

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. 302 OF 2010 with
CIVIL RULE NO.252 (F) OF 2025*

Buddha Deb Mukherjee being dead his heirs- Prodip
Kumar Mukherjee and others

....Appellants

-Versus-

Md. Afrozur Rahman and others

... respondents

Mr. Shah Muhammad Ezaz Rahman , Advocate

.... For the appellants.

Mr. Md. Mostafa, Advocate

....For the respondent Nos.1 and

5(Ka) - 5(Ga) .

Heard and Judgment on 13.05.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 17.05.2010 passed by the learned Joint District Judge, 1st Court, Shariatpur, in Title Suit No.4 of 2005, dismissing the same .

In this First Appeal the petitioners filed an application for an order of temporary injunction and on that application Civil Rule No.252(F) of 2025 was initiated.

Since this First Appeal and the Civil Rule arose out of the identical matter those were heard together and being disposed of by this single judgment.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 1.28 acres land appertaining to R. S. Khatian No.679 and for further declaration that Certificate Case No.2180/NN/63-64 showing auction sale of above property was forged, unlawful and not binding upon the plaintiff and purchase of above land from above auction purchaser Abdul Latif by Fazlur Rahman predecessor of defendant Nos.1-5 and added respondent No.5Ka to 5Gha is unlawful and not binding upon the plaintiff and the order passed in disputed mutation Case is unlawful and not binding upon the plaintiffs. It was alleged that above 1.28 acres land which comprises a big pond belonged to Ovoychoron Mukhapodday who died leaving five sons Koronakanto Mukherjee and others in whose names C. S. Khatian No.25 was correctly recorded. Above C. S. recorded tenants while owning and processing above land died and their heirs became owners and possessors of above land in their names R. S. Khatian No.679 was correctly prepared. Above R. S. and C. S. recorded tenant Upendra Chandra Mukherjee is the grandfather of the plaintiff. In the plaint a detailed description has been made as to how 23 R. S, recorded tenants died one after another

and ultimately plaintiff became their sole heir and owner of above land. The plaintiff is in peaceful possession of above pond but the local Tohashilder refused to receive rent from the plaintiffs and disclosed that the name of defendants predecessor Fazlur Rahman has been recorded for above land.

Defendant Nos.1-6 and 9-12 contested above suit by filling two separate written statements. It was alleged by defendant Nos.1-5 that above 1.28 acres land of R. S. Khatian No.679 which is a pond was sold in auction pursuant to Certificate Case No.2180/63-64 dated 20.08.1970 (Exhibit No.“Kha”) and purchased by Abdul Latif who transferred above pond to Fazlur Rahman predecessor of defendants Nos.1-5 by registered kabla deed dated 12.01.1977 (Exhibit No.Ka). Defendants while in peaceful possession in above land by mutating their names and paying rent to the Government transferred the same to added responded No.5Ka-5Gha by registered kabla deed No.729 dated 10.01.2010 and in their names B. S. Khatian of above land has been prepared. Plaintiffs field an objection under Section 30 of the State Acquisition and Tenancy Rules against above B. S. Khatian which was rejected.

It was alleged by the defendant Nos.9-12 that the R. S. recorded tenants gave settlement of above land to Moqbul Hossain Khan by Amalnama on 10th of Boishak,1356 B. S. and delivered possession

and they are in possession of above land by cultivation. Predecessor of defendant Nos.1-5 Abdul Latif having claimed title in above land Moqbul Hossain Khan filed Title Suit No.507 of 1977 in the Court of Munsif, Chikondi and obtained a judgment and decree on 26.05.1979 and alleged auction purchase of above Abdul Latif was declared to be unlawful and forged.

At trial plaintiffs examined four witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-8. Defendant Nos.1-6 examined four witnesses and their documents were marked as Exhibit Nos.“Ka”-“Cha”. Defendant No.9-12 examined two witnesses and their documents were marked as Exhibit Nos.“Ka1” to “Kha1”.

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

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above plaintiff as appellant moved to this court and preferred this First Appeal.

Mr. Shah Muhammad Ezaz Rahman, learned Advocate for the appellants submits that admittedly disputed 1.28 acres land appertaining to C. S. Khatian No.25 was recorded rightly in the names of Avoy Chandra Mukhapodday and other and in R. S.

Khatian No.679 above land was rightly recorded in the names of heirs of above C. S. recorded tenants. Plaintiff is the great grandson of C. S. recorded tenant Rajoni Kanto and grandson of R. S. recorded tenant Upendra Chandra. Plaintiff has claimed total shares of other 22 R. S. recorded tenants by way of inheritance. Defendants did not dispute the correctness and genuinity of above C. S. and R. S. khatians. Plaintiff No.5 Monju Mukherjee while giving evidence as PW1 has claimed that the plaintiff is the successive heir of above R. S. recorded tenant Upendra Nath and he was cross examined by defendant Nos.1-6 but his above evidence remains consistent and credence inspiring. Defendants Nos.1-6 have claimed title in above pond on the basis of purchase by their predecessor Fazlur Rahman by registered kabla deed of 1977 from Abdul Latif who allegedly purchased above property in auction pursuant to Certificate Case No.NN 2180/1963-1964. The defendants produced a true copy of above certificate of sale which does not bear the name of the Office of the Certificate Officer where above auction was held or by whom above certificate was issued. In the schedule of above certificate the R. S. Khatian No.679 has been mentioned but an auction under the Public Demands Recovery Act, 1913 can only be held if the rent receipting interest belonged to the Government. The defendants could not adduce any other document supporting above certificate of

sale (Exhibit No.“Kha”) which clearly show that above document was a forged and created document having no lawful effect. Since Abdul Latif could not prove lawful purchase of above pond by auction the registered kabla deed of 1977 by above Abdul Latif to Fazlur Rahman did not create any title in favor of above purchaser. As far as possession of above pond is concerned DW1 has admitted in cross examination that there is a dalan (building) on the bank of above pond and DW3 Shombo Dutta has admitted in cross examination that the plaintiffs live in the building on the bank of above pond. Above admission of two defendant witnesses clearly prove lawful possession of the plaintiffs in above pond. But the learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and legal evidence on record and most illegally dismissed above suit which is not tenable in law.

Mr. Md. Mostafa, learned Advocate for respondent Nos.1 and 5(Ka) – 5(Gha) frankly concedes that Exhibit No.“Kha” appears to be a certificate of sale of disputed pond for non-payment of rent by the Certificate Officer under the Public Demands Recovery Act, 1913. But in the schedule of above certificate R. S. Khatian No.679 has been mentioned and there is no mention of the S. A. Khatian in above certificate nor there is any mention of the name of the Office in which above certificate was filed and auction was held. The

number of the certificate is also dubious and confusing. As such the defendants do not rely on above document. But on the basis of above defective sale certificate Fazlur Rahman predecessor of the defendants entered into possession of above pond on 22.12.1970 and was in continuous and peaceful possession in above pond and after his demise his heirs defendant Nos.1-5 continued above possession until they transferred above pond to respondent Nos.“5Ka” to “5Gha” by registered kabla deed dated 25.02.2010. On the basis of above purchase and lawful possession above pond has been rightly recorded in the relevant B. S. Khatian in the names of above respondent Nos.“5Ka”- “5Gha”. By above continuous and peaceful possession in above pond for more than 12 years above Fazlur Rahman acquired valid title by adverse possession. On correct appreciation of above facts and circumstances of the case and materials on record the learned Joint District Judge has rightly dismissed above suit which calls for no interference.

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

It is admitted that disputed 1.12 acres land which is a pond in nature belonged to Rajoni Kanto Mukherjee and others and the same was rightly recorded in C. S. Khatian No.25 and on the demise

of above C. S. recorded tenants their heirs became owners and processors of above property and in the name of Rojoni Kanto and others. R. S. Khatian No.679 was rightly prepared.

Plaintiff claims that above Rojoni Kanto was his great grandfather. It has been further claimed that all others 22 co-sharers of R. S. khatian died one after another leaving the plaintiff as sole heir. Plaintiff No.5 Monju Mukherjee while giving evidence as PW1 reiterated above claim of acquiring title in above 1.28 acres land as successive heirs of above R. S. Khatian No.679 but he did not provide a detailed description of the genology of each and every 22 tenants of the R. S. Khatian. However, defendant No.6 while giving evidence as DW1 has admitted that the original owners of above 1.28 acres land were Surendra Nath and others.

It turns out from the schedule of the plaint that the plaintiff has described disputed 1.28 acres land by mentioning R. S. Khatian No.679 but relevant S. A. Khatian which was the latest survey khatian at the time of filling of the suit was not mentioned. PW1 has admitted in his evidence that B. S. Khatian of above land has been finally published in the names of the defendants. As such the plaintiffs should have by amendment of the plaint incorporated above B. S. Khatian for proper identification of the disputed property.

As mentioned above defendants No.1-5 claimed title in above 1.28 acres land on the basis of auction purchase by Abdul Latif vide Sale Certificate No.NN 2180/1963-64. In support of above claim defendants produced a true copy of above certificate which was marked Exhibit No.“Kha”. It turns out from above certificate that the same merely mentions “Province of East Pakistan” instead of the “Government of East Pakistan”. In above certificate there is no mention of the name of the office where above certificate was filed and above property was sold in auction. In the schedule of above certificate RS khatian No.679 has been mentioned. The plaintiff produced a certified copy of above R. S. Khatian which was marked as Exhibit No.2. It turns out from above khatian that the landlords of above khatian were Gosto Bihari Shaha who had the right to receive rent of above property. Above rent receiver could file a rent suit for recovery of outstanding rents if any. Moreover, no certificate number was mentioned in above certificate case. In above view of the alleged sale certificate (Exhibit No.“Kha”) we have no hesitation to hold that above document was created for above suit.

The learned Advocate for the respondent Nos.1-5 being unable to support above sale certificate claimed title in above pond by adverse possession. But above submission of the learned Advocate is outside of the written statement and evidence. There is nothing on

record to prove that on the basis of above sale certificate possession of above land was delivered to Abdul Latif. Nor any certificate of delivery of possession of above land to Abdul Latif was produced at trial.

On consideration of above facts and circumstances of the case and materials on record we hold that the ends of justice will meet 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 above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed. The judgment and decree dated 17.05.2010 passed by the learned Joint District Judge, 1st Court, Shariatpur, in Title Suit No.4 of 2005 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. Both the parties shall maintain status-que with regard to the possession of above pond till conclusion of the re-trial.

The connecting Civil Rule No.252(F) of 2025 is accordingly disposed of.

The learned Joint District Judge is directed to dispose of above suit on merit in accordance with law within a period of 6 (Six) month from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER