

Bench:

**Mr. Justice Bhishmadev Chakraborty**

And

**Mr. Justice Md. Akhtaruzzaman**

First Appeal No. 125 of 2020

Government of the People's Republic of Bangladesh  
and others

.....defendant-appellants

-Versus-

Imam Uddin and others

.....plaintiffs- respondents

Ms. Rahima Khatun, Deputy Attorney General with

Mr. Md. Ruhul Amin and

Ms. Farida Pervin Flora, Assistant Attorney Generals

.....for the defendant-appellants

Mr. Md. Delwar Hossain with

Mr. A.Z.M. Fariduzaman, Advocates

..... for respondent Nos. 1-11.

Heard on: 25.01.2024

Judgment on: 11.02.2024.

**Md. Akhtaruzzaman, J.**

This first appeal under section 96 of the Code of Civil Procedure (in short, the Code) is directed against the judgment and decree dated 04.11.2018 and 11.11.2018 respectively passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Gazipur in Title Suit No. 203 of 2013 decreeing the suit on contest.

Facts relevant for disposal of the instant appeal, in short, are that the respondents being plaintiffs filed Title Suit No. 203 of 2013 before the learned Joint District Judge, 2<sup>nd</sup> Court, Gazipur praying for declaration of title in the suit land duly described in the schedule of the plaint contending, *inter alia*, that the suit land of Mouza Boro Deura, Police Station-Tongi under District-Gazipur appertaining to CS khatian No.  $\frac{B}{339}$ , SA khatian No.1 (amended 551), CS and SA plot No. 66, RS khatian No. 22, RS plot No.85 with an area of 1.03 acres of land originally belonged to Zaminder

Kumar Rabindra Narayan. After the death of the Zaminder it was vested to Bhawal Court of Wards wherefrom the predecessors-in-interest of the plaintiffs namely, Akmal Khan, Ahammad Khan and Hekmat Khan upon paying salami obtained possession of the land and CS Khatian No.  $\frac{B}{339}$  was accordingly prepared in their names. They paid rents of the land upto 1361 BS. During SA operation, the land was wrongly recorded as khas property and, as such, they failed to realize rent of the same. Akmal Khan died leaving behind 2(two) sons, namely, Abdul Hamid Khan and Sobhan Khan. Thereafter, Ahmed Ali Khan died leaving behind 4(four) sons, namely, Amin Uddin Khan, Iman Ali Khan, Aman Uddin Khan and Saman Uddin Khan. During RS operation, RS khatian No. 22 in respect of disputed property was prepared in the names of Hekmat Khan @ Hekom Khan, Amin Uddin Khan, Iman Ali Khan, Aman Uddin Khan, Saman Uddin Khan, Abdul Hamid Khan and Sobhan Khan. Subsequently, on 25.01.1975 Sobhan Khan and Abdul Hamid Khan vide kabala deed No. 1242 and Hekmat Ali Khan vide registered deed No. 2945 dated 13.03.1969 transferred their respective shares of RS plot No. 66 in favour of Md. Amin Uddin, Md. Iman Uddin, Md. Aman Uddin and Md. Saman Uddin. Thereafter, by a registered partition deed No. 5073 dated 12.11.1984 Iman Uddin got 65.50 decimals and Amin Uddin Khan obtained 37.50 decimals of land. Then Md. Amin Uddin gifted the said 37.50 decimals of land to his 2(two) sons, namely, Md. Zumman and Md. Rafiqul Hasan vide Hiba-Bil-Ewaz deed No. 5228 dated 09.10.1994. The predecessors-in-interest of the plaintiffs Amin Uddin Khan and others went to local Tahasil office for paying rents of the disputed property. The Tahasilder refused to accept the

tax disclosing that the SA khatian of the land was prepared in the name of the government against which they filed Misc. Case No. 16B/77-78 before the ADC (Rev.), Dhaka, Gazipur. This case was disposed of on 27.10.1977. Being failed to correct the volume of SA record on the basis of order passed in the above miscellaneous case, they on 25.07.2011 again filed Misc. Case No. 57 of 2011 before the ADC (Rev.) Gazipur which was disposed of on 18.03.2013. The ADC (Rev.) advised the plaintiffs to seek redress before the competent civil Court. The erroneous SA khatian had clouded the title of the plaintiffs and, as such, they filed the instant suit.

Defendant Nos. 1-3, the government, contested the suit by filing a written statement contending that the suit land is the property of the government. They have been possessing the land for more than 60 years. Plaintiffs have no title and possession in it and filed the suit only to grab the government property which is liable to be dismissed with cost.

Defendant Nos. 5-15 filed a joint written statement but finally did not contest the suit.

In order to prove the case, the plaintiffs examined 3(three) witness and submitted some documents which have been marked as Exhibit Nos. 1-8. On the other hand, the contesting defendant Nos. 1-3 examined only 1(one) witness. The submitted documents of this side have been marked as Exhibit Nos. 'Ka'-'Kha'.

The learned Joint District Judge upon considering the oral as well as documentary evidence decreed the suit vide the judgment and decree mentioned above.

Being aggrieved by and dissatisfied with the judgment and decree passed by the trial Court the government as appellant preferred this appeal contending, amongst others, that the trial Court has fully misconceived the case of the contesting defendants and failed to draw reasonable inference from the facts placed before her in deciding the disputed issues and thereby erred in law.

Ms. Rahima Khatun, learned Deputy Attorney General with Ms. Farida Pervin Flora, learned Assistant Attorney General appearing for the government submits that the trial Court has failed to appreciate the worth of evidence lead by the respective parties and as such, came to an erroneous decision. She further submits that the plaintiffs have measurably failed to prove their chain of title in the suit land but the trial Court on wrong observations decreed the suit which is not at all tenable in the eye of law. The learned Deputy Attorney General also contends that as per contention of the plaint the predecessor-in-interest of the plaintiffs obtained the suit land from the Zaminder by way of pattan but the copy of the said pattan was not produced before the trial Court and, as such, they have failed to establish their title in the disputed land. Ms. Khatun refers to the case of *Chairman, Sherpur Paurashava v. Jahangir Hossain Chowdhury*, 57 DLR (AD) 120 and the case of *Sova Rani Guha alias Sova Rani Gupta v. Abdul Awal Mia and others*, 14 BLD (AD) 257 and submits that admittedly the suit land is a tank in nature and under section 20 of the State Acquisition and Tenancy Act, 1950 (in short, Act 1950) the suit land is non-retainable land of the Zamindars which was eventually vested to the government and the SA khatian No. 1 was correctly prepared

as khas land of the government. The learned Deputy Attorney General finally submits that in order to prove their case, the plaintiffs have submitted some of the documents without producing the original copy thereof which under section 65 of the Evidence Act are not at all considerable by the Court but the trial Court falling into error of law has considered the same and, as such, the impugned judgment and decree is liable to be set aside.

On the flip side, Mr. Md. Delowar Hossain with Mr. A.Z.M. Fariduzaman, learned Advocates appearing on behalf of plaintiff-respondent Nos. 1-11 submits that the learned Joint District Judge on a meticulous finding of facts as well as on scrutiny of exhibited documents satisfied that the plaintiffs have able to prove their title and possession over the disputed property and correctly decreed the suit. He refers to the cases of *Sree Sree Ananta Dev Chakra Bigrah & others v. Bangladesh & others*, 35 DLR 301; *Chairman, Sherpur Paurashava v. Jahangir Hossain Chowdhury*, 57 DLR (AD) 120; *Abdul Quddus v. Bangladesh and others*, 72 DLR 587; *Osimuddin v. Bangladesh and others*, 1 BLC 375 and *Bangladesh v. Askar Ali*, BCR HCD 1988 179 and submits that as per section 20(2)(b) and (2a) of the Act, 1950 the disputed tank is not non-retainable land and for the reason it was correctly given pattan to the predecessors-in-interest of the plaintiffs. Mr. Hossain further submits that admittedly CS khatian No.  $\frac{B}{339}$  was prepared in the name of the predecessors of the plaintiffs and they obtained the pattannama and paid rents to the Zaminder as well as to the government. The learned Advocate goes to say that SA khatian No.1 was wrongly prepared in the name of the

government and accordingly Miscellaneous Case No.16B/77-78 was filed before the ADC (Rev.) Dhaka, Gazipur who directed the concerned authority to receive the rents of the land and then the predecessors-in-interest of the plaintiffs had paid the rents of the land upto 1985. Mr. Hossain also submits that once the record of right was corrected and government accepted rent from the predecessors of the plaintiffs, in that case plaintiffs have no obligation to prove their chain of title. According to him, the learned Joint District Judge on proper assessment of the evidence on record decreed the suit which is not at all interferable by this Court.

We have heard the submissions advanced by the learned Deputy Attorney General appearing for the defendant-appellants as well as by the learned Advocate of the plaintiff-respondents, perused the impugned judgment and decree along with other connected materials available in the record and also considered the facts and circumstances of the case explicitly.

With a view to arrive at a correct decision in the instant appeal, we are now required to scrutinize and weigh the relevant witnesses together with the surrounding facts and circumstances of the case.

P.W.1 Md. Zummon Khan is plaintiff No. 2 of the case. In evidence he gives out that the suit land belonged to the Court of Wards. He filed Bhawal CS khatian No.  $\frac{B}{339}$  (Exhibit No.1). According to him, Akmal Khan and others obtained disputed 103 decimals of land from the Seresta of Bhawal Estate upon paying salami and since they were in possession and accordingly khatian No.  $\frac{B}{339}$  was prepared. Akmal Khan died leaving

behind 2(two) sons, namely, Abdul Hamid Khan and Sobhan Khan. Ahmed Ali Khan died leaving behind 4(four) sons, namely, Amin Uddin, Iman Ali, Aman Uddin and Saman Uddin. RS khatian No.22 was prepared in the name of Bhawal CS khatian named tenant Hekmat Khan along with 6(six) others. He submitted the said khatian (Exhibit No. 2). Sobhan Khan and others on 25.01.1975 vide kabala deed No. 1242 and Hakmat Ali on 13.03.1969 vide deed No. 2945 transferred their property in favour of Amin Uddin and others. He filed certified copy of deed No. 1242 and the original copy of deed No. 2345 (Exhibit No. 3 series). In this way Aman Uddin and his brother obtained the land and on 12.11.1984 vide partition deed No. 5073 transferred 65.50 decimals of land in favour of Iman Uddin and 37.50 decimals of land in favour of Md. Amin Uddin. This witness filed certified copy of partition deed (Exhibit No. 4). On 09.10.1994 Md. Amin Uddin gifted 9.50 decimals of land vide Hiba-bil-ewaz deed No. 5228 in favour of his son Zumman and 28 decimals of land in favour of his other son Md. Rafiqul Hasan. P.W.1 submits certified copy of this gift deed (Exhibit No. 5). P.W.1 in examination-in-chief further discloses that their predecessors-in-interest went to pay the rents but came to know that SA khatian No.1 was prepared in the name of the government and the concerned authority refused to receive rent. Then Amin Uddin Khan and others filed Misc. Case No. 16B/77-78 before the ADC (Rev), Dhaka. He filed certified copy of the order passed in the said miscellaneous case (Exhibit No. 6). In the judgment of the said miscellaneous case it was observed that the SA khatian No. 1 was wrongly prepared. A dispute case being No. 26/68 was filed against RS khatian and in the judgment of this

dispute case it was observed that the SA khatian was erroneously prepared in the name of the government. P.W.1 in his further testimony divulges that on 25.07.2011 they went to pay rents but the ADC (Rev.) Gazipur refused to receive it. Accordingly, they filed Misc. Case No. 57 of 2011 which was disposed of on 18.03.2013. He filed certified copy of the petition as well as the orders of the said miscellaneous case (Exhibit No. 7 series). In the evidence P.W.1 further states that the disputed land is a pond in nature. It is not possessed by the government. He submits 2(two) copies of rent receipts (Exhibit No. 8 series).

In reply to cross-examination done by the government P.W.1 says that he could not say how many plots are included in CS khatian No.  $\frac{B}{339}$ . He could not say SA khatian number of the case land. He denied the suggestion that the suit land is being possessed by the government.

Defendant Nos. 5-15 though filed written statement but they did not cross-examine P.W.1 inspite of their presence on the day of recording evidence of this witness.

In his testimony P.W.2 Haji Md. Shahjahan states that the suit land is a pond which is possessed by the plaintiffs and not by the government. In cross-examination he denied the suggestions that the suit land is possessed by the government or that it is not possessed by the plaintiffs.

P.W.3 Md. Malik is another witness of possession and in his evidence he says that the disputed pond is possessed by the plaintiffs. In cross-examination he denied the suggestions that the disputed land is government owned property or that it is possessed by the government or that it is not possessed by the plaintiffs.



On the other hand, Abdul Mannan, an employee of Tongi Municipal Land Office deposed as D.W.1. In evidence he states that the suit land is being possessed by the government for more than 60 years. It is never possessed by the plaintiffs. The suit land is possessed by the government on behalf of the people of the locality. He submits that the certified copy of SA khatian No.1 (Exhibit No. 'kha').

He was cross-examined by the plaintiffs and then says that the suit land was the land of Bhawal Zamindars. He denied the suggestions that CS khatian No.  $\frac{B}{339}$  was correctly prepared in the names of the predecessors of the plaintiffs. According to him, since the said khatian was baseless as such they did not take any action against it. He further says that it is not within his knowledge whether the ADC (Rev.), Dhaka in Misc. Case No. 16B/77-78 opined that disputed land is not the government property and directed to accept rents of the land. In cross-examination he also states that it is not within his knowledge whether Tahsilder filed his report in respect of possession of the plaintiffs in the suit land. He admits that the government did not take any steps regarding RS record. D.W.1 denied the defence suggestions that RS khatian No.22 was correctly prepared or that the land in dispute is not possessed by the government or that the said land is exclusively possessed by the plaintiffs since CS khatian.

These are all about the evidence that have been adduced by the respective parties in a bid to prove their cases.

In deciding Title Suit No.203 of 2013 the trial Court framed 6(six) issues. Upon considering the evidence on record, the learned Joint District

Judge concluded that the plaintiffs have able to prove their title and possession over the suit land and accordingly decreed the suit.

Admittedly, the disputed land is pond in nature. It is the definite case of the plaintiffs that their predecessors-in-interest Akmal Khan and others obtained the land from Bhawal Court of Wards and paid rents regularly. In paragraph 2 of the plaint they gave description of obtaining the property from Bhawal Court of Wards. The learned Advocate of the plaintiff-respondents submits that they obtained the property by way of pattan upon paying salami and since then they have been possessing the land. In the said paragraph the plaintiffs claimed that they paid rents of the land upto 1361 BS. at the rate of 3.31 paisa per anum but the matter of getting pattan has not been mentioned therein. The learned Advocate also submits that CS khatian No.  $\frac{B}{339}$  of the property was correctly prepared in the names of Akmal Khan, Ahmed Khan and Hekmat Khan but on perusal of Exhibit No. 1 it appears that it is not the certified copy of the said CS khatian. The plaintiffs treated it as Bhawal CS khatian No.  $\frac{B}{339}$ . The main contention of the plaintiffs are that Akmal Khan and others obtained the property from the Bhawal Court of Wards by way of Pattan and accordingly they paid rants of the land upto 1361 BS. But on perusal of record it is evident that the plaintiffs have measurably failed to submit any pattannama or rent receipts which ultimately proved that they have no pattannama or rent receipt with them for proving their title in the disputed property.

For proper appreciation of the case of the plaintiffs, the contention laid down in paragraph 2 of the plaint is reproduced below in verbatim:

“যেহেতু নালিশী নিম্ন তফসিল বর্ণিত সম্পত্তির মূল মালিক ও ভোগ দখলকার ছিলেন জমিদার কুমার রবীন্দ্র নারায়ন রায় ও তাহার ওয়ারিশগণ জমিদারী পক্ষে ভাওয়াল কোর্ট অব ওয়ার্ডস উক্ত ভাওয়াল কোর্ট অব ওয়ার্ডস এর নিকট আকমল খান, আহাম্মদ খান ও হেকমত খান নালিশী নিম্ন তফসিল বর্ণিত ১ ষোল আনা ১০৩ শতাংশ সম্পত্তির বিষয়ে নিয়মিত খাজনাদি প্রদানে বাস্তব স্বত্ব দখলকার নিয়ত থাকাবস্থায় উক্ত আকমল খান, আহাম্মদ খান, হেকমত খানের নাম ভাওয়াল বি/৩৩৯ নং পর্চা খতিয়ানে লিপিবদ্ধ হয় এবং তাহারা জমিদারী সেরেস্তায় ৩/৩১ পয়সা হারে ১৩৬১ বাংলা সন পর্যন্ত খাজনা প্রদানপূর্বক ভোগ দখলে নিয়ত থাকেন। গত এস.এ জরিপকালে নালিশী ভূমি নিতান্তই ভুলক্রমে জমিদারী সেরেস্তায় যাইয়া খাস খতিয়ানে লিপিবদ্ধ হইলে তৎপরবর্তী সময়ে বর্ণিত আকমল খান গং গভর্নেন্ট একোয়ার ভাওয়াল এস্টেট খাজনা পরিশোধ করিতে পারে নাই।”

It appears from paragraph 2 of the plaint that admittedly the suit land was recorded as khas property in the SA Khatian and for that reason plaintiffs have failed to pay taxes. But subsequently in paragraph 3 of the plaint they claimed that RS khatian No. 22 of the said land was prepared in the names of Hekmot Khan and others, the predecessors-in-interest of the plaintiffs. On consideration of the contents of the plaint and the documents submitted by the plaintiffs it appears to us that since the plaintiffs have failed to submit the pattannama and rent receipts of paying rents upto 1361 B.S and since the SA record has been prepared in the name of government, in that circumstances without making correction of SA record, the subsequent transfers made in favour of the plaintiffs have no legal value and those can be treated as colourable transfers.

