

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

First Appeal No.386 of 2000

IN THE MATTER OF:

The Government of Bangladesh, represented by the Deputy
Commissioner, Moulvibazar

... Defendant-Appellant

Versus

The National Tea Company Limited and others

... Plaintiff-Respondents

Mrs. Nahid Hossain, DAG with
Mr. Md. Jahirul Islam, DAG,
Mr. Md. Towhidul Islam, AAG,
Mr. Md. Sabbir Hossain, AAG,
Mr. Nooray Alam Shiddique, AAG and
Mr. Nasrin Khandaker, AAG

... For the Defendant-Appellant

Mr. A.B.M. Mostofa Kamal, Advocate

... For the Plaintiff-Respondents

Judgment on: 10.11.2025

Jesmin Ara Begum, J:

This appeal at the instance of the Defendant-appellant is directed against the judgment and decree dated 12.10.1999 (decree signed on 18.10.1999) passed by the then learned Sub-ordinate Judge, Moulvibazar, in Title Suit No.37 of 1991 in decreeing the suit.

The short facts of the plaint for disposal of this appeal are that, along with other lands the suit land has been known as Bijoya Tea Estate. Being the owner and possessor of the suit land Khondokar Hedaet Ullah and others permanently settled the same in favour of the Orient Tea Company Limited by a registered patta deed on 23 Chaitro

1324 B.S. Orient Tea Company Limited was the former owner of the Bijoya Tea Estate. The suit tea garden was vested in the Bangladesh Tea Board as it was enlisted as enemy property. Thereafter, in the year 1982, Bangladesh Tea Board transferred the suit land along with other lands to the plaintiffs, the National Tea Company Limited, which company is controlling the suit land as Bijoya Tea Garden and paying rents. All of the lands of this tea garden are being used for the purpose of tea plantation, production, tea preservation and for all other ancillary purposes. The suit land was recorded as a Hindu Temple and Labour lines of Bijoya Tea Estate, but it was wrongly recorded in the khas khatian No.1 of the government. The government of Bangladesh has no right title and possession over the suit land. When the plaintiff sought a long-term lease of the suit land from the ADC (Revenue) of Moulvibazar, he then advised the plaintiffs to amend the record of rights through the Court. Thus, the plaintiff filed the instant suit for a decree of declaration of title over the suit land and also for a declaration that the suit land was wrongly recorded in the khas khatian No.1.

Defendant No.1, the Government of Bangladesh, represented by the Deputy Commissioner (D.C.) of Moulvibazar contested the suit by filing a written statement denying all the material allegations made in the plaint, contending inter-alia, that the suit land is not a part of Bijoya Tea Garden because the suit plot No.327 is recorded as Hindu Temple and suit plot No.339 is recorded as the Coolie lines or labour lines, suit plots were never been used for ancillary purposes of the Bijoya Tea Garden and this tea garden has no title and possession over this suit land. The

suit land is rightly recorded in the khas khatian No.1 of the Government. There is no reason to issue any retention certificate in favour of the plaintiff for the suit land. However, the Government-defendant prayed for dismissal of the suit.

In order to adjudicate the suit, the trial Court framed as many as five different issues when the plaintiffs examined four witnesses and produced documents, which were marked as Exhibits 1-5, and the defendant examined one witness, but produced no documents.

On conclusion of the trial, after hearing the argument of both parties, the learned trial Court decreed the suit by its impugned judgment dated 12.10.1999 (decree signed on 18.10.1999) in Title Suit No.37 of 1991.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 12.10.1999 (decree signed on 18.10.1999) passed by the learned Sub-ordinate Judge, Moulvibazar in Title Suit No.37 of 1991 decreeing the suit, the Government-defendant, as appellant, preferred this First Appeal.

Mrs. Nahid Hossain, the learned Deputy Attorney General appearing on behalf of the defendant-appellant upon taking us to the impugned judgment and all the material documents appended with the paper book, at the very outset submits that the learned Judge of the trial Court has failed to consider that the plaintiff Tea Garden has no right, title and interest over the suit land and passed this impugned judgment and decree without applying his judicial mind vis-à-vis entering into the merit

of the suit and as such, the impugned judgment and decree is liable to be set-aside.

The learned Deputy Attorney General next submits that the plaintiff-respondents has hopelessly failed to prove its own case by producing appropriate oral and documentary evidences, especially failed to prove that the Bejoya Tea Garden is possessing the land of the suit plots and as such, the learned trial Judge has wrongly and erroneously held that the plaintiffs have become successful in proving its case, which is devoid of any substance, contrary to the basic principle followed in Evidence Act and therefore, the impugned judgment is liable to be set-aside.

Per contra, Mr. A.B.M. Mostofa Kamal, the learned counsel appearing for the plaintiff-respondents, opposes the contentions of the learned Deputy Attorney General, appearing for the appellant, and submits that there occurs no illegality in the impugned judgment, which has been passed based on evidence and materials on record, and hence the same warrants no interference.

We have heard the submissions advanced by the learned counsels appearing for both the parties, gone through the impugned judgment and decree, perused the exhibited documents along with the documents submitted by 'firisti', which though not exhibited, are kept with the record, and also perused the oral testimony of the witnesses.

Since the plaintiff filed the suit for declaration of title over the suit land of suit plot Nos. 327 and 339, we have to ascertain whether this suit land is well specified or not. In this respect, on perusing the schedule of

the plaint, it is found that .66 decimals of land of suit plot No.327 and 1.97 decimals of land of suit plot No.339 have been described in the schedule of the plaint by proper demarcation. So, the plaintiff filed the suit for a declaration of title for a nicely demarcated specified land of the suit plots.

It is admitted by the parties that the suit plot No.327 is recorded in the khatian as 'Debosthan' or Hindu Temple, and plot No.339 is recorded as 'kolie bosti' or labour lines of the Tea Estate in the khas khatian No.1 of the Government. The main question in controversy between the parties is that the plaintiff-respondents are claiming that the suit land is erroneously recorded in the khatian No.1, but the Government-appellant arguing that the suit land is the Government's khas land and for which the recording of it in the khatian No.1 is correct. In this respect, on perusing this suit khatian No.1, i.e., in Exhibit-2, it appears that though the suit land is recorded in the khatian No.1, but in the owner's name and address column of the said khatian, the suit land is recorded in the name of Bijoya Tea Estate. Therefore, relying upon Exhibit 2, it can be said that the Bijoya Tea Estate is the owner of the suit land, though it has been recorded in the Khatian No. 1. It is also evident from the suit khatian Exhibit 2 that the mouja of the suit land is recorded in khatian as Bijoya Tea Estate. D.W.1 also admitted in his cross that Bejoya Tea Estate is the owner and possessor of all other surrounding lands of the suit plots. All the P.Ws deposed in support of each other that the suit plots are used by the Bijoya Tea Garden as their labour lines and as Hindu Temple of their Hindu labour. It is proved by Exhibit 3 that, retention certificate under section 4(4) of section 20 of the State

Acquisition and Tenancy Act, 1950, was issued to the Bijoya Tea Estate by the concerned authority to retain possession of the suit land, among other lands. So, the plaintiff's side has become successful in proving by oral and documentary evidence that the Bijoya Tea Estate possesses the suit land as part of the Bijoya Tea Garden, and this Tea Estate has rightly obtained a retention certificate from the authority to possess the suit land and Bijoya Tea Estate is the recorded owner of the suit plots. Thus, there is no reason to record the suit plots in the khatian No.1.

Mr. Nahid Hossain, the learned Deputy Attorney General, lastly tried to draw our attention to the point that the exhibited documents of the plaintiffs do not support the scheduled land of the plaint and therefore, she claimed that the plaintiff failed to prove his case by supportive documentary evidence.

Mr. A.B.M. Mostofa Kamal, the learned Advocate appearing for the plaintiff-respondents opposes the contention made by the learned Deputy Attorney General and submitted that to resolve the question as to whether the documents submitted by the plaintiffs side is related to the suit scheduled land or not, one Advocate commissioner was appointed by the learned trial Court to hold local investigation of the suit land and to submit report thereto and thereafter, the learned Advocate Commissioner submitted his local investigation report on being found that the documents submitted by the plaintiffs are absolutely related to the suit scheduled land of the plaint.

This Court has gone through the materials on record and found that after holding a local investigation as per direction of the Court the

Advocate Commissioner submitted his commission report ascertaining that the suit land as is described in the schedule of the plaint is found similar in reality and the suit land is the 2nd schedule land of the registered patta deed, dated 23 chaitra 1324 B.S. This commission report is exhibited as Exhibit-5 and the advocate Commissioner was also examined as P.W.4, where nothing was disclosed from his cross-examination that he did not investigate properly. Therefore, the commission report substantiates the plaintiff-respondents' claim related to right, title, and possession over the suit land.

However, by this commission report, along with documentary evidence, the plaintiff-respondents have become successful in proving their claim of right, title, and possession over the suit land.

Regard being had to the above discussion and observation, we do not find any illegality in the impugned judgment and decree dated 12.10.1999 passed by the learned Sub-ordinate Judge, Moulvibazar in Title Suit No.37 of 1991, which warrants no interference by this Court.

Resultantly, First Appeal No.386 of 2000 is dismissed, however, without any order as to costs.

The impugned judgment and decree dated 12.10.1999 (decree signed on 18.10.1999) passed by the learned Sub-ordinate Judge, Moulvibazar, in Title Suit No.37 of 1991 is hereby affirmed.

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

Md. Iqbal Kabir, J:

I agree.

Md. Anamul Hoque Parvej
Bench Officer