

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

Present

Mr. Justice Md. Riaz Uddin Khan

And

Mr. Justice Raziuddin Ahmed

First Appeal No. 264 of 2019

IN THE MATTER OF:

Md. Shah Alam Miah and others

... Plaintiffs-Appellants

Versus

Shona Miah and others

... Defendants-Respondents

Mr. Md. Taufiqul Islam, Advocate

... For the Plaintiffs-Appellants

No one appears

... For the Defendants-Respondents

Judgment on: 28.10.2025

Raziuddin Ahmed, J:

At the instance of the plaintiffs-appellants this appeal is directed against the judgment and decree dated 08.10.2018(decree signed on 10.10.2018) passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.475 of 2013 dismissing the suit.

The case of the plaintiffs-appellants in short is that the defendant No.1 Shona Miah was the owner of a land measuring 122 decimals appertaining to C.S. Khatian No.292 corresponding to C.S. Plot No.24 and 25 in the Mouja of Borabo, Police Station-Adabor, District-Dhaka. Subsequently, the defendant No.1 Shona Miah sold 30 decimals of land to Begum Hajra Banu and Rajia Motin Chowdhury from his aforesaid 122 decimals of land. During

the survey operation of State Acquisition (S.A.) the total 122 decimals of land was recorded and published in the name of Shona Miah, Begum Hajra Banu and Rajia Motin Chowdhury in S.A.Khatian No.249 corresponding to S.A. Plot No.24 and 25. The defendant No.1 Shona Miah by executing a registered sale deed being Sale Deed No.5175 dated 02.06.1962 sold out his remaining 92 decimals of land to Mrs. Nurunnahar and handed over possession to her. But during the survey operation of Revisional Survey (R.S.) instead of Nurunnahar, the suit property was wrongly recorded and published in the name of Shona Miah, Begum Hajra Banu and Rajia Motin Chowdhury under R.S. khatian No.1921. Subsequently Mrs. Nurunnahar sold out .804 acres of land to the plaintiffs-appellants by executing three registered sale deed being Sale Deed Nos.3162, 3163 and 3164 all dated 22.04.1974. The plaintiffs-appellants then got their name mutated vide Mutation Misc. Case No.7085/77-78 dated 07.06.1978. Mrs. Nurunnahar also executed three rectification deed being Deed Nos.851, 852 and 853 all dated 09.02.1982 in favor of the plaintiffs-appellants correcting the C.S. khatian number as 292 which was wrongly written in all the aforesaid three sale deeds as 192. Afterwards the plaintiffs-appellants upon obtaining approval from Dhaka Improvement Trust (DIT) for construction of a five storied building, have erected a three storied building

in the suit land. The plaintiffs-appellants are also paying the holding tax after obtaining holding number from Dhaka City Corporation and also enjoying the utility services which includes electricity, water, gas and telephone in the said holding with due approval from the concerned authorities. During the survey operation of Dhaka City the aforesaid suit land of the plaintiffs-appellants was wrongly recorded and published in the name of the previous owner Shona Miah in Dhaka City Jorip khatian No.4165 corresponding to Dhaka City Jorip Dag No.1586. In the meantime, the period to file a suit in the Land Survey Tribunal to rectify the defect has already been expired. Hence the plaintiffs-appellants filed the present suit for declaration of title of 'ka' scheduled land and further declaration that the City Jorip Khatian No. 4165, Dag No. 1586 in the name of Defendant No.1 is wrong and not binding upon them.

3. It appears from the record that summons were duly served upon all the defendants. The defendant No.1 Shona Miah did not appear and contested the suit. The defendant Nos.2-4 appeared in the suit by filing vokalatnama and took several adjournments to file written statement but subsequently did not appear in the suit. The suit was then finally taken up for hearing ex-parte. The plaintiffs-appellants examined two witnesses in support

of their case and produced several documents which were marked as exhibit Nos.1-7.

4. After taking into consideration of the materials and evidence on record, the learned Joint District Judge, 2nd Court, Dhaka by his judgment and decree dated 08.10.2018 dismissed the suit.

5. Being aggrieved by and dissatisfied with the judgment and decree dated 08.10.2018 (decree signed on 10.10.2018) the appellants have preferred this appeal, on the ground taken in the memo of appeal.

6. The learned Advocate Mr. Taufiqul Islam, appearing on behalf of the appellants submits that the appellants are the lawful owners of the suit land by acquiring the same through three registered sale deed being Sale Deed Nos.3162, 3163 and 3164 all dated 22.04.1974. The said land was subsequently mutated in the name of the appellants through Mutation Misc. Case No.7085/77-78 dated 07.06.1978. The appellants are enjoying peaceful and uninterrupted possession of the suit land by constructing a three storied building by taking approval from the then Dhaka Improvement Trust (DIT). The appellants are also paying holding tax to Dhaka City Corporation regularly and also paying all utility bills to the concerned authorities.

7. The learned Advocate further submits that the summons was duly served upon all the defendants and the

defendant No.1 Shona Miah did not appear and contested the suit as because Shona Miah has no right, title and possession in the suit land. The learned advocate also submits that the learned trial court came into a wrong finding about nonjoinder of parties and referred the decision of Safaruddin and others -Vs- Fazlul Haque and others reported in 49 DLR(AD)151 where it was held that no suit can fail by reason merely of nonjoinder of parties. The learned advocate also referred the decision of Guru Charan Mondal and others -Vs- Sree Bhaba Sindhu Sarkar and others reported in 13 MLR(AD)7 where it was held that a registered documents prevails upon the record of rights.

8. The learned advocate finally referred the provisions of section 90 of the Evidence Act,1872 and submits that as per this section once a document of 30 years old is produced from proper custody then it will be presumed that it was duly executed and genuine document. The sale deeds produced by the appellants are more than 30 years old and as such the presumption is that it is duly executed and a genuine document. In this context he referred the decision of Asgor Ali and others -Vs- Noorjahan and others reported in 73 DLR(AD)119.

9. No one appears for the respondents.

10. We have heard the learned advocate for the appellants, perused the impugned judgment and decree of the trial court and assessed the evidence on record.

11. It appears from the judgment that it is the findings of the trial court that the suit is bad for defect of parties. The basis for the findings is that the suit land was recorded in the name of (1) Shona Miah, (2) Begum Hajra Banu and (3) Rajia Motin Chowdhury instead of Mrs. Nurunnahar in R.S Khatian No.1921 corresponding to R.S Plot No.1040, so without impleading Begum Hajra Banu and Rajia Motin Chowdhury in the present suit, the plaintiff cannot get any relief. As such the learned trial court came to the decision that the plaintiffs are not entitled to get any relief in the present suit.

12. It would be expedient if we reproduce the provision of order 1 rule 9 the Code of Civil Procedure which reads as follows:

Rule-9: Misjoinder and nonjoinder: No suit shall be defeated by reason of the misjoinder and nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regard the rights and interests of the parties actually before it.

13. It is the clear provision of law that no suit shall be dismissed only for misjoinder and nonjoinder of parties unless it causes prejudice. In the present suit

it has been claimed that the defendant No.1 Shona Miah was originally the owners of 122 decimals of land. Subsequently, he sold 30 decimals of land to Begum Hajra Banu and Rajia Motin Chowdhury. Afterwards Shona Miah sold his remaining 92 decimals of land to Mrs. Nurunnahar by registered Sale Deed No.5175 dated 02.06.1962. Out of her 92 decimals of land Mrs. Nurunnahar subsequently sold .804 acres of land to the appellants by executing three registered sale deed being Sale Deed Nos.3162, 3163 and 3164 all dated 22.04.1974. So from the aforesaid transaction it appears that the predecessor of the present appellants was Mrs. Nurunnahar who became the owner of the suit land by way of purchase from Shona Miah. Although the suit land was wrongly recorded in the names of Shona Miah, Begum Hajra Banu and Rajia Motin Chowdhury in R.S. Khatian No.1921 but the appellants did not implead Begum Hajra Banu and Rajia Motin Chowdhury as a party in the suit because they are neither the predecessor of the appellants nor have any claim against them. In the case of Taham Gazi Vs. Promila Pramanik reported in 1991 BLD 99, it was decided that a suit will not fail for nonjoinder of a person who is not a necessary party, but only a proper party. If no relief is claimed from any party and it is not impossible to pass an effective decree in his absence, then he is not a necessary party. It transpires from the plaint that no

relief has been claimed from Begum Hajra Banu and Rajia Motin Chowdhury and it is not impossible to pass an effective decree in their absence, so they are not necessary party in the present suit.

