

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No.303 of 2015

Md. Taher Ali Talukder appellant

-Versus-

Hajee A. Samad being dead his heirs:

1(a) Ranu Akter and others respondents

Ms. Moriam Begum with Ms. Umme Kulchum,
Advocates for the appellant

Mr. Minal Hossain, Advocate
..... for respondents 1(a)-1(c) and 15-20

Judgment on 24.08.2025

Bhishmadev Chakrabortty, J:

Defendant 1 has preferred this appeal which is directed against the judgment and decree of the Joint District Judge, Court 2, Munshiganj passed on 11.08.2015 in Title Suit 79 of 2007 decreeing the suit for declaration of title with other prayers.

The plaint case, in brief, is that CS *Khatian* 207 plots 1296 and 1297 measuring an area of .63 and .24 acres respectively totally .87 acres originally belonged to Yad Ali Beldar, Khedmat Ali Beldar and Mughal Ali Beldar in equal share. Yad Ali died leaving behind his son Himmat Ali and 3 daughters Arfan Bibi, Surjaban Bibi and Taraban Bibi. Himmat Ali died leaving behind his son Korban Ali and a daughter Ful Banu. Arfan Bibi died leaving her 3 sons Hazi Abdus Samad, Sohrab Ali, Meher Ali and a daughter Rahela Khatun. Surjaban Bibi died leaving behind a son Taher Ali and a daughter Halima Khatun. Taraban Bibi died leaving behind 3 daughters Yaron Bibi,

Rokeya Begum and Amena Khatun. Amena Khatun died leaving behind a son Amir Ali and a daughter Raju Bibi. Khedmot Ali died leaving behind his son Saher Ali. Saher Ali died leaving behind his son Chan Mia and a daughter Kala Boru. Mughal Beldar died leaving behind a son Shamsuddin Beldar who died leaving behind sons, daughters and a wife, the plaintiffs in this suit as heirs. The plaintiffs are in possession of the suit land and they are residing therein by erecting houses and implanting tress near about 80 years within the knowledge of the defendants. The plaintiffs went to the tahshil office on 20.09.2007 for payment of rent of the suit land but the tahshilder refused to accept it on the plea that the record of rights have been prepared in the name of defendant 1. Then they collected certified copies of the records and instituted the suit for declaration of right, title and interest in the suit land described in the schedule to the plaint and that SA and RS *Khatians* prepared in the name of defendant 1 is erroneous. The plaintiff amended the plaint and made further prayer that the judgment and decree passed in Title Suit 379 of 2010, in which the deed in question of the defendant 1 has been corrected, is not binding upon them because it was obtained behind their back. By further amendment the plaintiffs deleted plot 1297 from the schedule and prayed for declaration of title only on plot 1296 measuring .63 acres.

Defendant 1 contested the suit by filing written statement denying the contention made in the plaint. They contended that the suit is barred by law, barred by limitation, barred by principle of acquiescence and it is not maintainable in the present form and nature. He further stated that the lands of CS *Khatian* 207 originally belonged to 3 brothers Yad Ali, Khedmat Ali and Mughal. Yad Ali died leaving behind 2 sons Himmat Ali and Imam Ali. Khadmat Ali died leaving his son Saher Ali. Mughal Beldar, Shaher Ali and others sold out .63 acres of land of plot 1296 to Kujrat Ali Talukder through a kabala dated 20.01.1936. Kujrat Ali during his possession and enjoyment transferred the same to his son defendant 1 Taher Ali through a *heba-bil-awaz* dated 19.08.1953. Accordingly, SA *Khatian* 145 and RS *Khatian* 822 were prepared in his name. Defendant 1 came to learn on 20.07.2010 that in the deed dated 20.01.1936 plot 1293 was written wrongly in place of 1296 but in all the subsequent deeds plot number 1296 has been written correctly. The defendant then filed Title Suit 379 of 2010 in the Court of Joint District Judge, Court 2, Munshiganj and got a compromise decree on 19.01.2011 and accordingly plot number in the original deed has been corrected. Defendant 1 is in possession in the suit land for near about 55 years and has been enjoying it by growing crops therein. The plaintiffs have no title and possession in the suit land. Therefore, the suit would be liable to be dismissed.

The trial Court framed the following issues to adjudicate the matter in dispute-

1. Whether the suit is maintainable in its present form and nature?
2. Whether the suit is barred by limitation or not?
3. Whether the judgment and decree passed on 19.01.2011 is void, illegal and not binding upon the plaintiff or not?
4. Whether the plaintiff has the title over the suit land?
5. Whether the plaintiffs are entitled to get relief as prayed for?

In the trial, the plaintiffs examined 3 witnesses and produced their documents exhibits-1-4(Ka). On the contrary, defendant 1 examined 6 witnesses and produced their documents exhibits-Ka-Na(3). However, the Joint District Judge decreed the suit deciding all the material issues in favour of the plaintiffs, giving rise to this appeal by defendant 1.

Ms. Moriam Begum, learned Advocate for the appellant taking us through the materials on record submits that the trial Court failed to assess the evidence on record in its legal perspective and misdirected in its approach of the matter and decreed the suit. She then submits that defendant 1 got the suit land through a *heba-bil-awaz* from his father Kujrat Ali Talukder. His father purchased it from Mughal Beldar and others. Therefore, the suit in the present form without praying any consequential relief against those documents is not maintainable. She

refers the oral evidence of witnesses and submits that the witnesses of the plaintiffs' and defendant's proved possession of defendant 1 in the suit land. Therefore, the instant suit in the present form without any consequential relief of recovery of possession is not maintainable. She then refers to exhibit-Dha series and submits that the aforesaid objection cases under sections 30 and 31 of the State Acquisition and Tenancy Rules, 1955 (the Rules, 1955) proves that the plaintiffs had knowledge in 1976 that SA and RS records have been prepared in the name of defendant 1 but they instituted this suit in the year 2007 which is hopelessly barred under Article 120 of the Limitation Act. She then refers the rent receipts exhibits-'Da' and 'Na' series showing payment of rent in respect of the suit land and submits that the rent receipts are evidence of possession and be treated as collateral evidence of title in the suit land because possession follows title. The trial Court without going through the aforesaid legal position and factual aspects of the case erred in law in decreeing the suit which is required to be interfered with by this Court in appeal.

Mr. Minal Hossain, learned Advocate for respondents 1(a)-1(c) and 15-20 on the other hand opposes the appeal and supports the judgment and decree passed by the trial Court. He submits that in the suit the plaintiffs claimed title in the suit land by way of inheritance as gradual heirs of CS recorded tenants. SA and RS records have been prepared erroneously in the name of defendant 1. He emphasized his

submission on the decree passed in Title Suit 379 of 2010 through which defendant 1 got a compromise decree for correction of plot number in the deed of 1936. Since the plaintiffs are the gradual heirs of CS recorded tenants, the decree passed in the aforesaid suit in their absence cannot be treated as a valid decree. The trial Court rightly found that the aforesaid decree is collusive and not binding upon the plaintiffs. The suit for correction of the deed is hopelessly barred by limitation because it was filed after 75 years of the execution and registration of the deed. Mr. Hossain further submits that the witnesses of the plaintiffs' have been able to prove their possession in the suit land. Since the witnesses proved plaintiffs' possession in the suit land and preparation of RS and SA *Khatian* is found erroneous, the trial Court correctly decreed the suit. There is nothing to interfere with the judgment passed by the trial Court. The appeal, therefore, would be dismissed.

We have considered the submissions of both the sides and gone through the materials on record. It is found that the suit was for declaration of title in respect of the suit land measuring .63 acres of CS *Khatian* 207, SA and RS *Khatians* 145 and 822 respectively corresponding to CS plot 1296 and RS plot 1437. The plaintiffs further prayed for declaration that SA and RS *Khatians* prepared in the name of defendant 1 are erroneous. They also challenged the judgment and compromise decree passed in Title Suit 379 of 2010 in which plot

number in the deed was corrected as plot 1296 in place of 1293. In a suit for declaration of title with other prayers the plaintiffs are to prove their possession in the suit land. On scanning the documents and evidence of witnesses of the parties it is found that CS *Khatian* 207 consists of 2 plots 1296 and 1297. Plot 1296 is *nal* land and plot 1297 is homestead. Although at the time of filing of the suit the plaintiffs included plot 1297 in the schedule to the plaint but subsequently they amended the plaint and plot 1297 was deleted. In the record, we find that the lands of plot 1296 is *nal* which is admitted by the evidence of the parties.

In evidence PW1 Hazi Abdus Samad did not state that the plaintiffs are in possession of the suit land. PW 2 Taijuddin Sheikh in evidence although stated, “বাদী গন নালিশী জমি দখল করে।” But in cross-examination he stated, “আর. এস ১৪৩৭ দাগের জমিতে তাহের আলী ধনছা ও পাট লাগিয়েছে। আগে লাউ বুনেছে। তাহের আলী জোর পূর্বক লাগিয়েছে।। কুদরত আলী খরীদ সূত্রে মালিক হয়। তখন তাহের আলী মালিক হয়। আগে কুদরত আলী দখল করত।” PW 3 Ayub Ali Moral in evidence stated, “নালিশী জমি যার যার বাড়ি সেই সেই দখল করে।। নাল জমিতে ধনছা আছে।” In cross-examination he replied, “নাল জমি কুদরত আলী দখল করত। নালিশী জমিতে ধনচা ও পাট আছে। ধনচা ও পাট বুনেছে তাহের আলী।” The aforesaid plaintiffs’ witnesses thus admitted possession of Kujrat Ali, father of defendant 1 Taher Ali and defendant 1’s possession in the *nal* land of suit plot 1296. The witnesses of defendant 1 also proved his possession in the suit land. DW 1 Taher Ali

