

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No.69 of 1991

(First Appeal No.10 of 1982 of Rangpur Bench)

Siddique Hossain being dead his heirs-

1(a) Md. Golam Mostafa and others appellants

-Versus-

Government of Bangladesh and others

..... respondents

Mr. Md. Enamul Haque, Advocate

..... for the appellants

Mr. Redwan Ahmed, Deputy Attorney General
with Ms. Anjuman Ara Lima, Mr. Md. Saiful
Islam Miajee, Mr. Md. Abul Khair and Mr. Md.
Montu Alam, Assistant Attorney Generals

..... for the respondents

Judgment on 26.08.2025

Bhishmadev Chakrabortty, J:

This appeal at the instance of plaintiff is directed against the judgment and decree of the then Subordinate Judge, Additional Court, Rajshahi passed on 10.08.1982 in Other Class Suit 55 of 1980 dismissing the suit for declaration of title.

The plaint case, in brief, is that the then zaminder Akbar Ali Chowdhury was the original owner of the suit land described in the schedule to the plaint. Accordingly, CS *Khatian* was correctly prepared in his name. During its possession and enjoyment he settled the suit land to Emajuddin Mondal on 9th Poush, 1352 BS through an *amalnama*. Emajuddin paid rent to the zaminder in respect of the suit land and obtained *dakhilas* from him. He possessed and enjoyed the

suit land for more than 12 years on payment of rent to the ex-landlord. But in the SA operation the record was erroneously prepared in the name of ex-landlord. Emajuddin in need of money sold out the suit land to the plaintiff through a *kabala* dated 17.04.1953 at a consideration of Taka 5,500/- but the *kabala* could not be registered for want of income tax clearance certificate. But purchaser plaintiff remained in possession of the suit land. Subsequently, Emajuddin collected income tax clearance certificate and registered the *kabala* on 03.07.1973. The plaintiff then instituted Title Suit 215 of 1974 against Akbar Ali Chowdhury for rectification of wrong SA record which was ended on compromise and the suit was decreed. Later on the plaintiff came to learn that the government is trying to lease out the property to third party because RS *Khatian* has been prepared in the name of government. The plaintiff then filed objection petition to the Additional Deputy Commissioner, Rajshahi (ADC Revenue) which was dismissed on 20.07.1976. The plaintiff then moved to the Divisional Commissioner, Rajshahi who also rejected the appeal on 28.08.1976. The aforesaid order of Divisional Commissioner and wrong record of rights, *i.e.*, SA and RS *Khatians* have clouded plaintiff's title in the suit land, hence the suit for declaration of title in the suit land as described in the schedule to the plaint.

Defendant 1 government contested the suit by filing written statement contending that the property was the *khas* land of the then

zaminder. The land was recorded in SA *Khatian* in the name of zaminder showing the easement right of the people of the locality. Some of the suit land is pond and has been being used by the local people for irrigation purpose. The suit land was non retainable *khas* land of the ex-zaminder and as such on its acquisition after SAT Act, 1950 came into force it vested in the government. SA and RS *Khatians* have been correctly prepared in the names of zaminder and the government respectively. The plaintiff's objection for correction of the record of right was rejected by the ADC Revenue Rajshahi and RS *Khatian* has been prepared in the name of government. The land is the *khas* land of the government and, therefore, the suit would be liable to be dismissed.

Defendant 7 Bangladesh Lutharian Mission filed written statement to contest the suit. It claimed of taking the land of plots 144, 146 and 128 yearly lease from government. Defendant 8, Union Parishad filed written statement admitting the case of the government and stated that there is a road in the suit schedule on .42 acres of land of plot 139 and SA and RS records have been finally prepared showing it as road. Defendants 8 and 9 filed another set of written statement where they claimed of purchasing a part of the suit land from Moslem and Moshak, the sons of Emajuddin who took settlement from the zaminder and there is a public road in the suit land. The suit, therefore, would be dismissed.

