

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Appeal No. 468 of 2010.

**Matiar Rahman (Salam) Hawlader being died his
legal heirs 1(a) Shahan Begum and others**

.....Plaintiffs- Appellants.

-Versus-

**Md. Habibur Rahman (Khoka) Hawlader being died
his legal heirs 1(a) Mst. Samsun Nahar and others.**

.....Defendants- Respondents

Mr. Tapos Kumar Biswas along with

Mr. Redwanul Karim, Advocates

... For the Appellants

Mrs. Anjuman Ara Begum, Advocate

... For respondents

Heard on: 28.02.2024, 29.02.2024 and 04.03.2024

Judgment on: 11.03.2024.

Sashanka Shekhar Sarkar, J:

This appeal is directed against judgment and decree dated 14.09.2010 (decree signed on 20.09.10) passed by learned Joint District Judge, 1st Court, Madaripur in Title Suit No. 17 of 2007 dismissing the suit.

The appellants as plaintiffs instituted Title Suit No. 17 of 2007 in 1st Court of Joint District Judge, Madaripur impleading the respondents as defendants praying for the following reliefs:

- A) A decree of declaration of title against the defendant Nos. 1-3 in respect of the suit land.

B) A decree that the Kabala No. 4182/4186 dated 27.07.1983 and Kabala No. 4197 dated 28.07.1983 executed by Mamota Rani in favour of defendant Nos. 1-3 in pursuance of order of Certificate Case No. 11MT of 1975-76 are forged, fabricated, collusive, inoperative and by virtue of which the decree of Title Suit No. 140 of 1984 is illegal and inoperative.

The case of the plaintiffs in short is that Benilal Kundu Bhuiyan, Gobinda Lal Kundu Bhuiyan, Hiralal Kundu Bhuiyan, Kaloshashi Kundu, Baloram Kundu, Jogabondhu Kundu, Durgacharan Kundu, Debendranath Shaha, Paresh Lal Shaha, Vashani Kundu being the owners of 1.99 acres of land of R.S. Khatian No. 91 and R.S. Plots No. 139, 919, 154 and 140 made a settlement (pattan) in favour of Azizunnessa, the mother of the plaintiffs. During her enjoyment and possession, Rent Case No. 1225 of 1956 for arrear of rents was started which, was decreed on a compromise on 24.11.1956. The landlords admitting the right, title and possession of the Mother of the plaintiffs came to the compromise in the rent case but subsequently record was wrongly prepared in the name of previous land lords instead of their mother. Though the update record was not prepared in their mother's name nevertheless the plaintiffs did not face any obstructions or hindrance in maintaining peaceful possession. Azizunnessa died leaving behind her husband, the plaintiffs and the defendant No. 1 as her heirs and, each son got $28\frac{3}{7}$ and each daughter got $14\frac{3}{14}$ decimals of land. The defendant No. 1 is a brother of the plaintiffs who using the name of one Mamta Rani filed a Rent Case for depriving the plaintiffs (his other brothers) claiming to have purchased from their mother for arrears of rents. Practically 3.19 acres of land of S.A. Khatian No. 89 and R.S. Khatian No. 91 was never auction sold and Mamota Rani never

purchased the same. The story of auction purchase by Mamota Rani is false and fabricated and subsequent purchase by the defendants from Mamota Rani by three separate deeds are also false, fabricated, collusive and not binding upon them and as such the plaintiffs are entitled to get decree in respect of the suit land.

Defendant Nos. 1-3 contested the suit by filing a joint written statements denying all material averments of the plaint contending inter alia that the suit is not maintainable, bad for defect of parties, barred by limitation and the averments of the plaint itself is liable to be rejected as contrary to law. The defendants contended that the land in question belonged to Benilal Kundu Bhuiyan and others. Due to their arrear of rents, the Government of Bangladesh initiated Rent Case No. 11MT of 1975-76 against them in which, on auction, one Mamota Rani Kundu purchased on 07.09.1976 and got sale certificate and writ of delivery of possession. In the above way, Mamota Rani Kundu became the absolute owner of the suit land. Thereafter Mamota Rani transferred 66 decimals of land to the defendant No. 2 and 3 vide kabala No. 4182 dated 27.07.1983, 66 decimals of land to the defendant No. 1 vide kabala No. 4186 dated 27.07.1983 and lastly 66 decimals of land vide kabala No. 4197 dated 28.07.1983 to the defendants. In the above way, the defendant Nos. 1-3 became owners of 1.98 acres of land. They mutated their names and have paid upto date rents to the government. When one woman organization claimed the suit land to have obtained through settlement, then the defendant No. 1-3 challenging the said settlement, filed Title Suit No. 140 of 1984 and obtained decree which was affirmed in appeal. In the above way the defendants No. 1-3 being the absolute owner mutated their names and having approval a plan from Municipality constructed a building

and have been living therein peacefully within the knowledge of all. So the suit is liable to be dismissed with cost.

On the above contentions of the pleadings of the contesting parties the trial court framed the following issues:

- I. Whether the suit is maintainable in its present form?
- II. Whether the suit is bad for defect of parties ?
- III. Whether the suit is barred by limitation?
- IV. Whether the plaint of the suit is liable to be rejected under Order VII rule 11 of the Code of Civil Procedure?
- V. Whether the plaintiffs have been able to prove their right, title, interest and possession in respect of the suit land?
- VI. Whether the auction held in Rent Suit No. 11MP/75-76 and the decree of Title Suit No. 140 of 1984 are forged, fabricated, concocted and inoperative?
- VII. Whether the plaintiffs are entitled to have any other reliefs as prayed for?

At trial, the plaintiffs examined 4 witnesses and adduced documents which were marked as Exhibits-1 -7 (Uma), Exhibit-1 is the information slip of S.A. Khatian No. 89, Exhibit-2 is the Solenama decree, Exhibit-3 is the information of Solenama decree, Exhibit-4(Ka) is certified copy of R.S. Khatian No. 150, Exhibit-5, 5 (Ka), 5 (Kha) are three deeds being No. 1809, 1407 and 1016, Exhibit-6 is a plan approved by Municipality, Exhibit-7 to 7 (Uma) are all electricity bills in support of their claim.

On the other hand, the defendants examined three witnesses as DW-1-3 and adduced some documents to substantiate their claim which have been marked as Exhibit- "Ka to Naa" Exhibit- Ka is certified copy of R.S. Khatian No. 91, Exhibit- Ka(1) to Ka (3) are certified copies

of Bata Khatian of R.S. Khatian No. 91, Exhibit- "Kha" is certified copy of S.A. Khatian No. 89, Exhibit-Ga is certificate of the Rent Case No. 11MT/95-96, Exhibit-"Ga(1)" is boinama and writ of delivery of possession. Exhibit-"Gha" is the order sheet of the Settlement Case No. IX-PI-71MT/83-84, Exhibit-"Uma" is a mutation khatian held in the name of Mamota Rani Kundu, Exhibit-"Cha", "Cha(1)" and "Cha(2)" are sub kabalas executed by Mamota Rani in favour of the defendants, Exhibit- Chha, Chha(1) are the judgment and decree of Title Suit No. 140 of 1984, Exhibit- Chha (3) is the plaint of Title Suit No. 140 of 1984, Exhibit-Ja (3) is the amended plaint of Title Suit No. 140 of 1984, Exhibit-"Ja" is a rejection order in Title Appeal No. 212 of 1987. Exhibit-"Jha" is certified copy of mutation Khatian held in the name of the defendants, Exhibit-"Ua" is mutation porcha , Exhibit- Ta - Ta(4) are rent receipts, Exhibit-"Tha"-Tha(9) are the corresponding of payments made to Municipality to have a plan for making a construction on the suit land, Exhibit-"Da" is boinama in Certificate Case No. 1095 of 1958, Exhibit-"Dha(1)" is deed of delivery of possession of Rent Suit No. 1095 of 1958, Exhibit- "Na" is order sheet of the petition case , Exhibit-"Taa" is certified copy of the deed executed on 12.12.1988, Exhibit-"Thaa" is certified copy of the proceedings of section 30 of the State Acquisition and Tenancy Act, Exhibit-"Daa" is a receipt of Municipality rent, Exhibit-"Dhaa" is death certificate of Joygunnessa, Exhibit-"Naa" is an order of rejection of plan submitted by Azizur Rahman. The trial court dismissed the suit against which the plaintiffs have preferred this appeal.

Mr. Tapos Kumar Biswas along with Mr. Redwanul Karim, the learned Advocates, appearing for the appellants, has taken us through the impugned judgment, oral and documentary evidences and submits that the predecessor of the plaintiffs i.e. their mother Azizunnessa

obtained the land in question by way of settlement from landlords. Due to their arrears of rent, Rent Case being No. 1225 of 1956 was started against their mother which was decreed on compromise on 24.11.1956. The mother of the plaintiffs being the absolute owner and possessor died leaving behind the plaintiffs and the defendant No. 1. Before her death, the plaintiffs and defendant No. 1 got their proportionate share and accordingly they all are in peaceful possession by erecting and constructing respective houses within the knowledge of all. The defendant No. 1 was so cunning who by creating some forged documents claimed the entire land of his own and then the plaintiffs filed the suit.

Mr. Biswas submits that the plaintiffs and defendant No.1 are full brothers and they all are in possession to their respective shares. Their mother obtained best right, title and interest by virtue of pattan and sole decree which has been proved by Exhibit -2 and the documents so produced by the defendants being forged, fabricated and collusive, the suit is liable to be decreed.

Mr. Biswas further submits that the landlords executed a pattan in favour of the mother of the plaintiffs and defendant No. 1 but due to arrear of rents, a rent case was started in 1956 after abolishment of Zamindari and since the said rent case was decreed on compromise, the mother of the plaintiffs became the absolute owner. Mr. Biswas further submits that after abolition of Zamindari, the landlords were no more Zaminder and the story of purchase from Zaminder in auction by one Mamota Rani Kundu is absurd because there is no explanations from the defendants that since 1950-1975 why the Government did not take any steps against the tenants for arrear of rent and that create a doubt regarding the auction case and auction purchase by Mamota Rani.

Mamota Rani never purchased the land in question on auction and from her, the defendants did not obtain any right, title and interest by three sale deeds. Mr. Biswas lastly submits that since the plaintiffs successfully proved their right, title and possession while the defendants failed, nonetheless, the trial court dismissed the suit, which requires to go on remand for further scrutiny of evidences as was not considered and appreciated by the trial court.

Mrs. Anjuman Ara Begum, the learned Counsel appearing for the respondents submits that admittedly Beni Lal Kundu and others were the superior landlords of the disputed land. S.A. record was duly prepared in their names but after abolition of jamidari the Government initiated a Rent Case against them in which the decree was passed and in pursuance of decree a Certificate Case was started and one Mamota Rani purchased entire 3.19 acres of land. Mamota Rani was issued boinama and writ of delivery of possession through which she got possession and being absolute owner mutated her name (Exhibit-Kha). Thereafter Mamota Rani by three separate deeds of kabala transferred 1.98 acre land to defendant Nos. 1-3. The property in question appeared in V.P. list which was challenged in Title Suit No. 140 of 1984 and was decreed and in appeal the decree was upheld. Thereafter the defendants mutated their names and being absolute owners constructed multistoried building having approval of plan from Municipality and rest part of the land being possessed by planting valuable trees and cultivating fishes.

Mrs. Anjuman Ara Begum further submits that the rent case was lawfully adjudicated and Mamota Rani purchasing in auction became owner and transferred to the defendants and the trial court considering

the evidences, oral and documentary, rightly and lawfully dismissed the suit in which nothing remains to be interfered with by this court.

Mrs. Anjuman Ara Begum lastly submits that the plaintiffs totally failed to prove their right, title and possession by adducing any cogent and reliable oral and documentary evidences. The document of title i.e. the pottonna was not produced at trial by the plaintiffs and the information slip submitted by way of exhibit in regard to sole decree has not been proved by any reliable witnesses and after abolition of zamindari, the superior landlords had no authority to transfer by executing pattan or any other means.

To appreciate the submissions of the learned Advocates for the parties, we have meticulously perused the oral and documentary evidences and have given our anxious consideration to their submissions. The Trial Court dismissed the suit on a clear observation and findings that the plaintiffs have failed to prove their claim by adducing independent oral and cogent documentary evidences.

Now the question calls for consideration whether the plaintiffs have been able to prove their right, title and possession in the suit land by adducing sufficient oral and cogent documentary evidences.

