

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.3896 of 2012*

*Abul Kalam being dead his legal heirs*

*Chan Banu and others.*

*.....Petitioners.*

*-Versus-*

*Government of Bangladesh and others.*

*.....Opposite parties.*

*Mr.Mohammad Eunus, Adv. With*

*Mr. Md. Jahangir Alam, Advocate.*

*.....For the petitioners.*

*Mr. Md. Ensan Uddin Sheikh, D.A.G*

*With Mr. Md. Bulbul Haque*

*Chowdhury, Advocate. With*

*Mr. Mahmud Hasan, Adv.*

*.....For the Opposite parties.*

*Heard on 09.05.2024 and*

*Judgment on 13.05.2024.*

A.K.M.Asaduzzaman,J.

This Rule was issued calling upon the opposite party nos. 1-28 to show cause as to why the judgment and decree dated 31.10.2012 passed by the Additional District Judge, Chapainawabgonj in Title Appeal No. 237 of 2007 affirming those dated 13.08.2007 passed by the Joint District Judge, 2<sup>nd</sup> Court,

Chapainawabgonj in Other Class Suit No. 11 of 2001 should not be set aside.

Opposite party no. 1 government as plaintiff filed the suit being Other Class Suit No. 11 of 2001 before the Court of Joint District Judge, 2<sup>nd</sup> Court, Chapainawabgonj against the petitioners for declaration of title in the suit land in respect of 47.14 acres of land as described in the schedule of the plaint.

Opposite Party Nos. 2-28 added in the suit as a plaintiff as leasee of the suit land.

Plaint case in short inter alia is that land described in the 'ka' schedule of the plaint of C.S. Khatian Nos. 1-3 of Mouza Pathar Jagodishpur, under Police station Gomastapur, District Chapainawabganj were vested upon the Government as excess land of the landlord. On the provisions of State Acquisition and Tenancy Act, while those were in Khas possession of Bhairabendro Narayan and others, who were the landlords of Tilashan Singabad. On the basis of allotment case P.R.R. Khatian Nos.1/21 prepared in the name of collector in favour of the then province of East Pakistan that accordingly C.A. roll was prepared and compensation was paid. 'Ka' schedule land was recorded in khas Khatian no.1, while it was possessing by the Government. At the time of S.A. operation Khatian No.1 separately prepared and

the authorities were confirmed that the land would be recorded in the name of the Government at final publication. While Government was in possession then Government settled 1.50 acres of land from plot no. 107 in the name of Durul Huda through Settlement Case no. 984 (XII) 79-80, 1.50 acres of land in the name of Monirul Islam through Settlement Case no. 983(XII)79-80, 1.50 acres of land in the name of Obaidullah through Settlement Case no. 988 (XII)/ 79-80 1.50 acres of land in the name of Abdul Mannan through Settlement Case no, 992 (XII)/79-80, 1.50 acres of land in the name of Laibuddin through Settlement Case no. 989 (XII) 79-80, 1.50 acres of land in the name of Farid Ali through Settlement Case no, 990 (XII) 79-80, 1.50 acres of land in the name of Insun Ali through Settlement Case no. 991 (XII)/79-80, 1.50 acres of land in the name of Jalaluddin through Settlement Case no. 985 (XII)/79-80, 1.50 acres of land in the name Saifuddin through Settlement Case no. 993 (XII)/79-80, 1.50 acres of land in the name of Sadrul Ullah through Settlement Case no. 1352 of 80-81, 1.50 acres of land in the name of Nurul Huda through Settlement Case no. 1352 (XII)80- 81, 1.50 acres of land in the name of Abdul Hannan through Settlement Case no. 1301 (XII)/ 80-81,1.50 acres of land in the name of Faizul through Settlement Case no. 1346 (XII)/ 80-81, 1.00 acres of land in the name of Abdul Aziz through

Settlement Case no, 450 (XII) 81-82, 0.75 acres of land from plot No. 105 in the name of Gofuruddin through Settlement Case no. 449 (XII) 81-82, 1.50 acres of land in the name of Mazed Ali through Settlement Case no. 570 (XII) 79-80, 0.50 acres of land from plot No. 107 in the name of Afsar Ali through Settlement Case no. 36(XII) 79-80, 1.50 acres of land in the name of Samsul Huda through Settlement Case no. 385(XII)/ 80-81 1.50 acres of land in the name of Rabiul Haque through Settlement Case no. 336 (XII) 80-81, 1.50 acres of land in the name of Belal Mondal through Settlement Case no.337 (XII)/ 80-81, 1.50 acres of land in the name of Jay Mohammad through Settlement Case no. 332/(XII)/ 80-81, 1.50 acres of land in the name of Rahim Mondal through Settlement Case no. 331 (XII)/ 80-81, 1.50 acres of land in the name of Mominul through Settlement Case no. 213 (XII)/ 77-78. The settlement holders are landless people, who got permanent settlement and got possession. They mutated their names and got dakhilas by paying rent to the Government. They executed registered Kabuliats in favour of the Government, and possessing the land in dispute but on 02.04.1998 the defendants claimed title in the land in Ga schedule out of land Ka' schedule. After inquiry it is observed that 57.21 acres of land out of 'Ka' schedule had been recorded wrongly and "Kha' schedule land measuring 10.07 acres had been recorded in the name of the

Government. Land described in 'Ga' schedule had been recorded in R.S. Khatian No. 45 wrongly in the name of the defendant Nos.1 to 7 and Eklas Mia, who is the predecessor of the defendant No. 8 to 13 and defendant no.14 namely Abdur Rahman and defendant no. 25 namely Taboruddin Mondal and Anisur Rahman. Defendant's have no title and possession in the land in dispute and created some forged papers and claiming the title. R.S. record is wrong and baseless and due to wrong record, defendants claim title in the land in suit, hence this case for declaration of title.

Petitioners contested the suit as defendant nos. 34-54 by filing written statement denying the plaint case alleging, inter alia, that the land in dispute was khas land of the landlord namely Bhaibandro Narayan and others, while they were in possession they proposed to settle the land and the proposal was accepted by one Most. Rokeya Khatun through her husband and accordingly on 10<sup>th</sup> Baishak, 1349 B.S. landlord settled the land i.e. 7.49 acres of land from plot No. 105 and 39.62 acres of land from plot no.107 in favour of Rokaya Khatun. Rokaya Khatun took possession in total 47.21 acres of land. Rokeya Khatun while was in possession through her husband, on 12.06.1967 transferred 6.60 acres of land in favour of Rasheda Begum by virtue of registered kabala no. 5259. Rasheda got possession and on 28.02.1993, she transferred 1.98 acres of land in favour of Naimuddin by virtue of

registered kabala no. 1547. On 02.09.1993, Rasheda further transferred .28 acres of land in favour of the defendant no. 34 by virtue of registered Kabala no. 989. On 14.01.1998 Naimuddin transferred .4950 acres of land in favour of the defendant no.34 by virtue of registered kabala no.360. On 28.02.1993 Rasheda further transferred 2.52 acres of land in favour of defendant no. 34 by virtue of registered kabala no. 1550. In this manner, defendant no. 34 got title and possession in 3.2950 acres of land. On 20.11.1994 Naimuddin transferred .33acres of land in favour of the defendant no. 35 namely Chan Banu. On 14.02.1995 Defendant no. 35 got .8250 acres of land from Abdul Jabbar and transferred 4.00 acres of land in favour of Ajaharul Islam and Monjur Ali. On 25.03.1993 Monjur Ali transferred 1.00 acres of land in favour of Khalilur, Umesha and Anowara Khatun. On 22.01.1998 Ajaharul Islam transferred 4.00 acres of land in favour of Abul Hossain by virtue of registered kabala no. 592. On 08.11.1977 Defendant no. 14 transferred 1.00 acres of land in favour of Idris Ali. On 23.07.1977 Mozammel Hoque transferred 4.00 acres of land in favour of Idrish Ali by virtue of registered kabala no. 7244 and 7245. On 30.09.1992 Idris Ali transferred .66 acres of land in favour of Munirul Islam. On 30.09.1992 Idris Ali transferred .99 acres of land in favour of Azizur Rahman, Saidur Rahman, Amirul Islam, Sadequl Islam, Sofiur Rahman and Rezaul Karim by virute

