

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 508 of 1991 (Dhaka)

(F.A. No. 17 of 1984 of Rangpur Bench)

Prithwish Chandra Roy

..... appellant

-Versus –

Government of the Peoples Republic of Bangladesh represented by the Secretary, Ministry of Land Administration and Law Reforms, Sachibalaya (Eden Building), Dhaka and others Begum and and others

.....respondents

No one appears for the appellant

Mr. Redwan Ahmed, Deputy Attorney General with Mr. Md. Saiful Islam Miajee, Mr. Md. Abul Khair Khan, Mr. Anjuman Ara Lima, Mr. Md. Montu Alom and Mr. Md. Saydur Rahman Jatun, Assistant Attorney Generals

..... for the respondents

Judgment on: 31.07.2025.

Bhishmadev Chakrabortty, J:

The plaintiff has preferred this appeal challenging the judgment and decree of the then Subordinate Judge, Nilphamari passed on 12.09.1984 in the Other Class Suit No. 22 of 1983 dismissing the suit praying for declaration.

In the plaint it has been stated that Suresh Chandra Roy was the original owner of the suit property. The plaintiff was his nephew. Suresh Chandra was a citizen of Bangladesh. He left for India in October, 1977 and before his leaving this country he gifted the suit property to the plaintiff through deed of gifts dated 13.09.1977,

10.09.1977 and 24.09.1977 and delivered possession thereof. Defendant 4, the SDO Nilphamari illegally declared the suit property as vested property and evicted the plaintiff therefrom on 03.07.1978. The original owner of the suit property never left for India between 06.09.1965 to 16.02.1969. The plaintiff came to learn about the enlistment of the property as vested property and then preferred appeal before the ADC (Rev), Rangpur which was rejected. He then moved the Divisional Commissioner, Rajshahi in appeal. The appeal was allowed and it was declared that the suit property was not vested property and the concerned authority was directed to restore the plaintiff's possession in the suit land. Thereafter, defendant 1, the Secretary of the concerned ministry stayed the order of the Divisional Commissioner but subsequently did not take any step in its hearing hence, the suit for declaration that the order passed by the SDO, Nilphamari declaring the suit property as vested property is illegal, void, *ultra vires* and inoperative.

The government as defendant 2 contested the suit by filing written statement in which they denied the case of the plaintiff. The defendant stated that Suresh Chandra left this country for India in 1970 and settled there permanently. A notice as required by the law was served upon the original owner but he did not make any reply to it. Accordingly, the property has been validly enlisted as vested property. Suresh never gifted the property to the plaintiff through deed

of gifts. The suit in the present form without any consequential relief of recovery of possession is not maintainable.

The trial Court on pleadings framed 7 issues. Both the parties examined witness and produced their documents which were marked as exhibits. However, the then Subordinate Judge dismissed the suit deciding the material issues against the plaintiff, giving rise to this appeal by the plaintiff.

No one appears for the appellant. In the record it is found that after the death of the learned Advocate for the appellant, a notice under form N-10 was duly served upon the plaintiff but none appeared to support the appeal. Therefore, the matter is taken up for disposal upon hearing the respondents only as per the amended provisions of the Code of Civil Procedure in 2025.

Ms. Anjuman Ara Lima, learned Assistant Attorney General taking us through the impugned judgment and other materials on record submits that the trial Court found the deed of gifts in the name of the plaintiff forged and created and also found that the plaintiff is not in possession of the suit land. Therefore, the instant suit in the present form without any consequential relief is not maintainable. The trial Court on appraisal of evidence both oral and documentary and position of law dismissed the suit. There is nothing in the record to interfere with the aforesaid judgment passed by the trial Court. This appeal, therefore, would be dismissed.

We have considered the submission of the learned Assistant Attorney General, gone through the materials on record and the grounds taken in the appeal.

It is found that in the plaint the plaintiff admitted that the defendants dispossessed him forcefully from the suit property on 03.07.1978. Be that as it may, the instant suit for mere declaration in the form that the order of defendant 4 declaring the suit property as vested property is illegal without seeking any consequential relief of recovery of possession in the property is not at all maintainable. Admittedly the suit property belonged to Suresh Chandra. The plaintiffs claimed that Suresh gifted the suit property to him through deed of gifts in September, 1977 while he was in Bangladesh. But the plaintiffs failed to prove that at the time of execution of the deed of gifts dated 10.09.1977, 13.09.1977 and 24.09.1977 exhibits 6-9 the original owner Suresh Chandra was in this country. The evidence of witnesses proves that at the material time he was not in this country. Therefore, the findings of the trial Court as to the genuines of those deed of gifts is found correct. Moreover, the suit challenging the order of defendant declaring the suit property a vested property is also not maintainable.

In the aforesaid premises, we find no merit in this appeal. Accordingly, the appeal is dismissed. No order as to costs. The judgment and decree passed by the trial Court is hereby affirmed.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.

Rajib