On pleadings, the trial Court framed 6 issues. In the trial, the plaintiff examined 7 witnesses and produced their documents exhibits 1-6(c). Defendant 1 government examined 1 witness but produced no document in support of its claim. The other defendants who submitted written statement did not contest the suit. However, the then Subordinate Judge, Additional Court, Rajshahi by the judgment and decree under challenge dismissed the suit deciding all the material issues against the plaintiff.

Mr. Md. Enamul Huq, learned Advocate for the appellants taking us through the materials on record submits that the plaintiff purchased the suit land from Emajuddin through a *kabala* registered in 1973 who took it settlement from the zaminder through an *amalnama* in 1352 BS. The aforesaid documents have been produced in evidence and marked as exhibits. All the plaintiff's witnesses unequivocally stated that the plaintiff is in possession of the suit land. But the Court below without assessing oral evidence of the witnesses and the documents of the plaintiff dismissed the suit which is required to be interfered with by this Court in appeal. He refers to the case of Abul Hossain and others vs. Amjad Hossain and others, 62 DLR (AD) 436 and submits that law provides for a presumption of ownership of a person who is in possession of a property. A person in possession of land even with defective title has a good title against whole world except the true owner. Possession is evidence of title and gives a good

title as against wrong doer. In this case, the plaintiff successfully proved his possession in the suit property and as such he is entitled to get a decree of declaration as prayed for. The Court below erred in law in dismissing the suit. The appeal, therefore, would be allowed.

Mr. Md. Abul Khair, learned Assistant Attorney General on the other hand opposes the appeal and supports the judgment passed by the trial Court. He submits that in evidence PW1 stated that Emajuddin took settlement of the land from the superior landlord by paying Taka 10/- as *salami* but in the body of the *amalnama* there is nothing that he paid the amount to the superior landlord. He refers to the evidence of PW 7 who took settlement from the superior landlord but failed to identify the boundary of the ponds in the suit land. He then submits that the judgment and decree passed in Title Suit 215 of 1974 is not binding upon the government because it was not a party to the suit. The suit land having been non retainable *khas* land of the then zaminder vested upon the government after SAT Act, 1950 came into force. It has been recorded correctly in the name of the government in khas khatian. He further refers to the written statement filed by defendant 8 and submits that there is a public road in the suit land and as such the plaintiff cannot get a declaration of title therein. The trial Court correctly assessed the evidence of witnesses and dismissed the suit which may not be interfered with by this Court in appeal. The appeal, therefore, would be dismissed.

We have considered the submissions of the learned Advocate for the appellants, the learned Assistant Attorney General and gone through the materials on record. The plaintiff claimed title in the suit land described in the schedule to the plaint on the basis of a registered *kabala* dated 11.06.1973 exhibit-5 from Emajuddin who took settlement of the same land from the then zaminder Akbar Ali Chowdhury through an *amalnama* dated 9th Poush, 1352 BS exhibit-4. Emajuddin paid rent to zaminder Chowdhury who issued *dakhilas* to him. The aforesaid *amalnama* exhibit-4 followed by *dakhilas* has been proved in evidence. It is a very old document and can be relied upon unless it is challenged specifically and contrary is proved by the defendant. No specific case has been made out by defendant 1 that those were created or forged. We find in the *amalnama* that the above named zaminder put his signature therein with fountain pen. We find nothing to disbelieve it on naked eye. The *amalnama* exhibit-4 is followed by 2 *dakhilas* exhibits-3 and 3(a) which was issued to Emajuddin by the zamindari seresta. Moreover, PW5 Hasanauzzaman, the son of zaminder Akbar Ali Chowdhury in oral evidence stated, “এই আমলনামায় আমার পিতা দস্তখত করেছে। এই দাখিলা গুলি আমাদের সেরেস্টা থেকে দেওয়া হয়েছে।” In cross-examination he stated, “মকবুল হোসেন এই দাখিলা লিখেছে।” In the aforesaid evidence, it has been proved that the then zaminder Akbar Ali Chowdhury settled the suit land to Emajuddin through *amalnama* exhibit-4. He received rent from Emajuddin and