of registered kabala no. 36.77. On 30.06.1992 Idris Ali transferred 1.8150 acres of land in favour of Tahamina Khatun by virtue of registered Kabala No.3679. On 12.06.1967 Rokeya Khatun transferred 3.96 acres of land in favour of Nasiruddin Biswas by virtue of registered kabala no. 3264 and on 26.10.1997 transferred 2.65 acres of land in favour of Solimuddin and Bibi Kohinur by virtue of exchange deed. On 21.01.1998 Rokeya Khatun transferred 1.44 acres of land in favour of Ajan Nessa, Saidur Rahman; Morshed Ali, Sadekul Islam, Rojina Khatun, Nurefa Begum, Rulee Begum, Rebeda and Rubeda Begum by virtue of exchange deed no. 503. Ajan Nesa and others on the same day transferred 1.44 acres of land in favour of Tajenul Haque by virtue of deed no. 504. On 08.12.1967 Shahara Banu and others transferred .66 acres of land by virtue of deed no. 9704. On 15.12.1987 Ajaharul Islam purchased .66 acres of land from Khalilur Rahman by virtue of kabala no. 9950 and on 03.09.1997 transferred the same in faovur of Samir Ali by virtue of deed no. 73046. On 21.11.1994 Naimuddin transferred in favour of Abdus Samad, Khalilur Rahman, Sajenur Bibi and Setara Bibi by virtue of deed no. 9096. On 10.02.1998 Mojibar Rahman got .66 acres of land from Sokina Khatun and .33 acres of land from Nazrul Islam by virtue of exchange deed. Khalilur Rahman died leaving behind wife Umessa Khatun, five sons namely Samsuddin, Abdus Salam,

Toriquul, Hasan and Tahir Hossain. On 14.11.1983 Khos Mohammad transferred 1.00 acres of land in favour of Sunder Ali by virtue of Heba Bil Ewaz deed no. 9635. In this manner, defendants got the land in dispute and have been possessing the same. Plaintiffs have no possession in the suit land. S.A. record has been prepared in the name of Rokeya Khatun and S.A. recorded tenant got dakhilas by paying rent to the Government. On 12.06.1967 Rokeya transferred 3.30 acres of land in favour of Abdur Rahman by virtue of deed no. 5258 and on the same day transferred 6.60 acres of land in favour of Rasheda Khatun by virtue of deed no. 5259 and on the same day transferred 3.30 acres of land in favour of Rustam Ali by virtue of deed no. 5261. Plaintiffs' suit is false and is liable to be dismissed with cost.

During trial following issues were framed.

1. Whether the suit is maintainable in it's present form ?
2. Whether the plaintiffs have got right, title and possession over the suit land?
3. Whether the plaintiff is entitled to get relief as prayed for?
4. What else relief or relieves plaintiffs are entitled to get ?

During trial plaintiffs examined 05(five) witnesses and defendants examined 04(four) witnesses.

Considering the evidences and hearing the parties the trial court by its judgment and decree dated 13.08.2007 decreed the suit on contest.

Being aggrieved there against defendant-petitioner preferred Title Appeal No. 237 of 2007 before the Court of District Judge, Chapainawabgonj, which was heard on transfer by the Additional District Judge, Chapainawabgonj, who by the impugned judgment and decree dated 31.10.2012 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree defendant-petitioner obtained the instant rule.

