

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No. 606 of 1999

Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Chattogram and others

..... appellants

-Versus-

Syed Ahmed Chowdhury being dead his legal
heirs: 1(a) Iqbal Ahmed Chowdhury and others

..... respondents

with

First Appeal No.178 of 1999

Aminul Islam alias Aminul Huq and others

..... appellants

-Versus-

Syed Ahmed Chowdhury being dead his legal
heirs: 1(a) Iqbal Ahmed Chowdhury and others

..... respondents

Mr. Syed Ejaz Kabir, Deputy Attorney General
with Mr. A.K.M. Mukhter Hossain, Ms. Anjuman
Ara Lima, Mr. Md. Abul Khair Khan and Mr. Md.
Saidur Rahman Jatun, Assistant Attorney
Generals.

..... for the appellants

(In FANo.606 of 1999)

Mr. Md. Ali Ahsan Habib, Advocate

..... for the appellants

(In FANo.178 of 1999)

Mr. Md. Nurul Amin, Senior Advocate with Mr.
Mohammad Ali Akkas Chowdhury, Advocate

..... for the respondents

(In both the appeals)

Judgment on 22.05.2025

Bhishmadev Chakrabortty, J:

Since the appeals have arisen out of the same judgment and
decree and the parties thereto are same, both have been heard together
and are being disposed of by this judgment.

At the instance of defendants 1-3 Government First Appeal No. 606 of 1999 is directed against the judgment and decree of the then Subordinate Judge, Court 3, Chattogram passed on 31.08.1998 in Title Suit No.65 of 1994 decreeing the suit for declaration of title and recovery of possession with some other prayers. Defendants 4-7 of the aforesaid suit, some private individuals being aggrieved by the same judgment preferred First Appeal No.178 of 1999, therefore, both are taken up for hearing and disposal analogously.

The plaint case, in brief, is that Barada Charan and others were the original owners of the suit property described in schedule 1 to the plaint and accordingly RS *khatian* was prepared in their names. They mortgaged the suit property to Arban Co-operative Bank (the bank) and took loan therefrom. Subsequently, they failed to repay the loan amount and the bank put the suit property into auction. Through Execution Cases 248 and 249 of 1936 the bank purchased it in auction on 13.02.1937. Subsequently, the bank sold the land to one Syed Ahmed through *kabala* dated 23.01.1945 and handed over possession thereof. Syed Ahmed sold it to Hariranjana Biswas through *kabala* dated 20.12.1946 and also handed over its possession. During possession and enjoyment Hariranjana settled it to the plaintiff through a *pattan* on 08.12.1953 and subsequently through a deed of sale dated 09.12.1995 to plaintiff's wife Gulshan Ara Begum. The plaintiff during his possession and enjoyment paid rent to the government and

rented it temporarily to Kashi Bala Debi who defaulted in payment of rent and consequently plaintiff instituted SCC Suit No.142 of 1959 in the Court of the then Subordinate Judge and obtained a decree. Against the attachment order passed in the SCC suit Kashi Bala Debi filed miscellaneous case but subsequently she gave up her claim. A part of plaintiff's land went on erosion of canal which has not been included in the suit. .07 acres of land of RS plots 5263, 5264, 5265, 5266 and 5267 and part of plot 5265 fell on RS plot 5007 which has been shown in schedule 1 to the plaint and it was recorded in the name of the plaintiff. The property in respect of schedule 1(Ka) was recorded erroneously in the name of government for which the plaintiff filed an application to the Circle Officer (Revenue) Sadar and accordingly order was passed and *khatian* was corrected in his name. But subsequently Additional Deputy Commissioner (ADC) Revenue set aside the aforesaid order. The plaintiff then unsuccessfully moved to the Divisional Commissioner and Land Appeal Board. The Board in its order on 03.04.1986 opined that disputed question of title in the suit land is involved and the plaintiff may take steps in civil Court. It was further stated in the plaint that the houses in the suit property except a part was demolished in a tornado in 1960 and the land turned into a *bhiti*. The plaintiff then rented it for storing bamboos and other goods which were used to carry through boats. The house (remaining part) in schedule 1(Ka) was rented to Actory Office of Municipal

Corporation at Taka 50 and the Corporation paid rent to the plaintiff upto 1981. The land of schedule 1(Ka) was recorded in BS khatian in the name of one Jabbar as illegal possessor. The plaintiff then filed an appeal and it was corrected accordingly. The plaintiff was in possession of the above land as a whole but its record has been prepared in the name of the government erroneously. On such recording the title of the plaintiff was not lost. The defendants did never possess any part of the suit land till 1986. It has been recorded in the *khas khatian* of government who leased out a part of it to defendants 4-7 on temporary basis. On the basis of the judgment of the Land Appeal Board, defendants 4-7 were encouraged and started possessing the land of schedule 1(Kha) after 1986. The government has no authority to settle the land to those defendants. Hence the suit for declaration of title in respect of schedule 1(Ka) and 1(Kha) under schedule 1 and recovery of possession for schedule 1(Kha) and also for declaration that long term lease in favour of defendant 7 is illegal, collusive and without any jurisdiction and not binding upon the plaintiff with further prayer for restraining defendants 1-3 from leasing out the land of 1(Ka) and 1(Kha) schedule.

Defendants 1-3, the government contested the suit by filing written statement. They contended that the suit in the present form is not maintainable, it is barred by limitation and that the plaintiff has no *locus standi* to institute the suit. It was further stated that Barada

Charan and others were the original owners of the suit land. In British period the land was dilluviated in erosion of Karnaphuli river which was subsequently alluviated and as per section 86 of the State Acquisition and Tenancy Act, 1950 (the SAT Act, 1950) it has been recorded in *khas khatian*. They leased out .11 acres of plot 5043 to one Abdus Sukkur. Subsequently, the Ministry of Land cancelled it for irregularity against which the lease holder moved in the High Court Division of the Supreme Court of Bangladesh in Writ Petition No.2290 of 1990. The schedule land is the *khas* land of the government and if the plaintiff creates any document in respect of the suit land it will be treated as illegal and not acted upon. In the premises above, the suit would be dismissed.

Defendants 4-7 contested the suit by filing a separate set of written statement where they admitted the case of defendants 1-3. They further contended that Abdus Sukkur and Abdus Salam possess the suit property by taking yearly lease from government. Subsequently, government granted long term lease in 1989 and *khatian* has been prepared in the name of Abdus Sukkur who paid rent to the government. The land has been recorded in the name of government in *khas khatian* as alluviated land. PS *khatian* has been wrongly prepared in respect of plot 5053 in the name of the plaintiff. The plaintiff never possessed the suit land. The Rule issued in the writ petition against the cancellation of long term lease has been made

absolute by the High Court Division and the government did not prefer appeal against it. The land is being possessed by these defendants as salt mill, rice mill, godown and labour shade. Therefore, the suit would be dismissed.

On pleadings the trial Court framed 4 issues. In the trial, the plaintiff examined 4 witnesses and their documents were exhibits 1-10. Defendants 1-3 examined 1 witness DW1 while defendants 4-7 examined 3 witnesses DWs 2, 3 and 4. The documents of defendants 4-7 were exhibits Ka-Ja (20). However, the trial Court decreed the suit deciding the material issues in favour of the plaintiff. Being aggrieved by the defendant government preferred First Appeal No.606 of 1999 and lessee defendants preferred First Appeal No.178 of 1999.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General for appellants in First Appeal No.606 of 1999 taking us through the materials on record submits that the suit was for declaration of title with other prayers. In such a suit the plaintiff has to prove his title in the suit land first but through evidence both oral and documentary he failed to prove it. He refers to exhibits 9 and 10 *i.e.*, the *patta* in the name of plaintiff and registered *kabala* in the name of his wife Gulshan Ara respectively and submits that the *patta* was executed on 08.12.1953 and registered on 09.12.1953 while the *kabala* was executed and registered on 09.12.1953. The aforesaid two transactions in the name of the plaintiff and his wife respectively registered on the

