

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

FIRST APPEAL NO. 78 OF 2020

Government of Bangladesh and others

.....Appellants.

-Versus-

Munshi Basir Uddin Ahammad and another

.....Respondents.

Mr. S.M Zafor Sidique Tanveer, D.A.G

Mr. Md. Azadul Islam, A.A.G

Mr. Khorshed Alam, A.A.G

..... For the appellants

Mr. Ranjan Chakravorty, Advocate

..... For respondent Nos. 1 & 2

Heard on: 04.05.2026 and 07.05.2026.

Judgment on: 11.05.2026.

Md. Badruzzaman, J.

This appeal is directed against the judgment and decree dated 26.02.2007 passed by the learned Joint District Judge, 1st Court, Manikganj in Title Suit No. 14 of 2007 decreeing the suit.

The facts necessary for disposal of this appeal are that respondent Nos. 1 and 2, as plaintiffs, instituted Title Suit No. 14 of 2007 against the appellants-Government praying for a decree declaring title in respect of the suit land and further declaring that R.S. Khatian No. 1, in respect of 0.0150 acre of land corresponding to R.S. Plot No. 4177, which corresponds to S.A. Plot No. 1350 under S.A. Khatian Nos. 381/405 and C.S. Plot Nos. 421 and 422 under C.S. Khatian Nos. 21 and 328 respectively, was wrong and not binding upon the plaintiffs.

It was contended, inter alia, that 0.03 acre of land in C.S. Plot No. 422 was owned and possessed by Radhanath and Shibnath. Accordingly, C.S. Khatian No. 328 was correctly recorded in their names. They subsequently transferred the same by oral sale to Abdul Dhunkar and handed over possession to him. Since the value of the land was below BDT 100, no written deed was executed or registered. Abdul Dhunkar was also in possession of 0.05 acre of land in C.S. Khatian No. 21, which was recorded in his name. He thus possessed a total of 0.08 acre of land in C.S. Plot Nos. 421 and 422 along with structures. After his death, he left behind his only son, Talim Dhunkar. Talim Dhunkar, while in possession of the said 0.08 acre of land, mortgaged it by registered deed No. 1220 dated 20.02.1946 to Shamsheer Ali for 15 years. Thereafter, he transferred 0.03 acre of land from C.S. Plot No. 421 and 0.03 acre from C.S. Plot No. 422 to Shamsheer Ali and his wife Bashiran Nesa by registered sale deed No. 2633 dated 24.04.1951. They, in turn, came into possession. Subsequently, the land was recorded in S.A. Khatian No. 381/405 under S.A. Plot No. 1350 measuring 0.0512 acre in their names. Shamsheer Ali and Bashiran Nesa thereafter transferred the

suit land along with other lands to the plaintiffs by registered sale deed No. 4511 dated 09.11.1964 and by gift deeds Nos. 3077 and 2632 dated 08.05.1995 and 29.05.1995, respectively, and handed over possession. During the R.S. operation, R.S. Khatian No. 686 was prepared in the names of the plaintiffs and their mother Bashiran Nesa in respect of R.S. Plot No. 4176 measuring 0.0362 acre. However, by mistake, 0.0150 acre of land was recorded in the name of the Government in R.S. Plot No. 4177 under R.S. Khatian No. 1. On 15.06.2004, the plaintiffs obtained a certified copy of the R.S. Khatian and came to know about the alleged wrong recording. It was claimed that the Government had no right, title, or interest in the suit property, and had received rent from the plaintiffs in respect of 0.0512 acre of land including the suit land. As the R.S. record was prepared wrongly, the present suit was instituted.

The defendants-appellants contested the suit by filing a written statement, contending, inter alia, that the suit was not maintainable, was bad for defect of parties, barred by limitation, and that the plaintiffs had no right, title, or interest in the suit land. It was further contended that the suit land forms part of a canal and was rightly recorded in the name of the Government. The plaintiffs, it was alleged, raised no objection at the time of recording and filed the suit with false claims.

Both parties adduced oral and documentary evidence. Upon consideration of the same, the trial Court decreed the suit, against which the defendants preferred this appeal.

Submissions of the Parties

Mr. S.M. Zafor Siddique Tanveer, learned D.A.G., submitted that the plaintiffs failed to prove their title and possession by sufficient evidence. It was further argued that the alleged purchase from Radhanath and Shibnath was not proved. He also submitted that the suit land forms part of a canal used by the public and was rightly recorded in the name of the Government. The trial Court, according to him, misread and failed to properly appreciate the evidence.

Mr. Ranjan Chakravorty, learned Advocate for the plaintiffs-respondents, submitted that the plaintiffs successfully proved their title and possession. He argued that the predecessor-in-interest, Shamsher Ali and Bashiran Nesa, were recorded tenants under S.A. Khatian No. 381/405, and through them the plaintiffs acquired title. He further argued that the Government, having accepted rent and mutated their names, is estopped from challenging their title. Reliance was placed on *Bangladesh vs. Askar Ali*, BCR 1988 (HCD) 179 and *Osimuddin vs. Bangladesh*, 1 BLC 375. He supported the judgment of the trial Court.

Decision

We have heard the learned Advocates, perused the pleadings, evidence, impugned judgment, and other materials on record.

Upon the pleadings of the parties, the learned Trial Court framed the following issues:

1. Whether the suit is maintainable in its present form?
2. Whether the suit is barred by limitation?
3. Whether the plaintiffs have right, title, and possession in the suit land?
4. Whether the plaintiffs are entitled to a decree of declaration as prayed for?
5. To what other relief(s), if any, are the plaintiffs entitled?

To prove their case, the plaintiffs examined four (04) witnesses, including plaintiff No. 1. On the other hand, the defendants examined one (01) witness. The plaintiffs produced documentary evidence, which were marked as Exhibits 1 to 8. The defendants produced a photostat copy of the impugned R.S. Khatian, which was marked as Exhibit Ka. The report of the learned Advocate Commissioner was also proved and marked as Exhibit A series.

The plaintiffs claimed that 0.0150 acre of land, along with other land comprised in C.S. Plot Nos. 421 and 422, was owned and possessed by one Abdul Dunkar. Out of the said land, Abdul Dunkar allegedly purchased 0.03 acre of land in C.S. Plot No. 422 from the recorded tenants, Radhanath and Shibnath. C.S. Khatian No. 328 (Exhibit 1/1) was prepared and finally published in the names of Radhanath and Shibnath, whereas C.S. Khatian No. 21 (Exhibit 1) was prepared and finally published in the name of Abdul Dunkar.

It is further alleged by the plaintiffs that Radhanath and Shibnath transferred 0.03 acre of land to Abdul Dunkar by way of an oral sale. Thereafter, Abdul Dunkar died, leaving behind his only son, Talim Dunkar, who executed a usufructuary mortgage deed in respect of 0.03 acre of land by registered deed of mortgage No. 1220 dated

20.02.1946 (Exhibit 2). Subsequently, Talim Dunkar transferred 0.06 acre of land, along with dwelling houses and shops, in favour of Shamsheer Ali and Bashiran Nesa by registered sale deed No. 2633 dated 24.04.1951 (Exhibit 2/1). Upon acceptance of the tenancy rights of Shamsheer Ali and Bashiran Nesa, the Government prepared and published S.A. Khatian No. 381/405 in their names (Exhibits 1/2).

The S.A. Khatian No. 381/405 has been admitted by the defendants, wherein 0.0512 acre of land was recorded under S.A. Plot No. 1350. Subsequently, Shamsheer Ali transferred 0.0150 acre of land from C.S. Plot No. 422 and 0.0150 acre of land from C.S. Plot No. 421 in favour of the plaintiffs by registered deed of sale No. 4511 dated 09.11.1964 (Exhibit 3). Thereafter, Bashiran Nesa transferred her share to the plaintiffs by registered deed of gift No. 3077 dated 29.05.1995 (Exhibit 3/1) and deed No. 2632 dated 08.05.1995. The plaintiffs thereafter mutated their names in the office of the Government Revenue Officer in respect of 0.0512 acre of land and have been paying rent to the Government (Exhibit 5 series).

The plaintiffs further contended that the said 0.0150 acre of land formed part of S.A. Plot No. 1350, and during the R.S. operation, the said 0.0150 acre was recorded in R.S. Plot No. 4177 as "bhiti" land, while another portion, i.e., 0.0362 acre of S.A. Plot No. 1350, was recorded in R.S. Plot No. 4176 under R.S. Khatian No. 686.

