

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 449 of 2010

with

Civil Rule No. 670(f) of 2010

Md. Mosharaf Hossain and othersappellants

-Versus-

Hashem Ali being dead his heirs:

1(ka) Momtaz Uddin and othersrespondents

Mr. A.K.M. Rezaul Karim Khandaker, Advocate

..... for the appellants
(petitioners in the Rule)

No one appears for the respondents.

Judgment on 30.07.2025

Bhishmadev Chakrabortty, J:

Since the Rule has arisen out of the aforementioned first appeal and parties thereto are same, both have been heard together and are being disposed of by this judgment.

The plaintiffs have preferred this appeal which is directed against the judgment and decree dated 10.11.2010 passed by the Joint District Judge, Court 1, Dhaka in Title Suit No. 187 of 2009 dismissing the suit.

The plaint case, in brief, is that Jogendra Chandra Sharma and Nagendra Chandra Sharma alias Narendra Chandra Chakrabortty Sharma were the CS and SA recorded tenants of the suit land and they had equal shares therein. Narendra Chandra Chakrabortty during his possession and enjoyment in 8 annas share died leaving behind his

wife Jashoda Sundari Debi, two daughters Probha Rani Chakrabortty and Parboti Rani Chakrabortty with sons and another daughter Gauri Chakrabortty without son as heirs. Gopal Chandra Chakrabortty, the son of Parboti Rani Chakrabortty while in possession and enjoyment of the land sold out his share to Anwar Hossain through a kabala dated 20.06.1990. Nirmal Chakrabortty, father of minors Parimal Chakrabortty and Janardhon Chakrabortty sons of Probha Rani Chakrabortty obtained permission from the Court to sell land of their share and accordingly sold it to Anwar Hossain through a kabala dated 05.09.1990. Jashoda Sundari Debi who had life estate in the suit land executed and registered a deed of relinquishment to Anwar Hossain on 11.08.1991 in respect of his share. While in possession and enjoyment of the aforesaid land Anwar Hossain sold 0.6825 acres from plot 538 and .1975 acres from plot 539, i.e, in total 0.88 acres to Liakot Ali and others. The purchasers mutated their names and paid rent to the concerned authority. Later on they sold out 0.6025 acres from .88 acres to the plaintiffs through a registered kabala dated 19.05.1997 and handed over possession thereof. The land of Khatians 1427 and 326 corresponding to plots 68 and 69 were erroneously recorded in the RS khatian in the names of defendants 1 to 4 who have no right, title or possession therein. But BS Khatian has been prepared correctly in the names of the plaintiffs. They duly mutated their names and paid rent to the concerned authority. While the plaintiffs were in possession and enjoyment of the land, the Government acquired the suit land with other lands in LA Case No.

13/2007–2008. The plaintiffs came to learn that since RS record has been erroneously prepared in the name of the defendants, the award in respect of the suit land has also been prepared in their names. The erroneous RS record has deprived the plaintiffs of receiving compensation from the concerned authority. Therefore, the present suit seeking declaration that the plaintiffs are entitled to the compensation in respect of the suit land with further declaration that the RS record prepared in the names of the defendants is collusive, fraudulent, erroneous and not binding upon them.

None of the defendants appeared in the trial Court to contest the suit. In the trial, the plaintiffs examined two witnesses and produced their documents exhibits 1 to 15. The suit was ultimately fixed for *ex parte* hearing. The Joint District Judge dismissed the suit *ex parte* by the judgment and decree under challenge in this appeal.

After filing of this appeal, the appellants filed an application praying for an injunction restraining the respondent government from disbursing the compensation money in respect of the suit land awarded in the LA case, upon which the above Rule was issued and an *interim* order of injunction passed as prayed for.

Subsequently, the appellants filed an application in this Court praying for amendment of the plaint. This Bench allowed the application on 25.05.2025 and accordingly the cause title, prayer and schedule of the suit was amended.

