

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

First Appeal No. 24 of 2023

In the Matter of:

Government of Bangladesh represented by the
Deputy Commissioner, Gazipur and others
.....Defendant-appellant.

-Versus-

Md. Kamal Khan.
.....Plaintiff-respondents.
Mr. Md. Yusuf Ali, D.A.G with
Mr. Siddik Ali, A.A.G with
Ms. Ishrat Jahan, A.A.G with
Ms. Sabina Yasmin Nira, A.A.G
..... For the appellant.

Mr. Mehrab Hasan, Advocate
..... For the Respondents.

Heard on 04.05.2025, 14.05.2025 and
Judgment on 18.05.2025.

Sheikh Abdul Awal, J:

This first appeal at the instance of the plaintiff-appellant is directed against the judgment and decree dated 17.08.2015 (decree sign on 23.08.2015) passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 324 of 2012 decreeing the suit.

Material facts of the case, briefly, are that the respondents as plaintiffs filed Title Suit No. 334 of 2012 in the Court of the learned Additional Joint District Judge, Gazipur for declaration

of title over the suit land as described in the schedule of the complaint stating, inter-alia, that one Junab Ali was the original owner of suit land totaling 5.22 acre under C.S. mouza No. 419 Sreepur police station, Gazipur; that while the said Junab Ali was owning and possessing the suit land totaling 5.22 acre land under C.S. mouza No. 419, Police station Sreepur, District Gazipur, he transferred the same by registered deed No. 1272 dated 18.05.1952 to Momtaj Ali, Adur Rahman, Robi Uddin Sabdul Ali, Mafiz Uddin, Mokasdes Ali, Anser Ali and Nasir Uddin and also handed over possession to them. Thereafter, while the said Momtaj Ali and others were in possession over the suit land, S. A. Khotian No. 744, Dag no. 2040, 2041 and 2042 relating to 5.22 acre prepared correctly in their name. Thereafter, S.A. recorded owner Rabir Uddin by registered deed No. 1967 dated 20.02.1966 transferred 35 Shatok land to one Abdur Rahman and also handed over possession to him. Thereafter, Abdur Rahman by registered deed No. 1711 dated 14.02.1984 transferred the said 35 Shatok land to Md. Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque and also handed over possession to them. Thereafter, Haji Salim Uddin transferred his land to his 4 sons namely, Md. Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque on 14.02.1984 by Ewaz Heba deed No 1749 and handed over possession. Thereafter, Salim Uddin made an Ewaz deed No. 6763 dated 30.07.1984 with Kodom Ali son of S. A. recorded owner. The legal heirs of S. A. recorded owner Momtaj Ali transferred 52 ½ f satok land by registered deed No. 8675 dated 18.10.1984 to Md.

Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque and also handed over possession to them. Thereafter, Haji Salim Uddin transferred his 26 $\frac{1}{4}$ shatok land by Ewaz Heba deed No, 9688 dated 19.11.1984 to Md. Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque and also handed over possession to them. Thereafter, S. A. recoded owner Ansar Ali and others on 11.04.1990 transferred their 47 $\frac{1}{4}$ shatok land by sab- kabala deed No. 4248 to Md. Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque and also handed over possession to them. Thereafter, Md. Mozammel Haque and others as owner of 2 $\frac{1}{2}$ acre land mutated their name by jamabhag Noti No. 120/97-98 and opened D.C.R. on 18.06.1998 and possessing the suit said. Thereafter, Md. Mozammel Haque, Md. Shamsul Haque, Md. Nazrul Haque and Md. Fazlul Haque while were owing and possessing the suit land transferred their 70 Shatok land on 03.10.2006 by kabala deed No. 7284 and 52 Shatok land by sub-kabala deed No. 9080 dated 13.12.2006 and 26 Shatok land by sub-kabala deed No. 1575 dated 5.03.2007 and by sub-kabala deed No. 3770 dated 08.04.2009 35 Shatok land to plaintiff Md. Kamal Khan and also handed over possession to him. In this way the plaintiff Md. Kamal Khan became owner totaling 1.83 acre land and he constructed boundary wall and installed 12 fit gate therein and thereafter erected a tin shed house and started living thereon. The plaintiff also planted 25 jack trees therein. Thereafter, at one stage the plaintiff went to Bank for loan to make a farm on the suit property while Bank authority asked the plaintiff to come with

up-to-date rent receipts and thereafter, the plaintiff went to local toshil office for giving rent on 16.04.2009 when toshilder of local office disclosed that the property in question has been recorded in R.S. Khatian in the name of Government and thereafter, on search in record room the plaintiff came to know R.S. khatian of the property in question has been wrongly recorded in the name of Government, which cast a cloud on their ownership over the suit land and hence, the suit.

Defendants entered appearance in the suit and filed written statements denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner, the plaintiff filed the suit on false averments and the plaintiff has/ had no right, title and possession in the suit land, R. S. record rightly published in the name of the Government and plaintiff used a number of forged deeds to grab the Government property and as such, the suit is liable to be dismissed.

The learned Joint District Judge, Gazipur on the pleadings of the parties framed the following 5 issues for determination:

- i. Whether the suit is maintainable in its present form and manner?
- ii. Whether the suit is barred by limitation?
- iii. Whether the suit is bad for defect of parties?
- iv. Whether the plaintiff has/ had any right, title and possession in the suit land?
- v. Whether the plaintiff is entitled to get a decree, as prayed for?

At the trial the plaintiff side examined 6 witnesses and exhibited a series of documents, while the defendant side examined 1 witness to prove their respective cases.

The learned Additional Joint District Judge, Gazipur after hearing the parties by his judgment and decree dated 17.08.2015 decreed the suit.

Being aggrieved by the aforesaid impugned judgment and decree dated 17.08.2015 passed by the learned Additional Joint District Judge, Additional Court, Gazipur the Government-defendant preferred this First Appeal.

Mr. Md. Siddik Ali, the learned Assistant Attorney General appearing for defendant-appellant in the course of argument takes us through the plaint, written statements, deposition of witnesses and other materials on record and then submits that the original owner of the suit land was Zaminder Ram Kishore, S.A. khatian was wrongly published in the name of some private individuals and R.S. khatian was correctly recorded in the name of the Government in khas khatian No.1, the plaintiff has/ had no right, title and possession in the suit land and as such, the suit is liable to be dismissed.

In reply, Mr. Mehrab Hasan, the learned Advocate for the plaintiff-respondents submits that S.A. khatian No. 744 (Ext. 2/1) was prepared rightly in the name of some private individuals, who transferred their ryoti right through deed dated 18.05.1952 (Ext.- 16). He adds that it is well settled by our Apex court that any positive statement regarding acquiring ownership and possession in any kind of title deeds, would be

deemed as correct. Ref: 54 DLR (AD) 106 and 19 DLR (HCD) 179.

Mr. AAG further submits that the Mutation No. 120/97-98 and jote No. 1539 was created and false, only one rent receipt has been shown to be paid rent but dag number was not mentioned in that rent receipt which proves that it was false and created document, the rent receipt without mentioning any dag and khatian number is not proved the possession. He adds that ownership of the plaintiff as shown from the period of C.S. record but no rent receipt of C.S. & S.A. survey period was produced before the Court as evidence although the trial court without considering all these vital aspects of the case mechanically decreed the suit.

In reply, the learned Advocate for the respondent submits that rent receipt (Ext. 17-kha) prepared by the concerned officer of the Government in which the authority generally cited only khatian number without citing any plot number. So, rent receipt given by the then Tahsilder, Mouna Tahshil office citing only khatian number is correct.

Thirdly, the learned Assistant Attorney General submits that exhibit Nos. 6-17 and 20 all the Registered deeds have been shown from the year 1984 to 1990 and in that period R.S. Record was the last and final record although no R.S. dag was mentioned in those registered deeds which proves by suppressing the facts they created a series of deeds only to grab the Government property and as such, the impugned Judgment and decree of the learned trial court is liable to be set aside.

To this, the learned Advocate for the plaintiff-respondent submits, that it is on record that no one challenged the old registered deeds in any point of time and that the registered deeds are still valid documents and therefore, without any legal basis it cannot be said that the deeds are forged and created. He adds that all these registered deeds are duly acted upon.

Finally, the learned Assistant Attorney General submits that the plaintiff side has totally failed to prove their possession by adducing sufficient oral and documentary evidence and it is on record that the Government has been possessing the land as per last and final record (R.S. khatian No.1) and the suit property is Government's valuable property and as such, at any rate the impugned judgment is liable to be set-aside.

On the other hand, the learned Advocate for the plaintiff-respondent referring a series of documents namely, C.S & S.A khatian (Ext. Nos. 2 & 2/1), registered and ewaz deeds (Ext. Nos. 1-16 & 18, mutation (Ext.-17), DCR (Ext. 17-Ka) and rent receipt (Ext.-kha) submits that plaintiff has been chronologically possessing the suit land over a period of 76 years and in this case the plaintiff to prove his right, title and possession over the suit land exhibited 16 registered deeds, C.S & S.A khatian, DCR and rent receipt and the trial court on considering all these aspects of the case justly decreed the suit.

These are the points which were argued by the learned Advocates for the respective parties. Now, to deal with the contentions raised by the parties before us it would be convenient for us to decide first whether the trial Court below committed any error in finding that the plaintiffs by adducing

sufficient evidence have been succeeded to prove their right, title and possession over the suit land.

On scrutiny of the record, it appears that one Md. Kamal Kahan as plaintiff filed Title suit no. 334 of 2012 impleading the Government of Bangladesh, represented by the deputy commissioner, Gazipur and 2 others as defendants praying the following reliefs:

- ক) নালিশী সম্পত্তির ষোল আনা মালিক বাদীপক্ষ এই মর্মে ঘোষনামূলক ডিক্রি দিতে,
- খ) মোকদ্দমার যাবতীয় ব্যয় বাদীপক্ষের অনুকূলে এবং বিবাদীপক্ষের প্রতিকূলে ডিক্রি দিতে ,
- গ) মোকদ্দমার বাদীপক্ষের আইন অনুযায়ী আর যে যে প্রতিকার পাইতে পারে তাহার ডিক্রি দিতে ;

The learned Additional Joint District Judge, Gazipur after hearing the case by his judgment and decree dated 17.08.2015 decreed the suit in favor of the plaintiff-respondent.

Now, to justify the findings of the trial court as to right, title and possession of the parties in the suit land, let us advert to the evidence of PWs and DW-1.

PW-1, Azizur Rahman stated in his deposition as to their chorological ownership in the suit land by way of so many registered deeds. PW-1 also stated that- “বাদি খরিদ দলিলে মালিক হইয়া খরিদ জমির চার দিকে ইটের সীমানা প্রাচীর নির্মাণ করিয়া এবং ১২ ফিট গেইট নির্মাণ করিয়াছে ও গেইটে সাইন বোর্ড লাগাইয়াছেন। বাদি নালিশী ভূমিতে ০১টি ও টিন সেড ঘর তৈরী করিয়া লোকজনের মাধ্যমে ভোগ দখলে আছেন। নালিশী ভূমিতে ১৫টি কাঠাল গাছ আছে। তাহা ছাড়াও অন্যান্য গাছ আছে। গেইটে লাগানো সাইন বোর্ডে বাদি ক্রয় সূত্রে মালিক হওয়ার বর্ণনা দেওয়া আছে। বাদি নালিশী ভূমিতে খামার করার জন্য ব্যাংকের লোন নিতে গেলে ব্যাংক কর্মকর্তা জমি খারিজ করিয়া খাজনা পরিশোধ করিয়া আসিতে বলেন।” This witness proved and exhibited total 22 documents including S & S.A khatian (Ext. Nos. 2 & 2/1), registered sub-kabala deeds and ewaz deeds (Ext. Nos. 1-16 & 18, mutation

(Ext.-17), DCR (Ext. 17-Ka) and rent receipt (Ext.-kha). PW-2, Siddiquir Rahman stated in his deposition that: “আমি নালিশী সম্পত্তি চিনি। নালিশী সম্পত্তি হইতে আমার বাড়ী আধা কিঃ মিঃ। নালিশী সম্পত্তির উত্তরে রাস্তা, পূর্বে- রাস্তা, দক্ষিণে- শরাফত আলী ও নবাব আলীর বসত, পশ্চিমে- নবাব আলী গং। নালিশী সম্পত্তি ইটের বাউন্ডারী দেওয়া। বাউন্ডারীর ভিতরে আম, কাঁঠালের বাগান আছে, সন্নিবিষ্ট চাষ হয়। নালিশী সম্পত্তি ব্যক্তির ভোগ দখল করিতেছে তাহা আমি ছোট বেলা হইতে দেখিতেছি। সরকার এই সম্পত্তি কখনও ভোগ দখল করে নাই। নালিশী সম্পত্তির চার পাশে সরকারের কোন সম্পত্তি নাই।” PW-3, Sarafat Ali stated in his deposition that- “আমি নালিশী জমি চিনি। নালিশী জমি আমার বাড়ীর কাছে। এই সম্পত্তি বাদি কামাল দখল করে। তাহার এখানে আম, কাঁঠাল গাছ আছে। এই সম্পত্তির উত্তরে ও পূর্বে- রাস্তা, দক্ষিণে- নবাব আলী গং এবং পশ্চিমে- নবাব আলী গং। সরকার এই সম্পত্তি কখনও ভোগ দখল করে নাই। বাদিদের দীর্ঘদিন ধরিয় ভোগ দখল করিতেছে।” PW-4, Md. Somed Ali stated in his deposition that- “আমি নালিশী সম্পত্তি চিনি। আমার বাড়ীর পাশের বাড়ি জমি। সম্পত্তি বাদি কিনিয়া মালিক। কেনার পর বাদি বাউন্ডারী ওয়াল করিয়া আম, কাঁঠালের বাগান করিয়াছেন। সরকারকে আমি কখনও এই সম্পত্তি ভোগ দখল করিতে দেখি নাই।” PW-5, Sirajul Haque stated in his deposition that- “আমি নালিশী সম্পত্তি ও বাদিকে চিনি। বাদি ক্রয় সূত্রে পাইয়া বাউন্ডারী ওয়াল দিয়া আম, কাঁঠালের বাগান করিয়া ভোগ দখল করে এই জমির দক্ষিণে-নবাব গং, পূর্বে- সড়ক, উত্তরে- সড়ক, পশ্চিমে- নবাব গং এই চৌহাদীতে বাদি ১.৮৩ একর দখল করে। এই সম্পত্তি কোন দিন সরকার ভোগ দখল করে নাই।”

PW-6, Md. Sultan Uddin, Assistant Record Keeper stated in his deposition that- “আমি অদ্য আদালতের তলব মতে শ্রীপুর সাব- রেজিস্ট্রি অফিসের ১৯৯০ সালের ৫৭ নং ভলিউম নিয়া আসিয়াছি। এই ভলিউমের ১৩৩-১৩৬ নং পৃষ্ঠায় ৪২৪৮ নং দলিল তারিখ ১১/৪/১৯৯০ এর বিবরণ লিপি আছে। আমাকে দেখানো সেই মোহর নকলের সহিত বালামের লিপির হুবহু মিল আছে। এই সেই সেই মোহর নকল। প্রদর্শনী-১৮।”

The defendant side cross-examined these witnesses but failed to find out any contradiction in the evidence of P Ws. In view of the evidence of PWs, it appears that PW Nos. 1-5 are local people, who in their respective testimony categorically stated that the plaintiff has been possessing the suit land and the

Government never possessed the suit land. PW-1 in his evidence exhibited in all 16 old registered deeds to prove their chronological ownership in the suit land.

