

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.504 OF 2000

Samirendra Guha Roy
.... Appellants

-Versus-

Shabana Khatun and others
.... Respondents

Mr. Probir Neogi, Senior Advocate with
Mr. Md. Sumon Ali, Advocate
.... For the appellants.

Mr. Mohammad Eunos, Advocate
.... For the respondent No.1.

Heard on 04.08.2026 and Judgment on 23.08.2026.

S M Kuddus Zaman, J:

This First Appeal at the instance of the defendant is directed against the judgment and decree dated 03.09.2000 passed by the learned Subordinate Judge, 1st Court, Rajbari in Title Suit No.15 of 1998 decreeing the suit.

Facts in short are that the respondent No.1 as plaintiff filed above suit for declaration of title and recovery of possession for 9.18 decimal land and for further declaration that registered kabla deed dated 09.04.2016 executed by defendant No.1 to defendant No.5 on 09.04.1996 is unlawful, collusive and not binding upon the plaintiff alleging that

above property belonged to Abdul Jabber and the same was rightly recorded in S. A. Khatian No.164 and in above land Abdul Jabber had his dwelling house. In 1971 during the liberation war above Abdul Jabber and his wife who were non-bengalis were killed. Plaintiff was a minor girl of Abdul Jabber of 1 year age. Plaintiff was taken by Sheikh Bashir at his house in Faridpur. Above Sheikh Bashir was an issueless person who raised the plaintiff and gave her marriage. The name of the plaintiff is Sabana Khatun but in the kabinnama she was given the name Fatema Khatun daughter of Basir Mia. Above property was not liable to be abandoned property under P.O. No.16 of 1972. In above land several persons used to live on the permission of the plaintiff. In 1997 defendant Nos.4 and 5 forcibly entered into possession of above land.

Above suit was contested by defendant Nos.1-3 and 5 by filing two separate written statements although their claims were identical. Defendant Nos.1-3 stated that above property was declared abandoned property pursuant to P.O. No.16 of 1972 and the same was published in the official gazette. Above suit was barred by Section 6 of Ordinance No.54 of 1985. It was further stated that in 1971 the dwelling house of defendant No.5 was destroyed and his elder brother was killed and he started to live in the abandoned house of the disputed land since 1971. After enlistment of above property as abandoned property defendant No.5 was asked by the Government to surrender possession of above

property. On a petition of defendant No.5 the Government gave him allotment of above house and subsequently the Government decided to transfer above property by sale and published the same in the official gazette. No claim having received against above house the Government sold above house to defendant No.5 by a registered kabla deed dated 09.04.1996 and defendant No.5 is living in above house along with the members of his family.

At trial plaintiff examined four witnesses and documents of the plaintiff were marked as Exhibit Nos.1 and 2. Defendant Nos.1-3 examined one witness. Defendant No.5 examined two witnesses and documents of the defendants were marked as Exhibit Nos.“A” to “F” series.

The learned Joint District Judge decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.5 as appellant moved to this Court and preferred this First Appeal.

Mr. Probir Neogi, learned Senior Advocate for the appellant submits that Abdul Jabber was a non Bengali and his dwelling house was situated in the disputed land and after 1971 his whereabouts could not be known and above house remained abandoned. The Government declared above house as abandoned property under P.O. No.16 of 1972 and subsequently under Ordinance No.54 of 1985 an official gazette was accordingly published (Exhibit No.“E”). It is admitted that plaintiff

has been living in Faridpur in the house of Bashir Miah and in his kabinnama and voter list her name was Fatema and her father was Bashir Miah. Above Bashir Miah has given evidence as PW3 and in his evidence he stated that PW2 Kamrunnessa stated to him that plaintiff was the daughter of Abdul Jabber. Above witness was an inhabitant of Faridpur and he has no personal knowledge that plaintiff was the biological daughter of Abdul Jabber. Above Kamrunnessa gave evidence as PW2 but in her evidence she did not say that plaintiff was daughter of Abdul Jabber. The plaintiff has produced a succession certificate issued by Chairman of Rajbari Pourashava on the report of a Commissioner of Rajbari Pourashava on 27.01.1998 long after 1971. But above Commissioner did not give evidence in support of above certificate. As such above succession certificate cannot be treated as legal evidence. The plaintiff could not produce any legal evidence to establish that she was the daughter of Abdul Jabber not Bashir Miah. But the learned Judge of the trial Court most illegally held that the plaintiff was the daughter of Abdul Jabber which is not tenable in law. The plaintiff has claimed that she was removed from Rajbari when she was a child of one year and till date she is living in Faridpur in the House of Bashir Miah. It was stated in the plaint that several persons were living in the disputed house on the permission of the plaintiff but she could not mention the name of any person who resided in above house. Plaintiff has further claimed that defendant Nos.4 and 5 entered

in above property in January 1996. But she did not mention the exact date and time and the manner of dispossession nor she mentioned the names of person who witnessed above occurrence. The plaintiff has totally failed to prove her previous possession in above property and subsequently dispossession from the same by legal evidence. The learned Advocate lastly submits that since the disputed property was enlisted by the Government as abandoned property under P. O. No.16 of 1972 and subsequently Ordinance No.54 of 1985 and transferred to defendant No.5 by sale pursuant to Article 4 of P. O. No.16 1972 above suit was barred by Article 23 of P. O. No.16 of 1972 but the learned Joint District Judge totally failed to appreciate above facts and laws and most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Mohammad Eunos, learned Advocate for the respondent No.1 submits that disputed house belonged to Abdul Jabber who was a non Bengali. Above Jabber was killed along with his wife in 1971 excepting the minor daughter plaintiff who was a baby of one year and she was rescued by PW2 Qumrunnessa and handed over to PW3 Bashir Miah. Bashir Miah raised the plaintiff as his own daughter and gave her marriage. Above property has been enlisted as abandoned property by the Government pursuant to P. O. No. 16 of 1972 and Ordinance No.54 of 1985 and the same was published in the official gazette and subsequently the Government transferred above property by sale to defendant No.5. Article 23 of P. O. No.16 of 1972

and Section 6 of Ordinance No.54 of 1985 bars the filing of any suit in the Civil Court challenging the legality and propriety of any order or sale of any property treating the same as abandoned property and above Ordinance has created Court of Settlement for the aggrieved person for release of the property from the list of abandoned property. Since plaintiff was out of possession of the disputed house since 1971 she should have moved to the Court of Settlement as the only surviving heir of Abdul Jabber for releasing above property from the list of abandoned property and cancellation of the sale deed executed by the Abandoned Property Management Board to defendant No.5. But due to lack of legal skill and knowledge the appointed Advocate of the plaintiff erroneously filed above suit under Section 8 of the Specific Relief Act, 1877 in the Civil Court. The learned Advocate lastly submits that the period of time the plaintiff wasted for prosecution of above erroneous suit may be excluded from counting the limitation for filing a suit in the Court of settlement.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed house belonged to Abdul Jabber who was a non Bengali who was killed along with his wife in 1971 during the war of liberation and above property remained abandoned and the Government enlisted above property as abandoned property under P. O. No.16 of 1972 and Ordinance No.54 of 1985 vide AP Case No.8 of

1972 and sold the land and house of Plot No.1745 to defendant No.5 by registered sale deed dated 09.04.1994. The claim of the defendants Nos.1-3 that disputed land of plot No.1744 is being used as public road has not been denied by the plaintiff.

Plaintiff has claimed that in 1971 she was a baby of 1 year age and only surviving daughter of above Abdul Jabber. She further stated in the plaint that in 1971 at the age of one year she was removed to Faridpur and raised by PW3 Bashir Miah as his daughter. But in her evidence she stated that some non-Bengalis rescued her and took to Faridpur Jail and from above jail PW3 Bashir took her to Faridpur. She did not mention the names of persons who rescued her from the house of Abdul Jabber and took to jail. PW3 Bashir Miah has stated that plaintiff was handed over to him by PW2 Qumrunnessa who stated that plaintiff was the daughter of Abdul Jabber. Qumrunnessa gave evidence as PW2 and stated that while she was in Rajbari Jail a person handed over the minor plaintiff to her she does not know the name of that person. PW3 did not specifically say that she knew the family of Abdul Jabber and plaintiff was biological daughter of Abdul Jabber.

On the basis of enquiry report Mr. A. F. M. Shahjahan a Commissioner of Rajbari Pourashava the Chairman of above Pourashava issued a succession certificate on 27.10.1998 stating that plaintiff was daughter of Abdul Jabber. But above Commissioner did not give evidence as a witness in support of his enquiry or above

certificate. Admittedly plaintiff is a resident of Faridpur since 1971 and she did not live in Rajbari. Plaintiff filed this suit claiming that she was as Sabana but by amendment of plaint she admitted the claim of the defendants that in her kabinnama her name was Fatema Khatun and father's name was Bashir Miah. In cross examination PW1 has further admitted above facts but she did not provide any explanation for her above name and father's name.

The plaintiff has filed above suit for simple declaration of title under Section 42 of the Specific Relief Act, 1877 on 03.06.1998. By amendment of the plaint the plaintiff converted above suit for declaration of title and recovery of possession under Section 8 of the Specific Relief Act alleging that defendant Nos.4-5 dispossessed her in 1996. It shows that at the time of filing of above suit the plaintiff was out of possession of above property but falsely claimed to be in possession of the same.

In a suit under Section 8 of the Specific Relief Act, 1877 the plaintiff is required to prove this previous possession and subsequent dispossession and further prove that the suit has been filed within the statutory period of limitation. In the plaint plaintiff has stated that several persons used to live in above house on her permission but she could not mention the name of anyone who lived in above house as her permissive possessor. In her evidence as PW1 the plaintiff could not mention the name of any person who was his tenant or permissive

possessor in above house. PW2 Qumrunnessa and PW3 Bashir Miah did not mention anything in their respective evidence as to previous possession of the plaintiff in above property or unlawful entry of the defendant No.5 in above house.

On consideration of above facts and circumstance of the case and materials on record we hold that the plaintiff has utterly failed to prove her previous possession in the disputed property and unlawful entry of the defendants in above property in January, 1996 by legal evidence.

The learned Joint District Judge totally failed to appreciate facts and circumstances of the case and evidence on record and the provision of Section 8 of the Specific Relief Act, 1877 and most illegally decreed above suit which is not tenable in law.

The learned Advocate for respondent No.1 rightly points out that the Civil Court did not have jurisdiction to entertain any suit challenging the enlistment of any property as abandoned property and transfer of that property by the Abandoned Property Management Board by registered kabla deed and Ordinance No.54 of 1985 has created Court of Settlement for entertaining the claim of the owners or their heirs of such property. A true heir of Abdul Jabber if any, be at liberty to approach the Court of Settlement for appropriate remedy if the same is not otherwise barred.

In above view of the facts and circumstances of the case and materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The judgment and decree dated 03.09.2000 passed by the learned Subordinate Judge, 1st Court, Rajbari in Title Suit No.15 of 1998 is set aside and above suit is dismissed on contest against defendant Nos.1-3 and 5 and ex-parte against the rest.

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