

**Present:**  
**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**

**First Appeal No. 55 of 2015**

**In the Matter of:**

Memorandum of appeal from the original order.

-and-

**In the Matter of:**

Md. Abdus Salam Hawlader

.....Plaintiff-appellant.

-Versus-

Md. Badsha Matbor and others

...Defendant-respondents.

Mr. Md. Shariful Islam, Advocate

..... For the appellant.

None appears.

.....For the respondents.

**Heard on 24.10.2024, 27.10.2024 and**  
**Judgment on 30.10.2024.**

**Sheikh Abdul Awal, J:**

This appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 13.11.2014 (decree signed on 20.11.2014) passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Narayangonj in Title Suit No. 483 of 2009 dismissing the suit.

The relevant facts briefly are that Appellant, Md. Abdus Salam Hawlader as plaintiff filed Title Suit No. 483 of 2009 in the court of learned Joint District Judge, 2<sup>nd</sup> Court, Narayangonj impleading the defendants for declaration of title in the suit land

as described in the schedule of the plaint and also for declaration that the deed of agreement dated 07.05.2007 is not binding upon the plaintiff-appellant. The plaint case in short is that the suit land measuring 4.5 decimal originally belonged to Abdul Gafur & Abdul Matin (defendant No. 2 & 3), who sold 4.50 decimal out of 10 decimal land to the Plaintiff-appellant through deed of sale being sale deed No. 376 dated 13.01.2008 and handed over possession of the suit land to the plaintiff-appellant. Thereafter, plaintiff mutated his name and paid rent to the Government and thereafter the plaintiff made a tin-shed house on the suit property and also took electricity & gas connection in his name. In this background the plaintiff-appellant on 16.06.2008 came to know that a previous deed of contract for sale being No. 4003 dated 07.05.2007 was executed by the defendant Nos. 2 & 3 in favour of defendant No.1 and hence, the case.

Defendant No.1 entered appearance in the suit by filing written statement denying all the material allegations made in the plaint contending, inter-alia, that there is no cause of action for filing the suit and the suit is barred by limitation, plaintiff filed the case on false averments and as such, the suit is liable to be dismissed.

The learned Joint District Judge upon considering the pleadings of the parties framed the following issues:

- i. Whether the suit is maintainable in its present form and manner?
- ii. Whether the plaintiff has right, title and possession over the suit land?

iii. Whether the bainapatra dated 07.05.2007 is inoperative?

iv. Whether the plaintiff is entitled to get a decree as prayed for?

At the trial the plaintiff examined 3 witnesses and defendant side examined 2 witnesses and the parties also exhibited some documents to prove their respective cases.

The learned trial Judge upon hearing the parties and on considering the evidence and materials on record by his judgment and decree dated 13.11.2014 dismissed the suit mainly on the ground that the plaintiff by adducing evidence could not prove his right, title and possession in the suit land.

Being aggrieved by the aforesaid impugned judgment and decree dated 13.11.2014 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Narayangonj the plaintiff-appellant preferred this First Appeal.

Mr. Md. Shariful Islam, the learned Advocate appearing for the plaintiff-petitioner in the course of argument takes me through the impugned judgment, plaint of the suit, written statements, deposition of witnesses and other materials on record and then submits that the trial court below without applying its judicial mind into the facts of the case and law bearing on the subject most illegally dismissed the suit on the finding that the plaintiff could not prove his case by adducing sufficient evidence. He further submits that in this case admittedly the plaintiff purchased the suit land by registered deed dated 13.01.2008 (Ext.-1) and thereafter he took possession over the suit land and developed the same by making a tin-shed house

and the plaintiff also took all utilities namely, gas, electricity and other connections in his name in accordance with law. He further submits that the plaintiff also mutated his name and paid rent to the Government and during trial the plaintiff exhibited all those documents being exhibit Nos. 1-12 although the trial Court below without considering the exhibits from a correct angle most illegally dismissed the suit on a wrong finding that the plaintiff could not prove his right, title and possession in the suit land by adducing oral and documentary evidence and as such, the impugned judgment and decree is liable to be set-aside.

No one appears for the defendant-respondents.

Having heard the learned Advocate for the appellant and having gone through the materials on record including the impugned judgment of the trial Court, the only question that calls for our consideration in this appeal is whether the trial Court below was justified in arriving at a finding that the plaintiff could not prove his right, title and possession in the suit land by adducing evidence.

