

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.399 OF 2011

Most. Malek Rahman and others

...Appellants

-Versus-

Alhaj Mohammad Monjurul Alam Set and others

... Respondents

Mr. Md. Alamgir Mostafizur Rahman, Advocate with

Mr. Chanchal Kumar Dutta, Advocate

... For the appellants.

None appears

... For the respondents.

Heard and Judgment on 12.08.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 28.09.2011 passed by the learned Joint District Judge, 1st Court, Chattogram in Other Suit No.35 of 2004 dismissing the same.

Facts in short are that appellants as plaintiffs instituted above suit for declaration of title for 3025 decimal land and for further declaration that B. S. Khatian No.514 prepared for above land was erroneous and without any lawful basis alleging that 1.140 acres land including disputed 30.25 decimal belonged to Mahbub Alam Shed and Md.

Yeakub Shed who transferred above land to plaintiffs predecessor Osiur Rahman by registered kabla deed No.4608 dated 06.11.1962 and delivered possession. The Government acquired above land excepting disputed 30.25 decimal by L. A. Case No.274/62-63 and plaintiffs is in possession in above land by constructing a two storied paccu building and boundary wall. Plaintiff's predecessor Osiur Rahman was bed ridden due to severe ailment and B. S. Khatian N.514 of above land was erroneously prepared in the names of the defendants.

Defendant Nos.1-9 contested above suit by filing joint written statement alleging that disputed land belonged to Mahbubul Alam Shed and Yeakub Shed and after their demise defendants as their successive heirs are in possession of above property. Mahbub Alam Shed and Yeakub Shed did not transfer above property to plaintiffs predecessor Osiur Rahman and plaintiffs registered kabla deed dated 06.11.1962 was a forged and ineffective document.

At trial plaintiffs examined two witnesses and defendants examined three. Documents of the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos."Ka" to "Gha".

The learned Joint District Judge dismissed above suit on contest without any cost.

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

Mr. Md. Alamgir Mostafizur Rahman learned Advocate for the appellant submits that admittedly disputed 1.140 acres land including disputed 30.25 decimal land belonged to defendant's predecessors Mahbub Alam Shed and Yeakub Shed who transferred above land to plaintiff's predecessor Osiur Rahman by registered kabla deed dated 06.11.1962. PW1 Ahmed Khalil Khan produced a certified copy of above registered kabla deed dated 06.11.1962 which was marked as Exhibit No.2. Exhibit No.2 is a public document of more than 30 years old which did not require formal prove. Section 79 of the Evidence Act, 1872 provides a presumption as to correctness or genuinity of a certificate copy of a registered document. The learned Joint District failed to understand above legal provisions as to the status of a certified copy of a public document and erroneously held that the plaintiffs could not prove purchase of above land by plaintiff's predecessor Osiur Rahman from defendant's predecessor Mahbub Alam Shed Yeakub Shed which is not tenable in law. In the plaint plaintiffs have mentioned that excepting disputed 30.25 decimal land remaining land of above kabla deed was acquired by the Government by L. A. Case No.274/62-63. Above claim of the plaintiffs have not been denied by the defendants. As to the nature and possession of disputed land it has

been stated in the plaint and in the evidence of PW1 that the plaintiff's predecessor constructed a two storied pacca residential building in above land and secured above land by a boundary wall. The defendants did not deny above nature and possession of the disputed land. Defendants have claimed that they are in possession of above land as successive heirs of Mahbub Alam Shed and Yeakub Shed but they did not mention the nature of the land or manner of their possession.

The learned Advocate frankly concedes that the plaintiffs should have produced municipal tax receipts and electricity bills of above two storied buildings to fortify their claim of possession in above land. Since Exhibit No.2 was a certified copy PW1 should have given an explanation as to non production of original kabla deed. The learned Advocate further submits that above deficiencies in the plaintiff's case was caused due to lack of skill of the appointed Advocate of the plaintiffs in the trial court and the plaintiff should not made to suffer for the same. The learned Advocate lastly submits that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

Respondents did not enter appearance in this First Appeal nor anyone was found available at the time of hearing of this First Appeal

although this First Appeal appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocate for the appellants and carefully examined all materials on record.

It is admitted that the disputed 30.25 decimal land belonged to Mahbub Alam Shed and Yeakub Shed and relevant P. S. and R. S. Khatians were prepared in their names and defendant Nos.1-9 are their successive heirs and disputed B. S. Khatian No.514 has been recorded in the names of above defendants.

Plaintiff's claim their predecessor Osiur Rahman purchased 1.140 acres land including above disputed land from defendant's predecessors Mahbub Alam Shed and Yeakub Shed by registered kabla deed dated 06.11.1962. Six heirs of Osiur Rahman as plaintiffs jointly filed above suit but none of them gave evidence in support of their claim. The constituted attorney of the plaintiff Ahmed Khalil Khan gave evidence as PW1 and produced a certified copy of registered kabla deed dated 06.11.1962 which was marked as Exhibit No.2. Above deed shows that Osiur Rahman purchased 1.140 acres land out of six separate schedule from Mahbub Alam Shed and Yeakub Shed. The plaintiffs should have provided a detailed description for specification of disputed 30.25 decimal land out of 1.140 acres land purchase by above deed. PW1 should have given an explanation as to non production of above original deed and why a certified copy was produced. But no

explanation has been provided by the plaintiffs for non production of above original kabla deed dated 06.11.1962. The plaintiffs have claimed that excepting disputed 30.25 decimal land remaining land of above kabla deed was acquired by the Government by L. A. Case No.274/62-63 but no document was produced to substantiate above claim. It is true that above claim of the plaintiff has not been specifically denied by defendant Nos.1-9.

Plaintiffs have made specific mention at Paragraph No.2(Ka) of the plaint as to the nature of the disputed land and their manner of possession. It has been stated that plaintiff's predecessor constructed a two storied pacca residential house in above land and total disputed land was secured by a boundary wall. The defendants did not make specific denial of above nature of the land and manner of plaintiff's possession. But the plaintiffs should have produced some documentary evidences such as municipal tax receipts and electricity bills in support of above nature and manner of possession of the disputed property but the plaintiffs did not produce above documents. The learned Advocate for the appellants submits that the appellants are in possession in all above documents relating to payment of municipal tax, electricity bills and other service bills but those were not produced at trial due to lapses on the part of the appointed Advocate of the plaintiffs.

On consideration of above facts and circumstances of the case and submissions of the learned Advocate for the appellant we hold that the

ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence and if the defendants appear they will also be given opportunity to file additional written statement and further evidence if any.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 28.09.2011 passed by the learned Joint District Judge, 1st Court, Chattogram in Other Suit No.35 of 2004 is set aside and above suit is remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.