Mr. Mohammad Eunos, the learned advocate appearing for the petitioners drawing my attention to the judgment of the courts below submits that although by way of Exhibit-gha series, plaintiff has successfully able to prove their predecessor Rokaya Khatun obtained the settlement from the Ex-Jamindar Bhairabendro Narayan Roy and possessing the suit land by paying rents to the Ex-Jamindar as shown through rent receipt exhibited in court and on the basis of that pattan, the name of Rokaya Khatun has rightly been recorded in the S.A. khatian and thereafter petitioner being the subsequent purchaser of the suit land from Rasheda Khatun obtained the said land from the said

Rokaya Khatun by way of registered sale deed dated 12.06.1967 and remaining in possession as shown through R.S. khatian thereby proved their right, title and possession over the suit land and this documents were not in any way are found forged and concocted, even then both the courts below upon wrong presumption disbelieved the defendant's contentions and decreed the suit in favour of the plaintiff.

He further submits that as per Section 79 of the State Acquisition and Tenancy Act all the rent receiving interest of the Ex-Jamindar was acquired by the government on 1<sup>st</sup> August 1963 in the Rajshahi area but the rent roll as being shown by the government plaintiff vide exhibit-1(Jha) appears to be acquired after 1964 obviously not as an excess land of the Ex-Jamindar since at that time property was not belonged to Ex-Jamindar rather it was settled to Rokaya Khatun long before on 10.01.1349 B.S. In that view of the matter, when the property was not been in ownership and possession of the Ex-Jamindar, the question of acquiring the property as excess land from the Ex-Jamindar does not arise at all. Courts below concurrently failed to consider this aspect of this case. Defendant's predecessor Rasheda Khatun obtained the property from settlement holder Rokaya Khatun vide registered sale deed dated 12.06.1967, which is an ancient document and as per section 90 of the Evidence Act, it has got

presumptive value and carries the valid title to the defendants. Courts below totally failed to consider this aspect of this case.

Learned Advocate further submits that plaintiffs claimed that suit land has been leased out to different leasee vide different lease deeds of the year 1980 and onwards but there is nothing to show before the court that if the property is at all been acquired by the government through rent roll of the year 1964, but by which way and by whom this property was been possessed by the government during 1964 to 1980, where defendants have claimed that they were all along in possession into the suit property since taken pattan by their predecessor as well as subsequent purchaser including the petitioner and thereby by virtue of adverse possession defendants also acquired valid title over the suit land. Drawing my attention to the plaint as well as S.A. khatian, the learned advocate further submits that although in the plaint, plaintiffs claimed that S.A. khatian was not been prepared in the name of the government and the recording of the same in the name of defendant's predecessor was wrong but plaintiff did not challenge the said recording of the S.A. khatian as wrong and sought for any declaration to that effect and accordingly the suit challenging the recording of R.S. khatian alone is not maintainable.

Learned advocate further submits that schedule of the land of the plaintiff is unspecified and accordingly under Order 7 Rule 3 of the Code of Civil Procedure, plaintiff is not entitled to get the decree on such unspecified land. He finally prays that since the court below totally failed to consider above all aspect of this case and decreed the suit most arbitrarily, the impugned judgment is thus not sustainable in law, which is liable to be set aside. He thus prays for making the rule absolute. In support of his contention, he has cited a several decision viz in the case of Delipjan being dead her heirs: Fazal Haque and others Vs. Shahed Badsha and others reported in 66DLR(Ad)(2014) and in the case of M. Delwar Hossain Vs. Mohammad Ali and others reported in XIVADC(2017)paged 483 and in the case of Hriday Ranjan Dey and another Vs. Niranjan Dey being dead his heirs Probate Dey and another reported in 6MLR(AD)2001page267 and in the case of Balbhadra Prasad Singh, Bindbasini Prasad Sinha and Nagendra Prasad Sinha Vs. Gorakhnath Singh reported in AIR1957.