14. It also appears from the evidence on records that summons was duly served upon all the defendants. The serving officer delivers a copy of the summons to the defendant No.1 Shona Miah personally but the defendant No.1 refused to sign the acknowledgement, the serving officer then affixed a copy of the summons on the outer door of defendant No.1. Although the defendant No.1 have the knowledge of the suit but the defendant No.1 Shona Miah or any of his representative neither appeared nor contested the suit. It also appears from the record that the defendant Nos.2-4 appeared in the suit and sought several adjournments but did not file any written statements or raised any objection about the defect of parties at the initial stage of the suit. It is pertinent to mention here the provision of Order 1 Rule 13 of the Code of Civil Procedure, 1908 which provides that all objections on the ground of misjoinder and nonjoinder of parties shall be taken at the earliest opportunity and any such objection if not so taken shall be deemed to have been waived. So taking the ground of defect of parties for dismissing the suit by the learned trial

court at a belated stage of the suit does not bear any substance.

15. Another finding of the trial court is that in the rectification deeds the appellants did not mention R.S Khatian and R.S Plot number. This can be treated as mere omission and can be rectified by executing another rectification deed but for this mere omission the title of the appellants cannot be called in question. The last finding of the learned trial court to the effect that although the appellants owned .804 acres of land but they have challenged the total land of City Jorip Khatian No.4165 measuring .0960 acres of land mentioned in the 'Kha' schedule. The learned trial court failed to take into consideration that the appellants did not claim any area of land from 'Kha' schedule but prayed for a simple declaration that the record and publication of 'Kha' schedule property in the name of the defendant No.1 in R.S. khatian No.1921 is wrong and not binding upon the appellants.

16. So we are of the view that the learned trial court has utterly failed to assess the evidence on record in proper manner and came to a wrong decision.

17. It is now well settled that even when the proceeding is ex-parte, the plaintiff has to proof his case. In Bangladesh Vs Abdul Wadud reported in 25 DLR(SC)90 it was decided that the absence of the defendant cannot give the

plaintiff an occasion to obtain an ex-parte without producing evidence in support of the claim. Let us now examine whether the appellants have succeeded to prove their title and possession in the suit land in the trial court to get a declaration of title in the schedule 'ka' property. It appears from the evidence on record that the appellants have purchased .804 acres of land from Mrs. Nurunnahar by three different registered sale deeds being Sale Deeds Nos. 3162, 3163 and 3164 all dated 22.04.1974 (exhibits-1-4 series). After purchasing the aforesaid land the appellants got their name mutated vide Mutation Miscellaneous Case No. 7085/77-78 dated 07.06.1978 and paying revenue to the government regularly (exhibits-5 series). Subsequently, the appellants by obtaining approval of plan from Dhaka Improvement Trust (DIT) to construct a 5 storied building, has erected a three storied building on the suit land. It also appears from the records that the appellants have obtained a city corporation holding number being holding number 9/3, Ring Road, Shamoly, Dhaka on 26.01.1992 from Dhaka City Corporation and also got all utility connections which includes electricity, gas, WASA and telephone (exhibit-7 series) and peacefully enjoying the suit property without any hindrance from any quarter for more than 30 years.

18. From the facts and circumstances stated above and in view of the evidence on record placed before us we are of

the view that the trial court failed to assess the evidence on record properly and came to a wrong finding. We find substances in the submission of the learned advocate of the appellants. The findings of the trial court are liable to be reversed and the judgment and decree is liable to be set aside.

19. Hence, we find merit in the appeal and the same should be allowed.

20. In the result, the appeal is allowed.

21. The impugned judgment and decree dated 08.10.2018 (decree signed on 10.10.2018) passed by the learned Joint District Judge, 2nd Court, Dhaka in title suit No.475 of 2013 dismissing the suit is hereby set aside. The suit is decreed in terms of prayer Ka and Kha of the plaint.

Let a copy of the judgment along with the lower court records be transmitted to the learned Joint District Judge, 2nd Court, Dhaka at once.

Md. Riaz Uddin Khan, J:

I agree.