The suit has been consequently styled as, ‘স্বত্ব ঘোষনামূলক মোকদ্দমা’ and the prayer and schedule of the plaint was amended as under:

“(ক) অতএব প্রার্থনা এই যে, বাদীগণ ক-তপসিল বর্ণিত সম্পত্তির মালিক মর্মে ঘোষনামূলক ডিক্রি দিতে;

(খ) বাদীগণ খ-তপসিল বর্ণিত এল.এ কেস নং-১৩/২০০৭-২০০৮ মূলে নালিশী সম্পত্তির জন্য এওয়ার্ডকৃত সমুদয় টাকা পাওয়ার হকদার ঘোষনামূলক ডিক্রি দিতে;

(গ) নালিশী সম্পত্তি ১-৪ নং বিবাদীগণের নামে গ-তপসিল বর্ণিত আরএস খতিয়ান প্রস্তুত ভুল মর্মে ঘোষনামূলক ডিক্রি দিতে;”

ক তপসিল

“জিলা-ঢাকা, থানা ও সাব-রেজিস্ট্রী অফিস গুলশান, ৬১ নং তৌজিভূক্ত সাবেক ২৯০, হালে ১২০ উলন মৌজা, সিএস ৩৯৬, এসএ ৫৪৮, নামজারী খতিয়ান নং-২৪১, সিএস ও এসএ দাগ নং ৫৩৮, আরএস খতিয়ান নং ১৪২৭, আরএস দাগ নং ৬৯, জমির পরিমান ৯২ শতক, আরএস খতিয়ান নং ৩২৬, আরএস দাগ নং ৬৮, জমির পরিমান ১০৫ শতক, উহার কাতে ৬০২০ অযুতাংশ নালিশী সম্পত্তি বটে। মহানগর জরিপ খতিয়ান নং ২১০৪, দাগ নং ৭০১, জমির পরিমান ৬০২০ অযুতাংশ।”

খ তপসিল

“জিলা-ঢাকা, থানা ও সাব রেজিস্ট্রী অফিস গুলশান, ৬১নং তৌজিভূক্ত সাবেক ২৯০, হালে ১২০ উলন মৌজা, সিএস ৩৯৬, এসএ ৫৪৮, নামজারী খতিয়ান নং-২৪১, সিএস ও এসএ দাগ নং ৫৩৮, আরএস খতিয়ান নং ৩২৬, আরএস দাগ নং ৬৮, জমির পরিমান ১০৫ শতক, উহার কাতে ৫৯২৫ অযুতাংশ সম্পত্তি বাবাদ হাতিরঝিল প্রকল্প, ঢাকা, এলএ কেস নং ১৩/২০০৭-২০০৮ এর বিপরীতে এওয়ার্ডকৃত টাকা।”

গ তপসিল

“জিলা-ঢাকা, থানা ও সাব রেজিষ্ট্রী অফিস গুলমান, উলন মৌজা, জেল এল নং ৩৯, আরএস খতিয়ান নং ১৪২৭, আরএস দাগ নং-৬৯, জমির পরিমান ৯২ শতক, আরএস খতিয়ান নং ৩২৬, আরএস দাগ নং ৬৮, জমির পরিমান ১.০৫ একর, উহার কাতে ৫৯২৫ অযুতাংশ, যাহা নালিশী খতিয়ান।”

Mr. A. K. M. Rezaul Karim Khandaker, learned Advocate for the appellants taking us through the materials on record and the amended plaint submits that in the trial Court the suit was for getting compensation award in respect of the acquisitioned suit land with prayer that the RS khatian prepared in the names of defendants 1-3 and 4 is erroneous and not binding upon the plaintiffs. However, filing of the suit with such prayer was not appropriate. Accordingly, the appellants amended the plaint in this Court and now the suit stands for declaration of title in respect of the suit land as well as for declaration that they are entitled to the compensation money with further prayer that RS khatian prepared in the names of defendants 1-4 is erroneous. Mr. Khandaker then submits that in the trial Court the plaintiffs proved in evidence their title in the suit land. They acquired title in the suit land by way of gradual purchase from the CS and SA recorded owners. The names of the appellants have been recorded in the recent City Survey khatian also. In the suit, the plaintiffs have not challenged the acquisition of the land through the LA case but have prayed for declaration of title in the suit land prior to the acquisition. Therefore, being legal owners of the suit land they would be entitled to get the

compensation for their land. He further submits that the trial Court without framing any issue in the suit in a very casual manner passed the judgment that since the RS record stands in the name of the defendants and as such they are entitled to the compensation. The trial Court did not at all consider that RS record prepared erroneously in the name of the defendants. The trial Court erred in law and fact in dismissing the suit. Therefore, the appeal would be allowed and the suit be decreed as prayed for.

No one appears for the respondents, although it is found that respondent 8 was added as party on 07.02.2016 and respondent 4(ka)-4(ga) and 4 (jha)-4(neo) filed vokalatnama to contest the appeal. The matter has been appearing in the daily cause list for several months with the names of the learned Advocates for the respondents but none turned up for them, even not today.

We have considered the submissions of the learned Advocate for the appellants and gone through the materials on record. It appears that the plaintiffs instituted the suit seeking declaration that they are entitled to receive compensation in respect of the suit land acquired in the LA case. But subsequently, by amending the plaint in this Court they turned it into a suit for declaration of title in the suit land and that the plaintiffs are entitled to get compensation for *Kha* schedule land with further prayer that RS record in respect of the suit land prepared in the name of defendants 1-4 is erroneous. The plaintiffs cannot seek declaration of title in the suit land after its acquisition by the

government in LA case. The suit is practically for getting compensation for the acquired land owned by the plaintiffs described in the schedule to the plaint. If the appellants can establish that they had title and possession in the suit land before its acquisition, in that case they would be entitled to the compensation for it.

It appears that the plaintiffs submitted a series of documents including the *kabalas* through which their previous owners had purchased the suit land from the heirs of CS recorded tenants. Specifically, exhibits 3, 4, 5 and 6 are the deeds through which the plaintiffs' vendors purchased the suit land from the successive owners of the CS recorded tenants. However, the present plaintiffs are neither parties to those deeds nor they are witnesses thereto. Therefore, those deeds ought to have been proved as per law by examining the vendors or the deed writers or the witnesses to the deeds or as required. The above deeds were executed and registered between 1990 and 1992 and although they were produced and marked as exhibits but not proved in evidence in accordance with law. Since the deeds are not 30 years old, therefore, no presumption under section 90 of the Evidence Act can be inferred. But the documents produced prove plaintiffs' *prima facie* title in the suit land before its acquisition. On scanning the oral evidence of plaintiffs, we also do not find any definite case that the plaintiffs are in possession in the suit land prior to its acquisition. However, it is seen that in the City Survey the land has been recorded (exhibit 12) in plaintiffs' name.

Apart from the above position, we are not satisfied as per lower court's record about service summonses upon defendants 1-4.

In the light of the above discussion, we are of the view that Justice would be best served, if the suit is remanded to the trial Court giving the plaintiffs' an opportunity to prove the aforesaid documents in accordance with law. The plaintiffs will be at liberty to examine witnesses for the aforesaid purposes. In proceeding with the suit the plaintiffs shall send summonses afresh upon the defendants.

Therefore, the appeal is allowed. There will be no order as to costs. The judgment and decree passed by the trial Court is hereby set aside. The suit is remanded to the trial Court with direction to dispose it in light of the findings, observations and directions given in the body of this judgment.

The connecting Rule is accordingly disposed of, but the order of injunction regarding disbursement of compensation money in respect of the suit land shall remain in force till disposal of the suit. The trial Court is further directed to dispose of the suit expeditiously.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.