

Present:-
Mr. Justice Mahmudul Hoque
And
Mr. Justice Md. Ali Reza

F. A. No. 680 of 2019

Bangladesh Railway, represented by the
General Manager (East). C.R.B. Chattogram
and others

..... Appellants

-Versus-

Shamsun Nahar Begum and others

..... Respondents

Mr. Shaheed Alam, Advocate

.... For the appellants

Mr. Md. Imam Hossain with

Mr. Md. Wahidul Islam and

Mr. Kazi Akhtar Hosain, Advocates

... For the respondent Nos. 1-52.

Heard on 07.12.2023, 11.12.23, 13.12.23,14.12.23 and
Judgment on 24th January, 2024.

Mahmudul Hoque, J:

This appeal is directed against the judgment and decree dated 30.04.2018 passed by the learned Joint District Judge and Artha Rin Adalat, Narayanganj in Title Suit No. 297 of 2011 decreeing the suit.

Facts relevant for disposal of appeal, in short, are that the respondents, as plaintiff, instituted Title Suit No. 297 of 2011 against the present appellant and respondent Nos. 103-118, as defendant, for a declaration of title that the property measuring 34·83 sataks belongs to plaintiff No. 1 and 9·22 sataks belong to plaintiff Nos. 53-100 and in the

alternative be declared that the plaintiff Nos. 2-52 are owners of 16 annas share in 34·83 sataks land and also be declared that S.A. and R. S. Khatians wrongly recorded in the name of defendant No. 2 and defendant No. 10, stating that the property measuring 117 sataks belonged to one Yeasin Haji. Said Yeasin Haji as owner in possession of 117 sataks land under C.S. Khatian No. 46 transferred 70·90 sataks land to other people out of which 20·90 sataks land was acquired by Zilla Parishad and 50 sataks owned by defendant Nos. 6, 8, 9, 20 and Attorney of plaintiff, Saifuddin Ahmed, the defendant No. 18 in suit. For 70·90 sataks land there has been a Partition Suit No. 372 of 2010 filed in the Court of Joint District Judge, 2nd Court, Narayanganj for partition, which was decreed and in the said suit 20·90 sataks saham was given to Zilla Parishad and 50 sataks was given to defendant Nos. 6, 8, 9, 18 and 20. They got their saham through court and have been possessing the same by mutating their names in the khatian. Remaining 46·10 sataks owned by Yeasin Haji, who died leaving 2 sons Rahman Sarder, Miajan Sarder and only daughter Rahela Begum. Each son inherited 18·44 sataks and daughter 9·22 sataks. Among the aforesaid heirs Rahman Sarder died leaving 2 sons Mohammad Ali and Ahsan Ullah, 4 daughters, Anowara,

Rahima, Ful Banu alias Ful Bahar and Golnur. Resultantly, each son inherited 4·61 sataks, each daughter 2·30 sataks from share of Rahman Sarder. Said Anwara died leaving 4 daughters Momotaj, Sanowara, Lutfunnahar and Mahmuda and 3 sons Shahidul Islam, Rezaul Karim and Harun-Or-Rashid. Then Harun-Or-Rashid died leaving son Shahajalal and daughter Sharmin Akter. Aforesaid Rezaul Karim died leaving 2 sons Abu Bakkar Siddique (Sumon) and Ruman and 2 daughters Rahima Haque and Shahnaj Akter Kanan. Shahidul Islam died leaving 2 daughters Tania Islam and Sheuli Begum. Fulbanu alias Ful Bahar died leaving 2 daughters Angura Begum, Saleha Begum and only son Fakir Chand. Fakir Chand died leaving 5 daughters, Rahela Begum, Sufia Begum, Hena Begum, Mahmuda Begum, Amena Begum. Angura Begum died leaving 2 sons Md. Badal Mia, Md. Liton Mia and 2 daughters Parvin Akter and Shamima Akter. Saleha Begum died leaving 3 daughters Salma Begum, Zahanara Begum and Nasirun Nesa. Rahima Begum died leaving son Chan Mia, and then Chan Mia died leaving 2 sons Md. Nasim Ahmed and Abdur Rab Selim. Aforesaid heirs by Registered Power of Attorney No. 1848 dated 19.02.2014 appointed Abu Saud Masud as their attorney.

Said Golnur died leaving 4 sons, Jamal, Kafil Uddin, Sobhan, Babul and 2 daughters Helana and Selima. Babul died leaving wife Abeda, 2 sons Sumon, Al Amin and daughter Popi Akter. They by Registered Power of Attorney No. 3278 dated 05.03.2010 appointed Abu Saud Masud as attorney. Subsequently, Mohammad Ali died leaving 5 sons, plaintiff Nos. 4, 5, 67 and one Shamsul Hoque, 3 daughters, plaintiff Nos. 8, 9 and 10. Another son of Mohammad Ali named Shamsul Hoque died leaving plaintiff No. 11, as wife and plaintiff Nos. 12-16 as daughters and plaintiff No. 17 as son. Son of Rahman Sarder named Ahsan Ullah died leaving sons plaintiff Nos. 18-21 and plaintiff Nos. 22-25 as daughters. Plaintiff Nos. 4-25 as heirs of Abdur Rahman inherited 18·40 sataks land.

Daughter of Yeasin Haji named Rahela inherited 9·22 sataks who died leaving 2 sons, Abdul Awal and plaintiff No. 28 Oli Uddin, Kamala Bibi and plaintiff Nos. 2, 3, 26 and 27 as daughters. Therefore, they got 1·02 sataks each. Kamala Bibi got married with aforesaid Mohammad Ali and in her second family plaintiff Nos. 4-10 and one Shamsul Hoque were born. Shamsul Hoque died leaving plaintiff Nos. 11-17. As heirs of Kamala Bibi plaintiff Nos. 4-17 inherited 1·02 sataks. Plaintiff Nos. 27

and 28 inherited $(1.02+2.04)=3.06$ sataks. They also by a Registered Power of Attorney No. 3313 dated 16.05.2006 appointed Saif Uddin Ahmmed and Abdur Rahman as their attorneys. Said Miajan son of Yeasin Haji died leaving 2 sons, Showkat Ali, Abdul Mazid and 2 daughters Ambia alias Ambaly and Nur Jahan Begum alias Nuri. Shawkat Ali died leaving 3 sons, 3 daughters and only wife, plaintiff Nos. 29-35, who got 6.14 sataks, they also by a Registered Power of Attorney No. 5980 dated 06.08.2006 appointed Saif Uddin Ahmed and Abdur Rahman as their attorneys. Mazid son of Miajan died leaving plaintiff Nos. 36-38 as sons and plaintiff Nos. 39-46 as daughters and wife. Daughter of Miajan named Ambia while in possession of 3.07 sataks land died leaving son plaintiff No. 47 and daughter plaintiff No. 48. Another daughter of Miajan named Nur Jahan Begum died leaving 2 sons and 2 daughters who got 3.07 sataks. They also by a Registered Power of Attorney No. 6750 dated 06.08.2006 appointed Saif Uddin Ahmed and Abdur Rahman as their attorneys. Plaintiff Nos. 2-26 for management and sale of the property appointed Saif Uddin Ahmmed and Abdur Rahman as their attorneys vide Registered Power of Attorney Nos. 287 dated 22.12.2005, 830 dated 15.02.2006 and 3313 dated

16.05.2006. They by virtue of power of attorney transferred 34·83 sataks land on behalf of plaintiff Nos. 2-52 by Registered Sale Deed Nos. 183 dated 08.01.2006, 2039 dated 02.04.2006 and 7153 dated 10.09.2006 to plaintiff No. 1. But inadvertently the deed writer has included some excess land in the deed instead of 34·83 sataks. Plaintiff No. 1 has been possessing the said 34·83 sataks land mentioned in Schedule-Ka by rearing and catching fish. Two sons of Abdur Rahman Sarder inherited 9·22 sataks and the heirs of Miajan 18·44 sataks and son and daughters of Rahela Begum inherited 7·17 sataks totaling $(18·44+9·22+7·17)=34·83$ sataks who are plaintiff Nos. 2-52. By purchase from them, plaintiff No. 1 acquired title in the suit property and has been possessing the same in the aforesaid manner. Plaintiff Nos. 97-100 are 4 daughters of Abdur Rahman, they inherited $(2·30 \times 4)=9·22$ sataks. Abdul Awal son of Rahela was in possession of the same. Heirs of Abdul Awal, defendant Nos. 11-17 are owners in possession of 2·05 sataks.

On 25.01.2006 plaintiff No. 1 went to local Tahshil Office for payment rents and came to know that S.A. and R.S. Khatinas stand recorded in the names of Railway and Zilla Parishad, as such, refused to

accept the rents from plaintiff No. 1. Thereafter, the plaintiff obtained certified copy of S.A. and R.S. khatians on 06.02.2006 and finally came to know that S.A. and R.S. Khatians wrongly recorded in the name of Railway. Hence, the present suit for declaration of title. It is further stated that in between C.S. Plot No. 22 corresponding to S.A. Plot No. 22 and R.S. Plot No. 101 there is another C.S. Plot No. 23 corresponding to R.S. Plot No. 102 which is not claimed by Railway. The defendant-Railway never acquired the suit property, but S.A. and R.S. khatians wrongly recorded in their names.

Defendant Nos. 1-4 and defendant No. 10 and added-defendants contested the suit by filing written statement denying all the material allegations made in the plaint. Defendant Nos. 1-4 contended that they are owners in possession of the suit property, accordingly, .52 acres land rightly recorded in the name of Railway in S.A. and R.S. Khatians. The property in question was acquired by the then British Government for establishment of Chashara (চাষাড়া) Crossing Station along with other properties vide L.A. Plan No. C.E/L.P/1035 dated 29.01.1926 and paid compensation to the original owners. After receipt of compensation the owners lost their title and possession in the suit property. Thereafter, as

per East Bengal Railway land use plan, Collector, Narayanganj by a plan dated 29.01.1926 physically delivered possession to the Railway along with other acquired property. After acquisition final Gazette notification was published and the Railway has been possessing the suit property for more than 82 years with the knowledge of the plaintiffs and other local people, as such, the suit is barred by limitation.

Defendant No. 10 claimed that, the plaintiffs earlier filed Title Suit No. 49 of 2006 which was withdrawn and again filed Title Suit No. 177 of 2006. They admitted that C.S. Plot No. 27 measuring 117 sataks land belonged to one Yeasin Haji. For construction of Dhaka Narayanganj road the then British Government acquired the property under C.S. Plot Nos. 27, 33, 34, 35 along with other properties in the year 1933. Thereafter, vide L.A. Case No. $\frac{5}{71}$ /1933-34 acquired the property under aforesaid C.S. Plots and published in the Calcutta Gazette on 28.12.1933. After publication of the Gazette, owner of C.S. Plot Nos. 27, 33, 34 and 35 lost their title and possession in the suit property. C.S. Plot Nos. 27, 33, 34 and 35 correspond to S.A. Plot Nos. 27, 29, 30 and $\frac{11}{97}$ measuring 3.15 acres. C.S. Plot Nos. 111, 114 and $\frac{114}{229}$ measuring

2.27 acres stand recorded in the name of Zilla Parishad. After 74 years of acquisition of the property the plaintiffs came with false claim of title, as such, the suit is barred by limitation.

Defendant No. 10 admitted that the plaintiff filed Title Suit No. 372 of 2010 for a decree of partition which was decreed, but claimed that an appeal against the said judgment and decree is now pending before the higher court. The added-defendants filed written statement but subsequently, they transposed as plaintiffs admitting the case of the plaintiffs.

The trial court framed 4(four) issues for determination of the dispute between the parties. In course of hearing the plaintiffs examined as many as 8(eight) witnesses as P.Ws. On the other hand, defendant No. 10 examined one Md. Azimul Hoque as D.W.1 and Masudur Rahman as D.W.2. Defendant Nos. 1-4 examined one Md. Iqbal Mahmud as D.W.3. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by its impugned judgment and decree dated 30.04.2018 decreed the suit as prayed for.

Being aggrieved by and dissatisfied with the judgment and decree passed by the trial court the defendant Nos. 1-4 preferred this instant appeal.

Mr. Shaheed Alam, learned Advocate appearing for the appellants candidly submits that the property under C.S. Plot No. 27 measuring 1.17 acres belonged to one Yeasin Haji, however, the then British Government acquired 0.52 acres of land for construction of Chashara (চাষাড়া) Crossing Station and a portion of the property was acquired by District Board vide L.A. Case No. $\frac{5}{71}$ /1933-34. The then District Administration by drawing a L.A. map marking the same with specification, delivered possession to the Railway by memo dated 29.01.1926 attaching L.A. Plan No. C.E/L.P/1035. Therefore, the story of acquiring title by the plaintiffs in the property by inheritance from Yeasin Haji is absolutely false and fabricated. In support of his such contention he submitted the plan drawn on a white paper showing the acquired land.

Mr. Md. Imam Hossain with Mr. Kazi Akhtar Hosain, learned Advocate appearing for the respondents submit that had the property in

question acquired by defendant Nos. 1-4, Railway Authority for construction of Chashara (চাষাড়া) Crossing Station they could have filed acquisition plan, compensation award and Gazette notification in support of their claim. But Railway authority could not file any paper showing that the property was acquired in any L.A. case or Gazette notification was published in Calcutta Gazette. Mere submission of a self drawing map alleged to have been handed over by District Administration is not sufficient to claim that the property was acquired by the Railway. On the other hand, the plaintiffs could able to prove that the property belonged to Yeasin Haji and the plaintiffs are his successive heirs and purchaser of the property.

Mr. Imam submits that in support of claim of the plaintiffs they submitted C.S. khatian, S.A. khatian and R.S. khatian, registered sale deeds and Power of Attorneys etc. He argued that the plaintiffs admitted that a portion of Plot No. 27 measuring 20·90 sataks land was acquired by Zilla Parishad vide L.A. Case No $\frac{5}{71}$ /1933-34 and saham was given in their share in Partition Suit No. 372 of 2010, as such, the defendant No. 10, Zilla Parishad did not prefer any appeal against the judgment and decree of the trial court. The trial court rightly found title of the

plaintiffs in the suit land and decreed the same and there is no illegality at all.

We have heard the learned Advocates of both the sides, have gone through the appeal memo and the grounds setforth therein, plaint, written statements, evidences both oral and documentary available in records and the judgment and decree appealed against.

The appellant Railway authority admitted that the property in question originally belonged to one Yeasin Haji, but a portion of S.A. Plot No. 27 measuring 52 sataks land was acquired by the then British Government for construction of Chashara (চাষাড়া) Crossing Station in the year 1926 and after acquisition compensation was paid to original owners and the District L.A. Department by drawing an acquisition map marking the same with color pen delivered possession of the same to the Railway authority. In support of his such claim, the defendant Nos. 1-4 submitted a L.A. Plan No. CE/LP/1035 dated 29.01.1926 showing acquired land of the Railway. But in support of acquisition of the land, the appellants could not submit any paper or documents even mentioning L.A. Case number under which the property was acquired. If the property acquired by any authority there must be a L.A. proceeding

having number and there must be compensation of award list and after conclusion of the whole process there must be a final notification in the Official Gazette. But the Railway authority except a hand drawn map could not submit any documents, such as, L.A. case and Gazette notification showing final acquisition of the property in question. Moreover, the Railway authority did not deny or place any contrary statement regarding genealogy given in the plaint by the plaintiffs. The trial court found that the suit property situated outside of acquisition plan.

The plaintiff submitted C.S. khatian showing that the property measuring 1·17 acres originally belonged to one Yeasin Haji. The plaintiffs claimed that out of which Yeasin Haji transferred 70·90 sataks to other persons out of which 20·90 sataks land was acquired by Zilla Parishad. Accordingly, in Partition Suit No. 372 of 2010 they were allotted with saham. Remaining 34·83 sataks inherited by the plaintiff Nos. 2-52 who subsequently transferred the same to the plaintiff No. 1 through their constituted attorneys. In support of their claim they submitted registered power of attorney, sale deed and khatians. The trial court in its judgment and decree once again reiterated genealogy given in

the plaint by the plaintiffs and finally observed that nothing contrary has forthcoming either from defendant Nos. 1-4 or from defendant No. 10. Therefore, it is established that the genealogy given in the plaint also considered in the judgment passed in Title Suit No. 372 of 2010 (Exhibit-2). The trial court held that Zilla Parishad by filing L.A. proceeding as well as finally published Gazette could able to prove that 20 sataks of land was acquired by the then British Government for construction of Dhaka Narayanganj road vide L.A. Case No. $\frac{5}{71}$ /1933-34 and compensation was paid to the original owner. The defendant No. 10 could able to prove their contention by filing Calcutta Gazette and judgment in Title Suit No. 372 of 2010 giving saham to them and R.S. Khatian showing that the Zilla Parishad acquired a part of the suit plot measuring 20 sataks, for which compensation was paid to one Narendra Dhar whose father purchased the same from Yeasin Haji.

The defendant-appellants, Bangladesh Railway claimed that the property under C.S. Plot No. 27 was acquired by the authority from actual owner and duly made compensation against the land, but in support of their such claim the appellant only filed a L.A. survey plan made by the local District Authority delivered to them as Exhibit-Ga.

They could not substantiate their claim in which L.A. case the property was acquired from whom, awardee list showing payment of compensation as well as final Gazette notification and other connected documents. In the absence of any proof of acquisition of the property by relevant papers and documents the trial court had no other alternative, but to believe the case of the plaintiffs and decree the suit. Moreover, the plaintiffs obtained an information from D.C. Office as to whether the suit property has been acquired by any L.A. Case. They supplied information vide Exhibit-12 stating that the property was not acquired in any L.A. Case for Railway.

Apart from this genealogy stated in the plaint as well as deposed before the court by P.W.1 has not been denied by the defendant-appellants leaving no room for the court to disbelieve the statement and the genealogy disclosed in the plaint and evidences. On going through the judgment of the trial court, we find that the trial court disposed of the suit on proper analysis of each and every evidence both oral and documentary and finally came to the conclusion that the plaintiffs could not prove their case in the absence of any contrary document on the

part of the defendants. As such, we do not find any illegality or error in the judgment of the trial court calling for interference by this Court.

In view of the above, we find no merit in the appeal as well as in the submissions of the learned Advocate for the appellant.

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

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.

Md. Ali Reza, J:

I agree.