On a scrutiny of the record, it appears that on 19.07.2009 the appellant as plaintiff filed the Title suit No. 483 of 2009 in the court of the learned Joint District Judge, 2<sup>nd</sup> Court, Narayangonj praying the following reliefs:

(ক) নালিশা নিম্ন তপশীল বর্ণিত সম্পত্তিতে বাদী পক্ষের ষোল আনা স্বত্ত্ব স্বার্থ দখল আছে মর্মে ঘোষণার ডিক্রি দিতে;

(খ) নালিশা বায়নামা দলিল নং ৪০০৩ তারিখ- ০৭/০৫/২০০৭ ইং অত্র বাদী দ্বারা নট বাইন্ডিং অকার্যকর ও অত্র বাদী দ্বারা বাধ্যকর নহে।

(গ) সম্যক আদালত ব্যয় বিবাদীর বিরুদ্ধে ডিক্রি দিতে;

(ঘ) অত্র আদালতে ন্যায় বিচারের স্বার্থে বাদী পক্ষের যে প্রতিকার ভাজন হয় তাহাও ডিক্রি দিতে আজ্ঞা হয়।

It is found that during trial the plaintiff side examined in all 3 witnesses and exhibited some documents to prove his case out of which plaintiff, Md. Abdus Salam Hawlader himself was examined as PW-1, who stated in his deposition that defendant Nos. 2&3 transferred 4.5 decimal land through registered deed No. 376 dated 13.01.2008 and also handed over possession of the suit land to plaintiff and thereafter he developed the suit land and constructed 13 semi-paka rooms on the suit land, 2 toilets and 2 kitchens and also took gas and electricity connections in his name. This witness also stated that he resides in 2 rooms and deals business in a shop situated on the front side of the suit land. This witness also stated that- “ক্রয়ের পর বহুদিন আমি সাইন বোর্ড বুলিয়ে রেখেছিলাম। ১নং বিবাদী বাদীকে কোনদিন বায়না সম্পর্কে অবগত করেননি। বিবাদী মিস আপীল ৩৪০৮ দায়ের করলে তা নামঞ্জুর হয়। আমি নাঃ ভূঃ দলিল দাতার নাম খারিজ জেনে অত্র নাঃ ভূঃ ক্রয় করি। নাঃ ভূমি সম্পর্কে বায়না সম্পাদনের মোকদ্দমা হওয়ায় নাঃ ভূঃ আমার স্বত্বের ছায়াপাত ঘটে।” This witness in his cross-examination stated that- “আমি ৪<sup>১</sup>/<sub>২</sub> শং ভূমি ক্রয় করি ১৩/০১/০৮ তারিখে ৩৭৬ নং রেজিঃ দলিলে। আমি রেজিঃ অফিসে ও নামজারী অফিসে তল্লাসি দিয়ে নাঃ ভূমি ক্রয় করেছি।” This witness in his cross-examination also stated that- “আমার সাথে ১ মে মৌখিক বায়না হয়। তারপর রেজিঃ দলিল হয়। মৌখিক বায়নার দিন, তারিখ সম্পূর্ণ ৭ লাখ টাকা দেই।” This witness in his cross examination denied the suggestion that he did not develop the suit land and did not serve any notice of mutation to Badsha Mia. On recall this witness exhibited rent receipt, mutation khatian, electricity connection papers and gas connection papers and other documents as “Ext.-1-12. This witness denied the

suggestion in the following language: সত্য নয় আমার দাখিলীয় দলিল জাল। সত্য নয় আমি উপরোক্ত দলিল মূলে কোন বিদ্যুৎ, গ্যাস সংযোগ পাইনি।

PW-2, Iqbal Hossain, local witness stated in his deposition that he knew plaintiff and defendants. This witness also stated that his land is adjacent to the suit land. This witness stated that before transfer of the suit land to the plaintiff he did not know about the existence of bainapatra with regard to suit land. This witness stated in his evidence that- “আমি বাদীর দলিলের সাক্ষী, এই দলিলে ৩ জন সাক্ষী তারা হলেন মালেক, হাফিজুল, আমি দলিল লেখকের নাম কুদ্দুস শিকদার।” PW-3, Md. Abdul Malek, local elected member. This witness stated in his deposition that- “আমি দলিলের দাতা গ্রহীতাকে চিনি। এই দলিলের সাক্ষী আমি এবং ইকবাল হোসেন। দলিলের লেখক আঃ কুদ্দুস সিকদার। আমি দলিলের লেনদেন করা দেখেছি। দলিলটি ফতুল্লা সাব রেজিঃ অফিসে রেজিঃ হয়। আমি নাঃ ভূমি চিনি।” This witness in his cross-examination denied the suggestion that he known as to the fact of bainanama between Badsha and Salam.

