

Present:

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

First Appeal No. 402 of 2013

Sentara Begum and others

....Appellants

Versus

Zakir Hossain, being dead, his heirs 1(Ka) Muzibul Haque Bhuiyan and others

....Respondents

Mr. Uzzal Kumar Bhowmick, Advocate with

Mrs. Shahana Perveen, Advocate

....For the Appellants

Mr. Md. Munsurul Hoque Chowdhury, Senior

Advocate with

Mr. Md. Sarwar Hossain, Advocate and

Mr. Mohammad Shafikul Islam Ripon, Advocate

....For the Respondent Nos. 1(Ka)-1(Cha)

Judgment on 14.12.2025.

Md. Iqbal Kabir, J:

At the instance of the defendants/ appellants, this First Appeal is directed against the judgment and decree dated 26.08.2013 (decree signed on 29.08.2013) passed by the learned Joint District Judge, 2nd Court, Feni in Suit/Civil Case No. 30 of 2008 decreeing the suit in favour of the plaintiff-respondent.

Short facts leading to preferring this first appeal are that the Plaintiff is the rightful owner and occupier of the suit property, having acquired the raiyati title through a valid legal process. The cause of action arose when the raiyati title was extinguished, and subsequently when the Plaintiff or her predecessor was dispossessed by the defendants.

The plaintiff's case, in essence, is that Girish Chandra Dhupi was the original raiyat of 116 decimals of land recorded in Khatian No. 231. The raiyati interest of Girish Chandra Dhupi and his heirs stood duly extinguished when the property was sold in a rent auction owing to non-payment of arrears of rent. The land was auctioned in Rent Case No. 2319/34, corresponding to Execution

Case No. 1652/34, and was purchased on 19-01-1935 by Safarjan Bibi Gong, who thereby lawfully acquired raiyati title to the property.

It is the further case of the plaintiff that Sarla Sundari @ Ayesha Khatun, the widow of Girish Chandra Dhupi, subsequently obtained 59 decimals of the auction-purchased land through a settlement acceptance (Kabuliat-Exhibit-16) executed on 04-01-1937. Following such settlement, she exercised full rights of ownership over the land, including executing valid deeds of sale (Exhibits 3 and 4) and undertaking other transactions, which clearly demonstrate her possession and title. Based on these facts, the plaintiff seeks recovery of khas possession of the suit property from the defendants along with appropriate declaratory reliefs and costs.

The defendants categorically denied the plaintiff's assertions and maintain that they are the lawful owners and possessors of the suit land as heirs of the original raiyat, Girish Chandra Dhupi. They asserted that upon the death of Girish Chandra Dhupi, the entire 116 decimals of land recorded in Khatian No. 231 devolved upon his heirs, including themselves and Sarla Sundari, by operation of law. They deny that the property was ever sold in a rent auction, contending instead that the Rent Case and Execution Case cited by the plaintiff are fictitious. In support of this contention, they rely upon the court search slips (Exhibit-E series), which allegedly confirm that no such proceedings are traceable in the official records. Consequently, they claim that the Sale Certificate (Exhibit-14) is invalid, non-existent, or fraudulently procured.

The defendants further state that Sarla Sundari @ Ayesha Khatun never executed the alleged Kabuliat (Exhibit-16) in favour of Safarjan Bibi Gong and contend that the document is fabricated and not found in the concerned volume. They assert that they have been in uninterrupted, peaceful, and lawful possession of the suit land through inheritance, and the SA record correctly reflects the names of the heirs of Girish Chandra Dhupi. According to them, the plaintiff has wholly failed to prove possession or dispossession. Accordingly, the

defendants pray for dismissal of the suit with costs, affirming their inherited title and continuous possession.

It is pertinent to note that during the course of the trial, the plaintiff examined 5 witnesses, the defendant examined three witnesses, and witnesses were cross-examined. Further plaintiff produced 16 exhibits, and the defendant produced exhibits Ka, Kka, Kha-1, Ga, Gha, Gha-1, Yanga, and Yanga-1.

However, upon considering the evidence and materials on record, the trial Court decreed the suit by its judgment and decree dated 26.08.2013, passed in Title Suit No. 30 of 2008, in favour of the plaintiff respondents.

Being aggrieved with the aforesaid judgment and decree, the defendants/ appellants preferred the instant First Appeal No. 95 of 2000 before this Court.

