

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Appeal No. 389 of 2011**

**In the matter of:**

Mst. Jahiron Nessa, wife of Md. Lokman Ali of  
village- Shalgaria, Police Station- Pabna Sadar,  
District- Pabna and others.

... Appellants

-Versus-

Manager, Bangladesh Shilpa Bank, Bangladesh  
Shilpa Bank, Pabna Branch, Library Bazar, Pabna  
and others.

... Respondents.

Mr. Md. Abdul Haque, Advocate

... For the appellants

None appears

... For the respondent no. 2

**Heard and judgment on 11.03.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

At the instance of plaintiff no. 1 and the predecessor of the plaintiff  
no. 2 in Other Class Suit No. 75 of 2000, this appeal is directed against the

judgment and decree dated 15.05.2011 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pabna in the said suit dismissing the suit.

The case of the plaintiffs so figured in the plaint of the suit are:

The suit properties originally belonged to one, Bashan Sarder who got the property by registered sale deed dated 11.06.1943 and accordingly, S.A. record was prepared in his name in the S.A Khatian Nos. 215, 1368, 1439 and 1369. During his enjoying title and possession, R.S record came into force and accordingly R.S. record also prepared his name. While that very Bashan Sarder had been enjoying title and possession over the suit properties in transfer the same to his four daughters namely, the plaintiff nos. 1 and 2 and defendant nos. 4 and 5 by registered heba-bil-ewaj deed dated 15.04.1989. After getting that property by those very recipients, they got 31 decimals of land each and started enjoying title and possession over their respective portion of land. After that, the defendant no. 5 sold out her 31 decimals of land in favour of the plaintiff no. 1 by registered sale deed dated 23.04.1994 and thereby the plaintiff no. 1 acquired 63 decimals of land whereby the plaintiff no. 2 as the defendant no. 4 got the 31 decimals

of land each. After getting the land, the plaintiff nos. 1 and 2 started enjoying title and possession for 63 decimals of land by paying rent and enjoying title and possession by planting different sorts of crops in the suit property. It has further been stated that, neither the plaintiff no. 1 nor the plaintiff no. 2 mortgage in total 95 decimals of land (suit land) in favour of any bank by taking any loan for anybody else. It has also been stated that, the respective husband of the respondent nos. 1 and 2 are very poor farmers and illiterate persons and they met their inmates by doing the agricultural work.

On the contrary, the defendant nos. 2 and 3 and the husband of defendant no. 4 are very claver and cheat. It has finally been stated that, on 02.01.2000, the defendants disclose that the plaintiffs and the defendant no. 5, he obtained loan by mortgaging the suit properties and then denied the title and possession of the plaintiffs and hence, the suit.

In order to dispose of the said suit, the defendant no. 1 entered appearance and filed written statement denying all the materials averments so made in the plaint contending *inter alia* that, in order to doing extension

work of Trisho Chemical Industries Ltd., owned by the defendant no. 2 prayed for CC hypo loan when the defendant no. 1 asked the defendant no. 2 to give some property as of mortgage to secure the repayment of the loan when the defendant no. 2 mortgage some property against the loan in favour of the defendant no. 1 but since the said property has been found to be inadequate to grant loan then one, Jahiron Nessa, Mahirun Nessa, Tahirun Nessa and Shukjan Nessa (plaintiff nos. 1 and 2 and defendant nos. 4 and 5) came to the bank and gave mortgage of the suit property favoring the defendant no. 2 by deed dated 18.06.1995 and also filled out the mortgage form of the bank and also submitted all the documents required for extending loan in favour of the defendant no. 2. It has further been stated that, since the defendant no. 2 failed to repay the loan then the defendant no. 1 filed a suit being Artha Rin Suit No. 78 of 1998 and thereafter also filed a Bankruptcy Suit against the defendant no. 2 where the defendant no. 2 was declared as bankrupt and a receiver was appointed over the said property. It has further been stated that, in order to avoid the

loan liabilities of the defendant no. 2, the plaintiffs in collusion with each other filed the instant suit which is liable to be dismissed.

The defendant nos. 2-4 also jointly contested the suit by filing a written statement denying all the material averments so made in the plaint contending *inter alia* that, in order to sell the suit property, the husband of plaintiff nos. 1 and 2 and defendant nos. 4 and 5 came before him and prayed taka 45,000/- of per bigha of the suit property then the defendant no. 2 agreed to paid taka 35,000/- per bigha of the suit property and accordingly, those very plaintiffs and defendants agreed to sell out  $95\frac{1}{2}$  decimals of land in favour of the said defendant no. 2 but the bank executed and registered a sale deed in favour of the defendant no. 2, the defendant no. 2 asked those very husband of the plaintiffs and defendant nos. 4 and 5 to give mortgage of the said property in favour of the defendant no. 1 and accordingly, on 18.06.1996, the plaintiffs and the defendant no. 5 furnished a mortgage deed dated 18.06.1996 and also filled out the mortgage form on 19.07.1995 and accordingly, the said plaintiffs and defendants obtained the balance money of the suit property from the

defendant no. 2. It has further been stated that, this defendant has got no communication with the said plaintiffs rather their husband came to his office and got the said money from him where the defendant no. 4 has signed the deed of mortgage as of the mortgagor where the defendant no. 2 is neither a mortgagor nor the mortgagee in the said deed of mortgage and the suit has been filed by giving some sorts of false statement which is liable to be set aside.

In order to dispose of the suit, the learned Joint District Judge, 1<sup>st</sup> Court, Pabna framed as many as 6(six) different issues when the plaintiffs examined as many as 4(four) witnesses while the defendant no. 2 himself adduced as D.W-1. Apart from that, the plaintiffs produced two documents which were marked as exhibit '1' series. The learned Judge of the trial court upon considering the materials and evidence on record by impugned judgment and decree dismissed the suit holding that, the plaintiffs have not been able to prove their case and they have submitted all the documents favouring the loan taken by the defendant no. 2 from the defendant no. 1.

It is at that stage, the plaintiffs as appellant came before this court and preferred this appeal.

Mr. Md. Abdul Haque, the learned counsel appearing for the appellants upon reading the impugned judgment and decree and by reading all the testimony of the plaintiffs and the defendant witness vis-à-vis the documents so have been submitted by the plaintiffs at the very outset submits that the learned Judge of the trial court has hopelessly failed to appreciate the pivotal question that no documents has ever produced by the defendant nos. 1 and 2 to prove that this plaintiffs have ever mortgage the suit property as a security to repayment of the loan alleged to have obtained by the defendant no. 2 yet the learned Judge of the trial court has very misconceivably dismissed the suit.

The learned counsel further contends that, though the suit was filed for declaration of title in the suit properties and a declaration to the effect that, the documents alleged to have been obtained by the defendant no. 2 in support of taking loan from the defendant no. 1 is all forged, fraudulent and not binding upon the said plaintiffs but in spite of not filing any scrap of

documents by the defendants to show of obtaining loan by mortgaging the property by the plaintiffs yet the learned Judge of the trial court has misconceivedly founds those very documents in the judgment and very erroneously dismissed the suit which is liable to be set aside.

The learned counsel further contends that, though as many as 6(six) different issues have been framed but when the learned Judge of the trial court disposed of the point of limitation as out of blue found the said point against the plaintiffs in spite of the fact that, in terms of the cause of action of filing the suit, the plaintiffs in his cross-examination has clearly asserted so, so that very decision with regard to the point of limitation has clearly run against the testimony so made by the plaintiffs the assertion in the plaint.

The learned counsel next submits that, from the plain reading of the entire judgment, it is clearly found that, in a very slipshod and abrupt manner, the learned Judge of the trial court dismissed the suit without going into the evidence and materials on record placed before him which



can easily be called a perverse judgment in the eye of law. On those very counts, the learned counsel finally prays for allowing the appeal.

Record shows that, the respondent no. 2 entered appearance to contest the appeal but the learned counsel for the said respondent did not turn up to oppose the submission so placed by the learned counsel for the appellant. Still we have perused the impugned judgment and decree, considered the submission so placed by the learned counsel for the appellant and also meticulously gone through the documents so appeared in the paper book.

At the very outset, we examined the impugned judgment and decree. On going through the impugned judgment and decree, we don't find that the learned Judge of the trial court ever discussed the evidence so adduced and produced at the instance of the plaintiffs but fact remains, the plaintiffs adduced as many as four witnesses. Apart from P.W-1, all the three witnesses clearly asserted in their respective deposition that the plaintiffs have in possession over the suit property. On cross-examination nothing

deviation has been made by the defendant no. 2 in spite of the very fact, the learned Judge of the trial court has failed to discuss that very vital aspect.

Furthermore, as has been submitted by the learned counsel for the appellant that on the point of limitation, the learned Judge arrived at a wrong finding, we are totally at one with the submission because on going through the cause of action as well as the deposition so made by the P.W-1, we find that, the plaintiffs has clearly asserted the cause of action of casting cloud over the title of the plaintiffs in the suit property when the defendant no. 2 claimed the suit property to have mortgaged by them in favour of the defendant no. 1-bank. Since the very cause of action has been supported so no question can arise to find the suit as barred by limitation.

Moreover, two sets of *dakhilas* have been produced on behalf of the plaintiffs which is the rent receipt (*dakhila*) in respect of the suit properties.

It is the settled proposition of law that possession follows title and rent receipt is the legal instrument to prove the possession of any ones property in spite of the said fact that, that very *dakhila* has been come from a proper custody and no question was raised when the said documents has been

produced yet the learned Judge did not taken into consideration of that very documents.

Furthermore, from the order sheets especially order no. 85 and onwards, we find that, though the defendant no. 1 took adjournment to produce certain documents in support of taking loan but ultimately, the defendant no. 1 has failed to produce any documents in support of the loan which construe that, in connivance with the defendant no. 1 and 2, the loan has been obtained by making a false claim that in support of the loan by plaintiff nos. 1 and 2 and defendant nos. 4 and 5 has mortgaged the property but not a scrap of documents has been produced either by the defendant no. 1 or the defendant no. 2 leaving the allegation of the defendants totally false and fabricated. If no document is produced in that case, the prayer in respect of schedule 'kha' of the plaint stands but the learned judge of the trial court in the entire judgment did not touch upon that very vital aspect.

Given the facts and circumstances, we don't find any shred of substance in the impugned judgment and decree which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs.

The judgment and decree dated 15.05.2011 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pabna in Other Class Suit No. 75 of 2000 stands set aside.

Consequently, the suit is decreed.

Let a copy of this judgment along with the lower court records be transmitted to the learned Joint District Judge, 1<sup>st</sup> Court, Pabna forthwith.

**Md. Bashir Ullah, J.**

I agree.