

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.290 OF 2014

Md. Farid Ahmed being dead his heirs- Mst. Saleha Begum and others

.... Appellants

-Versus-

Abdur Rop @ Rouf and others

.... Respondents

Mr. Nirmalendu Deb, Advocate with

Ms. Shraabonee Guha, Advocate

.... For the appellants.

Mr. A. K. M. Faiz, Senior Advocate with

Ms. Mirza Zesika Sultana, Advocate

Ms. Kakoli Akhter, Advocate

.... For the respondent No.30.

Heard on 27.04.2026, 29.06.2026 and 30.08.2026.

Judgment on 01.09.2026.

S M Kuddus Zaman, J:

This First Appeal at the instance of plaintiff is directed against the judgment and decree dated 31.03.2014 passed by the learned Additional Joint District Judge, Sylhet in Title Suit No.154 of 2007 dismissing the suit.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 20 decimal land alleging that above land and other lands appertaining to 303/304 Bhabani Proshad Taluk was owned, held and possessed by Mazid Ullah who died leaving two sons

and one daughter namely Aziz Ullah, Miah Ullah and Khodeza Banu and their successive heirs namely Rafiq Ullah and Ramiz Ullah transferred 2 jasti, 2 rekh and 16 gonda land to Dudu Miah and Miah Ullah and heirs of Khodeza Bibi transferred 1 poa and 3 jaisti land to above Dudu Miah and Miah Ullah by registered kabla deed dated 08.11.1956. Arju Miah transferred 1 Jaisti, 1 rekh and 16 gonda land to Dudu Miah and Miah Ullah by registered kabla deed dated 02.03.1958. Kuti Bibi transferred $1\frac{1}{2}$ poa land to Pana Ullah by registered kabla deed dated 06.08.1953 who in his turn transferred the same to Dudu Miah and Miah Ullah by registered kabla deed dated 07.05.1998. Above Dudu Miah died leaving only brother Miah Ullah as heir who transferred disputed 20 decimal land to the plaintiffs by registered kabla deed dated 12.01.1991 but in S. A. Khatian No.69 above land has been erroneously recorded in the name of Pana Ullah, Ramiz Ullah and Babu Miah and on the basis above erroneous record defendants denied plaintiff's title.

Defendant Nos.29 and 30 contested above suit by filing two separate written statements but the claims of above two defendants are identical. It has been alleged that Pana Ullah, Ramiz Ullah and Babu Miah was rightful owner and possessor of 3.54 acres land including disputed 20 decimal and the same was rightly recorded in S. A. Khatian No.69. After demise of Pana Ullah the land of Plot No.1768 was partitioned among his heirs amicably and defendant No.1 a son of Pana Ullah was allotted 22 decimal land of disputed plot No.1768 and he

exchanged above land by a registered deed of exchange on 14.12.2006 with defendant No.29 who mutated his name for above land and paid rent to the Government and transferred above land to defendant No.30 by registered kabla deed dated 14.12.2006. Plaintiffs do not have any right, title, interest and possession in above land.

At trial plaintiffs examined three witnesses and defendants examined four. Documents of the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.“Ka” to “Kha” series.

The 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. Nirmalendu Deb, learned Advocate for the appellants submits that above property originally belonged to Mazid Ullah under Bhabani Prashad Taluk No.303/304 of Mouja- Hiaboran who died leaving two sons Aziz Ullah, Miah Ullah and daughter Khodeza who transferred above land by registered kabla deed dated 17.01.1956, 08.11.1956 and 08.06.1953 to Dudu Miah and Miah Ullah. The wife of Mazid Ullah namely Kuti Bibi transferred 1 poa, 6 jaist and 2 rekh land to Pana Ullah by registered kabla deed dated 08.06.1953 who in this turn transferred the same to Dudu Miah and Miah Ullah by registered kabla deed dated 05.07.1958. Dudu Miah died leaving Miah Ullah as the sole heirs who transferred disputed 20 decimal land to the plaintiff by registered kabla

deed dated 12.01.1991 and delivered possession. Plaintiffs are in possession in above land but above land was erroneously recorded in S. A. Khatian No.69 in the name of Pana Ullah, Ramiz Ullah and Babu Miah and on above erroneous record they claimed title in above land. Plaintiff is in possession in above land by way of cultivation. Plaintiff has examined three witnesses who have given consistent evidence as to the title and possession of the plaintiff in above land. Plaintiffs produced and proved five registered kabla deeds dated 06.08.1953, 15.07.1956, 06.11.1953, 28.02.1958 and 07.05.1958 of their predecessors Miah Ullah and Dudu Miah and plaintiffs kabla deed dated 12.01.1991 executed by Miah Ullah. Above deeds prove the lawful title of the plaintiff in above 20 decimal land. On the other hand defendant No.29 who claims title in above land as heir of Pana Ullah did not give evidence in support of his claim that above land belonged to Pana Ullah and he was in possession of the same as his heir. Nor defendant No.30 gave evidence in support of his claim of title and possession in above land. Above mentioned five registered kabla deeds of the predecessors of the plaintiffs do not mention the Khatian number and Plot number and those were relayed by the Advocate Commissioner who submitted a report mentioning that the land of above kabla deeds attracts the disputed land which was purchased by the plaintiff from Miah Ullah by registered kabla deed dated 12.01.1991. The learned Joint District Judge most illegally rejected above Advocate Commissioner report and most unlawfully dismissed above suit which is not tenable in law. The learned Advocate lastly

submits that the title of the plaintiffs in disputed 20 decimal land is based on the report of the Advocate Commissioner that five registered kabla deeds of their predecessor Miah Ullah attract the disputed land which has been rejected by the learned Judge of the trial Court. By above five kabla deeds of Miah Ullah the land of Hiaboran mouja was purchased which was subsequently allotted to Mouja- Bagbari and the plaintiff purchased the land of Bagbari from Miah Ullah by kabla deed dated 12.01.1991. But above facts of change of the name of the mouja has not been mentioned in the plaint nor any evidence was adduced to substantiate above claim. As such the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