same day is found suspicious. He submits that, if the plaintiff's case is considered as true in that case anyone of the aforesaid transactions will stand. If the *kabala* stands in the name of his wife in that case the plaintiff has no *locus standi* to institute the suit. He takes us through a report of Badar Amin and submits that if his report and the documents are scrutinized as a whole it can be safely presumed that the land went to the river in erosion and re-appeared which has been correctly recorded in the *khas khatian*. Mr. Kabir then submits that framing of issues in this suit is found faulty. In taking decision in such a suit, the Court is to assume title of the plaintiff first and then it may travel to the case of defendants. But the Court below mainly relied upon the defendants' fault in holding that the land was not alluviated land. He refers to the case of Golzar Ali Pramanik vs. Saburjan Bewa being dead her heirs Md. Yakub Ali Khan and others, 6 BLC (AD) 41 and relied on the *ratio* laid therein that there may be thousands of defects in the defence case but it cannot be ground to decree the plaintiff's suit. He refers to the provisions of sections 333-335 of 'ভূমি ব্যবস্থাপনা ম্যানুয়াল' and submits that for the sake of argument, even the land is considered as *foreshore*, it would be treated as land of the government. Mr. Kabir then submits that it is found that the plaintiff took *pattan* from the original owner in the year 1953 which is after the SAT Act, 1950 came into force. As per the provisions of the aforesaid Act Hariranjana Deb had no authority to settle the land to the plaintiff

through *patta* in 1953. He lastly submits that the plaintiff failed to prove the chain of genealogy in the suit land. The documents produced by him were not proved as per law. The certified copies of the documents being secondary evidence were not proved by calling for the volumes. Since the plaintiff failed to prove his title and possession in the suit land, the trial Court erred in law in decreeing the suit. The judgment and decree passed by the trial Court, therefore, would be set aside.

Mr. Md. Ali Ahsan Habib, learned Advocate for the appellants in First Appeal No.178 of 1999 adopts the submissions made by the learned Deputy Attorney General. He further submits that defendant 7 challenged the cancellation of long term lease granted by the government to him in Writ Petition No.2291 of 1990. The Rule issued in the aforesaid writ petition was made absolute by a Bench of this Division on 15.07.1992 and the order of cancellation was declared without lawful authority. The land is alluviated land and they took lease of the same from government complying with the formalities as were required by the law. They are in possession of the suit land. Hence, the judgment and decree passed by the Court below would be set aside and both the appeals be allowed.

Mr. Md. Nurul Amin, learned Senior Advocate for the respondent in both the appeals on the other hand supports the judgment and decree passed by the trial Court. He then submits that

the chain of genealogy of the plaintiff in the suit property has been proved by oral evidence of 4 PWs and series of documents submitted and exhibited. RS *khatian* in respect of the suit land has been prepared in the name of Barada Charan and others correctly. They mortgaged it to the bank and took loan. They defaulted in repaying the loan amount. The suit property was then put into auction in rent suits. The bank purchased it and got delivery of possession through exhibits-2 and 2Ka. The bank subsequently sold it to Sayed Ahmed through a registered *kabala* on 23.01.1945 exhibit-3. Sayed Ahmed sold it to Hariranjana Biswas on 10.12.1946 mark-x. The plaintiff took it *pattan* from Hariranjana through a *patta* executed on 08.12.1953 and registered on 09.12.1953 exhibit-9. He himself paid money to the owner and got the *kabala* registered in the name of his wife on 09.12.1953 exhibit-10. The previous owner and this plaintiff paid rent to the concerned. The plaintiff opened municipality holding number and paid rent in respect of the suit property through exhibits-5-5(Kha). The witnesses proved that they were in possession in total scheduled suit property and subsequently dispossessed by the defendants from a part due to wrong record of rights in the name of the government. He refers to the provisions of section 17(3) of the SAT Act, 1950 and the case of Tayab Ali Shaik and others vs. Hashem Shaikh and another, 12 BLT (HCD) 510 and submits that although the SAT Act came into force in 1951 but any settlement by the superior landlord was valid up

to 13.12.1955. So Hariranjjan Biswas had the authority on 08.12.1953 to settle the land in favour of the plaintiff through *patta*. He then refers to the cases of Md. Fazlul Karim and another vs. MA Majid, 2 BLC 155 and The Province of East Pakistan vs. Muhammad Hossain Mia, 16 DLR (SC) 667 and submits that although the plaintiff took *pattan* from Hariranjjan Biswas on 08.12.1953 which was registered on 09.12.1953 but he purchased it through registered *kabala* in the name of his wife on 09.12.1953 and those constituted a complete sell giving a single transaction and as such there can be no obstacle in getting title in the suit land through above documents exhibits-9 and 10. It will not hit by section 75A of the SAT Act. By the *patta* the plaintiff accrued tenancy right of the land from its owner but through *kabala* the plaintiff got rent receiving interest of it. He then submits that the government failed to prove that the land was ever dilluviated and subsequently alluviated. He refers to unreported case of Bangladesh vs. Abdur Rauf and others passed in Civil Appeal No.118 of 1980 [BSCD (1982-83)145] and submits that there is nothing in the record as well as in the evidence of DW1 that the land ever went on river erosion and re-appeared and as such the record of rights prepared in the name of government do not create any title to them. The government claimed the land solely on the basis of record of rights which has no basis. He then refers to the evidence of DW1 Kamal Uddin, Tahshilder of land office and submits that he deposed on

behalf of the government *i.e.*, on behalf of the Deputy Commissioner without any authorization letter. His evidence, therefore, cannot be taken into consideration as per provisions of section 120 of the Evidence Act. In this context he refers to the case of Shahani Bibi being dead her heirs Mohammad Azim and others vs. Nur Islam being dead his heirs Doly Islam and others, 4 BLC 195 and relied on the *ratio* laid therein. Mr. Amin finally submits that the plaintiff through evidence of 4 PWs successfully proved that he was in possession of whole land but subsequently dispossessed from 1(kha) schedule in the month of April, 1986. Since the plaintiff proved his title in the suit land and fact of dispossession from a part of property, the trial Court correctly appraised oral evidence of witnesses and documents on record and decreed the suit which may not be interfered with by this Court in appeal.

We have considered the submissions of all the parties and gone through the materials on record including the plaint, written statements, oral evidence of the witnesses, documents submitted by the parties, the provisions of law and *ratio* of the cases cited.

The plaintiff instituted the suit for declaration of title in respect of 1(Ka) and 1(Kha) schedule land and recovery of possession for 1(Kha) schedule with further prayer restraining defendants 1-3 from leasing out the suit property to defendants 4-7 or any other person and that the lease in infavour of defendant 7 is collusive, illegal, without

jurisdiction and not binding upon him and also for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession in 1(Ka) schedule land. The plaintiff avers that original owner of the land was Barada Charan and others. It is found in exhibit-1 that RS *khatians* 2, 3, 4 and 6 were prepared in the names of Barada Charan and others. The plaintiff claimed that Barada Charan and others mortgaged the suit property to Urban Co-Operative Bank and took loan therefrom; that they defaulted in making repayment and the property was put into auction in Execution Cases 248 and 249 of 1936. Exhibits-2 and 2(Ka) which are documents of 1937 prove that the bank got delivery of possession of the suit property in the execution cases. The bank subsequently sold it to one Sayed Ahmed through a registered *kabala* dated 23.01.1945 exhibit-3. The plaintiff further claimed that purchaser Syed Ahmed sold it to Hariranjana Biswas on 10.12.1946 through a *kabala* mark-x. Hariranjana Biswas then settled it to the plaintiff through a *patta* executed on 08.12.1953 registered on 09.12.1953 exhibit-9 and handed over possession thereof. The plaintiff thereafter through *kabala* exhibit-10 executed and registered on 09.12.1953 purchased the land in the name of his wife from Hariranjana Biswas. The learned Deputy Attorney General raised serious objection as to the execution and registration of two deeds, *i.e.*, a *patta* in plaintiff's name and a *kabala* in the name of his wife registered on the same day. He submits that

the above two deeds in the name of the plaintiff and his wife registered on the selfsame day creates a serious doubt as to the genuineness of those. But in the recital of the *kabala* exhibit-10 registered on 09.12.1953 it is found that the plaintiff purchased the land with his money in the name of wife Gulshan Ara. It proves that the wife was the *benamder* of plaintiff. Such *benami* transaction was valid at the material time. In the case reported in 16 DLR (SC) 667 and 2 BLC 155 it has been held that in a case where a permanent lease was taken and on the selfsame day a sale deed was executed and registered transferring rent receiving interest to the plaintiff, it will constitute a complete sale and not hit by section 75A of the SAT Act, 1950. The *patta* in the name of plaintiff and the *kabala* in the name of his wife as *benamder* constituted a complete sale through which the plaintiff acquired right, title and interest in the suit property. We further find that although the SAT Act came into force on 16.05.1951 but as per the provisions of section 17(3) of the Act and *ratio* laid in the case reported in 12 BLT (HCD) 510 settlement by the superior landlord through *patta* was valid up to 13.12.1955. Therefore, the argument made by the learned Deputy Attorney General that Hariranjana Biswas had no authority to give *pattan* to the plaintiff on 09.12.1953 bears no substance. Although the plaintiff produced certified copies of some documents but those were exhibited without any objection from the defendants. It is further found that the

statements made in the plaint stating the genealogy of the plaintiff was not denied specifically by the defendant in their written statements. The denial is found evasive and as such cannot be accepted according to law. The plaintiff through evidence both oral and documentary proved the chain of title in the suit land. The chain of title is found complete and unbroken.

The defendant government claimed that the suit land was diluviated by erosion of river and subsequently alluvated. In the written statement and evidence they stated that it happened during British period and the land has been recorded in *khas khatian* under section 86 of the SAT Act, 1950. But when the land went on river erosion and re-appeared nothing was stated in the written statement and no evidence was led by DW1 to prove it. For the sake of argument if it is admitted that it happened during British period the provisions of the aforesaid section of SAT the Act, 1950 shall not apply in recording the land in *khas khatian*. It is further found that DW1 Kamal Uddin, an Assistant Tahshilder deposed in the Court on behalf of the government without any authorization letter. Therefore, his evidence should be left out of consideration as per the provision of Order 1 Rule 12 of the Code of Civil Procedure and section 120 of the Evidence Act. The record of rights prepared in the name of the government in *khas khatian* appears without any basis. Therefore, leasing out the property on the basis of such erroneous record of right

is found without any legal basis which cannot be allowed and accepted.

Moreover, it is found that suit property has a municipality holding number and the plaintiff and his predecessors paid rent to the municipal authority through exhibits-5-5(Kha) which also proves the plaintiff's possession in the suit land. But unfortunately, he was dispossessed from 1(Kha) schedule property for erroneous record of rights in the name of government. The 4 witnesses of plaintiff proved his previous possession in respect of 1(Kha) property and subsequent dispossession in the year 1986. The suit is found to have been filed within the period of limitation.

It is found that writ jurisdiction was invoked in Writ Petition No.2291 of 1990 challenging the cancellation of the long term lease to the defendant 7 in respect of 1(Kha) schedule land. The Rule issued in the writ petition was made absolute declaring the cancelation without lawful authority. But this is a suit for declaration of title in respect of suit property and recovery of possession for 1(Kha) schedule. Since title of the plaintiff in the suit land is found which is based on a series of documents and oral evidence, therefore, the judgment passed in the writ petition can no way be a bar to get the decree of declaration of title and recovery of possession by a competent civil Court.

The trial Court on correct assessment of evidence both oral and documentary decreed the suit finding plaintiff's title in the suit land.

We find nothing to interfere with the aforesaid judgment passed by the trial Court.

Therefore, the appeals bear no merit. Accordingly, those are dismissed. No order as to costs. The judgment and decree passed by the Court below is hereby affirmed.

Communicate the judgment and send down the lower Court records.

A.K. M. Zahirul Huq, J.

I agree.