

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.294 OF 2013

Sarder Moin Uddin and others

.... Appellants

-Versus-

The People's Republic of Bangladesh and others

.... Respondents

Mr. Sasti Sarker, Advocate with

Mr. F.M. Mizanur Rahman, Advocate

.... For the appellants.

Mr. Md. Shaif Uddin Raton, Deputy Attorney General
with

Mr. Junaed Hossen Khan, Assistant Attorney General

.... For the respondent Nos.1-4.

Heard on 07.07.2026 and Judgment on 15.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 24.04.2013 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.28 of 2004 dismissing the same.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 7.97 acres land appertaining to C. S. Khatian No.223 corresponding to S. A. Khatian No.296 and Deyara Khatian No.1 alleging that 8.41 acres land including above 7.97 acres

belonged to Surendra Nath Roy and Panchanan Roy in equal sharers and C. S. Khatian No.223 was rightly prepared. Above Surendra Nath Roy and Panchanan Roy transferred above land to Elem Sarder and his son Younus Sarder by two registered kabla deeds dated 03.03.1939 and 22.03.1941 and delivered possession. On the basis of above purchase Elem Sarder and Younus Sarder were in possession in above land by cultivation and in S. A. Khatian No.296 was recorded in the name of Elem Sarder and Younus Sarder but erroneously with them names of previous owners Surendra Nath Roy and Panchanan Roy were also recorded. 40 decimal land out of above 8.41 acres was lost in Kazibacha river due to erosion and did not reappear and above Elem Sarder and Younus Sarder were in possession in 8.01 acres land and on 4 decimal land a CARE Road was constructed and plaintiffs are in possession in 7.97 acres land by mutating their names and paying rents to the Government. But in Deyara survey 7.61 acres land was recorded in the name of Government and remaining 36 decimals land was erroneously recorded in the name of the defendant No.13 in R. S. Khatian No.431.

Defendant No.1 contested above suit by filing a written statement alleging that disputed property belonged to Plot No.35 of C. S. Khatian No.295 which went into the riverbed of Kazibacha river and 7.61 acres land reappeared after independence of Bangladesh and rightly recorded in Deyara Khatian No.1 in the name of the Government. The

plaintiffs do not have any right, title, interest and possession in above 7.61 acres land.

At trial plaintiffs examined three witnesses and defendant No.1 examined one. Documents produced and proved by the plaintiffs were marked as Exhibit Nos.1 series – 16 series and those of the defendant No.1 were marked as Exhibit No.“Ka”.

On consideration of facts and circumstances of the case and evidence on record learned Joint District Judge dismissed above suit.

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. Sasti Sarker, learned Advocate for the appellants submits that admittedly 8.41 acres land including disputed 7.97 acres originally belonged to Surendra Nath Roy and Pachanan Roy and C. S. Khatian No.223 was correctly prepared. Plaintiff's predecessor Elem Sarder and Younus Sarder purchased above 8.41 acres land from above Surendra Nath Roy and Pachanan Roy by two registered kabla deeds dated 03.03.1939 and 22.03.1941. Plaintiff No.1 Sarder Moin Uddin while giving evidence as PW1 produced above two original registered kabla deeds dated 03.03.1939 and 22.03.1941 which were marked as Exhibit Nos.2 and 3 respectively. The defendants did not challenge the legality and propriety of above two ancient registered kabla deeds and on the basis of above kabla deed S. A. Khatian No.296 was rightly prepared in

the names of above Elem Sarder and Younus Sarder. But erroneously the names of above Surendera Nath Roy and Pachanan Roy were also recorded in above S. A. Khatian. The learned Joint District Judge utterly failed to appreciate the legal value of above registered kabla deeds of more than 30 years old and most illegally held that above documents were ineffective and the lawful execution of the same is not believable. Plaintiffs purchased above land from the heirs of Elem Sarder and Younus Sarder by successive registered kabla deed which were produced at trial and marked as Exhibit Nos.4-12. The defendants did not dispute the correctness and effectiveness of above documents and on above deeds the plaintiffs got their names mutated and paying rent to the Government and produced a series of rent receipts in support of above claim. Plaintiffs admit that only 40 decimals land of C. S. Khatian No.223 went into the river and did not reappear. The plaintiffs and their predecessors Elem Sarder and Younus Sarder were continuously possessing remaining disputed land. But in the plaint the plaintiffs did not separately mention 4 decimal land which was used for constructing CARE Road nor R. S. Khatian No.431 was mentioned in the plaint or schedule of the plaint. 36 decimal land of C. S. Khatian No.223 was erroneously recorded in R. S. Khatian No.431 in the name of defendant No.13 but above Khatian was not incorporated in the schedule to the plaint nor above facts were stated in the plaint clearly. The learned Judge of the trial Court pointed out that since above S. A. Khatian also

erroneously stands in the names of Surendra Nath Roy and Panchanan Roy their heirs were required to be implead as defendants. In view of above deficiencies in the plaint the learned Advocate submits 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 and after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

