

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.213 of 2011

Md. Shahjahan Sardar being dead his heirs and
successors- Mahfuza Begum and others

....Appellants

-Versus-

Sree Sree Laxmi Narayan Guak Thakur and others

... Opposite parties

Mr. Md. Harun-or-Rashid, Advocate with

Mr. Md. Mozammel Hossain, Advocate

Ms. Mahfuza Begum, Advocate

... For the appellants.

Mr. Bivash Chandra Biswas, Advocate with

Mr. Utpal Biswas, Advocate

Mr. Dipali Rani Das, Advocate

Mr. Shebani Biswas, Advocate

... For the respondent No.1.

Heard 29.07.2026 and Judgment on 30.07.2026

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 19.05.2011 passed by the learned Joint District Judge, 2nd Court, Munshigonj in Other Class Suit No.67 of 2007 dismissing the suit

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title by adverse possession for 3.19 acres land as described in the schedule to the plaint alleging that above property belonged to Nondalal Roy Chowdhury, Joshoda Lal Roy

Chowdhury and Tarit Bhushan Roy Chowdhury in separate shares and the same was correctly recorded in the relevant C. S. Khatian. Father of plaintiff No.1 Abdul Barek @ Kalu Sarker, father of plaintiff No.2 late Shamsul Kabir, father of plaintiff No.3 Manik Khan, father of plaintiff No.4 late Abdul Majid Sarder, father of plaintiff No.7 Naiderchan and father plaintiff No.8 late Profulla Chandra Shil erected their dwelling huts in above land on 04.07.1947. since above date plaintiffs are in possession in above land but defendant No.1 claimed title in above land. In fact defendant No.1 did not get any authority from above owners. The plaintiffs are in possession in above land as adverse possessors against above original owners. There is no temple and the defendant does not perform puja in above land. On 05.09.2007 defendant No.3 issued eviction notice upon the plaintiffs mentioning that the High Court Division has declared above property as the property of the deity. But the plaintiffs had already acquired valid title in above land by adverse possession.

Defendant No.1 contested above suit by filing a written statement alleging that above land belonged to Pulin Krishna Roy and relevant S. A. Khatian was prepared in his name. He installed a deity in his homestead and appointed shebayet who used to perform daily debopuja of Sree Sree Lakhkhi Narayan and above land was

rightly recorded in the name of defendant No.1 in R. S. Khatian NO.1166. But above land was unlawfully declared as vested property vide V. P. Case No.164 of 1974 and the heirs of above Pulin Krishna Roy filed Title Suit No.61 of 1974 for declaration that above property was not enemy property which was decreed on 04.06.1975. Above property was again declared as enemy property vide notice dated 01.10.1974 and against above order defendant No.1 filed Writ Petition No.1367 of 1974 and the High Court Division disposed of above Rule with direction for filing an appropriate Civil Suit. Defendant No.1 filed Title Suit No.160 of 1974 in the 3rd Court of Sub-ordinate Judge, Dhaka for declaration that above property is not enemy property and the same is a debottor property which was decreed on compromise. The Board of Land Reforms refused to release above property and Sebayet Ranjit Kumar Das filed Writ Petition No.424 of 1990 and above Rule was made absolute vide judgment and order dated 13.07.1998 and above property was declared to be property of defendant No.1. Pursuant to above judgment and order of the High Court Division defendant No.3 issued eviction notice upon the plaintiffs and the plaintiffs filed above false suit claiming title by adverse possession.

At trial plaintiffs examined seven witnesses and defendants examined three. Plaintiffs did not produce any document. The

documents of the defendants were marked as Exhibit Nos.“Ka” and “Kha” series.

The learned Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court seven plaintiffs out of eight as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Mozammel Hossain, learned Advocate for the appellants submits that above property originally belonged to Nanda Lal and others and relevant C. S. Khatian was correctly prepared. The dwelling houses of plaintiff's predecessors were destroyed by river erosion and they entered their dwelling huts in into the disputed land on 04.07.1947. Since above date plaintiffs are continuously possessing above land as their residential house, Court yard and tanks. There is no temple in the disputed land nor any religious rites or puja are held there. Above possession of the plaintiffs in the disputed land has matured into valid title by adverse possession. Defendant No.3 on the basis of judgment of the High Court Division passed in Writ Petition No.424 of 1990 issued eviction notices upon the plaintiffs which is not tenable in law. The learned Advocate further submits that under the Law Reforms Ordinance, 1972 none can be evicted from dwelling house and since plaintiffs are in possession in above land by erecting dwelling huts they were

immune from eviction. The learned Advocate lastly submits that due to errors and lack of skill of the appointed Advocate of the plaintiffs there are some defects in the plaint and some necessary evidence were not adduced at trial. As such the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

