

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 295 of 2020

IN THE MATTER OF:

Principal, Al-haj Sydur Rahman Montu Mohila College, Kushtian, represented by the Principal (in charge), Md. Rakibul Islam

... Appellant

Versus

Juel Ahmed and others

... Respondents

Mr. Shasti Sarker, Advocate

.... For the Appellant

Mr. Md. Hamidur Rahman, Advocate

... For the Respondent Nos. 1-10

Heard on 07.01.2026, 14.01.2026, 20.01.2026, and judgment on 19.02.2026.

Md. Iqbal Kabir J:

This appeal is directed against the judgment and decree dated 04.08.2019 (decree signed on 08.08.2019) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia in Title Suit No. 87 of 2015, dismissing the suit.

The instant suit has been instituted for the declaration of right, title, and recovery of possession in respect of the land described in the schedule of the plaint. The case of the plaintiff, in brief, is that a total of 1.20 acres of land, including the suit land measuring 0.09 acres situated in Khoksa Mouza under Khoksa Thana of Kushtia District, was transferred and delivered by local landowners in favour of Saidur Rahman Montu Women's College for the purpose of promoting women's education. Thereafter, on the said land, the college was duly established in the year 1999. Out of the total land, 0.11 acres was donated by defendant Nos. 3 and 4, along with their brother Shahjahan, in favour of the college, and the said land has been used as a north side road of the College. Although it was agreed that a registered deed of gift would be executed, only defendant No. 4, namely Riaz Uddin, executed a registered deed of gift on 25.12.2003 in respect of 0.02 acres of land (Deed No. 2039), while the remaining co-sharers failed to execute the deed. Further, it was the case of the plaintiff that

he retained possession over the remaining 0.09 acres of land, and by continuous, uninterrupted, and peaceful possession since 1999, the plaintiff has acquired title thereto by way of adverse possession. Since the establishment of the college, the said land has been continuously used by the college as a passage connecting the college to the Kushtia-Rajbari road and also as the office room of the Principal. A portion of the land was also surrendered for the construction of the said road, while the remaining portion has been in continuous use and possession of the plaintiff since 18.03.1999. The plaintiff requested the defendant Nos. 3-4 and 10-11 to execute and register the deed, despite repeated requests, they refused to do the same on the plea that the same had already been transferred in favour of defendant Nos. 1-2. Subsequently, on 21.05.2015, defendant No. 1 threatened the plaintiff to vacate the suit land, compelling the plaintiff to institute the present suit for recovery of possession.

The defendant Nos. 1-10 contested the suit by filing a written statement denying the material allegations and contending that the suit is false, fabricated, and not maintainable in law and fact. They denied the plaintiff's claim of possession and title.

Defendant No. 1 specifically contended that the suit land forms part of RS Khatian No. 181 under Khoksa Police Station, Kushtia District, comprising a total of 48 decimals out of a larger area of 2.87 acres recorded in the names of Abdul Latif and others. Abdul Latif transferred his share to Riaz Uddin and Shahjahan Sheikh by registered deed. Subsequently, Monowara Khatun acquired her share by inheritance and thereafter, sold her share along with other land to Abdul Latif, Riaz Uddin, and Shahjahan. Finally, it is contended that Abdul Latif, along with others, by registered deed, transferred 0.09 acres of disputed land to the predecessor-in-interest of defendant No. 1, namely Alaudin Khan, thereby conferring a valid title upon the defendants. The defendants further claim that the plaintiff never had any valid possession or ownership over the land and therefore the suit is liable to be dismissed.

In the course of the trial, the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia framed as many as 4(four) issues, examined 3 (three) witnesses adduced by the

Plaintiff, marked his documents as exhibits 1-2, and also examined three witnesses adduced by the defendants and marked documents as exhibits 'Ka, Ka-1, Ka-2, Kha, Kha-1, Ga, Ga-1 and Gha.

However, by the impugned judgment, the Joint District Judge, First Court, Kushtia, was pleased to dismiss the Title Suit No. 87 of 2015. Being aggrieved by and dissatisfied with the judgment and decree, the plaintiff/ appellant preferred the instant appeal before this Court.

Mr. Shasti Sarker, learned Advocate for the appellant, submits that by establishing Alhaj Saidur Rahman Montu Mohila College, the suit land has been used from its inception by the petitioner. According to him, such possession has been open, visible, and to the knowledge of the true owner, without any interruption or objection. He claims the plaintiff has successfully discharged its burden of proof by adducing consistent and corroborative oral evidence through the P.Ws., which demonstrates continuous and peaceful possession for all over the statutory period. There is no credible evidence on record to show dispossession or interruption within this period. Accordingly, the plaintiff's long, continuous, and hostile possession has ripened into a lawful title by way of adverse possession, entitling the plaintiff to a decree for declaration of title as prayed.

By showing the deposition made by PWs, it has been claimed that the college has been holding the possession of the land since 1999, i.e., for more than 12 years openly, hastily, notoriously, uninterrupted and with the knowledge of all people, including defendants; as such, the plaintiffs are entitled to get a decree by virtue of possession (11 MLR AD 151).

At the outset, it is respectfully submitted that the learned trial Court has fallen into serious error in failing to properly consider and appreciate the evidence on record, particularly the evidence adduced by the defence witnesses themselves. According to him, the evidence of the D.Ws, instead of supporting the case of the defendants, in fact demolishes their claim of possession. The testimonies of the defence witnesses are not only inconsistent but also mutually contradictory on the vital question of possession. There is a complete lack of

corroboration among the D.Ws, and such evidence, being unreliable, cannot be the basis of a finding in favour of the defendants. The learned trial Court, therefore, committed an error of law and fact in relying upon such defective and untrustworthy evidence.

He submits that the testimonies of the defence witnesses are inconsistent, self-contradictory, and do not corroborate each other on the crucial issue of possession. Such a lack of corroboration renders their claim unreliable and insufficient to establish possession in accordance with the law. He claims the defence has failed to discharge its burden of proving possession over the suit land. In support of this contention, reliance is placed on the decision reported in 49 DLR (AD) 61 in the case of *Abdul Jalil vs. Niropoma*, wherein it has been clearly held that, in order to establish title by way of adverse possession, a party must prove continuous, uninterrupted, and hostile possession over the statutory period of 12 years.

Furthermore, it is a settled principle of law that possession itself raises a presumption of title under Section 110 of the Evidence Act. If the plaintiffs are found to have the suit land, the law presumes ownership in their favour unless rebutted by the true owner. In this connection, reliance is also placed on the case of *Hajee Abul Hossain and others vs. Md. Amzad Hossain and others*, as reported in 15 MLR (AD) 486, wherein it has been held that possession is prima facie evidence of title and confers a good title against all except the true owner. A person in possession, irrespective of the strength of his title, is entitled to maintain such possession against a wrongdoer until the lawful owner asserts his right through due process of law. Thus, in the absence of any credible evidence from the defendants proving their possession, and in view of the consistent and lawful possession of the plaintiffs, the plaintiffs are entitled to the presumption of title under Section 110 of the Evidence Act.

However, he submits trial court has failed to consider the evidence of DWs, which proves that the defendants are not in possession. The witnesses of DWs do not corroborate the witnesses and failed to prove their possession; as

such, the impugned Judgment and Decree dated 04.08.2019 is liable to be set aside.

Mr. Md. Hamidur Rahman, learned Advocate for the respondent Nos. 1-10, submits that the plaintiff instituted the instant suit seeking a declaration of title over the suit land based on adverse possession. However, he claims the plaintiff has failed to establish uninterrupted, continuous, and peaceful possession over the suit land for the statutory period of more than 12 (twelve) years. Upon proper scrutiny of the evidence on record, the learned trial Court rightly dismissed the suit. Therefore, the instant appeal is liable to be dismissed.

He claims it is a settled principle of law that a person claiming title by way of adverse possession must prove, by clear, cogent, and unequivocal evidence, that such possession was hostile to the true owner and continued uninterrupted for the statutory period. In the present case, the plaintiff has failed to prove, either by oral or documentary evidence, that the possession was open, continuous, uninterrupted, and adverse to the title of the real owner. The trial Court, upon correct appreciation of the evidence, arrived at a lawful conclusion in dismissing the suit. As such, no interference is warranted, and the appeal is liable to be dismissed.

He submits that the plaintiff's claim is primarily based on the assertion that Alhaj Saidur Rahman Mohila College was established in 1999, and the suit land has been possessed within the knowledge of the defendants. However, the evidence on record clearly demonstrates that Defendant No. 2 lawfully purchased the suit land on 30.10.2003 and subsequently transferred the same to Defendant No. 1 on 13.10.2014. It is also evident that Defendant No. 1 took possession of the land and developed it by filling it with sand and soil. These facts negate the claim of continuous possession by the plaintiff and clearly establish that the plaintiff did not have possession over the suit land for the requisite statutory period.

At the outset, it is evident that the entire case of the plaintiff is founded on a claim of title by way of adverse possession, which, in law, requires strict proof of continuous, open, exclusive, and, most importantly, hostile possession against

the true owner for the statutory period. The burden of proving these essential ingredients squarely lies upon the plaintiff. In the present case, the plaintiff has miserably failed to discharge such a burden. The plaintiff's assertion that since the establishment of Alhaj Saidur Rahman Montu Mohila College, the suit land has been used as the only pathway for access to the Kushtia-Rajbari road and partly as the office of the Principal is wholly unsubstantiated. No reliable or convincing evidence has been adduced to establish such use or possession. Mere assertion, in the absence of proof, cannot confer title.

The oral evidence further fortifies the respondent's case. In cross-examination, D.W.-1 categorically stated that the suit land is situated about 55 feet away from the college and that the college building is enclosed by a boundary wall. He further stated that there exists an alternative access road for ingress and egress of the college. This evidence demolishes the plaintiff's claim that the suit land is the only access road or that it forms part of the college premises. Further, the evidence on record clearly supports the case of the respondent (defendant No. 1). It has been consistently stated that defendant No. 1 has owned the suit land since his purchase on 13.10.2014 from Alauddin Khan, who himself acquired the land through a registered deed dated 30.10.2003. These documents have been duly produced and remain unchallenged, thereby carrying a presumption of correctness.

It is, therefore, manifest from the record that the suit land is neither within the possession nor under the control of the plaintiff institution. Rather, the evidence shows that after lawful purchase, the respondent took possession and even developed the land by filling it with sand. Significantly, the plaintiff's own witnesses failed to rebut this fact; instead, one witness admitted having seen such development activities, while another acknowledged that the land originally belonged to Alauddin Khan. These admissions go directly against the plaintiff's case.

More importantly, the plaintiff's own pleadings are self-destructive of the claim of adverse possession. The case as set up is that the defendants had donated the land for the establishment of the college. Such a plea inherently

negates the element of hostility, which is the cornerstone of adverse possession. Possession, if any, arising out of permission or donation can never be adverse to the true owner. Thus, even if possession for a long period is assumed for argument's sake, the same would, at best, be permissive and not hostile, and therefore incapable of maturing into title.

Furthermore, the plaintiff has failed to establish the alleged prior transfer of the suit land by defendant Nos. 3-4 and 10-11 to defendant Nos. 1-2. In contrast, the respondent has successfully proved the chain of title through registered deeds, i.e., Deed No. 2304 dated 30.10.2003 and subsequent Deed No. 2203 dated 13.10.2014, which stand unrebutted.

From the foregoing discussion, it is abundantly clear that the plaintiff has failed to prove possession, much less the stringent requirements of adverse possession. In view of the above facts and circumstances, the plaintiff's claim of title by adverse possession is not maintainable in law.

The learned trial Court has meticulously considered both oral and documentary evidence and arrived at a correct and well-reasoned decision. There being no illegality, irregularity, misreading of evidence, or perversity in the impugned judgment and decree, no interference is called for by this Court.

Accordingly, the appeal, being devoid of merit, is liable to be dismissed.

Resultantly, the appeal is dismissed without any order as to cost.

Consequently, the impugned judgment and decree dated 04.08.2019 (decree signed on 08.08.2019) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia in Title Suit No. 87 of 2015, is hereby affirmed.

Send down the lower Court records along with a copy of this judgment and order to the Court below at once.

A.K.M. Zahirul Huq, J:  
I agree.