The plaintiffs examined 4 witnesses for substantiating the plaint case, of them, the PW-1 in chief stated that the land in question was given settlement in favour of his mother which, in Rent Case No. 1225 of 1926 was compromised by a sole in favour of their mother and thereafter they being the absolute owners by inheritance have been in possession but due to wrong preparation of record in the name of superior landlord in place of their mother, the defendants No. 1 taking that chance created some forged documents and claimed the entire property of his own. This witness in cross examination stated that no

suit was filed challenging the wrong record of right. His mother died in 1998. He does not have even a single rent receipt to submit to the court. In cross examination he stated that the three documents he produced before the court are not concerned with the disputed land.

PW-2 is a neighbour of the parties and knows them. He in his deposition in chief stated that he purchased some lands from Habibur Rahman vide registered deed No. 1197 the mentioning the reference of bia deed No. 1497 executed by Mamota Rani Kundu to the defendants. How she obtained the property was not mentioned in sale deed. The defendant No. 1 purchased the land in question from Mamota Rani and his wife also subsequently purchased from the defendant No. 1. He admitted that Mamota Rani purchased the land in question on auction and there was a building which is now under possession of the defendant No. 1 who possesses more than one acre of land. The plaintiffs have only two houses therein.

PW-3 is a neighbour of the parties in his deposition stated that both the plaintiffs and defendants possess the suit land and in cross examination stated that there is only one building on the suit land where the defendant No. 1 resides.

PW-4, one Yeasin Mollah, deposed that both the plaintiffs and defendants possess the suit land and in his cross examination stated that there is only one building in the suit property where the defendant No. 1 resides alone. The land in question previously belonged to Beni Lal Kundu but he has no idea whether it was auction sold. Sukumar Kundu is the husband of Mamota Rani and they would live at the disputed homestead.

On the other hand DW-1 Habibur Rahman in his deposition stated that Mamota Rani became owner by auction purchase on

07.09.1976 and she was handed over possession on 30.07.1977 through writ of delivery of possession. She mutated her name and transferred 66 decimals of land to the defendant Nos. 1-3 vide kabala No. 4182 dated 27.07.1983. On the same date she also transferred 66 decimals of land to them. Again on 28.07.1983 by kabala deed No. 1497 transferred 66 decimals of land to the defendants. In this way, in total 1.98 acres of land was purchased by the defendants by three separate sale deeds and got possession. He further deposed that he being absolute owner and possessor planted trees and constructed dwelling houses etc. When a women organization illegally tried to dispossess him from the suit land claiming vested property, he challenged the same by filing a suit and obtained decree which on appeal was affirmed. Thereafter mutated his name and got plan approved by Municipality for building construction. He proved the documents submitted by way of exhibits in support of his case.

DW-2 Kalipado Kundu stated in chief that Mamota Rani Kundu purchased the land in question on auction sale, thereafter she was given possession by issuing writ of delivery of possession and defendants have a building on the land in question. In cross examination he said that Mamota Rani purchased the land on auction sale then no one except Mamota Rain resided in the house. He denied the suggestion that Azizunnessa was residing at the house and Mamota Rani did not purchase the land and the mother of the plaintiffs got potton and both the plaintiffs and defendants are jointly possessing the suit land .

DW-3 is a neighbor of the parties in his chief stated that Habibur Rahman possesses the suit land and the plaintiffs do not possess the same. In cross examination he denied the suggestion that Azizunnessan

would live in the land in question and Habibur Rahman was given permission to live there.

Apart from the oral evidences the plaintiffs also adduced some documentary evidences (Exhibit -1- 7 (Uma)). Basically the plaintiffs claimed their right, title and interest by virtue of pottan alleged to had executed by superior landlords in favour of their mother and also by dint of solenama decree. Save and except these two documents i.e. Exhibit-2 and 3 they did not submit and adduce any other documents in support of their claim.

On the other hand the defendants apart from oral evidence also adduced documentary evidences (Exhibits- "Ka-Na"). Amongst those, exhibit "Ka-ka(3)" are R.S. Khatian; exhibit "Kha" is S.A. Khatian; exhibit "Ga" is Certificate Case No. 11MT/1976-76; exhibit "Ga (1) is boinama and writ of delivery of possession; Exhibit "Gha" is mutation in the name of auction purchaser; Exhibit-"Um", mutation porcha and Exhibits- "Cha", "Cha(1)", "Cha(2)" are three deeds executed by Mamota Rani in favour of the defendants; Exhibits "Chha" and "Chha(1)" are the judgment and decree of Title Suit No. 140 of 1984; Exhibit-"Neo" is mutation porcha; Exhibit- " Ta, Ta-(1), Ta-(2), Ta-(3), T-(4) are rent receipts; Exhibit-"Ta - Ta(4)" are Municipal plan. Exhibit Tha- Tha (9) are the plan approval from Municipality and other necessary documents relating the same.

Having considered the submissions of the learned Advocates of both the parties and perusing the evidences on record, oral and documentary, the following issues being framed for adjudication;

- a) Whether the plaintiffs have been able to prove their right, title, interest and possession in respect of the disputed land by virtue of "pottan nama" and by "sole decree" passed in

Rent Case No. 1225 of 1956 along with documents submitted to substantiate their claim?

- b) Whether the plaintiffs have been able to prove that the Certificate Case No. 11MT/1975-76, though which, auction held and purchased by Mamota Rani Kundu and subsequent transfer by her to the defendants by three deeds and the decree of Title Suit No. 140 of 1984 are false, fabricated, collusive by adducing cogent ,reliable, oral and documentary evidences and lastly;
- c) Whether the plaintiffs have been able to prove their case in any manner whatsoever?

All the above issues are being discussed and decided taken together.

It appears that the plaintiffs claim their right, title, interest and possession in the suit land by virtue of "pattan" executed by superior landlords in favour of their mother and by "sole decree" held in Rent Case No. 1225 of 1956.

On the other hand, the defendants in support of their claim mainly based upon the Certificate Case No. 11MT/1975-76, boinama and writ of delivery of possession, the mutation in the name of auction purchaser Mamota Rani Kundu, three purchase deeds and lastly a decree of Title Suit No. 140 of 1984 by which the inclusion of the suit land as vested property was nullified.

On meticulous perusal of the documentary evidences adduced by the plaintiffs, we find that, the story of "pattan" claimed to be executed by superior landlord in favour of their mother has not been proved by adducing and producing any oral and documentary evidences. The sole decree, (exhibit-2) basing upon which, the plaintiffs

claim their right, title and possession is not an authentic document because the information slip in support of "sole decree" produced to substantiate the claim of sole decree has no scope to be taken into consideration under Evidence Act.

We also find no documents as to "pattan" claimed to had executed by superior land lord and after "Pattan" no record in their names and mutation opening holding and payment receipts of rents.

It is settled principle of law that the plaintiffs have to prove their own case by oral and documentary evidences. The documentary evidence [Exhibit-"1-7(Uma)"] and oral evidence (PW-1-4) adduced and produced do not however help the plaintiffs to have decree for declaration of title in respect of the suit land. We have meticulously perused the oral evidence from which it has been revealed that the plaintiffs witnesses admitted in their testimonies that the defendants are in possession in the suit land. The PW-2 very specifically admitted in his deposition that he purchased some lands from the defendant No. 1 in the name of his wife which the defendant No. 1 had purchased from Mamota Rani Kundu. So practically, by the evidences of the PWs it has been proved that the defendants purchased the suit land from auction purchaser Mamata Rani Kundu.

Side by side, we have meticulously perused the documentary evidences as well as oral evidences of the defendants. In the Certificate Case 11 MT/1975-76 one Mamota Rani Kundu took part and purchased the land on auction. The defendants purchased from her and subsequently their names have been properly recorded in accordance with law. To remove the cloud created in respect of the suit land enlisting as enemy property the defendants filed suit challenging its legality and obtained decree which even was affirmed by the Court of appeal. As long as a decree of a court is not set aside by any competent court of law, the right, title and interest in respect of the suit land established by virtue such decree no way be hampered.

The learned Advocate for the appellants prayed for fresh trial claiming them to be possessor in the suit land but we do not find any legal reasons to send back the suit for trial afresh on remand.

On considering above all facts and circumstances we are of the view that the plaintiffs have failed to prove their case by adducing and producing cogent, oral and documentary evidences. On the other hand the defendants by adducing and producing sufficient oral and documentary evidences have substantiated their claim and the trial court rightly dismissed the suit whereof we find no illegalities and infirmities and hence calls for no interference.

In the result, the appeal is dismissed.

However without any order as to costs.

The Civil Rule No. 58 (F) of 2011 arose out of this appeal is discharged and order of statusquo granted thereat is vacated.

Communicate the judgment and order at once.

Send down the Lower Courts Records immediately.

(Justice Sashanka Shekhar Sarkar)

I agree.

(Justice Md. Badruzzaman)