Mr. A. K. M. Faiz, learned Senior Advocate for respondent No.30 submits that above land belonged to Pana Ullah and his two brothers Ramiz Uddin and Babu Miah and the same was rightly recorded in S. A. Khatian No.69. Defendant No.1 is the son of Pana Ullah and he inherited disputed land by amicable partition and transferred the same to defendant No.29 by registered deed of exchange dated 14.12.2006 who in his turn transferred the same to defendant No.30 by registered kabla deed dated 01.11.2011. Defendant No.29 mutated his name for the disputed land and paid rent to the Government and after purchase defendant No.30 also got his name mutated and paid rent to the Government. But defendant Nos.1, 29 or 30 did not give evidence in

Court in support of their case and DW1 Hasan Md. Mohiuddin gave evidence in above suit as constituted attorney of Defendant No.30. In his evidence he stated that he was appointed attorney on 01.12.2012 and he has no knowledge about the disputed land before his above appointment as attorney. The defendant should have examined competent witnesses in support of their title and possession in above land. 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 the defendants 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 disputed 20 decimal land and other land has been recorded in S. A. Khatian No.69 in the names of Pana Ullah, Ramiz Uddin and Babu Miah in equal shares and defendant No.1 is a son and heir of above Pana Ullah and disputed land is situated in Mouja-Bagbari. Plaintiff claims that above land and other land originally belonged to Mazid Ullah and by successive purchase by five registered kabla deeds from the heirs of Mazid Ullah two brothers, Mainullah and Dudu Miah became owner of above land and Miah Ullah transferred above land to the plaintiff.

The plaintiffs have produced above five registered kabla deeds dated 08.11.1956, 01.03.1958, 06.08.1953 and 07.05.1958 which were marked as Exhibit Nos.1(Ka) to 1(Gha). It turns out from the contents of

above documents that the land of Hiaboran Mouja were transferred by above deeds and the land of above documents were identified by mentioning boundary. Out of five registered kabla deeds Miah Ullah and Dudu Miah purchased land of Kuti Bibi from Pana Ullah by registered kabla deed dated 28.02.1958 after final publication of S. A. Khatian. In above deed the land of Mouja-Hiaboran was transferred but in the kabla deed of the plaintiff dated 12.01.1991 from Miah Ullah the land of Mouja-Baghbari was transferred and in this suit the plaintiff has claimed disputed 20 decimal land of Mouja-Baghbari. There is a slipshod mention in the plaint that Mouja- Hiaboran was subsequently renamed as Mouja-Bagbari. But there is no specific and detailed description as to when above change of the name of mouja occurred nor any evidence oral or documentary was adduced at trial to prove that Mouja- Hiaboran was subsequently renamed or divided into several Moujas including Mouja-Bagbari. All five title deeds from 1953-1958 of plaintiff's predecessor Miah Ullah mentions Mouja- Hiaboran but Miah Ullah has transferred disputed land to the plaintiff in 1991 mentioning the name of the Mouja as Bagbari. As such the plaintiff was required to prove by legal evidence as to above change of name of Mouja.

Since the land of above five registered kabla deeds of Miah Ullah did not mention Khatian number and Plot number on an application by the plaintiff the learned Judge of the trial Court directed for relay of above deeds by the Advocate Commissioner to ascertain if the land of above deeds attract disputed 20 decimal land and the Advocate

Commissioner on conclusion of necessary investigation submitted a report mentioning that the land of above five documents attract disputed 20 decimal land. But in above report there is no mention as to change of the name of the Mouja from Hiaboran to Bagbari as mentioned above. The learned Judge of the trial Court found that the quantity of land was more than 20 decimal land and out of five kabla deeds only four deeds were relayed and another kabla deed which was relayed was not sent for relay. The learned Judge on a detailed analysis of the evidence of PW1 held that the plaintiff did not adduce any evidence oral or documentary to prove that disputed land originally belonged to Bhabani Porshad Taluk and the same was owned, held and possessed by Mazid Ullah. Above claims of the plaintiffs being not admitted by the defendants the plaintiffs were required to prove those by legal evidence.

The learned Advocate for the respondents has rightly pointed out that defendant Nos.1, 29 or 30 did not give evidence in support of the claim that above land belonged to Pana Ullah, Ramiz Uddin and Babu Miah and S. A. Khatian was correctly prepared and by successive transfer defendant No.30 is in possession of above land. The learned Advocate for the respondents has sought retrial of above suit so that the defendants can adduce additional evidence to substantiate their claims.

The claims of the plaintiffs that Mouja- Hiaboran was subsequently remained or divided as Mouja Bagbari and the land of above five registered kabla deeds of 1953-1958 attracts the disputed land require prove by legal evidence.

On consideration of above 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 for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 31.03.2014 passed by the learned Additional Joint District Judge, Sylhet in Title Suit No.154 of 2007 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.

The learned Additional Joint District Judge is directed to conclude the trial of above case expeditiously in accordance with law within a period of 6(six) months from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.