On the other hand Mr. Junaed Hossen Khan, learned Assistant Attorney General for respondent Nos.1-4 submits that on consideration of facts and circumstances of the case and materials on record the learned Joint District Judge rightly dismissed above suit which calls for no interference but since the learned Judge of the trial Court held that the suit was bad for defect of parties and the learned Advocate for the appellants had admitted that 4 decimals land of CARE Road and 36 decimals land of R. S. Khatian No.431 were not properly incorporated in the schedule of the plaint the impugned judgment and decree may be set aside and above suit may be remanded for retrial after giving defendant No.1 an opportunity to submit additional written statement and adduce further evidence.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that 8.41 acres land appertaining to C. S. Khatian No.223 and Plot No.35 belonged to two brothers Surendra Nath Roy

and Pachanon Roy and above C. S. Khatian was correctly prepared. It is also admitted that above 8.41 acres land was recorded in S. A. Khatian No.296 jointly in the names of Surendra Nath Roy and Panchanon Roy and plaintiffs predecessors Younus Sarder and Elem Sarder.

Plaintiff No.1 while giving evidence as PW1 produced two original registered kabla deeds dated 03.03.1939 and 22.03.1941 which were marked as Exhibit Nos.2 and 3. It turns out from above original registered deeds of more than 60 years old that Surendra Nath Roy and Panchanon Roy by above two deeds transferred 8.41 acres land to plaintiff's predecessors Elem Sarder and Younus Sarder. The defendants did not dispute the correctness and effectiveness of above two registered old deeds. As such no formal proof was required for admission of above deeds into evidence. Admittedly on the basis of above two deeds at least partial S. A. Khatian Admittedly was recorded in the names of Elem Sarder and Younus Sarder. Plaintiffs have admitted that 40 decimal land of above C. S. Khatian No.223 went into the riverbed due to erosion which did not reappear and they have excluded above land from the plaint. The defendants claimed that total 8.41 acres land of C. S. Khatian No.223 went into the river due to erosion and reappeared after independence of Bangladesh. The defendants did not mention the exact date of above erosion or reappearance nor adduced any evidence in this regard. While giving evidence as solo defendants witness Mr. Babul Akter admitted that

above 8.41 acres land originally belonged to Surendra Nath Roy and Pachanon Roy and relevant S. A. Khatian has been prepared in the name of plaintiff's predecessor Elem Sarder and Younus Sarder. The defendants did not claim that they are in possession in above land and above DW expressed his ignorance about the possession of above land. On the other hand plaintiffs have produced a bunch of rent receipts showing payment of above rent for above land to the Government which shows plaintiff's possession in above land.

As mentioned above S. A. Khatian No.296 was prepared jointly in the names of Surendra Nath Roy and Panchanon Roy and Elem Sarder and Younus Sarder. Plaintiffs claimed that above recording in the names of Surendra Nath Roy and Panchanon Roy were erroneous and they had no subsisting interest in above property. But the plaintiffs were required who make above claims in presence of above Surendra Nath Roy and Panchanon Roy or their heirs by impleading them as defendants in above suit. But above Surendra Nath Roy and Pachanon Roy or their heirs were not made defendants in above suit for declaration of title. It is admitted that out of 8.41 acres land only 7.61 acres has been recorded in the name of defendant No.1 in Deyara Khatian No.1. The learned Advocate for the appellants submits that remaining 36 decimals land has been erroneously recorded in the name of defendant No.13 in R. S. Khatian No.431 and there is CARE Road in remaining 4 decimals land. But in the schedule to the plaint there is no

mention of R. S. Khatian No.431 nor the plaintiffs have expressly excluded 4 decimals land of care road nor specified above land in the schedule to the plaint. On consideration of above facts and circumstances of the case and materials on record we hold that above suit was bad for defect of parties and for non specification of disputed land in respect of which a decree for declaration of title was sought. But the plaintiffs have succeeded to prove that their predecessor Elem Sarder and Younus Sarder purchased total 8.41 acres land from C. S. recorded tenants Surendra Nath Roy and Pachanon Roy by two registered kabla deeds (Exhibit Nos.2 and 3) and on the basis of above purchase their names were partially recorded in S. A. Khatian No.296. The learned Joint District Judge erroneously held that the plaintiffs failed to formally prove above two registered kabla deeds dated 03.03.1939 and 22.03.1941 which were original registered deeds of more than 30 years old and whose formal proof was not required by law.

In above view of the facts and circumstances of the case and materials on record 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 both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 24.04.2013 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Suit No.28 of

2004 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER