

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

First Appeal No. 165 of 2015

In the matter of:

Most Hasina Banu being dead her heirs Most.
Babita Begum .

... Appellant

-Versus-

The People's Republic of Bangladesh
represented by the Deputy Commissioner,
Sirajgonj, and others

... Respondents

Mr. Humayun Kabir Sikder, Advocate

...For the appellant

Mr. Arobinda Kumar Roy, D.A.G with
Mr. Mohamad Abbas Uddin, A.A.G with
Ms. Shamsun Nahar (Laizu), A.A.G

....For the respondents

**Heard on 11.01.2024 25.01.2024
and Judgment on 25.01.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

At the instance of the one of the heirs of the plaintiff namely, Most Hasina Banu, this appeal is directed against the judgment and decree dated 01.05.2015 passed by the learned Joint District Judge, 1st court, Sirajgonj in other class suit no. 5 of 2010 dismissing the suit.

The case of the plaintiffs so have been figured in the impugned judgment are:

An area of 6375 decimals of land appertaining to CS khatian no.162 corresponding to plot no. 518 and 519 originally belonged to one, Ram Chandra Sarker. Subsequently Ram Chandra Sarker died leaving behind only son, Nil Madob Sarker @ Nil Madob Roy who died leaving behind his wife Omio Prova Devi. While Omio Prova Devi had been enjoying title and possession over that property left by her husband, SA khatian being no. 229 and 741 in respect of the suit land it was prepared in her name. After the demise of the husband of Omio Prova Debi she left her husband's house and went to her paternal house located in Mymensingh and started living there. However, she kept on enjoying title and possession over the suit property through tenants erecting dwelling house as well as excavating pond therein. When Omio Prova Devi had been in possession over the suit property she offered to sale the same but out of fear she could not transfer the said land under the sub-registry office, in Sirajgonj and ultimately sold out the suit land in the sub registry office, Mymensingh in favour of the predecessor of the plaintiff, Most Hasina Banu by registered sale deed dated 08.01.1963. Thereafter, Most Hasina Banu started enjoying title and possession over the said property by paying rent in the respective Towshill office but the latest RS record was wrongly prepared in the name of the defendant no. 1, though by dint of that very record, no right and title was passed in favour of the said defendant. Since Most Hasina Banu became the owner of the suit land she thus by executing power of attorney upon her son-in-law devolved the responsibility to look after the said property. However, the plaintiff came to learn about the said wrong recording on 16.04.2008 and hence the suit.

The defendant no. 1, government of Bangladesh represented by the Deputy Commissioner, Sirajgonj and defendant 10, executive engineer department public works entered appearance to contest the suit when only defendant no. 10 filed written statement though the defendant no. 1 ultimately did not contest the suit.

The short facts so have been described in the written statement filed by the defendant no. 10 are:

The land appertaining to CS khatian no. 162 corresponding to plot no. 518 and 519 originally belonged to one, Ram Chandra Sarker who died leaving behind one son, Nil Madob and on his demise his wife, Omio Prova Debi got the suit land and SA record was prepared in her name. But since the suit land was required by the defendant no. 10 then it made a proposal to the Deputy Commissioner, Sirajgonj to acquire the said property and by virtue of LA case no. 13/64 the suit property was acquired and accordingly the SA recorded tenant, Omio Prova Debi withdrew the compensation money by handing over possession to the defendant no. 10. After getting the suit land the public works department got a plan passed and built quarters for its staffs and those very residents of the public works department have since been residing in the suit property. However, the RS record was wrongly prepared in the name of the defendant no. 1 yet the suit property is being possessed by the defendant no. 10. It has further been stated that, the plaintiff by manufacturing some concocted documents and to grab the suit property filed the instant suit which is liable to be dismissed.

In order to dispose of the suit, the learned judge of the trial court framed as many as 5 different issues and in support of the case the plaintiff examined 3 witnesses and produced several documents which were marked as exhibit nos. 1-6. On the contrary, the defendant no. 10 examined 2 witnesses and also produced a single document which was marked as exhibit 'ka'. However, the learned judge after considering the materials and evidence on record vide impugned judgment and decree dismissed the suit.

It is at that stage the heir of the plaintiff, Most Hasina Banu as appellant preferred this appeal.

Mr. Md. Humayun Kabir Sikder, the learned counsel appearing for the appellant upon taking us to the impugned judgment and decree and all other document in particular, the deposition so made by the plaintiff's and defendant's witnesses and those of the document so exhibited by the plaintiff and defendant at the very outset submits that, the learned judge of the trial court erred in law in not considering the fact that, by virtue of the sale deed dated 08.01.1963 the plaintiff have been in possession over the suit property by paying rent to the respective office of the government. The learned counsel by referring to the deposition so made by the P.W 2 and P.W 3 also contends that, those very witnesses are the adjacent land owner of the suit property and they corroborated each other stating that, a pond is there in the suit land and there has been a building in some portion of suit land supporting the plaintiff's case yet the learned judge without appreciating those corroborative evidence very misconceivably dismissed the suit which cannot be sustained in law. The learned counsel

by referring to the provision of section 28 of the Registration Act also contends that, since apart from the suit land some portion of land in Mymensingh has also been included in the registered sale deed so there has been no illegality in executing and registering the same through which the plaintiff acquired title in the suit land but the learned judge of the trial court has misdirected himself in dismissing the suit which cannot be sustained.

