

**Present:**  
**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**

**First Appeal No. 03 of 2024**

In the Matter of:

Lieutenant Colonel Md. Mujibur Rahman  
(Retd.) and others.

.....Plaintiff-appellants.

-Versus-

The Government of Bangladesh  
represented by Deputy Commissioner,  
Gazipur and others

.....Defendant-respondents.

Mr. Kazi Akhtar Hosain, Advocate  
..... For the appellants.

Mr. Md. Yusuf Ali, D.A.G with  
Ms. Kamrunnahr Lipi, A.A.G with  
Ms. Ishrat Jahan, A.A.G.

.....For the respondents.

**Heard on 09.01.2025, 26.01.2025,**  
**06.02.2025 and Judgment on**  
**06.02.2025.**

**Sheikh Abdul Awal, J:**

This appeal at the instance of the plaintiff-appellant is directed against the judgment and decree dated 31.10.2023 (decree signed on 05.11.2023) passed by the learned Joint

District Judge, 1<sup>st</sup> Court, Gazipur in Title Suit No. 271 of 2014 dismissing the suit.

At the very outset to cut short the matter Mr. Kazi Akhtar Hossain, the learned Advocate appearing for the plaintiff-appellants referring an application under Order XLI, Rules 23 and 24 of the Code of Civil Procedure, 1908 for sending back the case on remand to the trial Court submits that in the facts and circumstances of the case this is a fit case to send back on remand for fresh trial.

It is contended in the application that during hearing of Title Suit No. 271 of 2014, the learned Advocate for the plaintiffs submitted rent receipts by Firisti list amongst those some receipts were inconsistent to the suit Khatian. It was done inadvertently by the learned Advocate and PWs deposed and exhibited those documents before the trial Court resulting the appropriate rent receipts were not exhibited. Besides, at that time, the plaintiffs produced the certified copy of SA. Khatian and the defendant also produced certified copy of SA Khatian and it was found there are dissimilarities amongst those two khatians. In this background the plaintiffs again procured a printed certified copy of SA Khatian from the record room and found the entry of SA Khatian is similar to the earlier khatian produced by the plaintiffs. So, to ascertain/elucidating the actual entries of Khatian, it is very much necessary to examine the register Nos. 1, 2 and 8 of the Government record room. It is further contended that at the time of hearing of the suit neither the plaintiffs nor the defendants produced the certified copy of the CS Khatian. The plaintiffs tried to get the certified copy but

the concerned office reported that the record is damaged which was exhibited as Exhibit No. 1. Now, both the parties again obtained certified copy of those papers, which show some distinct entry as a result of which, the plaintiffs need to exhibit the lately procured certified copy of CS Khatian and the relevant actual rent receipts by adducing witnesses in accordance with law to proper adjudicate the matter. It is further contended that during pendency of the First Appeal the plaintiff-appellants got the actual and relevant papers in their hands which were not in their hands earlier though the plaintiffs have endeavored their level best and for proper adjudication of the matter in dispute those documents are very much relevant and necessary, and it is incumbent upon the plaintiffs to substantiate their case as such it is very much necessary to send the case back on remand for fresh trial with a direction to trial Court to allow the plaintiffs as well as defendants to take necessary amendments of their pleadings and to adduce witnesses and also to produce documents for proper disposal the issue No. 2, নালিশি ভূমিতে বাদীপক্ষের স্বত্ব, স্বার্থ ও দখল আছে কিনা " otherwise, the plaintiff-appellants will suffer irreparable loss and injury.

Mr. Kazi Akhtar Hosain, the learned Advocate for the plaintiff-appellants submits that during trial the plaintiff-appellants could not able to collect the relevant documents from the Government office and thereby they could not produce and prove the same before the trial Court and now pending hearing of this appeal both the parties having been able to collect those documents which are now necessary to adduce as evidence in

the case in order to proper adjudicate the matter. The learned Advocate further submits that the plaintiffs got the suit property by way of lease and they are in possession over the suit land by paying rent and taxes to the Sreepur Paurashava under Gazipur district, unless they are allowed to exhibit their evidence in record the plaintiffs will suffer irreparable loss and injury.

Mr. Md. Yusuf Ali, the learned Deputy Attorney General appearing for the defendant-respondents, on the other hand, opposes the application. He submits that the trial Court after full-fledged trial on an analysis of the evidence and materials on record came to conclusion that- “প্রদর্শনী-৫ চিহ্নিত বি/৬৩১ নং খতিয়ান পর্যালোচনা করে উক্ত খতিয়ানটি পরবর্তীতে সৃজন করা হয়েছে। কারণ উক্ত খতিয়ানটির বিষয়বস্তু যে স্ট্যাম্প পেপারে লেখা হয়েছে সেই স্ট্যাম্প পেপারটিতে পূর্বে অন্য কিছু লেখা ছিল এবং সেই লেখা কোনো রাসায়নিক পদার্থ দ্বারা মুছে নতুন করে এই খতিয়ানের বিষয়বস্তু নতুন কালিতে লেখা হয়েছে মর্মে স্পষ্টতই বুঝা যাচ্ছে।” and this finding manifests that the plaintiffs with unclean hands forged the documents in order to grab the Government’s valuable property and the property in question is now under control and management of the Government. The learned Deputy Attorney General further submits that the plaintiffs have/had no right, title and possession over the suit property whatsoever and the proposition of law is by now well settled that when the Court below decided the suit on merit on the basis of the evidence on record, the High Court Division is not at all justified in law in sending back the case on remand to the trial Court for holding trial afresh, rather in the interest of justice the High Court Division itself should decide the case on merit in accordance with law. The learned Deputy Attorney General in support of his

submission has relied on the decision reported in 7 BLT (AD)145.

Having heard the learned counsels for both the parties and having gone through the materials on record including the impugned judgment together with the application for remand.

It appears that the plaintiffs categorically stated in their application for remand that due to the circumstances beyond their control they could not collect C.S. khatian, S.A. khatian and also filed some rent receipts mistakenly instead of original one and to allow the appellants a turn for examining their witnesses for proving those important papers for the purpose of complete adjudication between the parties.

It is found that during hearing of this appeal both the parties filed 2 separate applications, one is under order 41, Rule 27 of the Code of Civil Procedure for acceptance of additional evidence filed by the Government-respondents and another one is under Order, 41 Rule 23 and 24 of the Code of Civil Procedure for sending back the suit on remand. The plaintiffs are now praying to send back the case on remand for proper adjudication of the dispute.

On a perusal of the impugned judgment it appears that the learned Court below, in fact, did not give any clear finding on the point of possession in the suit land. Since both the parties filed 2 separate applications, one is under order 41, Rule 27 of the Code of Civil Procedure for acceptance of additional evidence filed by the Government-respondents in support of their case and another one is under Order, 41 Rule 23 and 24 of

the Code of Civil Procedure for sending back the suit on remand, we propose to send back the case to the trial Court on open remand for re-trial.

In the case of Narayan Chandra Ghosh & Ors Vs. Moksed Mollah & Ors reported in 13 BLT (AD) 28, wherein it has been held as follows:-

It appears that the plaintiff filed a petition on 11.12.2001 before the High Court Division whereby it was stated that they failed to produce the patta dated 13-3-1951 and kabala dated 17-3-1951 in the trial court but they filed said 2 documents in the court of appeal below but the said documents were not considered by the court of appeal below and in such view of the matter, the learned Single Judge was justified in sending the case on remand to the trial court to take steps to prove the said documents in the interest of justice and proper adjudication of the matter in controversy between the parties.

In the case of Md. Motiullah Khondaker Vs. Yousuf Shikder and others reported in 14 BLT 375, wherein it has been held that:-

“In the instant case without ascertaining the point of identification of suit land or addition of the interested persons in the suit and without asserting, whether the purchaser Mustafa Khondaker's nickname is Md. Motiullah Khondaker, the decision cannot be taken. So it is a fit case for sending the case back on remand to the trial court for ascertaining all these points for interest of justice. An order of remand can be passed if it

is necessary to do so in the interest of justice. The power of remand must be regulated by the provision of rule 23 of order 41 and that inherent powers under section 151 of the Code cannot be exercised by the appellate court to order remand. The power of remand was thus, strictly a limited power and yet in practice, the case like this arose wherein remand was necessitated for some reasons.”

In the case of Jobeda Khatun vs Hamid Ali reported in 40DLR (AD) 101, wherein it has been held as follows:-

“Mr. T.H. Khan, learned counsel for the appellants, in support of his prayer for an order of remand in the interest of justice pointed out that the appellants were the weaker contestants in the suit in that they included only women and minors being heirs of Hajrat Ali, brother of the plaintiff Hamed Ali. They have quite a formidable case as the documents produced by them would apparently show but unfortunately because of proper legal advice in not putting any witness in the box on their behalf, their case went abegging so much so that the trial court took them to be non-contesting and did not even allot any saham in their favour although they were entitled to a share whatever it might have been. Mr.Khan sub-mitted that this could not and should not have been the fate of co-sharers in a partition suit who claim a saham and have proved documents which were not even objected to. We think there is a good deal of persuasion in the submission of the learned counsel for the appellants. A case for remand has been made out.”

The present case is fully covered by the above quoted decisions.

In the result, the appeal is disposed of. The suit is sent back to the trial Court for fresh trial and both the parties will be at liberty to adduce fresh evidence in support of their respective cases and thereafter the learned trial Court shall dispose of the suit on merit in accordance with law.

Since the appeal is disposed of the connected Rule being Civil Rule No. 18(F) of 2024 is also disposed of.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

**Md. Mansur Alam, J:**

I agree.