

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice
Mr. Justice M. Enayetur Rahim
Mr. Justice Jahangir Hossain

CIVIL APPEAL NO.187 OF 2015.

(From the judgment and order dated 24.01.2010 passed by the High Court Division in Civil Revision No.4554 of 2008)

Monoranjan Pal being dead his heirs Appellants.
1(a) Jagonath Pal and others :

=Versus=

The Government of Bangladesh,
represented by the Deputy Commissioner, Respondents.
Narayangonj and others :

For the appellants : Mr. Nozrul Islam Chowdhury,
Senior Advocate with N.K.
Saha, Senior Advocate,
instructed by Mr. Syed
Mahbubar Rahman , Advocate-
on-Record.

For the Respondent Nos.1-4: Mr. Amit Das Gupta, Deputy
Attorney General, with Mr.
Mohammad Saiful Alam,
Assistant Attorney General,
instructed by Mrs. Mahmuda
Begum, Advocate -on-Record.

Respondent Nos.5-6: Not represented.

Date of hearing : 07.03.2023, 14.03.2023 & 15.03.2023

Date of judgment : 28-03-2023

J U D G M E N T

Hasan Foez Siddique, C.J: The appellants filed Title Suit No.21 of 2000 in the Second Court of Joint District Judge, Narayangonj for declaration of title in respect of the suit described in the schedule to the plaint

stating, inter alia, that one Chandra Mohon Pal and Modon Mohon Pal were the C.S. recorded tenants having 0.55 acre of land of C.S. plot No.12 appertaining to C.S. khatian No.17 of Mouza Alinagar under Police Station-Fatullah, District Narayangonj. Chandra Mohon Pal died leaving behind one daughter, plaintiff No.1 who inherited 8 annas shares of the suit land. Modon Mohon Pal also died leaving behind his daughter Sattya Bala Pal who married with one Ramani Mohon Pal. Sattya Bala Pal died leaving behind 6 sons including plaintiff Nos.2 and 3 who inherited the remaining portion of the suit property. During S.A. operation their names had been duly recorded in S.A. khatian. One of the sons of Sattya Bala Pal, namely, Chitta Ranjan Pal died and whereabouts of 3 other sons were not known. The plaintiff Nos.2-3 had been owning and possessing the respective shares of their brothers including their own shares of the suit property. Suit land was residential plot of the plaintiffs which had been let out to other persons on rent for bricks and stones business. They had paid rents and taxes to the government upto 1392 B.S. After the war of liberation, the plaintiffs have been residing

at their present addresses in Jamalpur and Narayangonj. Due to absence of the plaintiffs, the suit land had been wrongly recorded in R.S. khatian No.4 in the name of the government. The government mutated the suit land in the name of M/S. Elahi Buksh Cold Storage and Company Limited (in short, the Company) represented by the Ministry of Commerce, the Government of Bangladesh in Mutation Case No.4884 of 1991. Cause of action of the suit arose on 02.01.2000 when the plaintiffs went to the concerned office for payment of rent and came to know about the said wrong record of right. So, they instituted the present suit.

The defendant Nos.1-3 and 5-6 contested the suit by filing separate sets of written statements. The defendant Nos.1-3 contended that the suit land being abandoned property had been recorded in R.S. khatian No.4 during the last revisional survey operation and was amalgamated with other plots of Elahi Buksh Cold Storage & Company Limited measuring 1.92 acres of land in the name of the Ministry of Commerce, Government of Bangladesh in Miscellaneous Case No.7/85 (AP) dated 05.12.1985. The Company had paid land

development Tax upto 1405 B.S. The plaintiffs, forging some documents, instituted the present suit with a view to grab the government property.

The contentions of the defendant Nos.5 and 6 in short, are that the suit land measuring 55 decimals were recorded in the names of the plaintiffs and others in S.A. khatian No.21, S.A. Plot No.12. Plaintiff No.1, Taru Bala Pal sold .14 acre of land from suit plot to the defendant Nos.5 and 6, the Company by registered sale deed No.5323 dated 29.09.62. Rukkoni Bala and others sold .16 acre of land of suit plot by registered sale deed No.6807 dated 06.12.62 to the company. Mohon Razbonshi sold out .12 acre of land by registered deed No.731 dated 25.01.1963 to the Company. Aeson Company Limited, by deed No.4401 dated 12.06.1999, exchanged 14 decimals of land with the Company. The defendant no.5, while enjoying the possession of the suit land, established a cold storage therein. During the war of liberation the original owners of the company left the country. Accordingly, vide SET Miscellaneous Case No.7/85(AP) dated 05.12.85 the suit properties had been declared as

abandoned property and it was ultimately vested in the government. Its management had been controlled by the Board of management duly constituted by Ministry of Commerce. During R.S. survey the suit property had been duly recorded in the name of the Government of Bangladesh represented by the Ministry of Commerce. The said khatian had been amalgamated with other properties of the company measuring 1.92 acres of land and was finally published in R.S. khatian No.4. The plaintiff never possessed the suit land and that the instant suit had been instituted by the plaintiffs in order to grab the government property with some fictitious documents. The suit was liable to be dismissed with costs.

The trial Court decreed the suit. The Government preferred appeal and the appellate Court dismissed the appeal thereby affirmed the judgment and decree of the trial Court. Then the Government filed Civil Revision No. 4554 of 2008 in the High Court Division and obtained Rule. The High Court Division, by the impugned judgment and order dated 24.01.2010, made the said Rule absolute. Thus, the plaintiffs have preferred this appeal upon getting leave.

Mr. Nozrul Islam Chowdhury, learned Senior Counsel appearing for the appellants, submits that the High Court Division has committed an error of law in dismissing the suit reversing the concurrent findings of facts holding that the instant suit was not maintainable. He further submits that all the three Courts below concurrently found the plaintiffs' possession in the suit land and that the plaintiffs have been able to prove their title in the suit land, the High Court Division most illegally dismissed the suit inasmuch as the plaintiffs acquired valid title in the suit land by way of inheritance .

Mr. Amit Das Gupta, learned Deputy Attorney General appearing for the respondent Government, submits that the High Court Division upon proper appreciation of the materials on record, held that the instant suit was not maintainable. He submits that the plaintiffs have failed to prove their title and possession in the entire suit land, the High Court Division rightly dismissed the suit.

Admittedly, the suit land originally belonged to Chandra Mohon Pal and Madon Mohon Pal to the extent of 8 annas share each.

Chandra Mohon Pal died leaving only daughter, Taru Bala Pal, the plaintiff No.1. On the other hand, Modon Mohon Pal died leaving daughter Sattya Bala Pal. Sattya Bala Pal died leaving 6(six) sons, namely, Chitta Ranjan Pal, Monoranjan Pal, Shishu Ranjan Pal, Khushi Ranjan Pal, Nidhon Ranjan Pal and Aurun Ranjan Pal. Khushi Ranjan Pal, Nidon Ranjan and Aurun Ranjan Pal were untraced since 1971 and their interest was ultimately devolved to their brothers Monoronjan Pal and Shishu Ranjan Pal, the plaintiff No.2 and 3. S.A. record-of-rights was prepared in their names.

It was the case of the contesting defendants that Taru Bala and others transferred .14 acre of land on 29.09.1962, Rukkhini Bala and others transferred their .16 acre of land on 06.12.1962 and Mohon Rajbonshi transferred .12 acre of land on 25.01.1963 to M/S. Elahi Boksh and Company Limited. From the materials on record, it appears that the plaintiffs are the successive heirs of C.S. recorded tenants and their names were duly recorded in S.A. khatian. The contesting defendants relied upon 3(three) kabala deeds. Of them, kabala deed dated 06.12.1962 in respect

of .16 acre of land was executed by Rukkhini Bala and others and kabala deed dated 25.01.1963 in respect of .12 acre of land was executed by Mohon Rajbongshi. The defendants hopelessly failed to prove the source of title of Rukkhini Bala and Mohon Rajbongshi. In absence of any proof of source of title of the executants of those deeds, it is difficult to hold that the defendants had acquired any title on the basis of deeds dated 06.12.1962 and 25.01.1963. The learned Advocate appearing for the respondents also failed to satisfy us as to the source of their title. In such view of the matter, it is difficult to hold that by those deeds, the contesting defendants have acquired any title in the suit land. In such circumstances, we have no hesitation to hold that the plaintiffs' title in the suit land remained undisturbed. The Court of facts below concurrently disbelieved the execution and registration of the said deeds.

All the Courts below concurrently found the plaintiff's possession in the suit land. It is relevant here to state the finding of the High Court Division as to possession of the suit land. It held, "as to possession of the

plaintiffs opposite parties the findings of the trial Court as well as the appellate Court being passed on evidence on detail discussion I found no reason to interfere with."

It is settled principle that possession may prima-facie raise a presumption of title. If at any time a person with title was in possession of the property, the law allows the presumption that such possession was in continuation of the title vested in him. The accepted proposition law is that possession follows title. Presumption of possession over an open land always is deemed to be that of the owner unless it is proved that he is a trespasser. In the eye of law an owner would be deemed to be in possession of a property so long as there is no intrusion.

Considering the facts and circumstances, we are of the view that the High Court Division committed an error of law in not holding that the plaintiffs have been able to prove their title and possession in the suit land.

Accordingly, we find the substance in this appeal.

Thus, the appeal is allowed. The judgment and order dated 24.01.2010 passed by the High

Court Division in Civil Revision No.4554 of
2008 is hereby set aside.

C.J.

J.

J.

The 28th March, 2023
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