On scrutiny of the above quoted evidence both oral and documentary, it appears that the plaintiff as PW-1 testified details as to his right, title and possession in the suit land. PW-1 exhibited all his material documents namely, rent receipt, mutation, electricity & gas bills, baya deed, registered deed etc. This witness having testified in detail about the factum of the case and the same having not been shaken in cross examination at all and rest PWs namely PW-2-3, both of them in their respective evidence corroborated the evidence of PW-1 in respect of all material particulars.

Now, let me advert to the evidence of DWs. DW-1, Mahbubul Alam Selim, power of attorney holder of defendant No.1, Badsha. This witness deposed that defendant No.1-2 were owner of 10 decimal land, they executed a bainanama on getting consideration money in favour of Badsha Matbor (defendant No.1). This witness in his cross-examination stated that- “বাদশা মাতবর নাঃ ভূঃ ভাড়া দিয়েছে। নাঃ ভূঃ বিদ্যুৎ এবং গ্যাস লাইন নাই। নাঃ ভূঃ তদন্তের সময় আমি ছিলাম তখন কমিশনার কি দেখেছে জানি না। বাদশা ৯.৩০ শতাংশ ভূমি বায়না করেছে। সত্য নয় বাদশা মাতবর বায়নাকৃত ভূমি দখল করে। সত্য নয় আমি কোন নোটিশ দেইনি। সালাম কোন নোটিশ পাইনি। সত্য নয় মিথ্যা সাক্ষ্য দিলাম। সত্য নয় সালাম মাতবর নাঃ ভূমি, বাড়ী, দোকান করে দখল করে।” DW-2, Md. Yunus Molla stated in his deposition that- “আমি বাদী বিবাদীদের নাঃ ভূঃ চিনি। নাঃ ভূঃ ৯.৩০ শং বাদশা দখল করে। বায়না সূত্রে ৬টি রুম, রান্নাঘর, বাথরুম করে দখল করে। বাদশা ১মে ১০ লাখ টাকা দেয় পরে ৭০ হাজার টাকা বায়না বাবদ দেয়। বায়না করার সাথে সাথে দখল বুঝিয়ে দেয়। বায়নার সময় আমি ছিলাম। নাঃ ভূঃ বাদীর আংশিক জায়গায় দখল রয়েছে।” This witness in his cross-examination stated that- “বাদী নাঃ ভূঃ দখল করার সময় বাধা দেইনি। বাদশার নাঃ ভূমি ৬টি রুম আছে। নাঃ ভূমি তদন্ত হওয়ার বিষয়ে জানি না।”

From the above, it appears that DW-1&2 in their respective evidence admitted part possession of the plaintiff in the suit land. It further appears that the defendants to prove their case did not produce any tangible/substantive documentary evidence. Weighing the evidence of both the parties, we find that the evidence in plaintiff side is credible and tenable in Law.

On a close perusal of the entire evidence both oral and documentary, it appears that at the trial the plaintiff-appellant to prove his right, title and possession in the suit land adduced

sufficient evidence both oral and documentary. The initial onus lies on the plaintiff to prove his title. In this case the plaintiff is claiming his title to the suit land on the basis of a registered deed. We have already indicated that in this case the plaintiff having succeeded to discharge his onus by proving his documents of title. Therefore, we are constrained to hold that the impugned judgment of the trial Court below does not deserve to be sustained. The learned Trial Judge erred in law and fact when he failed to properly evaluate the evidence on record as to right, title and possession of the plaintiff in the suit land and erroneously concluded that the plaintiff by adducing evidence could not prove his right, title and possession in the suit land, which is perverse being contrary to the evidence and materials on record.

In view of our discussions made in the foregoing paragraphs by now it is clear that the instant appeal must succeed.

In the result, the appeal is allowed. The impugned judgment and decree dated 13.11.2014 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Narayangonj in Title Suit No. 483 of 2009 dismissing the suit is set-aside and that the suit is decreed in favour of the plaintiff to the extent as to right, title of the plaintiff in the suit land.

Let a copy of this judgment along with lower Courts' record be sent down at once.

**Md. Mansur Alam, J:**

I agree.