Mr. Md. Bulbul Haque Chowdhury, the learned advocate appearing for the opposite parties on the other hand submits that when the defendants taking settlement and paying rents to the Ex-Jamindar was not proved by any attesting witness, said documents appears to be void and illegal and does not carries any title to the

defendants and thereby all such subsequent transfer in favour of defendants are illegal and could not carry any valid title and interest over the suit land. In support of his contention, he has cited a several decision viz in the case of Sontosh Lal Saha and others Vs. Dakhina Ranjan Choudhury and another reported in 5DLR(1953)page 44 and in the case of Bangladesh Vs. Dewan Obaidur Reza Chowdhury and others reported in 43DLR(1991)page 551 and in the case of Ali Akbar Khan Vs. Gurudas Mondal and others reported in 4BLC(1999)page265.

Learned advocate further submits that the document showing the recording of S.A. khatian since not been proved by calling the volume is a forged document and as such it need not required to sought for cancellation or declaration against the said documents. Drawing my attention to the decision in the case of Bangladesh Vs. Dewan Obaidur Reza Chowdhury and others reported in 43 DLR (1991)page 551 and the case of Ali Akbar Khan Vs. Gurudas Mondal and others reported in 4 BLC(1999) page 265, learned Advocate further submits that suit being want for declaration of title only and there being no prayer for confirmation of possession or for recovery of possession, the point of alleged vagueness as per description of the suit land was not a material for adjudication and in such circumstances, the provision of Order 7 Rule 3 of the Code of Civil Procedure can not be

applied strictly. He finally prays that since the rule contains no merits, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a suit for simple declaration of title, on the event that R.S. khatian was wrongly been recorded in the name of the defendant. Plaintiff claimed that suit property was belonged to Ex-Jamindar Bhairabendro Narayan and others, who were the landlords of Tilashan Singabad. On the basis of allotment case P.R.R khatian Nos. 1/21 prepared in the name of collector in favour of the then Province of East Pakistan and accordingly rent roll was prepared and compensation was paid and the ka schedule land was recorded in khash khatian no. 1, while it was possessing by the government. While government were in possession into the suit land, it was settled to different leasee by different settlement case. Land described in Ga schedule land has wrongly been recorded in the R.S. khatian in the name of the defendant nos. 1-7 and Ekhlash Mia, who is the predecessor of defendant nos. 8-13 and defendant no. 14 namely Abdur Rahman and defendant no. 25 namely Taboruddin Mondal and Anisur Rahman. Due to the said wrong recording, when defendants claim a title over the suit land plaintiff instituted this suit for declaration that the said RS. Khatian was wrong.

On the other hand, defendant-petitioners claimed that suit property was admittedly belonged to Bhairabendro Narayan and others, who settled the said land to one Most. Rokaya Khatun on 10<sup>th</sup> Boishak 1349 B.S. and remaining in possession on 47.21 acres of land. She transferred 6.60 acres of land to Rashida Begum vide registered sale deed dated 12.06.1967. Present Petitioners are the subsequent purchaser from Rashida Khatun as well as from Rokaya Khatun vide different sale deeds. Pursuant to that purchase Rashida Khatun got her name recorded in S.A. khatian and subsequent purchaser got recorded their names in R.S. khatian correctly and they are enjoying the said suit land till their purchase. Trial Court decreed the suit in favour of the plaintiff, which is also affirmed by the Appellate Court.

In the suit main question to be decided whether the suit property was either been settled in favour of the Rokaya Khatun vide amalnama of the year 1349 B.S. or being acquired by the government as an excess land of the Ex-Jamindar and the rent roll was prepared accordingly. If the defendant's contention are proved that property was at all being settled in favour of Rokaya Khatun through amalnama, they acquired that property, and the government's contention appears to be no basis at all and thus illegal. From the record, it appears that a paper has been shown of giving the settlement the property in favour of Rokaya Khatun

from Tilashan Singabad Estates as exhibit gha (4). This document was produced in court and marked as exhibited by the D.W.4, one Md. Jamir Uddin, son of late Tamij Uddin, a man aged about 85 years old, who while deposing in court as D.W.4 has said that