On the other hand Mr. Bivash Chandra Biswas, learned Advocate for respondent No.1 submits that PW1 Md. Shahjahan Sardar while giving evidence for all plaintiffs has admitted that S. A. Khatian of disputed 3.19 acres land stands in the name Pulin Krishna Roy. Defendant No.1 has produced and proved R. S. Khatian No.1166 of the disputed land (Exhibit No.“Ka”) which shows that above property has been recorded in the name of defendant No.1 as debottor property. Above property was enlisted by the Government as enemy property and subsequently vested property and defendant No.1 filed two separate suits which were decreed on 04.06.1975 and 01.06.1974. But the Deputy Commissioner did not hand over possession of above property to defendant No.1. As such defendant No.1 filed Writ Petition No.424 of 1990 to the High Court Division and this Court made above Rule absolute declaring that the disputed property belonged to defendant No.1 as debottor property. Pursuant

to above judgment and order of the High Court Division the Deputy Commissioner issued eviction notice upon the plaintiffs who on receipt of above notice have filed above false suit claiming title by adverse possession. The plaintiffs could not prove the claim of title by adverse possession by legal evidence. On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge rightly dismissed above suit which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

The plaintiffs have claimed in the plaint as well as in the evidence of PW1 Md. Shahjahan Sardar that disputed 3.19 acres land belonged to Nondo Lal Roy Chowdhury, Jashoda Lal Roy Chowdhury and Tarit Bhushan Roy Chowdhury in separate shares and the same was rightly recorded in relevant C. S. Khatian. Above claim has not been admitted by defendant No.1. As such the plaintiffs were required to have above claim by legal evidence. But the Plaintiffs did not Khatian Number nor produced above khatian to the trial Court to prove that above property stands in the names of Nondo Lala Roy Chowdhury and others in the C. S. Khatian.

It turns out from Exhibit No.“Ka” that disputed 3.19 acres land has been recorded in R. S. Khatian No.1166 in the name of defendant No.1 as debottor property. PW1 Md. Shahjahan Sardar has admitted in his cross examination that above property was recorded in relevant S. A. Khatian in the name of defendant’s predecessor Pulin Krishna Roy.

A claim of title by adverse possession is the wildest form of acquisition of title in immovable property. A plaintiff who makes such a claim must prove the date of his entry into the possession of disputed property and the date when his alleged possession became adverse against the lawful owners to the knowledge of all concerned including the real owners and the date when above adverse possession matured into valid title.

In the plaint plaintiffs have stated that their fathers entered in the disputed land on 04.07.1947. But in his evidence PW1 Md. Shahjahan Sardar claimed that he entered into possession of above land on above date. PW1 has given above evidence on 03.02.2009 but he did not mention his capacity to give evidence as to above fact of 04.07.1947. He did not claim that he is an eye witness to above occurrence.

There is no mention of the date when above possession of plaintiffs fathers became adverse against the real owners. The learned

Advocate for the appellants repeatedly stated that their claim of title by adverse possession was against above C. S. recorded tenants, namely Nandalal and others. But above Nandalal and others or their heirs were not impleaded as defendants in above suit.

On the contrary, in the relief portion of the plaint and in his evidence as PW1 plaintiff No.1 has sought a decree for title by adverse possession against defendant No.1 but the plaintiffs do not admit title of defendant No.1 in above land.

PW1 has admitted in cross examination that their names have not been recorded in any khatian as the possessors of any part of the disputed land. PW2 Abdul Majid Sikder, PW3 Rabindra Nath Deb, PW4 Shafiuddin, PW5 Mannan Karal and PW6 Md. Dulal have given evidence in support of possession of the plaintiffs in above land. The possession of the plaintiffs in above land is admitted by the defendant. Plaintiffs have been designated as unlawful occupants of above land and they were issued eviction notice by defendant No.3. It has been admitted in the plaint that on receipt of eviction notice plaintiffs have filed this suit. PW1 has claimed to be authorized to give evidence on behalf of all seven plaintiffs. But PW7 Krishna Chandra Shil has denied to have authorized PW1 to give evidence on his behalf and he has withdrawn himself from above suit.

The plaintiffs have miserably failed to make out a prima facie case of acquisition of title by adverse possession against the original owners of above land namely Nondo Lal Roy Chowdhury and others. It is crystal clear from the pleadings and evidence of PWs that this suit was filed after receipt of eviction notice which was issued by defendant No.3 pursuant to the judgment and order of this Court passed in Writ Petition No.424 of 1990.

The learned Advocate for the plaintiff lastly submits that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded for retrial so that the plaintiffs can get another opportunity to make out a good case for title by adverse possession. As mentioned above disputed property has been declared as the debottot property of defendant No.1 by the High Court Division and the learned Joint District Judge on a detailed analysis of the evidence on record rightly held that the plaintiffs could not prove their claim of title by adverse possession.

We are unable to find any illegality and irregularity in the impugned judgment and decree and the remand of above suit for retrial shall not serve the ends of justice rather an order of retrial shall cause unnecessary harassment to defendant No.1.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this First Appeal which is liable to be dismissed with cost.

In the result, the First Appeal is dismissed with cost.

The judgment and decree dated 19.05.2011 passed by the learned Joint District Judge, 2nd Court, Munshigonj in Other Class Suit No.67 of 2007 is hereby affirmed.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**