

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Sayed Jahed Mansur

First Appeal No. 131 of 2004

Government of Bangladesh and others
... Appellants

-Versus-

Mst. Ful Nahar Begum

... Respondents

Mr. S. M. Bazlur Rashid, Advocate

... For the appellant No.3.

Mr. Sk. Sharifuddin, Advocate

... For the respondent Nos.1.

Heard on 21.10.2025 and 22.10.2025.

Judgment on 09.11.2025

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 07.04.2004 passed by the learned Joint District Judge, 1st Court, Chattogram decreeing the suit in Other Class Suit No.81 of 2003 the plaintiffs as appellants to file the memorandum of Appeal on the following amongst others.

Facts in short are that respondent No.1 as plaintiff institute above suit for declaration of title and recovery of possession for 4.7 decimal land as described in the schedule to the plaint and for further declaration that V. P. Case No.1 of 1979-80 initiated by the defendant for above property was unlawful, fraudulent and not binding upon the plaintiff. It was alleged that above property belonged to Nayon Tara

who died leaving Champak Prova who filed a Case for probate of the will executed by Nayan Tara which was allowed. The dwelling house of Champak Prova was situated in above land who entered into a binapatra with the plaintiff on 23.08.1975 for sale of above property and pursuant above deed of bainapatra sold above land to the plaintiff by six registered kabla deeds being Nos.7577 dated 20.06.1977, 7575 dated 21.06.1977, 7604 dated 22.06.1977, 7648 dated 25.06.1977, 7601 dated 21.06.1977 and 7708 dated 28.06.1977 and delivered possession. The plaintiff reconstructed above dwelling house and was living along with the members of his family by mutating name and paying rent to the Government. The defendants created a forged and false V. P. Case being No.1 of 1979-80 showing that above property was vested property and by filing a false Criminal Case being No.17(3) of 1985 arrested the plaintiff and forcefully dispossessed him and the members of his family and demolished above dwelling house in violation of the order of temporary injunction passed in this case on 22.08.1981.

Defendant Nos.1-2 and 6 contested above suit by filing two separate statements. It was alleged by defendant Nos.1-2 that above property belonged to Bonimohon who died leaving one son Nalini Mohan who died leaving Sreekant as his sole heir and above owner of the property left this country for good before 06.09.1965 and the property was lawfully enlisted as vested property. Nayan Tara and Champak Prova Debi were the wife and son's wife of C. S. recorded tenant Monimohon and they had no right, title, interest and possession

in above land. All documents of the plaintiffs were forged, concocted and by above documents plaintiff did not acquire any right, title, interest and possession in above land.

Defendant No.6 alleged that above property was adjacent to the other property of defendant No.6 Chattogram Shahi Masjid and above property being needed for public purpose defendant Nos.1 and 2 acquired above land by L. A. Case No.72 of 1984-85 and handed over possession to the defendant. The plaintiff does not have any subsisting title and possession in above land.

The plaintiffs filed a petition for amendment of the plaint on 25.03.1990 alleging that the plaintiff is the lawful owner and possessor of above land and the defendants to legalize their unlawful dispossession of the plaintiffs from above property subsequently created L. A. Case No.72 of 1984-85 and no notice of above case was served upon the plaintiff. The plaintiff also amended clause b of the last paragraph of the plaint and added following relief:-

b(2) "that in the alternative, if the schedule property is found to be legally acquired or finds any difficulty in giving Khas possession under the Land Acquisition Case No.72/84-85 a decree be passed to the effect that the plaintiff being the sole owner of the property is entitled to get the entire compensation money as per award."

It was further stated that due to acquisition by L. A. Case No.72 of 1984-85 and demolition of the dwelling house plaintiff has sustained a loss of Taka 31,38,000/-.

Above defendants did not submit any additional written statement against above amendments of the plaint which were allowed by the trial Court and made part of the plaint.

At trial plaintiffs examined six witnesses and defendants examined two. Documents of the plaintiffs were marked as Exhibit Nos.1-20 and those of the defendants were marked as Exhibit No."Ka".

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial Court defendant Nos.1, 2 and 6 as appellants moved to this Court and preferred this appeal.

Mr. S. M. Bazlur Rashid, learned Advocate for appellant No.3 submits that above property belonged to Champak Prova Debi and the plaintiff acquired the same from above owner by way of purchase but above property was adjacent to the other property of Chattogram Shahi Mosque and above property were required for public purpose for extension and income generating project of above mosque. As such the Government acquired above land by L. A. Case No.72 of 1984-85 and handed over vacant possession to defendant No.6. Defendant No.6 has deposited compensation money above land amounting to Taka 3,77,000/- to the Deputy Commissioner, Chattogram. Plaintiff is at

liberty to withdraw above money at any point of time. It is true that the plaintiff had his dwelling house in above land. The plaintiff has claimed that due to demolition of above house and their eviction he has suffered a loss of Taka 31,38,000/-. Defendants No.6 is ready to pay above amount of Taka 31,38,000/- in addition to the compensation money for acquisition of above land. On consideration of above facts and circumstances of the case impugned judgment and decree may be set aside and the suit may be decreed in terms of payment of above compensation by defendant No.6 to the plaintiffs.

On the other hand Mr. Sk. Sharifuzzaman, learned Advocate for respondent No.1 submits that the plaintiff is a law abiding citizen but defendant Nos.1-2 being responsible Government Officers have most illegally and forcibly evicted the plaintiff alongwith the members of the family in the dark of the night and demolished his dwelling house on the basis of false and forged a Criminal Case and V. P. Case No.1 of 1979-80. When defendant No.2 realized that plaintiff is the rightful owner and possessor of above land and he was has been unlawfully evicted from above house they created false L. A. Case No.72 of 1984-85 in order to hid their unlawful acts of forcible dispossession. The plaintiff was dispossessed from above property during pendency of above suit and violating an order of injunction of a Court of law. The plaintiff has suffered monetary loss and damage of Taka 31,38,000/-. Above L. A. Case was created falsely and by back dating and no process or notice of above case was served upon the plaintiff. As such

above proceeding was unlawful and without any lawful effect. On consideration of above materials on record the learned Judge of the trial Court rightly decreed above suit. However, the learned Advocate lastly submits that since the land has been handed over to Chattogram Shahi Mosque the plaintiff may be given damage for unlawful eviction and destruction of this dwelling house as well as lawful compensation for acquisition of above land.

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

It is admitted that disputed 4.7 decimal land belonged to Champak Prova Debi who transferred the same to the plaintiffs by six registered deeds of sale in 1977 and the plaintiff constructed his pacca dwelling house in above land and was living there along with the members of his family.

It is also admitted that defendant Nos.1 and 2 filed VP Case No.1 of 1979-80 declaring above property as vested property and the plaintiff filed above suit challenging the legality and propriety of enlisting above property as vested and non-resident property and for declaration of title and in above suit the trial Court passed an order of temporary injunction against the defendants restraining them from dispossessing the plaintiff.

It is a matter of great disgrace that defendant Nos.1 and 2 being responsible Government Officers deliberately violated above order of injunction of a Court of law and most illegally evicted the plaintiff and

his family from above dwelling house by arresting the plaintiff in an unfounded Criminal Case. It is also admitted that after above unlawful eviction of the plaintiff the defendants initiated Land Acquisition Case No.72 of 1984-85 and acquired above land and handed over possession to defendant No.6 namely Chattogram Shahi Mosque.

The plaintiff amended the plaint and added a new remedy at Paragraph No.B(2) seeking a decree for damage and compensation for acquisition of above property by L. A. Case No.72 of 1984-85. It was further stated that due to above unlawful demolition of dwelling house plaintiff has sustained a loss of Taka 31,38,000/-. Above amendments of the plaint were allowed by the learned Judge of the trial Court vide order No.134 dated 31.03.1990.

It turns out from the plaint as well as evidence of six PWs that although the plaintiff has claimed that above L. A. Case was initiated with bad intention in order to cover up above unlawful dispossession of the plaintiff no remedy was sought against above L. A. Case. The plaintiffs sought a remedy against V. P. Case No.1 of 1979-80 and the defendants abandoned their claim that above property was liable to be enlisted as vested and non-resident property. As mentioned above the plaintiff by way of amendment of the plaint has sought a decree for compensation and damage and paid ad-volerum Court fees.

As mentioned above plaintiffs lawful title and possession in the disputed property has been admitted by the defendant Nos.1-2 and 6 and the learned Judge of the trial Court rightly on assessment of the

evidence on record held that the defendant Nos.1 and 2 forcibly and unlawfully dispossessed the plaintiff from above dwelling house in violation of an order of injunction. But the learned Judge of the trial Court committed an error in decreeing the suit for declaration of title and recovery of possession due to the fact that the plaintiffs did not seek any remedy against above L. A. Case No.72 of 1984-85. Since above Land Acquisition Case remains unaffected whatever title the plaintiff had in above land has been extinguished.

As mentioned above the compensation for acquisition of above land has been assessed at Taka 3,77,907 and the learned Advocate for the appellant submits that above money has been deposited by defendant No.6 to the Deputy Commissioner, Chattogram and plaintiff may withdraw above money at any point of time.

The plaintiff has sought damage of Taka 31,38,000/- and for demolition of his house and unlawful eviction. Learned Advocate for the appellants repeatedly stated that the appellants are ready to pay above money to the plaintiff and in support of above submission the learned Advocate has submitted a Supplementary Affidavit.

On consideration of above facts and circumstances of the case and materials on record we hold that the ends of justice will be met if the plaintiff is awarded compensation of Taka 31,38,000/- for his forcible and unlawful dispossession from above dwelling house in the dark of the night in violation of an order of injunction and further award of Taka 3,77,907.18 for acquisition of above property.

The impugned judgment and decree dated 07.04.2004 passed by the learned Joint District Judge, 1st Court, Chattogram decreeing the suit in Other Class Suit No.81 of 2003 is modified.

Plaintiff is entitled to get a total amount of 35,15,907.18 (Taka 3,13,8000/- as compensation for his unlawful eviction and demolition of house and Taka 3,77,907.18 for acquisition of above property) from defendant Nos.1-2 and 6 . Above defendants are directed to pay above money to the defendant within 60 days from this date in default the plaintiff shall get the same through Court.

This First Appeal is accordingly disposed of.

However, there is not order as to costs.

Send down the lower Court's record immediately.

Sayed Jahed Mansur, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER