

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Appeal No. 46 of 2022

In the Matter of:

Memorandum of appeal from the original decree.

-and-

In the Matter of:

Government of the People's Republic of
Bangladesh on behalf of land Reforms Board,
Ministry of Land, Bhawal Raj Estate represented
by its Manager.

.....Defendant-appellant.

-Versus-

Jamina Khatun and others

...Plaintiff-respondents.

Md. Tassadder Raihan Khan, Advocate
..... For the appellant.

Mr. Md. Khalilur Rahman, Advocate with
Mr. Md. Rashidul Karim, Advocate

.....For the respondent No. 1.

Mr. Md. Yousuf Ali, D.A.G. with
Ms. Kamrunnahar Lipi, A.A.G with
Mr. Golam Akter Zakir, A.A.G with
Ms. Israt Zahan, A.A.G.

.....For the Proforma Respondents

Heard on 12.11.2024 and Judgment on 17.12.2024.

Sheikh Abdul Awal, J:

This First Appeal is directed against the judgment and
decree dated 10.07.2019 (decree signed on 18.07.2019) passed by

the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 392 of 2016 decreeing the suit.

Material facts relevant for disposal of the appeal, briefly, are that the respondent No. 1, Jamina Khatun as plaintiff filed Title Suit No. 392 of 2016 in the court of the learned Joint District Judge, 4th Court, Dhaka impleading the defendant-appellants for declaration of title to the effect that the Plaintiff is owner in the 'ka' schedule 0.30 acre suit property and also for further declaration that kha' schedule Dhaka City Jarip khatian prepared and published in the names of Defendant Nos. 1-4 is wrong and baseless and as such, the same is not binding upon the Plaintiff. The plaintiff's case in short is that one Kalim Uddin was the C.S recorded tenant in respect of 0.75 acre agricultural land including the 'ka' schedule 0.30 acre land under the Zamindar Kumar Rabindra Narayan Roy Chowdhury and his name was recorded in C.S khatian No. 192 (Ext. 1), who died leaving behind his only son Md. Tarikullah, who became owner of the said 0.75 acre land by way of successor; that at the time of preparation and publication of the next S.A record of right his name was duly recorded as owner in possession of that 0.75 acre land in S.A khatian No. 120 citing 0.59 acre land in S.A plot No. 54 and 0.16 acre land in S.A plot No. 122 (Ext. 2); that said S.A recorded owner Md. Tarikullah firstly transferred 0.10 acre land on 30.01.1970 by registered sale deed No.1719 (Ext. 5) and thereafter also sold 0.20 acre land to late Noor Akter khatun on 02.04.1974 by sale deed No. 9675 (Ext. 6) and also gave delivery of possession of those transferred land to said late Noor Akter Khatun, the mother of the Plaintiff, Jamina Khatun and in this way Noor Akter Khatun the mother of the Plaintiff became owner in possession of (0.10+ 0.20) 0.30 acre land by purchase from S.A

recorded owner Md. Tarikullah and she had been owning and possessing her said purchased $(0.10 + 0.20) = 0.30$ acre land by erecting tinshed houses therein; that at the time of preparation and publication of R.S record of right 0.10 acre land out of 0.30 acre suit land was duly recorded in R.S khatian No. 288 in her name (Ext.3-kha) and the balance 0.20 acre land was recorded in the name of her Vendor, Md. Tarikullah (Ext.3-ka); that while late Noor Akter Khatun was owning and possessing her purchased $(0.10 + 0.20) = 0.30$ acre property, she died leaving behind her only daughter Jamina Khatun, the present Plaintiff-Respondent No.1 as her only legal heir; that the present Plaintiff Jamina Khatun as only legal heir of her mother Noor Akter Khatun became owner in possession of her mother's purchased 0.30 acre 'ka' schedule suit property by inheritance but at the time of preparation and publication of the Dhaka City Jarip her name was not recorded as owner in possession of 0.30 acre suit property, it was wrongly recorded in the name of ownerless and possession less Defendant No.1 in the suit 'kha' schedule, Dhaka City Jarip khatian No. 349 (Ext.4) baselessly in the column of owner of that khatian and the names of Defendant Nos. 2 to 4 were cited in the column of possession of that khatian No. 349 (Ext.4); that the said wrong record (Dhaka City Jarip khatian No. 349, Ext.4) created a cloud in the valid, right title and possession of the Plaintiff in her 'ka' schedule 0.30 acre suit property and hence the suit.

Defendant No.1 entered appearance in the suit and filed written statement denying all the material averments made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner as the suit is barred by estoppels, waiver and acquiescence, barred by section 42 of the Specific Relief Act. The case of the Defendant

No.1, Court of Wards, Bhawal Raj Estate is that the Government of the province of East Pakistan enacted State Acquisition and Tenancy Act, 1950 for the purpose of abolishing Zamindari System in the tenanted land and at the time of preparation and publication of the S.A khatians as per the said State Acquisition and Tenancy Act, 1950, many of the properties of Court of Wards were not recorded in the name of Court of Wards and were wrongly recorded in the name of many individual persons; that S.A and R.S khatian of the 'ka' schedule suit property were wrongly recorded in the name of Noor Akter Khatun, the mother of the Plaintiff; that by those wrong S.A and R.S record neither the Plaintiff's predecessor Noor Akter Khatun nor the Plaintiff has acquired any valid right, title and possession in the 'ka' schedule suit property; that C.S khatian and Dhaka City Jarip khatian (Ext, kha and 4) were correctly recorded in the name of Court of Wards, the Defendant No.1 and the Court of Wards is in possession of the suit 'ka' schedule property. The plaintiff filed the suit on false averments and as such, the suit is liable to be dismissed.

The learned Joint District Judge on the pleadings of the parties framed the following issues for determination:-

- (1) Is the suit is maintainable in the present form?
- (2) Whether the suit is bad for defect of parties?
- (3) Whether the Plaintiff has right, title and possession in the suit land?
- (4) Whether City Survey Khatian No. 349 corresponding Plot No. 2562, 3508 was wrongly recorded or not?
- (5) Whether the Plaintiff is entitled to get reliefs, as prayed for?

At the trial the plaintiff side examined 4 witnesses and defendants examined 1 witness and adduced some documentary evidence to prove their respective cases.

The learned Joint District Judge, 4th Court, Dhaka on consideration of the facts and circumstances of the case and the evidence on record decreed the suit by the impugned judgment and decree dated 10.07.2019.

Being aggrieved by the aforesaid judgment and decree dated 10.07.2019 the defendants preferred this first appeal before this court.

Mr. Md. Tassadder Raihan Khan, the learned Advocate appearing on behalf of the defendant-appellant submits that the Learned Court below did not apply its judicial mind into the facts and circumstances of the case and without considering the evidence of DWs oral and documentary most illegally held that the defendant appellant has failed to prove their right, title and interest in the suit land which occasioned a failure of justice. He further submits, it is apparent from the Survey report submitted by the surveyor of the Court of Wards Bawal Raj Estate that the disputed property in question 2820 decimal of land in dag No.2562 and 0240 decimals of land in plot No.3508 total 3060 decimals of land is rightly and properly recorded in the name of Court of Wards in originally C.S. Khatian No.02, C.S Plot No. 139, S.A. Khatian No. 120, Plot No. 54, R.S. Khatian No. 267 and 288 and later Dhaka City Jarip Khatian No.349 corresponding to Plot No. 2562 and 3508 although the learned Joint District Judge, 4th Court, Dhaka failed to re-evaluate the evidence on record from a correct angle thereby coming to a wrong decision and as such the

impugned judgment and decree is liable to be set aside. The learned Advocate further submits that according to P.O. Ordinance No. 12 of 1973 the management of the Estate has been vested upon the Government of the People's Republic of Bangladesh in 1989, according to section 5 of Land Reforms Law, the Management of the Estate has been vested upon the Land Reforms Board, City Survey Khatian No.349 corresponding to Plot No.2562 and 3508 absolutely possessed and control by the Court Of Wards in accordance with law and the Court Of Wards has not been transferred this property to anybody in any manner at all, the plaintiff filed the suit on false averments and as such, the suit ought to have been dismissed.

Mr. Md. Khalilur Rahman, the learned Advocate appearing on behalf of the plaintiff-respondent No.1, on the other hand, supports the impugned judgment and decree, which was according to him just, correct and proper.

Having heard the learned Advocates for both the sides and having gone through memo of appeal, evidences of both the parties both oral and documentary and other materials on record including the impugned judgment and decree, the only question that calls for our consideration in this appeal is whether the trial Court below committed any wrong in decreeing the suit in favour of the plaintiff-respondent.

On a scrutiny of the record, it appears that the respondent as plaintiff filed Title Suit No. 392 of 2016 in the Court of the learned Joint District Judge, 4th Court, Dhaka against the defendants praying the following reliefs:

ক) বাদীপক্ষকে "ক" তফসিল বর্ণিত সম্পত্তির ষোল আনা মালিক স্বত্বাধিকারী ঘোষণাক্রমে এক ডিক্রী প্রচার করিতে।

(খ) তর্কিত "খ" তফসিল বর্ণিত মহানগর জরিপ খতিয়ান ১নং বিবাদী এবং মন্তব্যের কলামে ২-৪নং বিবাদীর নামে লিপি হওয়া/রেকর্ড হওয়া সম্পূর্ণভাবে বে-আইনী ভুল/অকার্যকর/প্রথম হইতেই অবৈধ (Void- ad- initio) এবং বাদীর উপর কার্যকরী নহে মর্মে ঘোষণা মূলক এক ডিক্রী প্রচার করিতে;

(গ) "খ" তফসিল বর্ণিত সিটি জরিপ ৩৪৯ নং খতিয়ানের ২৫৬২ নং দাগের ভূমির পরিমাণ ২৮২০ শতাংশ এবং ৩৫০৮ নং দাগের ভূমির পরিমাণ ০২৪০ শতাংশ একুনে মোট দুইটি দাগের ৩০৬০ শতাংশ ভূমি ১নং বিবাদীর নামের পরিবর্তে বাদীর নামে ৩০৬০ শতাংশ লিপিবদ্ধ হইবে;

(ঘ) ন্যায়পর আদালতে ব্যয় বাদী স্বপক্ষে এবং ১-৪নং বিবাদীর বিরুদ্ধে ডিক্রী দিতে;

(ঙ) আইন ও ন্যায়নীতি এবং ন্যায় বিচারের বাদী আর যে সকল প্রতিকারাদি পাইবার হকদার বলিয়া বিবেচিত হন সেই সকল প্রতিকারাদি বাদী বরাবরে ডিক্রী দিতে হুজুরের মর্জি হয়।

It appears that at the trial the Plaintiff cited 4 (four) witnesses and produced and proved as many as 7(Seven) documents as Ext. 1 to 7 namely, C.S khatian No.192 as Ext.1, S.A khatian No.120 as Ext. 2, R.S khatian Nos.267 and 288 as Ext. 3(ka) and 3(kha), printed porcha of City Survey khatian No. 349 prepared in the name of Plaintiff (Ext. 4), registered deed No. 1719 dated 30.01.1970 (Ext. 5), registered deed No. 9675 dated 02.04.1974 (Ext.6) and Pantagraph of C.S, S.A, R.S and City Survey khatian (Ext. 7 series) and on the other hand, the Defendant No.1 Court of Wards cited only its Office Assistant, named Obilash Chandra Chakroborti as D.W-1 and produced and exhibited two documents namely authorization letter as Ext. 'ka' and C.S khatian No.2 as Ext. 'kha'.

The Trial Court at first discussed over the issue Nos. 1 and 2, that is, maintainability of the suit and defect of parties and came to the findings that the suit is maintainable and does not suffer by defect of parties. Thereafter, the Trial Court took up the issue No.3

regarding right title, interest and possession of the Plaintiff in the suit property and after discussing the evidences of the Plaintiff and Defendant No.1 came to the conclusion that the Plaintiff has successfully proved her title and possession in the 'ka' schedule suit property. The learned Joint District Judge, 4th Court, Dhaka also came to the finding that Defendant No. 1. Court of Wards could not able to prove its case regarding their title and possession in the 'ka' schedule property as stated in its written statements. In respect of Dhaka City Jarip khatian No. 349 (Ext.4) prepared and published in the name of Defendant No. 1, the Trial Court after discussing evidences on record came to the conclusion that the suit land recorded therein as of 0.2820 acre in Dhaka City Plot No. 2562 and as of 0.0240 acre in Dhaka City Jarip Plot No. 3508 does not indicate the true picture of possession rather the plaintiff has/had actual control and possession over the suit property measuring 0.30 acre land and on these findings the Trial Court decided issue No. 4, Dhaka City Jarip record is baseless and incorrect which wrongly recorded in the name of Defendant No.1 and as such, the same is not binding upon the Plaintiff.

Drawing our attention to facts of the case and relevant laws Mr. Khalilur Rahman, the learned Advocate for the Plaintiff-Respondent No.1 submitted that the C.S khatian No.2 and C.S Plot No. 139 was really the actual C.S khatian but S.A Buzarat or Shabek khatian No. 192 mistakenly cited as C.S khatian of the suit property due to bonafide mistake. The Learned Advocate further submitted that even for such bonafide mistake, the Defendant No.1 will not have acquired any right title and possession in the 'ka' schedule 0.30 acre suit property because of the fact that the said actual C.S khatian No.2 of Raza Bazar Mouza, has been cited as projabli property of the projabli property Gazette, 1952 published

by the Government under section 3(i) of the State Acquisition and Tenancy Act, 1950 for abolishing Zamindari system and thereby the Government has acquired its rent receiving interest in the land including the suit land of the Plaintiff covered by the said C.S khatian No.2 and ownership of all the properties cited in the said C.S khatian No.2 was declared as vested to the respective proja as owners in respect of their respective tenanted land, including tenanted land of the Plaintiff's original predecessor, Tarikullah. So, the then Government of East Pakistan has rightly prepared and published the respective separate S.A khatian in the names of respective projas as owners including in the name of Plaintiff's predecessor, Tarikullah in S.A khatian No.120 citing section 24(i) of the State Acquisition and Tenancy Act, 1950, that is, owner by raiyoti right as basis of such record after dividing all the lands covered by C.S khatian No.2 into different S.A khatians for the sake of realizing land development taxes by the Government after declaring ownership of the each previous projas as owner to their respective tenanted lands. The aforesaid acquisition of rent receiving interest by the Government in respect of the property covered by C.S khatian No.2 of Raza Bazar Mouza and vesting of ownership thereof to different projas has not only been declared by the State Acquisition and Tenancy Act, 1950, by P.O. 90 of 1972 and by amended section 8A of the Court of Wards Act, 1879, but also has been settled by the Ruling of this Hon'ble High Court Division in the case of Romisa Khatun and others-Vs- Bhawal Court of Wards reported in 61 DLR 18 and also by the Appellate Division in its upholding Judgment reported in 14 MLR, 401. It may be mentioned in this connection that the High Court Division in 61 DLR's case declared that Circular dated 10.11.2002 of the Ministry of Land as of illegal and of without jurisdiction upon

what basis the Defendant No.1 claimed his Dhaka City Jarip khatian No.349 was duly prepared and published in its name. In view of the decision reported in 19 MLR (AD) 01 our Apex Court gave a direction upon the Court of Wards and also upon the Ministry of Land that the projabli property is the property of general projas and Court of Wards can only manage and administer its choiced retainable khas land of the previous Zamindars of Bhawal Raj Estate as its manager/custodian as per amended section 8A of the Court of Wards Act, 1879 and under no circumstances it can claim the projabli property as of its own property and if it so claims, then its officers will be punished for Contempt of Court apart from abating such claim under P.O. 90 of 1972. As such, filing the present Appeal by the Court of Wards violating the positive direction of the Hon'ble High Court Division claiming the Plaintiff's projabli property contained in C.S khatian No.2 of Raza Bazar Mouza which cited in the projabli property Gazette, 1952 is not only illegal but also contemptuous and in that view of the matter the Defendant-Appellant cannot claim the 'ka' schedule 0.30 acre property as of its own property.

Mr. Md. Yousuf Ali, the learned Deputy Attorney General and Mr. Md. Tassadder Raihan Khan, the learned Advocate appearing for the appellant at the end of the day by referring relevant law and decision could not refute the above contentions raised by Mr. Md. Khalilur Rahman.

Furthermore, on going through the evidence of both the sides, it appears that Plaintiff, Jamina Khatun deposed as PW-1 that one Kalim Uddin was the C.S recorded tenant in respect of 0.75 acre land. C.S. record was correctly prepared in the name of Kalim Uddin, who died leaving behind his only son Tarik Ullah and thereafter S. A. Khatian No. 120 and Dag No. 54 was finally

published in the name of Tarik Ullah regarding 0.59 acre and accordingly Tarik Ullah mutated his name and paid rent to the Government and thereafter while he was in possession in “Ka” schedule land on 30.01.1970 transferred 10 decimal land to Nur Akter Khatun, mother of the plaintiff and handed over possession of the transferred land and thereafter R.S. Khatian No. 288 Dag No. 1096 was prepared in the name of new land owner, Nur Akter Khatun regarding 10 decimal land. Later on the said Tarik Ullah also transfers another 20 decimal land to her mother and handed over possession of the transferred land and in this way her mother became owner of total 30 decimal land of “ka” schedule land and thereafter Nur Akter Khatun died leaving behind the plaintiff as her sole heir, who became owner of “ka” schedule land and she mutated her name and paid rent to the Government. Dhaka City Jarip khatian was wrongly prepared in the name of the defendant appellant instead of the plaintiff. Defendant No. 1 never possessed the suit land. Pw-1 (plaintiff) proved as many as 6(Six) documents as Ext. 1 to 6 namely, C.S khatian No.192 as Ext.1, S.A khatian No.120 as Ext. 2, R.S khatian Nos.267 and 288 as Ext. 3(ka) and 3(kha), printed porcha of City Survey khatian No. 349 prepared in the name of Plaintiff (Ext. 4), registered deed No. 1719 dated 30.01.1970 (Ext. 5), registered deed No. 9675 dated 02.04.1974 (Ext.6). In cross examination the defendant side could not able to discover anything as to the credibility of this witness (PW-1) on the matter to which she testifies. PW2 Md. Sohag, PW3 Md. Iqbal Hossain & PW4 Md. Helal Uddin, all of them in their respective evidence corroborate the evidence of PW-1 in respect of material particulars.

