

Present:

**Mr. Justice Sheikh Abdul Awal
And
Mr. Justice Md. Mansur Alam**

First Appeal No. 47 of 2016

In the matter of:

Memorandum of appeal from original decree
-and-

In the matter of:

Kazi Zakir Hossain being died his heirs:

1(a) Dilruba Begum and others

Defendant-Appellants

Versus

Bangladesh Bank Chittagong

Plaintiff-Respondent

Mr. Md. Kamrul Islam, Advocate
for the appellant

Mr. Shamim Khaled Ahmed, Advocate
for the respondent

Heard on: 28.11.24, 09.12.2024

Judgment on: 12.12.2024

Md.Mansur Alam, J

This appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 17.11.2015 (decree signed on 22.11.2015) passed by the learned Joint District Judge, Poribesh Adalat, Chittagong in Title Suit No. 33 of 2015 decreeing the suit.

The facts, relevant for disposal of this appeal, in brief are that the plaintiff-respondent filed Title Suit No. 33 of 2015 for the following reliefs:

- a) a decree for a declaration of right, title over the suit land;

- b) a decree for khas possession evicting the defendant-appellant from the suit land.

The plaintiff-respondent Bangladesh Bank, Chattogram brought Title Suit No. 48 of 1995 which is renumbered as 47 of 2016 in the Court of Joint District Judge, Poribesh Adalat, Chattogram impleading the defendant for relief as described in the schedule of the plaint. The case in the plaint in short is that the scheduled land was originally belonged to Shorot Kumar Kanungo and R.S. record was originally prepared in his name. Shorot Kumar Kanungo transferred the scheduled land to Pakistan Tobacco Company on 09.09.1959 by way of a kabala deed No.4935. Pakistan Tobacco Company thereafter transferred the suit land to State Bank of Pakistan by way of a registered deed No.1133 on 12.02.1964. The suit land was vested on Bangladesh Bank after independence of 1972 and B.S. Khatian 3831 was prepared in the name of Bangladesh Bank. The defendant-appellant dispossessed the plaintiff Bank, entered into the suit plot No.2670 by erecting a hangama house of bamboo fencing and tin roof in the suit land, which now they claimed to be utilized as a mosque. Plaintiff-respondent sought relief from the local police station but failed. Thereafter, the plaintiff brought Misc. Case No. 63 of 1993 before Deputy Commissioner, Chattogram but Deputy Commissioner on trial rejected the case on the ground that the contention brought by the plaintiff is a civil nature and therefore he has no jurisdiction to pass any order sought in the misc. case. Thereafter the plaintiff-

respondent filed this Title Suit for a declaration of right, title over the suit land and for khas possession by evicting the defendant-appellant from the suit land.

Defendant Kazi Zakir Hossain 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, the suit is barred by limitation, that the learned Judge of the trial Court on surmise and conjecture held erroneous view that the suit is worthy of being decreed though not satisfactorily proved by adducing substantive evidence and as such the Judgment and decree of the trial Court is liable to be set aside.

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

1. whether the suit is maintainable in its present form and manner ?
2. whether the defendant dispossessed the plaintiff from part of the suit land of plot 2670 ?
3. whether the plaintiff is entitled to get decree as prayed for ?

At the trial the plaintiff examined 4 witnesses and the defendant examined 3 witnesses and the parties also submitted some documents to prove their respective case which are marked as Exhibit-1-12 and as Exhibit ka to Gha respectively.

The learned trial Judge upon hearing the parties and on considering the evidence, and materials on record by his judgment

and decree dated 17.11.2015 decreeing the suit on the ground that the defendant encroached the land in plot No. 2670 measuring 3429 square feet by erecting a house therein. Trial Court ordered to hand over the suit land in favour of the plaintiff within 60 days of the day of judgment.

Being aggrieved and dissatisfied by the impugned judgment dated 17.11.2015 passed by the learned Joint District Judge, Poribesh Adalat, Chattogram the defendant-appellant preferred this First Appeal.

Mr.Md. Kamrul Islam the learned Advocate appearing for the defendant-appellants in course of argument takes us through the impugned judgment, plaint of the suit, written statements deposition of the 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 subject most illegally decreed the suit on the finding that the plaintiff-respondent have been able to prove his right title over the suit land and defendant-appellant evicted the plaintiff-respondent from the suit land by erecting a hangama house of bamboo fencing with tin roof thereon.

The learned Advocate further submits that the plaintiff-respondent brought a complaint to the local police station for the same relief which the OC, concerned police station rejected as the same as brought under false avertainment. Thereafter the plaintiff-respondent brought a Misc. case before Deputy Commissioner,

Chattogram and on dismissal preferred appeal before Divisional Commissioner Chattogram which also was dismissed finding no merits of the case filed by the plaintiff-respondent. Thereafter the plaintiff-respondent filed the impugned Title Suit No. 48 of 1995 which was renumbered as 33 of 2015, brought on false averments and it was liable to be dismissed but learned trial Court on misconceived of law and facts decreed the suit. Hence, this appeal is well worthy to be allowed.

On the other hand, Mr. Shamim Khaled Ahmed the learned Advocate appearing for the plaintiff-respondent contended that the Deputy Commissioner and the Divisional Commissioner dismissed the misc. case as the same was a civil in nature. The learned Advocate further contends that the suit land was never measured on the spot. So, the office of Deputy Commissioner and of Divisional Commissioner could not determine whether the alleged mosque encroached the suit land or not. But in this case learned Advocate Commissioner Md. Rafiqul Alam physically surveyed the suit land, detected the suit plot, prepared sketch map, field book and submitted his report. It reveals from his report that the disputed mosque is located in part of the suit plot No. 2670. According to the contention of learned Advocate for the plaintiff-respondent as defendant-appellant encroached into the suit plot No.2670, so learned Joint District Judge rightly passed the order of declaration of title with the order of eviction from the suit land.

Having heard the learned Advocates from both the sides 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 trial Court below was justified in arriving at the findings that the plaintiff-respondent have been able to prove their right, title over the suit land and whether the defendant-appellant dispossessed the plaintiff-respondent from the suit land on the date and time as alleged.

Now, let us scrutinize the evidence adduced by the both the parties.

The Pw1 Sojol Kanti Das gave statements on the part of the plaintiff-respondent. The relevant portion of his statements are that the scheduled land was belonged to state Bank of Pakistan and thereafter this plaintiff Bangladesh Bank by way of kabala deed, the defendant got possession of the suit plot forcibly, the defendant dispossessed the plaintiff from the suit land on 22.10.1992 by erecting a hangama house of tin roof with bamboo fencing, they publicized this hangama house as a prayer place, the plaintiff lodged a complaint with local police station regarding this matter but they did not get any relief, thereafter they brought a misc. case before Deputy Commissioner on 29.10.1992, an investigation report was submitted by 1st Class Magistrate Fazlul Huq and AC land Abdullah Al Baki, ADC revenue rejected the Misc. case as the matter is of civil nature, thereafter on appeal Deputy Commissioner confirmed the rejection order of Deputy

Commissioner, thus the plaintiff-respondent brought this title suit. To cross pw1 stated that the defendant possess the land of plot No.2671, Bangladesh Bank gave the defendant possession. Pw1 stated in his cross that defendant dispossessed the plaintiff-respondent by erecting a house of bamboo fencing with tin roof and the construction of governor house in the suit land for Bangladesh Bank official is absolutely true.

The pw2 Advocate Rafique Alam deposed that he measured the suit land on the spot and he submitted his report there. He denied the suggestion that he submitted a false report being assured by Bangladesh Bank to be made him a panel lawyer.

Reversely Dw1 Belal Ahmed deposed that Bangladesh Bank transferred the suit land of 2671 to this defendant, defendant has brick building on that plot, also there are garden, mosque and garage of the defendant. He also stated that they jointly measured the suit plot in 1985 and that was approved by them both. He also deposed that they proposed Bangladesh Bank to purchase some portion of land from the suit plot 2670 but it was not done. To cross he admitted that they claim the land of plot No.2671, that the alleged mosque is built in the plot No.2671, he admitted that Deputy Commissioner rejected the plaintiffs Misc. case as the same is of civil nature, Advocate Rafiqul Islam measured the land on the spot and got the mosque in the land of plot No.2670, they applied to Bangladesh Bank for purchasing the land of plot No.2670, Dw2 stated that the alleged mosque is in the land of Kazi

Zakir Hossain. To cross the deposed that he did not know whether the alleged mosque is in the plot No.2670 or whether it is in the commissioner report that the alleged mosque is in the plot No.2670. Dw3 deposed that the alleged mosque is built in Zakir Hossain's land. He admitted to his cross that Kazi Zakir's house is surrounded by a boundary, the alleged mosque is outside of that boundary.

On careful perusal of the evidence and materials on record it is found that the plaintiff-respondent brought the original Title Suit No. 47 of 2016 for a prayer of declaration of title and recovery of khas possession evicting the defendant-appellant from the suit land. It is admitted by both the parties that the suit plot Nos.2670 and 2671 was belonged to Bangladesh Bank. Bangladesh Bank transferred the suit plot No.2671 in favour of the defendant-appellant by way of an auction deed. The only contention is to determine in this appeal is whether the defendant-appellant encroached the suit land of plot No.2670 by erecting a hangama house and thereafter transferred that house to a mosque for prayers. The plaintiff-respondent have been able to prove by adducing evidence both oral and documentary that the alleged mosque encroached the land of plot No.2670 belonging to Bangladesh Bank. Advocate Mr. Rafiqul Islam as survey commissioner physically measured the suit land on the spot maintaining all the formalities of survey matter, he submitted his report, field book, sketch map etc to the trial Court. Defendant-appellant in this

context could not shaken his evidence in cross examination. Dw2 did not deny whether the alleged mosque is in plot No.2670 or not. Dw3 admitted that the said mosque is outside of the boundary of Kazi Zakir's house, where the defendant Zakir claimed that it is inside his boundary alongwith the other establishment. Dw1 disclosed in his evidence that they wanted to purchase some land in a narrow area of plot No.2670 but no transaction was done to that effect. This version of Dw1 clearly indicates that they always had their eyes on this land which led them to occupy the same. Defendant-appellant contented that the plaintiff-respondent did not get any relief from the Deputy Commissioner's office in a misc. case No. 17/92-93 and Divisional Commissioner's Office in Misc. Appeal No.60 of 1993 relating to the suit land. As it transpires from the evidence and materials on record, the contention of the defendant-appellant merits no consideration as the aforesaid misc. case and misc. appeal were dismissed on the ground of their jurisdiction. Both Deputy Commissioner and Commissioner, Chattogram observed that since the relief sought before their court is a civil in nature, so they did not give any relief in the misc. case. Divisional Commissioner observed that the suit land is located between the periphery of plot Nos. 2670 and 2671 and till disposal of the issue relating to the border area of plot Nos. 2670 and 2671 it could not be ascertained in which plot the mosque is situated. In this context Advocate Commissioner submitted his survey report exhibited as 12 where it is found that

he physically measured the suit plot and found the half brick building with tin roof is built on 3429 square feet land in the suit plot. Defendant-appellant adduced nothing to refute the version of pw3 Advocate Commissioner Mr. Rafiqul Islam.

On meticulous and close perusal of the entire evidence both oral and documentary, we found that the defendant-appellant has failed to prove that the alleged mosque did not encroach the plot No.2670. Rather, the plaintiff-respondent has been able to prove that defendant-appellant dispossessed 3249 square feet of land in the suit plot No.2670 and thus the right and title over the suit land is clouded by the defendant-appellant claiming the occupied land measuring 3249 square feet of their own.

The plaintiff-respondent has been succeeded to discharge their onus adducing oral and documentary evidence. Adversely the defendant-appellant could not adduce any tangible or substantial evidence to the effect that their hangama house thereafter transferred as mosque is built in their plot No.2671, nor they proved that they did not dispossess the plaintiff-respondent from the land of plot No.2670. Therefore, we are constrained to hold that the impugned judgment of the learned trial Court does not deserve to be interfered. The learned trial Judge properly evaluated the evidence and materials on record decreed the suit.

In view of our discussion made in above by now we are of opinion that instant appeal must failed.

In the result, the appeal is dismissed.

The judgment and decree dated 17.11.2015 (decree signed on 22.11.2015) passed by the learned Joint District Judge, Poribesh Adalat, Chittagong in Title Suit No. 33 of 2015 decreeing the suit is hereby affirmed.

The order of status-quo granted earlier by this Court at the time of issuance of the Rule is hereby recalled and vacated.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.

Sheikh Abdul Awal, J

I agree