

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

**First Appeal No. 418 of 2015**

**In the matter of:**

The United States Missionary Board represented  
by Mr. Reverend Tapan Kumar Borman

... Plaintiff-Appellant

-Versus-

Md. Abdus Salam (Shahjahan) and others

...Defendants-Respondents

Mr. Md. Aminul Islam, Advocate

...For the appellant

Mr. Md. Nazmul Huda with

Ms. Keya Sen, Advocates

....For the respondent no.2

**Heard on 11.12.2024**

**Judgment on 12.12.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

At the instance of the plaintiff in Other Class Suit No. 36 of 2013, this appeal is directed against the judgment and decree dated 13.07.2015 passed by the learned Joint District Judge, Second Court, Lalmonirhat dismissing the suit on contest against the defendant no. 2 and *ex parte* against the rest.

The salient facts in preferring the instant appeal are:

The present appellant as plaintiff filed the aforesaid suit seeking the following reliefs:

- ক) নালিশী সম্পত্তি বাবদ ২নং বিবাদী কর্তৃক ১ নং বিবাদী বরাবর গত ২-৫-১৩ ইং তারিখে সম্পাদিত এবং ২২১৩/১৩ নম্বরে ৭নং মোকাবেলা বিবাদীর অফিসে রেজিস্ট্রিকৃত দলিলখানি বে-আইনী, বেদাড়া, যোগসাজসী, তথাকী, প্রতারণামূলক এখতিয়ারবিহীন, আইনতঃ মূল্যহীন, প্রচলিত আইনের পরিপন্থি এবং বাদীপক্ষের উপর বাধ্যকর নহে প্রচারের ঘোষণায় এবং উক্ত দলিল খানি বাতিলের ডিক্রী দিতে;
- খ) উক্ত রায়ের কপি ৭ নং বিবাদী সাব রেজিস্ট্রারের কার্যালয়ে প্রেরণ করতঃ উক্ত দলিলের ভলিউম তথা রেজিস্ট্রারে বিজ্ঞ আদালতের রায় ও ডিক্রীর বিষয় নোট আকারে লিপিবদ্ধের আদেশ দিতে;
- গ) মোকদ্দমার যাবতীয় খরচার ডিক্রী দিতে;
- ঘ) আইন ও ইকুইটি মতে বাদী অপর যে কোন প্রকারে পরিবর্তিত, পরিবর্দ্ধিত, সংশোধিত ও সংযোজিত প্রতিকার পাইতে পারেন তাহারও ডিক্রী দিতে বিজ্ঞ ন্যায় আদালতের আজ্ঞা হয়।

The said suit was filed praying for cancellation of registered deed no. 2213/13 dated 02.05.2013 in respect of the suit land so have been mentioned in schedule-‘A’ to the plaint measuring an area of 6 decimals of land. In the plaint it is stated *inter alia* that the United States Missionary Board that is Global Mission of Church of God Ministries Anderson, Indiana, USA appointed, authorised and empowered the plaintiff to operate the administration and financial management of the Administrative Council of the Church of God Lalmonirhat, Bangladesh as Secretary- Treasurer for 03(three) years on 01.04.2000. Subsequently, on 19.04.2006 he was appointed Secretary-Treasurer for further 03(three) years. Thereafter, again he was appointed Secretary-Treasurer on 26.04.2011 by the Regional Coordinator Asia and Pacific region for Global Mission of Church of God Ministries, Anderson, Indiana, USA.