On the other hand DW.1, Obhilash Chandra Chokroborty stated in this deposition that - এই খতিয়ানে C.S দাগ ১৩৯, খতিয়ানে জমির

পরিমাণ ৪৯। এই জমি ভাওয়াল রাজ এস্টেটের নামে রেকর্ড হয়েছে। পরবর্তীতে S.A, R.S ভাওয়াল রাজ এস্টেটের নামে হয় নাই। সিটি জরিপে ৩৪৯ নং খতিয়ান দাগ নং-২৫৬২, ৩৫০৮ ভাওয়াল রাজ এস্টেটের নামে রেকর্ড হয়। এই সম্পত্তি ভোগ দখলে কোর্ট অব ওয়ার্ডস আছে। বাদীর মামলা খারিজ চাই। বাদী ভুল তথ্যে মামলা করেছে। This witness stated in his cross examination that : বাদীর মামলায় আরজি দেখেছি। বাদীর মামলা C.S খতিয়ান নং-১৯২, দাগ নং-৫৪। এই দাগে ভূমির পরিমাণ ৪৯ শতাংশ। আমাদের দাবীকৃত ভূমির C.S দাগ খতিয়ান নং-০২, C.S দাগ নং-১৩৯। বাদীর দাবীকৃত ভূমি ও কোর্ট অব ওয়ার্ডসের দাবীকৃত ভূমি এক দাগ নয়। ইহা আমাদের জানা নেই যে, এই মামলার নালিশী সম্পত্তি কোর্ট অব ওয়ার্ডসের অর্ন্তভুক্ত নেই। S.A খতিয়ান এই মামলার বাদীর নামে হয়েছে কিনা আমার জানা নেই। সত্য নয় যে, বাদীগণ নালিশী সম্পত্তিতে ভোগ দখল এ আছে। সত্য নয় যে, ভুলক্রমে কোর্ট অব ওয়ার্ডসের নামে ভুলক্রমে সিটি জরিপে হয়েছে। সত্য নয় যে, জবাবে ১-২ জবাবে বলেছি তা মিথ্যা।

Trial court below on due considering the evidence and materials on record came to its conclusion that: “I found plaintiff’s claimed property and defendant No-1’s claimed property is different.” This finding finds supports from admitted evidence of DW-1.

This being purely a finding of fact based on proper assessment of the evidence on record that plaintiff’s claimed property and defendant No-1’s claimed property is different.

From the evidence on record it is found that the plaintiff has been possessing the suit land chronologically for more than 60 years in accordance with law. According to survey and settlement manual Rule 391 khatian is made on the basis of possession. In present case, it appears that impugned city survey khatian no. 349 corresponding plot no. 2562, 3508 does not indicate the true picture/ position of the possession. Therefore, we do not find any ground to differ with the view taken by the trial court below that

impugned city survey khatian no. 349 corresponding plot no. 2562, 3508 recorded wrongfully and contain errors and it is not binding upon the plaintiff.

Weighing the evidence of both the parties, we find that the evidence in plaintiff side is credible and tenable in Law.

The learned Joint District Judge, 4th Court, Dhaka appears to have considered all the material aspects of the case and justly decreed the suit by his judgment and decree dated 10.07.2019 (decree signed on 18.07.2019). We find no reason to interfere therewith.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant first Appeal must fail.

In the result, the Appeal is dismissed without any order as to costs. The judgment and decree dated 10.07.2019 (decree signed on 18.07.2019) passed in Title Suit No. 392 of 2016 by the learned Joint District Judge, 4th Court, Dhaka is hereby maintained.

Let a copy of this judgment along with lower Courts record be sent down at once.

Md. Mansur Alam, J:

I agree.