stated in cross-examination, “আমার অংশে আমি দখলে আছি।” DW2 Miraz Uddin Miah stated in evidence, “বিবাদী গন নালিশী জমি দখল করে।” DW 3 Motazzal Bepari stated in evidence, “বিবাদী গন নালিশী জমি দখল করে। আমি ছোট বেলা থেকে বিবাদী গনকে দখল করতে দেখি। ধনচা আছে নালিশী জমিতে।” DW 4 Mojibur Rahman stated in evidence “বিবাদীদের দখলে নালিশী জমি বাড়ী ও ধনচা আছে।” DW5 Abdul Kader Bapari stated in evidence, “নালিশী জমি বিবাদী গন দখল করে। ধনচা আছে বিবাদীদের।” In cross-examination he stated, “নালিশী জমির উত্তরে তাহেরের বাড়ী। । লাউ কুমরা আছে।” The aforesaid witnesses of defendant 1 were cross-examined by the plaintiffs but nothing has come out adverse as to the possession of defendant 1 in the suit land. In the oral evidence it is found that defendant 1 is in possession of the suit land. The documents SA and RS *Khatian* exhibits-2 and 3 as well as ‘Kha’ and ‘Ga’ and rent receipt exhibits- ‘Da’ and ‘Na’ series show payment of rent in respect of suit land by defendant 1. Defendant 1 proved that his father purchased suit land on 20.01.1936 through exhibit-‘Gha’ who transferred it to him through *heba-bil-ewaz* dated 19.08.1953 exhibit-‘Ta’. In view of the aforesaid evidence of possession, we are of the view that the suit in the present form without seeking any consequential relief of recovery of possession and seeking relief on those deeds is not maintainable.

It is further found that while SA and RS *Khatians* were prepared in the name of defendant 1, the plaintiffs filed objection case before the concerned authority under the provision of Rules 30 and 31 of Rules,

1955 in the year 1976 for correction of the record of rights. Defenant 1 stated in the aforesaid fact in the written statement and cross-examined PW 1 on this particular point wherein he stated, “আর. এস খতিয়ান সম্পর্কে আপত্তি দিয়াছি তবে কোন কাগজাদী দাখিল করিনাই। আপত্তি না মঞ্জুর হবার পর আপিল করিনাই। আমার মামা আপত্তি দেয়।” The objection case filed by the plaintiff was produced in evidence as exhibits-Dha-Dha(2) which proves that the plaintiffs filed objection case against the record of rights in the year 1976 but they instituted this suit in 2007, which is hopelessly barred under Article 120 of the Limitation Act.

Mr. Minal Hossain, learned Advocate for the respondents raised serious objection as to the legality of the decree passed in Title Suit 379 of 2010 in which defendant 1 got a compromise decree for correction of plot number in the deed of sale registered in the name of the Kujrat Ali Talukder, father of defendant 1 dated 20.01.1936 exhibit-Gha. He submits that the plaintiffs being the heirs of CS recorded tenants were necessary parties to the suit but the decree was obtained on compromise with third party behind their back which cannot be sustained in law. Ms. Moriam Begum, learned Advocate for the appellant finds it difficult to make any forceful submission on this point but submits that the subsequent deeds in the name of defendant 1 proves that it was an error on the part of the deed writer of writing plot 1293 in place of plot 1396 in the deed. The subsequent deeds prove that actually the land of plot 1296 was sold in the year 1936 to the father of defendant 1. We

have meticulously gone through the materials on record and submissions of the parties on this particular point. It appears that the land of CS *Khatian* 207 is the suit *khatian*. We have gone through CS *Khatians* 201 and 207 exhibits-Ka-Ka(1). It is found that plot 1296 is in CS *Khatian* 207. But plot 1293 is in CS *Khatian* 201. Therefore, the original owner of the land practically sold out the land of plot 1296 of CS *Khatian* 207 through deed dated 20.01.1936 exhibit-‘Gha’. The *ekrarnama* dated 20.01.1936 in respect of the same suit land exhibit-‘Cha’ also proves that the land of CS plot 1296 is in CS *Khatian* 207 which has been sold to the father of defendant 1. The *ekrarnama* dated 20.01.1936 exhibit-‘Cha’ and subsequent deed of *heba-bil-awaz* dated 19.08.1953 exhibit-Ta through which Kujrat Ali transferred the suit land to his son defendant 1 and all other subsequent deeds includes plot 1296 of CS *Khatian* 207. The corresponding SA and RS *Khatians* also prove that in the deed of 1936 CS plot 1296 would be the correct number. Therefore, it is found that although the decree passed in Title Suit 379 of 2010 was not as per law but inclusion of plot 1293 in CS *Khatian* 207 in the deed dated 20.01.1936 exhibit-‘Gha’ was an error on the part of the deed writer. Subsequently, the aforesaid deed has been acted upon by subsequent transfers in respect of plot 1296 of CS *Khatian* 207 correctly.

Defendant 1 proved his title and possession in the suit land through a series of documents. On the contrary the plaintiffs failed to

prove their title and possession in the suit land. We find that SA and RS records have been correctly prepared in the name of defendant 1. The trial Judge without assessing and sifting the evidence of witnesses both oral and documentary decreed the suit which cannot be sustained in law. Therefore, we find merit in this appeal.

Accordingly, the appeal is allowed. However, there will be no order as to costs. The judgment and decree passed by the trial Court is hereby set aside and consequently, the suit is dismissed.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.