Mr. Uzzal Kumar Bhowmick, the learned Advocate for the appellants argued that the defendants (appellants) inherited the property as the lawful heirs of the original owner, Girish Chandra Dhupi, and the plaintiffs-respondents failed to prove their convoluted chain of title, possession, or dispossession. According to him, the alleged auction and subsequent extinguishment of the heirs' raiyati title are not proven. The burden of proof was squarely on the plaintiffs to establish the validity and existence of the legal proceedings that allegedly extinguished the clear inherited title. In this context, it was brought to notice that the core claim of the auction is supported only by a certified copy of a Sales Certificate (Exhibit-14) and a Kabuliat (Exhibit-16). According to him, the defendants produced a search slip (Exhibit-E series) from the concerned court showing no record of the alleged Rent Case No. 2319/34 or Rent Execution Case No. 1652/34 in the roll book. The registered copy of the sales certificate (Exhibit-14) contains contradictory case numbers, and the trial court's dismissal of this as mere "negligence" is an insufficient justification when the record search denies the existence of the case.

It has been contended that the plaintiffs have utterly failed to adduce any documentary evidence in support of their assertion that Saforjan Bibi acquired

title to the suit property by way of auction sale of the superior interest of the admittedly alleged superior landlord, Mokrom Billah, and others. On the contrary, the plaintiffs' own case suffers from material inconsistency and contradiction as to the identity of the superior landlord. While the plaintiff categorically asserts the superior landlord to be "Mokrom Billah Chowdhury Gong," PW-1, in his examination-in-chief, erroneously stated the landlord to be "Safarjan Gong" and only attempted to rectify such misstatement during cross-examination, thereby rendering his testimony unreliable and untrustworthy.

He argued that the Kabuliat (Exhibit-16) is highly doubtful and cannot be relied upon. He claims Kabuliat is fundamentally vitiated, as it purports to derive its validity from an alleged Rent Suit and corresponding Execution Case, the very existence and legality of which have not been proved by the plaintiffs. In the absence of proof of the underlying auction proceedings, any instrument purportedly emanating therefrom is devoid of legal foundation and must necessarily be rejected.

It has alleged sale certificate was not supported by a document evidencing that the delivery of possession had been made. Such omission strikes at the root of the plaintiffs' claim of lawful acquisition and possession. According to him, the testimony of PW-2 is highly questionable and undermines the plaintiffs' case. PW-2 attempted to prove a Kabuliat allegedly registered in the year 1937 by producing a registration volume of the year 1936, which clearly casts serious doubt on the genuineness and authenticity of the document. This discrepancy strongly suggests manipulation and renders the plaintiffs' documentary evidence unsafe to rely upon. Further, it has been argued in view of the aforesaid infirmities, contradictions, and lack of credible proof, the plaintiffs have failed to establish their claimed title and the suit is liable to be dismissed.

Mr. Md. Munsurul Hoque Chowdhury, the learned Senior Advocate for the respondents, supports the judgment and decree; according to him plaintiff witness (P.W-2), by its testimony, prove Kabuliat registered in 1937 and, in

support of his claim, presented the related volume to the Court. He claims the court below did not commit any illegality in passing the decree, and the same does not require any interference either by the Appellate Court or by this Court.

We have considered the submissions made by the parties, perused the memorandum of appeal and impugned judgment annexed herewith, and also perused the documents so exhibited by the parties.

It has claimed that the plaintiff's case and oral evidence are inconsistent with the identity of the superior landlord, and a failure of proof regarding possession and dispossession, which also creates a significant doubt about their ownership claim.

Therefore, the point for consideration is whether the impugned judgment calls for interference by this Court.

In the above context, on scrutiny, it appears that the plaintiff by its plaint claims বর্ণিত নালিশী ২৩১ নং খতিয়ানের উপরিস্থ স্বত্ত্বে মালিক ছিলেন মক্রম বিল্যা চৌধুরী গং though, P.W-1 in its initial deposition states that নাঃ খতিয়ানের ভূমিতে গিরিশ চন্দ্র ধূপী মালিক দখল কার থাকাবস্থায় শ্রী সরলা সুন্দরী ও কন্যা পিত্রালয়ে মারা গেলে বাদী করের দায়ে উপরিস্থ স্বত্ত্বের মালিক ছিলেন ছফরজান বিবি গং বাদী হয়ে সরলা সুন্দরী গং কে বিবাদী করে ফেনী ২য় মুন্সেফী আদালতে ২৩১৯/১৯৩৪ নং কর মোকদ্দমা আনয়ন করে। ১৩-৮-৩৪ ইং তারিখে ডিক্রী প্রাপ্ত হয়। by the alleged deposition incorrectly identifies the superior landlord as Safarjan Gong.

In the plaint, the plaintiff asserts that Mokrom Billah Gong was the superior landlord of Khatian No. 231. However, P.W-1, in his witness, categorically deposed that Safarjan Gong was the superior landlord who acquired the property after the auction. This erroneous assertion was subsequently distorted by cross-examination, where P.W-1 expressly admitted that Mokrom Billah Gong was, in fact, the superior landlord. Such contradictory versions from the part of the plaintiff's witness strike at the root of the alleged chain of title and render the plaintiff's claim wholly unreliable.

Even assuming that Safarjan Gong had any connection with the property, the plaintiff has failed to produce a single document to establish superior interest of Mokrom Billah Gong was ever put to auction, or Safarjan

Gong lawfully acquired such interest through any auction proceeding. P.W-1 candidly admitted that no documentary evidence exists to show that Safarjan Gong acquired the property by auction. More significantly, the plaintiff admitted that no Dakhalanama (possession certificate) was filed in support of the alleged auction purchase. In the absence of a Dakhalanama, the alleged transfer of title and possession through auction remains legally unproven and wholly conjectural.

Further, it appears that the testimony of P.W-2 is highly questionable, as they attempted to prove a Kabuliat (deed of agreement) registered in 1937 by bringing a Volume of 1936. The witness himself admitted that the alleged Kabuliat does not appear in the relevant pages of the said volume. Alleged illogical and untenable attempt to prove a document from the wrong year fatally undermines the authenticity and admissibility of Ext. 16, rendering it wholly unreliable.

The plaintiff's evidence regarding possession and dispossession is vague, contradictory, speculative, and self-destructive, and it can be evident from the following context, as stated below.

It has claimed in the plaint that নালিশী সাবেক ২৩১ নং খতিয়ানের ভূমি নিলাম হওয়ায় খতিয়ানের রায়ত গিরিশ চন্দ্রের স্বত্ত্ব বিলুপ্ত হইয়া গিয়াছে। However, P.W-1 in his deposition clearly states that নালিশী ভূমিতে বাদীগন ভোগদখলে থাকাবস্থায় ১-৫ নং বিবাদীগন নালিশী বি,এস, খতিয়ানের মালিক গিরিশ চন্দ্রের ওয়ারিশানগন নাঃ ভূমিতে স্বত্ত্ব দখল তাদের বরাবরে ছেড়ে দেওয়ার জন্য আমার ছোট ভাইদের বলেন। From the above it appears that the plaint specifies a manner of possession but P.W-1's deposition offered no specific manner of possession. Further, P.W-1 in his deposition admitted there is a "Ghar" (house) on the land, but did not state specific measurements his statement was as follows: নালিশী দাগে একটি ঘর আছে। তবে কোন রান্নার ঘর বা লেট্রিন নেই। পরে বলে নালিশী দাগে কোন বসতঘর নেই। সেখানে শুধু একটি কক্ষ তৈরী করা আছে। ঘরটি টিনের চালযুক্ত, তবে পরিমান বলতে পারব না। এই ঘরে কে থাকে বলতে পারব না। and failed to provide other specifications wherein it states বেদখলকৃত ভূমির সুনির্দিষ্ট দৈর্ঘ্য প্রস্তুত আমি জানি না। বেদখলের পর কি ছিলে মনে নেই।

Further, it appears P.W-3, in his deposition, states আমি বিবাদীকে বেদখল করার সময় দেখিনি। By such deposition, it is clear that other P.Ws gave contradictory evidence on their dispossession. P.W-4 attempted to improvise the manner of possession by introducing new elements (nursery and two shops), going beyond both the Plaintiff and P.W-1's testimony. In cross-examination, P.W-4 admitted they only heard about the dispossession according to him আমরা পরদিন দোকানে চা খেতে এসে জবর দখলের বিষয় শুনি। উক্ত ১/২ শতক ব্যতিত অন্য কোন ভূমিতে বিবাদীদের দখল নেই এবং পূর্ব ১/২ শতকেও দখল ছিল না। বাদীরা প্রায় ৪০ বৎসর যাবৎ দখল করে। and did not know the date of dispossession উত্তর পার্শ্বে ভিটি ও দোকান, পশ্চিম পার্শ্বে অন্যের জায়গা।

From the above, it transpired that the plaintiff vaguely asserts possession following the auction; P.W-1's deposition fails to describe any definite or continuous manner of possession. P.W-1 admitted the existence of a "ghar" on the land but could not specify its measurements, its nature, who resided therein, or any boundaries or appurtenant structures. Such evasive testimony conclusively demonstrates that P.W-1 had no actual knowledge of possession.

The P.W-3 unequivocally admitted that he did not witness any dispossession. It appears P.W-4 conceded in cross-examination that he merely heard about the alleged dispossession and did not know the date or manner thereof. P.W-5 also admitted that he never saw the dispossession. Knowing such, it has been asserted that the plaintiff's witnesses utterly failed to prove dispossession; further hearsay evidence of dispossession, unsupported by any specific date, manner, or act, is legally insufficient.