Since then he has been operating the Administration, Financial Management and supervising the assets and property of the Church of God. It is further stated that one Yakub Ali Sheikh sold out 1.42 acres of land under District-Lalmonirhat, Mouza-Khordasaptana, C.S Khatian No. 25 to the United States Missionary Board represented by R. H. Clerk on 23.02.1939 vide deed no. 892. Subsequently, the land was recorded in the name of the United States Missionary Board represented by R. H. Clerk under S.A. Khatian No. 44. On the other hand, defendant no.1 is a permanent resident of the area and defendant nos. 2-6 are the members and voters of the Church of God, Lalmonirhat. Defendant nos. 2-6 are the members of Church Council but they are not the members of Administrative Council of Global Mission of Church of God Ministries, Anderson, Indiana, USA. The tenure of the Church Council expired in 2011 so an *ad-hoc* committee was formed. The *ad-hoc* committee generally organises election, forms election commission and prepares the voter list. Accordingly, the committee declared the date of election on 17.02.2012. Defendant nos. 2 and 3 filed Other Class Suit No. 25 of 2012 before the Senior Assistant Judge, Sadar Court, Lalmonirhat, challenging the voter list and prayed for temporary injunction for staying the election. The Court granted an ad-interim injunction and as such the election has been stayed. The suit is still pending. Meantime, defendant nos. 2-6 fabricated resolution dated 08.03.2013 and 02.04.2013 and other documents showing an illegal 07(seven) members committee. The defendant no. 2 sold out the scheduled-‘A’ land to the plaintiff on 02.05.2013 by registered deed no. 2213 using the fabricated resolution dated 02.04.2013 violating the provision of the constitution and the bye-

laws of Church of God, Lalmonirhat. The defendant no. 1 disclosed that he had right and ownership in the land in question and then the plaintiff went to the concerned Registry office and came to know about the transfer of the scheduled-‘A’ land and was constrained to file the suit for the greater interest of the Church of God.

Defendant no. 2 entered appearance and contested the suit by filing written statement denying all material averments stating *inter alia* that a 09(nine) members committee was elected for 2005-2008. After the expiry of the tenure, a new committee was elected for 2008-2011 to operate the Church of God for the greater interest of the Christian religion. On 17.03.2011, the elected committee formed a three member committee led by defendant no. 2 for operating the organisation and graveyard as well as empowered him to purchase and sell the property. It was decided in the general meeting to sell 10 decimals of land for the welfare of underprivileged Christian families. The land in question was not used for personal interest. The plaintiff is nobody of the Church of God. There is no cause of action and hence the suit is liable to be dismissed.

In order to dispose of the suit, the learned Judge of the Trial Court framed as many as 04 (four) different issues. To support the case, the plaintiff examined as many as 02 (two) witnesses while the defendant no. 2 examined 04 (four) witnesses. The plaintiff and the defendant no. 2 also produced several documents which were also marked as exhibits.

Upon hearing the parties and on perusal of the pleadings and evidence, the learned Joint District Judge, Second Court, Lalmonirhat dismissed the suit on contest against the defendant no. 2 and *ex parte* against the rest.

Being aggrieved by and dissatisfied with the judgment and decree dated 13.07.2015 passed by the learned Joint District Judge, Second Court, Lalmonirhat in Other Class Suit No. 36 of 2013 the plaintiff as appellant preferred this appeal before this Court.

Mr. Md. Aminul Islam, the learned Advocate appearing for the appellant upon taking us to the impugned judgment and decree as well as the documents so appeared in the paper book at the very outset contends that the constitution and bye-laws of the organisation do not empower and authorise any person to sell out the property of the Church of God. But the defendants-respondent nos. 2-6 in collusion with the defendant-respondent no. 1 by creating some false and forged resolutions and documents transferred the suit properties to the defendant-respondent no. 1 by the impugned deed no. 2213 dated 02.05.2013.

He further contends that Mr. Reverend Tapan Kumar Borman, the plaintiff was appointed Secretary-Treasurer of the Administrative Council of the Church of God, Lalmonirhat as per Article No. III (Membership) of the bye-laws of the Administrative Council of the Church of God, Lalmonirhat by the United States Missionary Board (at present the Global Missions of Church of God Ministries Inc.) and as such he is the legal person to institute the suit, but the learned Judge of the trial Court without considering this aspect most illegally dismissed the suit on the ground of *locus standi* and as such the impugned judgment and decree passed by the trial Court is liable to be set aside.

Mr. Islam further contends that the tenure of the elected committee of the Church of God, Lalmonirhat expired in 2011 and thereafter an *ad-hoc* committee was formed to hold the election and there was an

injunction on the election at the time of selling out the suit property. The *ad-hoc* committee had no power to take any decision in respect of the suit property without the prior approval of the Global Missions of Church of God Ministries, Inc. (formerly the United States Missionary Board).

Learned counsel further contends that the plaintiff is authorised by the Global Mission of Church of God Ministries and the Global Mission of Church of God sent an authorisation letter exhibit-4. So, there is no bar to institute the suit by the plaintiff. In support of his contention, the learned Advocate referred to the case of *Anath Bandhu Guha & Sons Ltd. through its Attorney Md. Sirajul Huq Vs. Babu Sudhangshu Sheihar Halder*, reported in 42 DLR(AD)(1990)244. He finally submits that the impugned judgment and decree cannot be sustained in law and the appeal be allowed.

*Per contra*, Mr. Md. Nazmul Huda with Ms. Keya Sen, the learned Advocates appearing for respondent no. 2 oppose the contention so taken by the learned Advocate for the appellant and submit that the plaintiff has no *locus standi* to file the suit. The authorisation letter (Exhibit-4) is not a proper one and it was collected during the pendency of the suit.

He further contends that it appears from the constitution or bye-laws of the Church of God, Lalmonirhat that there is no bar to sell out the property of the Church of God.

Mr. Huda contends that a meeting was held on 01.03.2011 wherein it was unanimously decided that 10 decimals of land would be sold out for rehabilitation of 16 landless families and accordingly empowered defendant no. 2 to sell out the same. The defendant no. 2 sold out 06

decimals of land to the defendant no. 1 complying with the decision mentioned above and hence he finally prays for dismissing the appeal.

We have heard the learned counsels for both parties and perused the impugned judgment and decree, memorandum of appeal, evidence, as well as other materials on record.

It is admitted that 1.40 acres of land including the land in question was purchased in the name of the United States Missionary Board, represented by R. H. Clerk from C.S. recorded tenant namely Yakub Ali Sheikh on 23.02.1939 by registered deed no. 892. It appears from the S.A. record no. 44 (Exhibit-‘Ka’) that the land in question was recorded in the name of the United States Missionary Board, represented by R. H. Clerk, son of A. M. Hink. Exhibit-‘Kha’ shows that the land development tax was also paid in the name of the United States Missionary Board, represented by R. H. Clerk. So, it is our considered view that nobody is empowered to sell out the scheduled-‘A’ land without having the permission of the United States Missionary Board. The council or the committee have the right to oversee and operate the management of all the movable and immovable property of the Church of God, Lalmonirhat, but has no power to transfer the property. No person or committee gets the right to sell any property belonging to the church unless they are explicitly authorised by the proper authority.

It appears from the record that the tenure of the regular committee expired in 2011 and then an *ad-hoc* committee was formed for holding the election and there is a suit being Other Class Suit No. 25 of 2012, pending before the learned Senior Assistant Judge, Sadar Court, Lalmonirhat and

the Court granted ad-interim injunction whereby the election procedure has been stayed. When there was no regular committee then the decision to sell out the property of the Church of God, Lalmonirhat is questionable and suspicious.

It is declared in the impugned deed no. 2213 dated 02.05.2013 that the defendant no. 2 was the secretary of the Church of God, Lalmonirhat and he was empowered to sell the land in question but the defendant no. 3 in his cross-examination stated that নালিশী জমি সহ চার্চের মালিক ছিল চার্চ অব গড পক্ষে R.H. Clerk. ফ্রান্সিস বর্মেন সুবোধকে (Defendant no. 2) নালিশী জমি বিক্রয়ের একক কোন ক্ষমতা প্রদান করা হয় নাই। কথিত সাব কমিটিকে জমি বিক্রয় করতে হলে সাব কমিটির সকল সদস্যদের স্বাক্ষর লাগবে সত্য।

Defendant no. 2 in his cross-examination also conceded by stating that “ক্ষমতাপত্রে Missionary Board আমাকে জমি বিক্রীর ক্ষমতা দেয়নি সত্য”। He further admitted in cross-examination that “চার্চ অব গডের C.S, S.A খতিয়ান, খাজনার দাখিলা United Missionary Board এর নামে।” He went on to assert that “চার্চ কাউন্সিল এর মেয়াদ ২০১১ সালে শেষ হয়েছে। ঐ মেয়াদ শেষে এখন পর্যন্ত আর কোন চার্চ কাউন্সিল গঠন হয় নাই।”

In cross-examination defendant no. 2 conceded that “আমাদের গঠনতন্ত্রের বাইরে কাজ করার কোন ক্ষমতা নেই। উক্ত গঠনতন্ত্রে জমি বিক্রী করার ক্ষমতা প্রদান সম্পর্কে কিছু বলা নেই। কোন ধারাও নেই।”

It appears from the evidence of DW-4 where he deposed that বাদী মিশনে চাকুরী করে। বাদী মিশনের সেক্রেটারি ট্রেজারারের ট্রেজারী পদে চাকুরী করে। বিবাদী ফ্রান্সিস বর্মেন কোন চাকুরী করে না।

We have gone through the constitution of the Church of God, Lalmonirhat so supplied by the learned counsel for the appellant from



where we find that nothing has been enshrined therein regarding the sale of the properties of the Church of God.

Learned counsel appearing for the respondent no. 2 on the other hand, contends that the authorisation letter marked as Exhibit-4 is not proper and not duly stamped and it was collected during the pendency of the suit and there is no attestation nor it was notarized by the proper authority and hence the plaintiff cannot file the suit through such defective authorisation letter. In reply to such contention, the learned counsel for the plaintiff submits that the defendant no. 4 asserted বাদী মিশনে চাকুরী করে। বাদী মিশনের সেক্রেটারি-ট্রেজারারের ট্রেজারী পদে চাকুরী করে। In fact, authorisation letter was not required. Rather, no question was raised at the time of producing the authorisations letter marked as Exhibit-4. So, at this stage, the defendant-respondent cannot raise such objection. Moreover, it is evident from Exhibit-4 that one Mr. Rev. Donald Armstrong, the Regional Coordinator, Asia Pacific Church of God Region, Global Mission; Church of God, Thailand certified and recognized the plaintiff Rev. Tapan Kumar Borman empowering him to act in all the matters related to former the United Missionary Board of Church of God properties and finances of Bangladesh as Secretary-Treasurer of Administrative Council of the Church of God in Lalmonirhat, Bangladesh and hold this position since April 1, 2000 and the defendant no. 1 who purchased the land in question did not appear and contest the suit. On the other hand, defendant nos. 2-6 contested the suit but the defendant no. 2 only filed written statement on 10.11.2013. In view of the aforesaid discussion, it cannot be said that the suit is not maintainable due to delay of filing the authorisation letter. In this regard, it has already been decided

in the case of *Anath Bandhu Guha & Sons Ltd. through its Attorney Md. Sirajul Huq Vs. Babu Sudhangshu Sheihar Halder*, reported in 42 DLR(AD)(1990)244, that:

“In any view of the matter if a plaint is not properly signed or verified or presented the Court has always got the discretion to allow the plaintiff to remedy the defect at a later stage, on the view that the defects are of technical nature relating to matters of procedure curable at any time.”

Given the above facts, circumstances and *ratio*, we do not find any iota of substance in the impugned judgment and decree which is liable to be set aside. Rather, we find merit in the appeal.

Accordingly, the appeal is allowed, however without any order as to costs in this appeal.

The judgment and decree dated 13.07.2015 passed by the learned Joint District Judge, Second Court, Lalmonirhat in Other Class Suit No. 36 of 2023 is thus set aside and the suit is decreed.

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

**Md. Mozibur Rahman Miah, J.**

I agree.