On the other hand, DW-1, Md. Akkas Ali, Union Assistant Land Officer stated that on getting power he is giving evidence on behalf of the Government, who proved the said power as “Ext.-Ka”. This witness stated in his evidence that the suit land is under the control of Government and R.S. khatian No.1 prepared in the name of Government. This witness proved the same as “Ext.-kha”. This witness also stated that the plaintiff never possessed the suit land, C.S. and S.A. khatians wrongly recorded the name of private individuals. This witness also stated that the plaintiff filed the case on false averments. In cross, this witness stated that- “R. S. রেকর্ড মূলে সরকার মালিক স্বাধীনতার পূর্বে হইতে R. S. সরকারের নামে হওয়ায় সরকার C.S. ও S. A. বিষয়ে সরকার কোন পদক্ষেপ নেয় নাই। বর্তমানে C.S. ও S. A. রেকর্ড বিষয়ে ভূমি অফিসে কোন কাজ হয় না। সরকার C. S. ও S. A. খতিয়ানের বিরুদ্ধে কোন প্রতিকার চায় নাই। C.S. ও S. A. খতিয়ান ভুল ছিল। C. S. ও S. A. রেকর্ডের মালিকদের হস্তান্তর সম্পর্কে আমার জ্ঞান নাই। R. S. এর পূর্বে সরকার মালিক ছিল এমন কোন কাগজ দাখিল করি নাই। দলিল রেজিস্ট্রি করিতে ভূমি অফিসের কোন অনুমতি লাগে না। বাদি বা তাঁহার পূর্ববর্তীদের দলিলের বিরুদ্ধে সরকার কোন প্রতিকার চায় নাই।” This testimony of the defendant's witness (DW-1) is not backed up by other witnesses or evidence. This lack of corroboration can weaken the defense's case and make it more difficult for the court to accept the witness's statements as true.

On perusal of the evidence and materials on record, it appears that the plaintiff to prove his case exhibited a series of registered deeds since 1952 to 2009 in total 16 registered deeds. It further appears that registered deeds were duly acted upon.

Further all those registered are more than 30 (forty) years old registered documents were produced and exhibited before the Court without any objection. Law is well settled in this regard that once such a document more than 30 years old is produced from a proper custody is presumed to be authentic as per section 90 of the Evidence Act.

The sole DW-1 in his evidence stated that the Government did not take any step against those registered deeds. However, in the course of his argument the learned Assistant Attorney General submits that in this case the plaintiff to grab the Government's property submitted a number of forged registered deed. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in number of cases. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, appellant has not been able to rebut the said presumption. Mere submission as to genuineness of the registered documents without any legal basis cannot be said that more than 30 years old registered deeds are forged and created or not authentic.

We have already indicated that in this case the plaintiff to prove his right, title and possession in the suit land exhibited a series of documents including 16 registered deeds, rent receipts etc. and examined 5 witnesses namely, PW-1, PW-2, PW-3,

PW-4 and PW-5 and all these witnesses corroborated with each other in respect of title and possession of the plaintiff over the suit land.

The trial court as first court of fact upon a lengthy consideration of the facts and law involved in the case observed that the plaintiff has been succeeded to prove his case.

Mr. Siddik Ali, the learned Assistant Attorney General could not point out any misreading or non reading of evidence. It is true that the plaintiff is to prove his title in all the cases. But it is now settled that the plaintiff is not always required to prove his title to the hilt rather if he is able to prove his title better than that of his adversary it is enough.

In this case the plaintiff side examined 6 PWs and it is on record all the PWs in their respective evidence category stated as to title and possession of the plaintiffs in the suit land. The evidence of PWs remained unshaken in the cross examination and all the PWs corroborated their evidence with each other. Thus it appears that the plaintiff respondent, in this case has been able to prove better title against the defendants and having possessing the suit land chronologically more than 60 years, as such, the plaintiff is entitled to a decree. Therefore, we find no substance in either of the contentions as raised by the learned Assistant Attorney General for the Appellant.

On an analysis of the impugned judgment and decree, we find no flaw in the reasonings of the trial Court or any ground to assail the same.

In any view of the matter, having regard to the fact as aforesaid, this appeal must fail.

In the result, the appeal is dismissed. The judgment and decree dated 17.08.2015 (decree sign on 23.08.2015) passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 324 of 2012 is hereby maintained.

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.