‘আয়নাল হককে চিনতাম। সে রোকেয়ার স্বামী ছিল। নালিশী জমি জমিদারের খাস দখলে থাকা অবস্থায় বন্দোবস্তের করলে আয়নালের সাথে গিয়েছিলাম। আমার আমলেই বন্দোবস্ত হয়েছিল। ২৭ টাকা সেলামীতে বন্দোবস্ত হয়। এই সেই ১৩৪৯/১০ কেস মামলা উহা সঠিক। খতিয়ানের মাধ্যমে দখল পাই নাই।’

Although the learned advocate appearing for the petitioners Mr. Bulbul tried to say that this statement is not in conformity with the produced (Exhibit gha-4). But upon perusal of Exhibit gha-4, it appears that the land was settled at 27 taka 06 anna on 10<sup>th</sup> Baishak 1349 B.S. in favour of Most Rokaya Begum by the Ex-landlord. Thus this documents apparently proved the defendants case.

In support of this settlement defendant also produced exhibit-gha series of showing payment of rents to the Jamindar. All these proved that said Rokaya Khatun remaining in possession by paying rents to the Ex-Jamindar. As per the claim of the defendant original registered sale deed dated 12.06.1967 showing the transfer of 6.60 acres of land by Rokaya Khatun to Rasheda

Begum (Exhibit Ka), defendants tried to establish their case. These 02(two) vital documents (viz Exhibit gha-4 and Exhibit ka) were not been challenged in the suit as forged and concocted one. Thereafter Rahseda Khatun transferred the suit property to different persons, from them defendants subsequently acquired the property, which are the basis of recording their names in the R.S. khatian. These documents were also not been challenged as forged and concocted documents and also not been proved in court that by these registered document defendants acquired no title into the suit land. S.A. khatian No. 54 (Exhibit gha-3) shows that the settlement holder Rokaya Khatun got her name recorded in the S.A. khatian through government and government accepted her as tenant in the suit premises. This document also not been asked to be declared as void or cancelled. Defendant's all witnesses in a voice corroborate that defendants are in possession into the suit property along with their predecessor since taking settlement of the suit land. On the point of possession the claim of D.W.1 was corroborated by the witness D.W.2 Md. Abul Hossain and D.W.3 Md. Tajibar Rahman, who are the owner of the contiguous land proved the possession of the defendant into the suit land. Court below also overlooked the above contentions. Mainly they relied upon the recording of R.O.R. khatian, which is prepared in the name of the government. The rent roll (Exhibit-1 Ja) appears to be

prepared in the year 1964 obviously. But it was after the State Acquisition and Tenancy Act came into operation through Section 79 of the Act, at that time property was not appears to be under custody or control of Ex-Jamindar rather at that time it was settled in favour of Rokaya Khatun, who has admittedly got title and possession into the suit land as would appear through the recording of S.A. khatian. The question of acquiring the property as excess land of the Ex-Jamindar at that time does not arise at all. Accordingly this document (Exhibit-1 Ja) appears to be recorded having no basis at all. From the record, no where it is appeared that if the property at all been acquired by the government through rent roll (Exhibit -1 Ja) how and what manner and by whom government possessing the said land. In that view of the matter, the submission as made by the defendant-petitioner of holding the possession since taking settlement have got good sound. When the plaintiff did not challenge the recording of S.A. khatian as wrong rather it has been admittedly found in the name of the predecessor of the plaintiff, the instant suit challenging the R.S. khatian alone appears to be not maintainable and suit is liable to be dismissed. Both the courts below concurrently failed to consider this aspect of this case and decreed the suit most arbitrarily.

When the plaintiffs apparently are not found in possession in the suit land, the instant suit for simple declaration of title is also not maintainable without having a consequential relief.

Regard being had to the above law, facts and circumstances of this case, I am of the opinion that both the courts below concurrently committed error of law in decreeing the suit. The impugned judgment of the courts below are thus not sustainable in law, which is liable to be set aside.

In that view of the matter, I find merits in this rule. Accordingly the rule is made absolute without any order as to costs. The judgment and decree passed by the courts below are hereby set aside.

Let the order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the L.C.Records and communicate the judgment to the court below at once.