The learned counsel further contends that, though the defendant claimed the property to have acquired in the name of the defendant no. 10 but not a scrap of document has been produced in support of its assertion in absence of which the case of the defendant has not been proved yet the learned judge dismissed the suit.

The learned counsel lastly contends that, since it is admitted position that, the predecessor of the plaintiff is the SA recorded tenant and the genealogy of acquiring title by the plaintiff has fairly been proved through exhibit nos. 1-6 still the learned judge without appreciating those exhibited documents very erroneously dismissed the suit and therefore the judgment cannot be sustained in law. However, in support of his submission, the learned counsel has also placed his reliance in the decision so have been reported in 37 DLR AD 177 and finally prays for allowing the appeal.

Conversely, Mr. Arobinda Kumar Roy, the learned Deputy Attorney General appearing for the government respondent no. 1 has very robustly opposes the contention taken by the learned counsel for the appellant and submits that, though it is the assertion of the plaintiff she

got the property by sale deed dated 08.01.1963 but till 2005 she did not bother to pay any rent in respect of the suit land to prove her acquiring title and enjoying possession over the suit property even though, the rent receipt so have been produced does not attract the suit land and therefore it cannot be taken as any evidence of possession for the plaintiff-appellant.

The learned Deputy Attorney General by referring to exhibit-‘ka’ produced at the instance of defendant witness no. 10, also contends that, by that exhibit all the information relating to acquiring the suit land through LA case no.,. 13/16-64 has clearly been proved as the suit land has rightly been gazetted and the information pertaining to the said annexure has correctly been asserted by DW-1 having no scope to say that, the suit land has wrongly been prepared in the name of the government.

The learned Deputy Attorney General further contends that, though the plaintiff put her all emphasis on the sale deed dated 08.01.1963 yet to prove the authenticity of the said sale deed neither of the scribe nor any of the attesting witnesses has been adduced to prove the genuineness of the sale deed and the learned judge of the trial court has rightly found the said loopholes and disbelieved the correctness of the sale deed and then very perfectly dismissed the suit which calls for no interference by this Hon’ble court.

The learned Deputy Attorney General wrapped up his submission contending that, though the plaintiff filed two sets of plaint but in which prayer of those very plaints they are relying upon cannot be found from the assertion in the plaint and if for argument’s sake the subsequent plaint is taken into consideration, even the prayer made therein is not in

consonance with the schedule of the suit property as the suit land has not been enlisted as any vested property rather it has been prepared in the name of the government in RS khatian, so it is neither a vested property nor any khas land and therefore the prayer itself is not entertainable and finally prays for dismissing the appeal.

We have considered the submission so advanced by the learned counsel for the appellant and that of the respondent no. 1. We have also gone through the materials on record especially the documents so produced and exhibited by the plaintiff and the defendant no. 10 vis-a-vis the testimony so given by the plaintiff and the defendant no. 1. On going through the documents so exhibited we don't find any RS record was produced or exhibited which is the crux of the dispute among the parties. It is admitted fact that RS record in respect of the suit land was prepared in the name of the government in RS khatian no. 18 and 7. So it is palpably clear, the relief so have been sought in the prayer of the plaint has got no nexus with the schedule (তপসীল ভূমি) of the plaint as the suit land has not been recorded as any vested and non-residential property of the government. Furthermore, it has been alleged that due to fear in executing and registering sale deed in, Sirajgonj where the suit land is located, by Amio Prova, the predecessor of the plaintiff, has compelled to get the sale deed executed and registered in the District Mymensingh by including a small portion of land in that District. But whether the suit land has been registered or transferred by Omio Prova in favour of the predecessor of the plaintiff cannot be proved by any independent witnesses especially the scribe as well as any attesting witness or the

witnesses supposed to familiar with their signature in absence of which the said sale deed cannot be taken as proven and the learned judge of the trial court has rightly cast doubt about the genuinity of the sale deed having no scope to apply section 28 of the Registration Act here. It is the settled proposition that, the plaintiff has to prove his/her own case without depending upon the weakness of the defendant's case. But in the instant case, though plaintiff in order to prove the possession produced two rent receipts (*dhakila*) but on going through those very receipts we don't find any proximity of the SA khatian on which the alleged rent was paid. On the other hand, while the defendant no. 10 through DW 1 gave testimony in support of its case he supported all the information pertaining to exhibit 'ka' in acquiring the suit property, when the plaintiff has not raised any objection. So it clearly proves that, it is not the plaintiff rather the defendant no. 10 has been possessing the suit property by erecting staff quarter for its employees. However, from the trend of testimony given by the PW 1 and PW 3 it appears to us to be tutored witnesses. Because it is totally unbelievable that there has been no structure on the suit properties when it is the assertion of the defendant, that in the year 1986 a building was constructed for the accommodation for the staffs of the public works department and those staffs are residing in the building. Furthermore, there has been no explanation as to what prevented the plaintiff to pay rent as well as mutate her name in the khatian soon after purchasing the suit property back in the year 1963. So in absence of any assertion to the effect it exemplifies that, just to describe a cause of action the suit has been filed as of test case in the year of 2010 by the plaintiff in order to

grab the government's property purportedly by giving a power of attorney in favour her son-in-law. On the contrary, though the defendant no. 10 produced a single document but that very document reveals all the informations in regard to acquiring title in the suit property.

Given the above facts and circumstances and the materials and evidence on record we are of the view that, the learned judge of the trial court has very perfectly dismissed the suit which warrants no interference by this court.

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

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

Mohi Uddin Shamim, J.

I agree.