On the other hand, the Government contended that the suit land forms part of a canal and does not constitute part of S.A. Plot No. 1350.

A local investigation was conducted during the trial at the instance of the plaintiffs. The learned Advocate Commissioner, after holding such local investigation, submitted his report, which was proved by him as P.W.4 and marked as Exhibit A series. In his report, the learned Advocate Commissioner, inter alia, found as follows:

“ (২) উক্ত ভূমির সি-এস, এস-এ ও আর-এস দাগ অনুযায়ী সনাক্ত শেষে ভূমির পরিমাপ করি।

(৩) সি-এস ৪২১ দাগের নকশা ভাউরাইয়া উহাতে জমির পরিমাণ পাওয়া যায় ৩.৬১ ডিং এবং সি-এস ৪২২ নং দাগের নকশা ভাউরাইলে উহাতে জমির পরিমাণ পাওয়া যায় ২.৪৭ ডিং। আবার সি-এস ৪২১ ও সি-এস ৪২২ দাগটি সরজমিনে পরিমাপ করিলে উহাতে জমির পরিমাণ ৩.৬১ ডিং ও ২.৪৭ ডিং ভূমি পাওয়া যায়। সি-এস ৪২১ ও সি-এস ৪২২ দাগে মোট জমির পরিমাণ $(৩.৬১+২.৪৭) = ৬.০৮$ ডিং।

(৪) এস-এ ১৩৫০ দাগের ভূমির নকশা ভাউরালে উহাতে জমির পরিমাণ পাওয়া যায় ৫.২৮ ডিং এবং এস-এ ১৩৫০ দাগের ভূমিটি সরজমিনে পরিমাপ করিলে উহাতে জমির পরিমাণ পাওয়া যায় ৫.২৮ ডিং।

(৫) সি-এস ৪২১ ও সি-এস ৪২২ দাগের ভূমি এস-এ ১৩৫০ দাগের ভূমির (যাহা ৫.২৮ ডিং) নকশা, পর্চা পর্যালোচনা করে এবং সরজমিনে পরিমাপ করে দেখা যায় যে, এস-এ ১৩৫০ দাগের ভূমিটি আর-এস ৪১৭৬ দাগে এবং আর-এস ৪১৭৭ দাগে রেকর্ড হয়েছে বলে প্রতীয়মান হয়।

(৬) আর,এস ৪১৭৬ দাগে এবং আর-এস ৪১৭৭ দাগটির নকশা ভাউরালে উহাতে যথাক্রমে জমির পরিমাণ ৩.৬৫ ডিং এবং ১.৬৩ ডিং পাওয়া যায় এবং আর-এস নকশা অনুযায়ী দাগ দুইটি পরিমাপ করে ও আর-এস ৪১৭৬ দাগে ও আর-এস ৪১৭৭ দাগে যথাক্রমে ৩.৬৫ ডিং ও ১.৬৩ ডিং জমি $(৩.৬৫+১.৬৩) = ৫.২৮$ ডিং পাওয়া যায়।”

On perusal of the report (Exhibit A), it appears that, after field measurement of the suit land along with the total land of S.A. Plot No. 1350, the learned Advocate Commissioner found that S.A. Plot No. 1350 was divided into two parts during the R.S. operation and recorded as R.S. Plot No. 4176 and R.S. Plot No. 4177. Out of these,

R.S. Plot No. 4176 comprises 0.0365 acre of land and R.S. Plot No. 4177 comprises 0.0163 acre of land, and the aggregate of the two plots is 0.0528 acre. The defendants neither denied the report of the Advocate Commissioner nor could they prove by evidence that the suit land was not part of S.A. Plot No. 1350 or that it was part of a canal. Accordingly, it has been proved that 0.0150 acre suit land was recorded in R.S. Plot No. 4177, which is a part of S.A. Plot No. 1350. The report also suggests that 0.0528 acre of land was part of C.S. Plot Nos. 421 and 422. Thus, the contention of the defendants that the suit land was not part of S.A. Plot No. 1350 has not been proved.

On the other hand, to prove their title and possession, the plaintiffs adduced oral evidence, including P.W.1, Md. Bashir Uddin Ahmed, who in his examination-in-chief narrated the facts in accordance with the plaint regarding the acquisition of title of the plaintiffs to the suit land from C.S. recorded tenants. He further deposed that they have been owning and possessing the suit land by erecting dwelling houses as well as shops thereon, and that the suit land is not part of any canal. He did not deviate from his statement during cross-examination by the defendants. P.W.2 Md. Aatur Rahman, an Advocate of the Manikganj District Bar Association, deposed that the plaintiffs are in possession of the suit property and have been possessing 0.0510 acre of land, including the suit land, where their dwelling house is situated; that the canal is situated far away from the suit land; and that the suit land is not part of any canal and no canal exists therein. In his cross-examination, he also did not deviate from his earlier statement. P.W.3 Dewan Golam Mostafa, in his examination-in-chief, deposed that his dwelling house is situated five plots away from the suit property, that there is a two-storied

building on the suit property, and that the suit property is far away from the canal. He also did not deviate from his statement during cross-examination.

On perusal of the impugned R.S. Khatian No. 1 (Exhibit Ka), it appears that 0.0150 acre of land was recorded in R.S. Plot No. 4177 as bhiti land. On the other hand, on perusal of C.S. Khatian No. 21 (Exhibit 1), it appears that 0.05 acre of land was recorded in C.S. Plot No. 421 as shop, and in C.S. Khatian No. 328 (Exhibit 1/1), 0.03 acre of land was recorded in C.S. Plot No. 422, also described as shop. From S.A. Khatian No. 381/405 (Exhibit 1/2), it appears that 0.0512 acre of land was recorded in S.A. Plot No. 1350 as shop land. Upon consideration of the entire evidence adduced by the parties, we find no canal within the 0.0150 acre of suit land, and accordingly, the plea of the Government that the suit land forms part of a canal has not been proved by evidence.

Admittedly, after acquiring 0.03 acre of land by purchase and 0.03 acre by deed of gift, the plaintiffs applied for mutation in respect of 0.0512 acre of land, including the suit land, under S.A. Plot No. 1350 of Khatian No. 381/405. Upon acceptance of their tenancy right, the Government mutated their names and received rent from them by endorsing their tenancy right and issuing rent receipts (Exhibit 5 series).

It is a settled principle of law that after the acquisition of rent-receiving interests, there remains only one class of tenants, namely raiyats under the Government, in respect of which S.A. Khatians are prepared and finally recorded in accordance with the provisions of the State Acquisition and Tenancy Act, 1950. It is also a settled

principle of law that once the Government has accepted rent from a raiyat in respect of a tenancy, it is estopped from challenging the title of such raiyat, and the raiyat acquires a valid title in the said tenancy. [Ref: Bangladesh vs. Askar Ali, BCR 1988 (HCD) 179; Osimuddin vs. Bangladesh and Others, 1 BLC 375.]

In the instant case, S.A. Khatian No. 381/405 (Exhibit 1/2) was prepared and finally published in respect of 0.0512 acre of land, including the suit land, in the names of Shamsheer Ali and Bashiran Nessa, which proves that the said Shamsheer Ali and Bashiran Nessa became raiyats (tenants) under the Government. The plaintiffs derived their title to the suit land through Shamsheer Ali and Bashiran Nessa, and the Government accepted rent from the plaintiffs after correction of the S.A. Khatian. As such, the Government is estopped from challenging the title of the plaintiffs to the suit land.

Moreover, the Government failed to produce any document of title to the suit land on the basis of which the impugned R.S. Khatian was prepared and finally published in its name. It is a settled proposition of law that a record-of-rights, without any legal basis, does not confer title upon the person in whose name it is prepared. Since the Government failed to produce any document of title in support of the impugned R.S. Khatian, we are of the view that it was wrongly prepared and finally published in the name of the Government.

Upon consideration of the entire evidence on record, we are satisfied that the plaintiffs have been able to prove their title to and possession in the suit property through C.S. recorded tenants, and as such, they are entitled to the decree as prayed for. From the

impugned judgment, it appears that the trial Court, upon proper evaluation of the evidence on record, arrived at correct findings and rightly decreed the suit. Accordingly, no interference is called for by this Court.

In view of the above, we find no merit in this appeal.

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

Send down the LCR along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Ms. Justice Aynun Nahar Siddiqua)