Further, it transpired that a testimony witness supported the defendant's possession of the land. It is alleged that P.W-4 inadvertently supported the defense by admitting the existence of a kitchen on the suit land. P.W-4 deposes সত্য নয় যে, চেনতারা গং নীচু জায়গায় কচুক্ষেত লাগায়। কচুক্ষেত্রের দক্ষিণ দিকে বাদী, উত্তর পার্শ্বে খাল, পশ্চিম পার্শ্বে পুরুর, পূর্ব পার্শ্বে বাজার। বিবাদীর দখলী ভূমির উত্তর দিকে খাল, দক্ষিণে নার্সারী, পশ্চিমে অন্য দাগের পুরুর, পূর্ব দিকে বাজার। চেনতারাদের দখলীয় ঘর (৫ ১০/১২) বর্গহাত তার সাথে উত্তর দিকে একটি রান্নাঘর। বিবাদীদের টিউবওয়েল আছে কিনা জানি না। বিবাদীর দখলীয় ভূমির বাইরের নার্সারীর পূর্ব পার্শ্বে বাজার। উত্তর পার্শ্বে ভিটি ও দোকান, পশ্চিম

পার্শ্বে অন্যের জায়গা। কোন বাবে চেনতারা দখল করেছে জানি না। গত স্টুল ফিল্টর/স্টুল আয়হা কত তারিখে হয়েছে সুব্রন নেই।

P.W-5 in its deposition confirming the presence of the defendant's "Ghar," latrine, and tubewell over the suit land, he states নালিশী ভূমিতে কোন বেড়া নেই। নালিশী ভূমিতে উত্তর দক্ষিণে ১৫-১৬ হাত, পূর্ব-পশ্চিমে ৮-১০ হাত যথা চেনতারা ঘরটি। ঘর থেকে টিউবওয়েলটি ১৫ হাত দূরে। চেনতারার ল্যাট্রিন উত্তর পার্শ্বে ৫/৭ হাত দূরে। রান্নাঘরটি বসতঘরের উত্তর পার্শ্বে ৫/৭ হাত লম্বা, প্রস্থ ৪/৫ হাত, দক্ষিণমুখী। আমি ১৪৫ ধারার মামলা দায়েরের ১/২ দিন পূর্বেই বিবাদীরা মাটি ভরাট করেছিল। আমার দায়েরী মামলা খারিজ হয়েছে কিনা আমি জানি না। নালিশী বাড়িটি বিবাদীদের মৌরশী বাড়ি কিনা আমি জানি না। P.W-5 also did not see the dispossession নালিশী ভূমিতে দুটি দোকান, দুটিই একচালা।

From the above, it transpires that the plaintiff's side made vague and contradictory testimony. Their witnesses could not provide the definite date of dispossession or the specific boundary of the property. While the Plaintiff specified a manner of possession, P.W-1 offered no specific manner in its deposition. Furthermore, P.W-3 and P.W-5 admitted they did not witness the alleged dispossession. P.W-4 attempted to introduce new unsupported elements of possession (nursery and two shops), but admitted they only heard about the dispossession and did not know the date. However, damagingly, the plaintiffs' own witnesses inadvertently supported the defense's position. P.W-5 delivered a significant admission, confirming the presence of the defendants' "Ghar, latrine, and tubewell over the suit land." The alleged admission strongly suggests that the plaintiff was not in possession at the time of the alleged dispossession.

It appears the plaintiffs' case suffers from material inconsistency and contradiction as to the identity of the superior landlord. The plaintiff categorically asserts that the superior landlord, to be "Mokrom Billah Chowdhury Gong," P.W-1, in his examination-in-chief, erroneously stated the landlord to be "Safarjan Gong" and only attempted to rectify such misstatement during cross-examination, thereby rendering his testimony unreliable and untrustworthy. In this context, the plaintiff failed to submit any documents supporting the claim that Safarjan Gong acquired the property by auctioning the superior interest of

Mokrom Billah Gong. The alleged auction purchase is not supported by any documentary evidence, including dakhalanama. The plaintiff also failed to prove his possession at any material time. The plaintiff's own witnesses affirmatively establish the defendant's possession. Indeed, the plaintiffs failed to establish a superior title, and the defendants' title is clearer and supported by public records. The suit is nothing but a misconceived attempt to dispossess a party in settled possession.

In light of the above discussions and reasons, we are of the view that the learned Joint District Judge, 2nd Court, Feni has utterly failed to assess the evidence on record adequately and came to a wrong decision, thereby, decreeing the suit. In view of the above, the impugned Judgment suffers from legal infirmities which call for interference by this Court. Thus, the appeal having merit succeeds.

In the result, the First Appeal is allowed without any order as to cost.

The impugned judgment and decree dated 26.08.2013 (decree signed on 29.08.2013), passed by the learned Joint District Judge, 2nd Court, Feni, in Suit/Civil Case No. 30 of 2008, decreeing the suit in favour of the plaintiff-respondent, are thus set aside.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Jesmin Ara Begum, J:
I agree.