IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 128 of 1990

In the matter of:

Bangladesh, represented by the Deputy Commissioner, Nawabgonj.

… Appellant

-Versus-

Begum Nur Mahal and others

…Respondents

Mr. Arobinda Kumar Roy, D.A.G with
Mr. Mohamad Abbas Uddin, A.A.G with
Ms. Shamsun Nahar (Laizu), A.A.G

…For the appellant

None appeared

....For the respondent

Heard and Judgment on 22.02.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

This matter has been referred by the Hon'ble Chief Justice of Bangladesh by his verbal order.

At the instance of defendant no. 1, the government, this appeal has been preferred against the judgment and decree dated 30.11.1988 passed by the then Subordinate Judge, Nowabgonj in Other Class Suit No. 16 of 1986 decreeing the suit.

The short facts that stemmed from the impugned judgment are:

The present respondent nos. 1-6 as plaintiffs originally filed the aforesaid suit for declaration of title in respect of 'gha' schedule of land measuring an area of 24 acres stating *inter alia* that, the suit land originally belonged to one, Jaminder Bhairobendra Narayan Roy and others of Tialson Estate, Malda. When those Jaminders had been in possession of the said property, the fathers of the plaintiff, nos. 1 and 2 took pattan of the scheduled land on 19 Boishak 1348 BS describing in schedule 'ka' to the plaint fixing annual rent at taka 58.75 paisa when the plaintiffs were minors. Subsequently, SA record was prepared in respect of 'ka' schedule of land in SA khatian no. 35 in the name of the plaintiff nos. 1 and 2. Thereafter, the plaintiff nos. 1 and 2 transferred certain portion of land in favour of plaintiff nos. 3-6 and since then those plaintiffs kept on possessing the suit property in *ejmali* and they paid rent up to 1392 BS and got rent receipt *(dhakila)* from the government. It has further been stated that, though in the latest record the field survey (মাঠ জরিপ) was prepared in the name of the plaintiffs but during "objection" to have been conducted under Rule 30 State Acquisition and Tenancy Rules, 1955 there name were striken off and it was prepared in the name of the government. However, in the process of appeal under Rule 31 of the above rules, the name of the plaintiffs got recorded by the Assistant Commissioner (Survey) and they rest assured that, final RS record has been prepared in their name but when the plaintiffs went to pay the rent *(khazna)* on 30.03.1985 the respective *thowshilder* disclosed then that, RS record in respect of suit land was prepared in the name of the government

in *khas* khatian which cast doubt over the title of the plaintiffs in the suit property and hence the suit.

Conversely, the defendant no. 1, government contested the suit by filing a written statement denying all the material statement made in the plaint contending *inter alia* that, though the property originally belonged to erstwhile *jaminder*s but after the State Acquisition and Tenancy Act came in to operation the right, title and interest in the suit property enjoyed by the *jaminder*s was abolished and it was vested on the government and accordingly SA and RS record was prepared in the name of the government. It has further been stated that, the alleged lease as well as obtaining *dhakilas* by the plaintiffs are all concocted and forged even though SA record had not been prepared in the name of the plaintiffs initially rather the alleged SA khatian no. 35 was subsequently manufactured and on the basis of that very SA khatian, mutation khatian was also prepared in the name of the plaintiffs as well as their subsequent transferees. It has further been stated that, the suit land is being possessed by the government by giving lease to one, Abdul Kader and others and the suit is liable to be dismissed.

In order to dispose of the suit, the learned judge of the trial court framed as many as four different issues and the plaintiff adduced three witnesses while the defendant no. 1 adduced a single witness. Apart from that, the plaintiff produced several documents which were marked as exhibit nos. 1-7 series. Though the defendant examined none nor it produced any document. The learned judge after considering the materials and evidence on record ultimately decreed the suit holding that

the plaintiff have been able to prove their title in the suit property. It is at that stage the defendant no. 1, the government preferred this appeal.

Mr. Arobinda Kumar Roy, the learned Deputy Attorney General (DAG) appearing for the government-appellant upon taking us to the impugned judgment and decree and the documents so appeared in the paper book at the very outset submits that, it is the definite case of the defendant that, the SA record was wrongly prepared in the name of the plaintiffs and the said assertion has clearly been described in the written statement though in order to prove that assertion, no document was produced.

The learned Deputy Attorney General further contends that, since it has been found from the judgment as well as the plaint that, from CS khatian no. 88 and 89 from which the subsequent SA and RS record was prepared but it has been found from CS khatian no. 89 that, it was a ditch so under no circumstances that very land can be given settlement by the *jaminder*s to the predecessor of the plaintiffs but that point has not been taken into consideration by the learned judge of the trial court and therefore arrived at a wrong finding which cannot be sustained in law.

The learned Deputy Attorney General further contends that, though the learned judge of the trial court found title and possession in the suit property taking into consideration of the plaintiff's witnesses but since RS record was prepared finding the property beyond the ceiling, plaintiffs were entitled to hold on so the RS record was rightly prepared in the name of the government and therefore the learned judge ought to have found that very legal point and dismissed the suit. With those submission, the

learned DAG finally prays for allowing the appeal by setting aside the impugned judgment and decree.

None appeared for the respondents to oppose to appeal.

We have considered the submission so advanced by the learned Deputy Attorney General for the appellant and also gone through the materials available before us. On going through the exhibited documents we find that, SA record was produced at the instance of the plaintiffs which were marked as exhibit-4 series and other documents were marked as exhibit 1-7 series through which the plaintiffs have been able to prove the geonology of acquiring title in the suit property as per assertion so made in the plaint. It is the assertion of the plaintiffs that, soon after SA record was prepared in the name of the plaintiffs they also transferred certain portion of land both in favour of the plaintiff nos. 3-7 as well as proforma defendant nos. 3-6 and all those subsequent transferees have also got their name mutated in the respective khatians and those mutated *khatians* have also been produced by the plaintiffs and were also marked as exhibits even without any objection supposed to be raised by the defendant, government leaving the veracity of those documents unchallenged. Furthermore, though it is the contention of the learned Deputy Attorney General that it is the assertion of the plaintiffs that initially RS record was prepared in the name of the plaintiffs but no *porcha* which has been made under Rule 30 and 31 was produced by them to prove that, initially RS record was prepared in their name. But we don't find any substance in the submission because the plaintiffs have ultimately challenged the propriety of the preparation of RS record by

proving their cause of action because it is the definite case of the plaintiffs that, moment they came to learn about the wrong preparation of RS record from the *towshil* office, when they went to pay rent, then they first came to learn about the preparation of RS record and since there has been no deviation with regard to the said knowledge vis-a-vis arising cause of action so there has been no occasion to disbelieve the knowledge of the plaintiffs about the RS record. Furthermore, subsequent transfer of land by the plaintiff after preparation of RS record to some of the plaintiffs and defendants also proves the title of the plaintiffs as well as their assertion made in the plaint for not preparing their name in RS record. The learned judge of the trial court while controverting the assertion of the defendant also found that, since the *dhakila* so issued in favour of the lessee by the Jaminders as well as the land development tax *(dhakila)* so given by the government after SA record was prepared to the plaintiffs so it is clear testimony of having possession of the plaintiffs in the suit property. Furthermore, the plaintiffs adduced as many as three witnesses where apart from PW 1, PW 2 and PW 3 are sharecroppers *(borgader)* who corroborated each other in finding and holding possession of the plaintiffs in the suit property. It is the settled proposition that, possession follows title and since the assertion of those witnesses could not be shaken by cross examining those PW 2 and PW 3 by the defendant, government so it also proves that, the plaintiff have been in possession in the suit property. Though it is the contention of the learned Deputy Attorney General that since the nature of CS plot no. 89 was ditch so there had been no scope for the *jominder*s to settle the said plot no. 89 in favour of the predecessor

of the plaintiffs. But fact remains, SA record was prepared in the name of the plaintiffs in SA khatian no. 35 so until and unless the defendant, government challenges the SA khatian then alleged assertion by the learned DAG does not *ipsofacto* deprive the plaintiffs in enjoying title and possession in the suit land when admittedly SA record was prepared in the name of the plaintiffs. On top of that, not a single document has been produced by the defendant to substantiate the claim that, the property has been leased out to the lessee leaving the case of the defendant totally disproved.

Given the above facts and circumstances vis-a-vis the materials and evidence on record we don't find any illegality in the impugned judgment which is liable to be sustained.

Accordingly, the appeal is dismissed however without any order as to costs. .

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

Mohi Uddin Shamim, J.

I agree.

Kawsar /A.B.O