issued *dakhilas* exhibits-3 and 3(a) to him who subsequently sold it to the plaintiff through exhibit-5 dated 11.06.1973. It is found that SA and RS records were not prepared in the name of the plaintiff. The plaintiff filed objection against wrong record of rights prepared in the name of the zaminder and the government which was disallowed. But it is found in the order of ADC (Rev), Rajshahi dated 05.12.1979 exhibit-6(b) that he directed the parties maintain *status quo* in respect of the suit land unless decision of title comes from a civil Court. Therefore, it is found that that ADC (Rev) also observed that disputed question of title is involved in the suit land. The plaintiff then instituted this suit claiming his title in the suit land which has been clouded on the basis of wrong record of rights prepared in the name of the government. The suit, therefore, is found well maintainable in the present form. Moreover, the plaintiff has been able to prove his title in the suit land through documents also.

The plaintiff, PW1 Siddique Hossain stated in evidence, “১৮/১৯ বছর পূর্বে আমি দখল পেয়েছিলাম। তারপর ১৯৭৩ সালে কবলা দলিল রেজিস্ট্রি হয়।” PW2 Intaz Ali in evidence stated, “নালিশী জমি বাদী ১৮/১৯ বছর যাবৎ দখল করছে। ইতি পূর্বে এমাজউদ্দিন দখল করতে দেখেছি ১০/১১ বছর ধরে।” PW 3 Sohrab Ali in evidence stated, “১৫/১৬ বৎসর যাবৎ আমি বাদীকে এই জমি খেতে দেখি। এমাজ উদ্দিন হতে বাদী পেয়েছে। বাদীর পূর্বে এমাজ উদ্দিন খেত।” PW4 Khaja Ahmed in evidence stated, “বাদী এবং নালিশী জমি চিনি। উহা ১৫/১৬ বছর যাবৎ বাদী দখল করেছে।” PW 7 Enajuddin who took settlement from zaminder in

evidence stated, “আমি ১৮ বৎসর দখল করেছি। বাদী এখন সম্পূর্ণ জমি দখল করছে।”

The above witnesses were cross-examined by the defendant at length but nothing has come out adverse to plaintiff's possession in the suit land. It is further found that the plaintiff paid rent to the government in respect of the suit land through exhibits-1(A)-1(D) and 2. These are all rent receipts issued by the government in respect of the suit land. Although defendant 1, government contested the suit by filing written statement denying the statements made in the plaint but did not challenge the authenticity of those. In evidence DW 1 Mozibur Rahman, the tahshilder stated, “১৮/১৯ নং খতিয়ান জমিদারের নামে তাদের খাস জমি হিসাবে রেকর্ড হয়। অতিরিক্ত জমি হিসাবে সরকারের উপর বর্তায়।” But if the government claims the land as excess land of the zaminder after abolition of the zamindari system it has to comply with procedure of Chapters IV, V and VI of SAT Act, 1950. The government did not produce any scrap of paper or did not make out any case in support of acquisition of the land as excess land of the zaminders. Therefore, mere claim in the written statement to that effect cannot stand against the oral and documentary evidence of the plaintiff.

In the case of Abul Hossain and others vs. Amjad Hossain and others, 62 DLR (AD) 436 it has been held-

“Section 110 of the Evidence Act provides for a presumption of ownership in favour of the person who is in possession of the property. A person in possession of land however imperfect his title may be, has a good title against whole world except the true owner and until the true

owner comes in Court to assert a claim to the property. Possession is evidence of title, and gives a good title as against wrong doer.”

The *ratio* of the aforesaid case matches this case and squarely applies here because the plaintiff is found in possession of the suit land and defendant failed to prove that it is the real owner of the land.

In view of the discussion made hereinabove, we find that the learned Judge of the trial Court without going through the evidence both oral and documentary dismissed the suit relying only on evidence of PW7 as to the identification of the pond. It is found that in the schedule of the plaint the whole land of each plot have been included, so there is no necessity of identifying the land by metes and bounds in the plaint or by evidence of witnesses.

In the premises above, we find merit in this appeal. Accordingly, the appeal is allowed. However, there will be no order as to costs. The judgment and decree passed by the trial Court is hereby set aside and the suit is decreed.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.