

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice A. K. M. Zahirul Huq

First Appeal No. 79 of 2004

Md. Joinal Abedin
....Appellant

Versus
Mohammad Wahidul Akbar Khan and others
....Respondents

No one
....For the Appellant

Mr. Muhammad Tawhidul Islam, Advocate
With
Mr. Arif Moinuddin Chowdhury, Advocate
....For the Respondent No. 1

Heard on 11.01.2026, 12.01.2026, and
Judgment on 14.01.2026.

Md. Iqbal Kabir, J:

This First Appeal has been filed against the judgment and decree dated 27.01.2004 (decree signed on 24.02.2004) passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 193 of 2003, by which the suit was dismissed.

The plaintiffs filed the suit seeking a declaration of title over 0.59 acres of land of C.S. Plot No. 2996. Their case is that the land originally belonged to Madbar Asami. After his death, his heirs obtained the land through a partition decree in Partition Suit No. 55 of 1953. Later, part of the land was sold by the heirs of Sadu to Abdul Hai and Mohor Ali by registered deed dated 20.02.1968. According to the plaintiffs, through subsequent transfers and inheritance, they became owners of 0.4675 acres of land in the said plot. They also stated that the Government later acquired the entire 0.59 acres in L.A. Case No. 13/93-94.

The defendants contested the suit. They admitted that Abdul Hai and Mohor Ali purchased 0.59 acres in 1968. However, they stated that Mohor Ali later sold portions of his land to Abul Hossain, and from him the present

defendants purchased specific portions by registered deeds in 1980. They also claimed that they mutated the land in their names and have been in possession.

In order to dispose of the suit, the learned Trial Court framed as many as 6 different issues, and the plaintiff side examined 5 witnesses, the defendant side examined 8 witnesses in support of their respective case. Apart from that, the plaintiff side produced documents, including the final decree passed in partition suit No. 55 of 53 and deed No. 3162 dated 20/02/68.

The learned judge of the Trial Court, after conclusion of the trial and upon considering the materials and evidence on record, dismissed the suit by the impugned judgment.

Being aggrieved by and dissatisfied with the said judgment and decree dated 27.01.2004 (decree signed on 24.02.2004) passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 193 of 2003, the plaintiff's appellant preferred this appeal.

It is pertinent to note that no one appeared on behalf of the appellant when the appeal was taken up for hearing. However, the learned Advocate for the respondents supported the judgment of the trial Court and submitted that the plaintiffs failed to prove title and possession.

Mr. Muhammad Tawhidul Islam, learned Advocate for the respondent No. 1 in his submission, asserted that the plaintiffs failed to prove any sort of title and possession on the suit property. On the other hand, the defendants gave mutation Khatians in respect to the suit land in their names and rent receipts as well, showing their possession over the same. He claims from the depositions made by D.W. 1, D.W. 3, and D.Ws. 5 to 7, for which it appears the suit property has been acquired by the government, and the government owns the suit land. According to him, plaintiffs never possessed the land, and they are not at all in possession of the same; there is nothing to interfere with the judgment and decree passed by the learned trial Court.

We have considered the submissions so placed by the learned advocate for the respondent, perused the memorandum of appeal, the impugned judgment annexed therewith, and also examined all the materials so exhibited.

On our scrutiny and upon examination of the record, it appears that it is admitted that the legal heirs of Sadu and Modu and Idi Bibi (wife of Madbar Asami) got 19 Bigha 8 Katha of land mentioned in 'C' saham, which consisted of C.S. Pot Nos. 2164, 2165, 2166, 2996, 3067, 3139, and 3315. But there was no formal partition among them, and there is no evidence that the legal heirs of Modu got the entire suit property of 59 decimal, since there is no record and mutation in their names and no possession, and thus the suit for simple declaration of title is not maintainable. The plaintiffs failed to prove any title and possession on the suit property; and on the other hand, the defendants have submitted mutation Khatians relating to the suit land in their names and rent receipts as well, showing their possession over the same. Further, it appears that though the predecessors of the plaintiffs have a deed dated 20/02/68, it was not recorded in their name, and as such, the suit is barred by limitation. Apart from the plaintiff, the D.W. 1, D.W. 3, D.W. 5, D.W. 6, and D.W. 7 all deposed that the suit property has been acquired by the Government, and the Government owns the suit land. The plaintiffs never possessed the land, and they do not have the same.

Indeed, the trial Court, being the final Court of fact, upon due consideration of the entire evidence and materials on record, rightly concluded that the plaintiffs have no record of right or mutation in their names and that they do not own the suit property. It is a settled principle that in a suit for declaration of title, the plaintiff must prove his own title and possession. If he is not in possession, he must seek recovery of possession. In this case, the plaintiffs filed a suit for simple declaration only, though they were not in possession. In such circumstances, a suit for mere declaration of title is not maintainable. The plaintiffs miserably failed to prove either title or possession over the suit land. As the property is not recorded in their names and they were

never in possession thereof, the suit is clearly barred by limitation. The plaintiffs are not at all in possession of the suit property, and therefore, the learned trial Court correctly dismissed the suit.

Regard being had to the above discussion and observation, the impugned judgment and decree are based on a proper appreciation of both facts and law, and we don't find any illegality, perversity, or misdirection that would warrant interference of the same sitting in an appellate jurisdiction. Therefore, the appeal must fail.

Accordingly, the Appeal is dismissed without any order as to costs.

The judgment and decree dated 27.01.2004 (decree signed on 24.02.2004) passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 193 of 2003 is hereby affirmed.

Send down the lower Court records with a copy of this judgment to the Court below at once.

A. K. M. Zahirul Huq, J:
I agree.