measuring 39 decimals of land and 88 decimals of land of R.S. Plot No. 2018 totaling 1.27 acres of land has rightly been prepared in the name of the government in R. S. Khatian No. 1. It has further been stated that, the plaintiff has got no right, title and possession over the suit property and in order to grab the government property, the plaintiff filed the instant suit with some frivolous statement as well as by manufacturing some deeds which has got no basis and finally prays for dismissing the suit.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 6(six) different issues. However, the plaintiff examined 4(four) witnesses and produced several documents which were marked as exhibit nos. 1-5(c) when the defendant no. 1 examined a single witness and produced documents which were marked as exhibit nos. 'ka' and 'kha'. However, after conclusion of the trial, the learned Judge of the trial court decreed the suit on contest against the defendants.

Being aggrieved by and dissatisfied with the said judgment and decree, the defendant no. 1 as appellant came before this court and preferred this appeal.

Mr. Arobinda Kumar Roy, the learned Deputy Attorney-General appearing for the appellant upon taking us to the impugned judgment and decree as well as the documents so appeared in the paper book at the very outset submits that, the suit itself was not maintainable under the provision of section 145A of the State Acquisition and Tenancy Act, 1950 since the plaintiff filed the suit challenging the latest record and Land Survey Tribunal is the right forum to challenge the wrong recording of the suit land and the learned Judge of the trial court ought to have dismissed the suit.

The learned Deputy Attorney-General next contends that, since the plaintiff-respondent failed to produce any documents such as, rent receipt, mutation khatian to prove holding of possession as well as enjoying title over the suit property and since possession follows title which is the settled proposition so, the learned Judge ought to have dismissed the suit.

The learned Deputy Attorney-General wrapped up his submission contending that, though certain documents have been marked exhibits by the plaintiff but those are all fraudulent papers which was malign only to grab the government valuable properties and therefore, the suit is liable to be dismissed and the appeal be allowed.

On the contrary, Mr. Niaz Murshed, the learned counsel appearing for the plaintiff-respondent no. 1 by refuting the submission so advanced by the learned Deputy Attorney-General for the appellant submits that,

under the provision of section 145A (6) of the State Acquisition and Tenancy Act, 1950 since R. S. record all over the country was completed in the year 1997 and from 1998 onwards, the B.S. record as well as City Jorip (survey) was started and it was also completed so the provision of section 145A of the Act is not applicable in the instant case and the learned Judge of the trial court has rightly decreed the suit.

The learned counsel by taking us to the paper book mainly the deposition so made by the P.W-1 to P.W-4 in particular, P.W-1 and P.W-3 also contends that, those very witnesses have clearly proved the possession of the plaintiff stating that “নালিশী জমি বাদীরা ভোগ দখল করে চাষাবাদ ক্রমে নালিশী জমির চার দিকে কাঁটা তারের বেড়া সহ পিলার আছে” and on cross-examination, the P.W-3 categorically stated that, “নালিশী জমির পাশে আমার জমি ছিলো, উহা আমি বিক্রি করেছি। নালিশী জমিতে কাঁটা তারের বেড়া ৩/৪ বছর আগ থেকে দেখছি। ... বর্তমানে বাদীরা আছে। ... বাদী ৫২ শতাংশ জমি দাবী করে।”

By showing the documents so have been exhibited as exhibit nos. 1-5(c), the learned counsel further contends that, since those very title documents which is the chain of acquiring title in the suit land by the plaintiff and those have been proved by marking as exhibits and no objection was raised when those were taken into evidence and therefore, the suit land was wrongly prepared in the name of the government in R. S. Khatian No. 1.

The learned counsel further contends that, in the prayer portion, the plaintiff prayed for declaration in respect of 1.27 acres of land though he claimed 52 decimals of land to have wrongly prepared in the name of the government so such declaration in respect of 1.27 acres of land is mere a

mistake save for 52 decimals but that can well be rectified under the provision of order XLI, rule 24 and 33 of the Code of Civil Procedure so the decree passed in respect of 52 decimals of land will not be affected at all.

The learned counsel next contends that, though soon after purchasing the property by the plaintiff, he mutated his name in the khatian which also described in the plaint but inadvertently that very mutation khatian has not been marked as exhibit even then the D.W-1 in his cross-examination also asserted to have seen the said mutation khatian stands in the name of the plaintiff which also proves that the plaintiff acquired indefeasible title and possession over the suit property and R. S. record in respect of 52 decimals of land has wrongly been prepared in the name of the government in the R.S. Khatian No. 1 and finally prays for dismissing the appeal.

We have considered the submission so advanced by the learned Deputy Attorney-General for the appellant and that of the respondent no. 1 at length. We have also very carefully gone through the provision provided in section 145A (6) of the State Acquisition and Tenancy Act. It is admitted position that, the provision of section 145A was inserted by Act No. 09 of 2004 and it is our common knowledge that R.S record all over the country was completed by the year 1997 and soon thereafter B. S. record as well as City Jorip (in Dhaka) was started and it was also completed in respect of the suit land so at the point of enacting/incorporating that provision, B.S and City Jorip was ended. So invariably, the latest record in respect of the suit land is “City Survey” not

the R.S record which is under challenge so the contention advanced by the learned Deputy Attorney-General that the plaintiff ought to have filed the suit before the Land Survey Tribunal clearly falls through.

On going through the written statement so filed by the defendant-appellant, we find that, it simply claimed the suit land to have rightly prepared in R.S. Khatian No. 1. But how the defendant acquired the suit land and got it prepared in its name has not been described in the four corners of the written statement. On the other hand, from the statement so made in the plaint, we got the detailed genealogy of acquiring title by the plaintiff in the suit land and all the documents from C.S Khatian to R.S. Khatian and the title deed have been produced before the trial court and the trial court marked those very vital documents of acquiring title as exhibits without any objection on the part of the defendants which alternatively proves that the plaintiff has got title and possession over the suit property.

However, the plaintiff claimed to have purchased 52 decimals of land from R.S Plot No. 2018 that comprises a total area of 88 decimals of land and another 39 decimals of land from R.S Plot No. 2016 totaling 1.27 acres of land. Since the plaintiff became aggrieved with the wrong recording of 52 decimals of land he purchased, he thus compelled to file the suit even though the plaintiff prayed for declaration in respect of 1.27 acres of land but that very prayer will in no way affect the impugned judgment and decree in declaring the preparation of 52 decimals of land in R.S Khatian No. 1 as illegal.



Furthermore, on going through the testimony so made by the P.W-1 to P.W-4, we find that, the plaintiff has been able to substantiate the case as regards to acquiring title as well as enjoying possession in the suit property as the testimony of P.W-1 has clearly been corroborated by the P.W-3 who is admittedly the adjacent land owner of the suit land and both the witnesses clearly asserted the boundary of the suit land saying that, it was butted and bounded by pillar.

Insofar as it regards to the testimony of the defendants as D.W-1, we find from the cross-examination that, he admitted of having seen the mutation stands in the name of the plaintiff as per S.A record. So we find that, though the plaintiff has failed to mark the mutation khatian as exhibit but it was on the record and therefore, the submission placed by the learned Deputy Attorney-General that in absence of any mutation khatian as well as the rent receipt, the plaintiff cannot get possession in the suit property does not hold water. Because, the suit land was recorded in the name of the government in R.S Khatian which is under challenge so naturally, the government will not receive any rent from the plaintiff so long it remains in the name of the government. But with the above discussion, it is crystal clear that, the plaintiff has acquired title and possession over his purchased 52 decimals of land. On the contrary, the defendant-appellant has utterly failed to prove the basis of preparing the suit land in R.S Khatian No. 1.

Regard being had to the above facts and circumstances, we don't find any substance in the submission so placed by the learned Deputy Attorney-General and on the other hand, the judgment and decree passed

by the trial court is well-founded and reasoned which is based on materials and evidence on record.

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

Let a copy of this judgment along with the lower court records be communicated to the court concerned forthwith.

**Mohi Uddin Shamim, J.**

I agree.