

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

First Appeal No. 259 OF 2014
F. A. T No. 550 OF 2014

Md. Khorshed Alom and others Appellants
Versus	
Zakir Hossain and others Respondents
Mr. Md. Bodruddoza, Senior Advocate with	
Mr. Md. Manirul Islam, AdvocateFor the Appellants
No oneFor the Respondents

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Judgment on 28.05.2025.

Md. Iqbal Kabir, J:

This appeal has been presented, at the instance of the plaintiffs-appellants against the judgment and decree dated 28.05.2014 (decree signed on 05.06.2014) passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 378 of 2006, dismissing the suit on ex-parte hearing.

The short facts leading to preferring this appeal are that the plaintiffs-appellants filed a Title Suit, the case of the plaintiff as stated in the plaint in short that C.S recorded tenants are the heirs of Lal Chand Mondal transferred 39 decimals of land in the year 1335 BS from the south side of C.S Plot No. 906 to Sree Madhab Chandra Pal and handed over the physical possession. He sold said 39 decimals of land to Muhammad Suparish vide registered Sale Deed No. 3927 dated 01.05.1952. Subsequently, Abdul Sattar purchased the said 39 decimals land vide deed No. 199 dated 10.01.1968, at the time of liberation Abdul Sattar was killed by the Pak Army with some others, and all

deeds and documents kept in his residence of Masdair Village were burned by the Pak Army. The sons and daughters of Abdul Sattar being minors were unable to record their names in the R. S record of rights and as such the R. S record of rights was wrongly recorded in the name of defendant Nos. 01 to 04 and predecessors of defendant Nos. 05 to 43 being R. S Khatian No. 364, corresponding to R. S Plot No. 1003. However, while the successors of the late Abdul Sattar owned and possessed the suit land without any intervention of others, on 11.10.1986, they executed Partition Deed No. 3694 to possess the land of deceased Abdul Sattar amicably and the same was registered on 13.10.1986, thereafter suit land along with some other land distributed to the heirs i.e., wife, son and daughters of late Abdul Sattar and they got mutation. Thereafter, they executed a registered Power of Attorney Deed No. 7373 dated 8.09.1995 thereby appointing Most. Shahnaz Begum (Lipi), daughter of late Abdul Sattar, and another relative namely Mohammad Hossain as lawful attorney to sell out the suit land. Being an attorney on 20.05.1996 sold 39 decimals suit land to Plaintiff Nos. 01 to 03 vide registered Sale Deed No. 2944 and handed over the physical possession to them. They jointly got a mutation in their name and paid ground rent over the suit land and possessed by the same amicably and also without any intervention of others by cultivating the same and thereafter they also got a mutation in their name separately and also paying ground rent payment. It has alleged five years back a road passed through the western part of the 39 decimals of suit land, merging with some other land, and after constructing the road, out of 39 decimals of land, the plaintiffs now are in possession of the remaining 3534 Ajutangsho Land and the said 3534 Ajutangsho land is now the suit land. The BRS Parcha has been prepared in the name of the plaintiffs, suit land is well-demarcated.

However, the plaintiff came to know about the wrong record when the concerned office declined to receive ground rent payment. According to the

plaintiff's alleged R.S Parcha was wrongly published in the name of the defendants which has no legal basis and due to that wrong record plaintiff's rights title, and interest over the suit land does not hamper, that wrong record of rights make a shadow over the suit land and as such plaintiffs have filed the instant suit in the present form with a prayer to declare the title of the plaintiffs over 3534 Ajutangsho lands and publication of R. S Parcha of the suit land is wrong, baseless, fabricated and illegal.

Upon receiving the summons defendant Nos. 29-43 appeared and sought time to submit written statements. The defendants didn't submit any written statements though time was allowed. Thereafter, the date i.e 17-09-2013 was fixed for the ex-parte hearing. However, based on an application of the plaintiff's advocate commissioner recorded deposition of the Plaintiff No. 01 as P. W-1 and took documents as Exhibit Nos. 01 to 15. Thereafter, the court vide order dated 28.05.2014 dismissed the suit on ex-parte against the defendants.

Being aggrieved by and dissatisfied with the judgment and decree dated 28.05.2014 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.378 of 2006, the plaintiffs as appellants preferred this appeal before this Court.

Mr. Md. Bodruddoza, learned Senior Advocate with Mr. Md. Manirul Islam, learned Advocate for the appellants submitted plaintiffs prayed for declaring the title over 3534 Ajutangsho lands and also prayed to declare the publication of R. S Parcha of the suit land is wrong, baseless, fabricated, and illegal.

He submitted decision was passed by the court on the ex-parte hearing without farming any issue, scrutinizing the exhibit documents, pleadings of the parties, and also materials on record arbitrarily dismissed the suit. According to him court below without examining the pleadings came to the wrong conclusion and observed that plaintiffs without adducing documents and

without seeking relief declaration and partition institute the suit and as such the impugned judgment and decree are liable to be dismissed.

He submits the court below failed to appreciate that the record of rights does not bear any title, but the plaintiffs filed the instant case against the wrong record of rights when the plaintiff's interests are affected. But based on that wrong record of right, they did not lose their title over the suit lands. Though the court below by dismissing the suit directly denied the title of the plaintiffs and as such the impugned Judgment is liable to be set aside.

He contended that the right, title, possession, and interest of the plaintiffs over the suit land does not hamper due to the wrong record of rights. However, it has created a shadow over the suit land and to remove such shadow plaintiff filed the instant suit. According to him, there is no dispute between the parties in respect of possession and enjoyment, so seeking relief for partition as consequential relief is immaterial and absurd. Under the law there is no scope to make out a third case and as such the impugned judgment and decree is liable to be dismissed.

He submits court below in misreading and misconstruing the laws as well facts hold that "the plaintiff purchased the suit land in the year 1996 and after a long lapse of 10 years went to pay revenues. According to him plaintiffs earlier muted their name over the suit land and paid ground rent payment till 1410. However, plaintiffs came to learn in respect of the wrong record of right when the office of AC land declined to receive ground rent payment as per S.A Mutation.

He submits that all exhibited deeds are registered, exhibited Parchas are public documents, exhibited Mutation Parchas and DCR are established documents of possession and other exhibits ground rent payments receipts may be used as collateral evidence of title and exhibit documents should have been discussed by the learned court in the impugned judgment and decree but

the learned court intentionally and arbitrarily failed to weigh the gravity of exhibit deeds and documents and as such the same is liable to be set aside for the ends of justice.

He submits that since the plaintiffs are in joint possession of the immoveable properties, they are entitled to a suit for declaratory relief only to remove a cloud on their title created owing to the wrong recording of a record of right because in such a suit, declaration of title is all that the plaintiff needs and as they are not called upon to ask for consequential relief by way of partition.

He submits that “out of 39 decimals of land the plaintiffs prayed for declaration over 3534 Ajutangsho as 3.66 decimals of land used for construction; According to him, the plaintiff clearly claims the road constructed on the west side of the purchased 39 decimals of land, and out of 39 decimals they enjoyed 3534 Ajutangsho, and the suit land is butted and bounded. But the Court below arbitrarily and without assigning any cogent reason disbelieved the plaint, P.W, and exhibit documents and came into the wrong finding opined plaintiff without any metes and bounds assessed and measured that 3.66 decimals of land and as such the same is liable to be set aside.

In support of his submission Advocate for the appellants cited the decision delivered in the case of Government of Bangladesh vs. Har Chandra Nath & others reported in 10 MLR (AD) 313, wherein the court observed that:

“It may be mentioned the law is now settled that a real owner is not required to file the suit merely because his land has been wrongly recorded in the record of rights and he can very much wait until the person in whose name the record of right has been wrongly pre- pared raised claim in the land of the rightful owner.”

In the decision of the Government of Bangladesh vs. AKM Abdul Hye and others, reported in 56 DLR (AD) 53 wherein the court observed that:

“The law is now settled that against the wrong record of rights, the person whose interest is affected by such wrong recording need not file suit questioning the legality of the record of rights so prepared and finally published within 6 years from the said date or from the date of knowledge of such wrong record of rights, *but he is required to file the suit seeking declaration of title within six years from the date the person in whose name record has been wrongly prepared and finally published raises claim denying his claim on the basis of wrong record.*”

In the decision of Gias Uddin (Md) and others vs. Md. Nowab Ali and others, reported in 6 BLC, 493 wherein the court observed that

“It is settled that: It may be that the plaintiff requires nothing more than a mere declaration and in those circumstances to refuse to make the decree asked for, will be a denial of justice. Accordingly, since a cloud has arisen on the title of the plaintiff because of the wrong recording of ROR, a declaration of title is all that the plaintiff needs.

Accordingly, since the plaintiffs are in joint possession of the immoveable property they are entitled to a suit praying for declaratory relief only to remove a cloud on their title created due to the wrong recording of ROR because in such a suit, declaration of title is all that the plaintiff needs and so they are not called upon to ask for consequential relief by way of partition.”

In the case of Erfan Ali vs. Joynal Abedin Mia (late) represented by his legal heirs Golenur & others reported in 35 DLR (AD) 216, wherein it has held that:

“Rent receipts are evidence of possession and may be used as collateral evidence. Rent receipts though not documents of title are important items of evidence of possession and may be used as collateral evidence of title since possession generally follows title.”

We have considered the submission so placed by the learned counsel for the appellant perused the memorandum of appeal and the impugned judgment annexed therewith and also perused the documents so exhibited.

It is pertinent to note that plaintiffs submitted C.S/S.A/R.S Parcha/R.S Khatian (exhibit- 01 series) Bia Sale Deed, Partition Deed/Power of Attorney Deed and Sale Deed (Exhibit- 2 to 6) Death Certificate (exhibit-7) BRS (Field) Parcha of BRS Khatian No. 10832 (Exhibit- 11) Exhibit-12 Certificate of Janata Bank in respect of Mortgaged and Exhibit- 13 submitted attested copy of Sale Deed No. 2944; According to the plaintiffs above noted documents clearly proved the chronology of title of the plaintiffs.

It is further noted that plaintiffs submitted DCR & Mutation in the name of successors of late Abdus Sattar) (Exhibit-8); Ground Rent receipt, DCR & Mutation in the name of Plaintiffs (Exhibit-9 Series and 14 and 15); BRS (Field) Parcha of BRS Khatian No. 10832 in the name of Plaintiffs (Exhibit- 11 by which plaintiffs shows chronology in respect of the possession of the plaintiffs as well as their predecessors of the plaintiffs. Those documents show plaintiffs paid ground rent payments till 2003; therefore, the court below committed an error of laws as well as facts in holding the plaintiff without adducing proper documents instituted the suit.

The record shows plaintiffs enjoyed 3534 Ajutangsho out of 39 decimals of land and the suit land is butted and bounded by specification wherein it has states in the north Suruj Miah, in the South Umesh and others, in the east successors of Siraj Ali and in the west Road. Moreover, the P.W-1 in his deposition affirmed specification and demarcation as well as the claiming portion of the suit land and exhibited deed support in the same position.

Against the above backdrops and given the submissions made hereinabove along with cited decisions, we are of the view that the learned judge of the trial court in a very slipshod and casual manner dismissed the suit

on exparte against the defendants without taking into account the legal aspect involved in the case which cannot be sustained in law.

Given the above facts, and the case as revealed from the materials on record we are of the view that to prevent failure of justice and interest of justice, it is required this Court should send back the suit on remand to the trial Court below for deciding the suit afresh.

In a result, the appeal is allowed.

The impugned judgment and decree dated 28.05.2014 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 378 of 2006, is thus set aside without any order as to costs.

The case is remanded to the trial Court below for deciding the same afresh in accordance with law and for the said purpose the parties will be permitted to adduce evidence/exhibits both oral and documentary in support of their case, if so required and thereafter the learned trial Court shall dispose of the suit on merit under law.

However, the learned Joint District Judge, 4th Court, Dhaka is directed to dispose of Title Suit No. 378 of 2006 as expeditiously as possible, preferably within 06 (six) months from the date of receipt of the copy of this judgment.

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

Md. Riaz Uddin Khan, J:

I agree.