In the plaint the plaintiffs asserted that they had filed Misc. Case No. 16B/77-88 against erroneous preparation of SA khatian before the ADC (Rev.), Dhaka-Gazipur. It is within our judicial notice that in the year 1977-78 Gazipur was a subdivision under Dhaka district and no ADC was posted in the said subdivision. But it is not known to us how the plaintiffs filed the above mentioned miscellaneous case before the ADC (Rev.), Dhaka-Gazipur? In this respect P.W.1 in his evidence says that Amin

Uddin and others filed Misc. Case No. 16B/77-78 before the ADC (Rev), Dhaka. He did not state that the case was filed before the ADC (Rev.), Dhaka-Gazipur. They filed the certified copy of the ordersheet of Misc. Case No. 16B/77-78 (Exhibit No. 6) which does not indicates that the miscellaneous case was filed before the ADC (Rev.), Dhaka-Gazipur.

The relevant paragraph of the plaint is reproduced below in verbatim:

“উক্তরূপে বাদীগণের পূর্ববর্তী আমিন উদ্দিন খান গং তাদের দখলীয় নালিশী নিম্ন তফসিল বর্ণিত সম্পত্তি শান্তিপূর্ণভাবে ভোগ দখলে থাকাবস্থায় তাহাদের পূর্ববর্তীগণের নামীয় পূর্বজোতে খাজনাদী পরিশোধের লক্ষ্যে স্থানীয় তহশিল অফিসে যোগাযোগ করিলে সংশ্লিষ্ট তহশিলদার সাহেব তাহাদেরকে জানান যে, অন্যান্য সম্পত্তির সহিত তাহাদের সাবেক ৬৬নং দাগের সম্পত্তি এস.এ ১নং খতিয়ানের অন্তর্ভুক্ত হইয়া সরকারী সম্পত্তি হিসাবে রহিয়াছে বিধায় উক্ত সম্পত্তির খাজনাদী গ্রহণ করা যাইবে না। বাদীগণের পূর্ববর্তী আমিন উদ্দিন খান গং উক্ত বিষয়ে সংশ্লিষ্ট তহশিলদারের নিকট হইতে উক্তরূপ বিষয় শুন্য পর বিজ্ঞ ADC (Rev.) ঢাকা-গাজীপুর আদালতে বিবিধ মোঃ নং ১৬বি/৭৭-৭৮ দাখিল করেন। উক্ত নং বিবিধ মোকদ্দমায় যথারীতি নোটিশ জারী হয় এবং টঙ্গী ভূমি অফিসের সহকারী তহশিলদার উপস্থিত হইয়া অত্র দরখাস্তকারীগণের দাবী স্বীকার করেন, যাহা তৎকালীন এ.ডি.সি রেভিনিউ অফিসার ঢাকা উক্ত বিবিধ মোকদ্দমায় বিগত ২৭/১০/১৯৭৭ইং তারিখে ৪নং আদেশে বিস্তারিতভাবে উল্লেখ করিয়াছেন।”

From the above it appears that SA khatian in respect of disputed plot No. 66 was prepared in the name of the government and, as such, the predecessors-in-interest of the plaintiffs filed Miscellaneous Case No. 16B/77-78 before the ADC (Rev.) Dhaka-Gazipur. We could not understand how a miscellaneous case was filed before the ADC (Rev), Dhaka and Gazipur at the same time?

It further appears from Exhibit No. 6 that the orders in Misc. Case No. 16B/77-78 were passed by *A. Khaleque, Revenue Administrator*. But the plaintiffs in paragraph 6 of their plaint mentioned that they filed the miscellaneous case before the ADC (Rev.), Dhaka, Gazipur which creates

doubt in respect of genuineness of Exhibit No. 6. Since independence of Bangladesh there exists no such posts, like *Revenue Administrator* in the organogram of district administration.

On perusal of Exhibit No. 6 it is further evident that the certified copies of the orders of said Revenue Administrator were issued by the Circle Officer (Rev.), Joydevpur on 05.11.1977 but at the backside of that certified copy a round seal used as “থানা রেভিনিউ অফিসার জয়দেবপুর, ঢাকা” which again creates doubt about the genuineness of that document on which basis the plaintiffs claimed that they paid rents in respect of the suit land upto 1379-84 and 1385 B.S (Exhibit No.8 and 8/1).

Mr. Delwar Hossain, learned Advocate of the plaintiff-respondent submits that the plaintiffs have paid rents of the land and submitted 2(two) Dhakilas which proves their title and possession over the suit land since rents receipts are treated as evidence of title and possession. Mr. Hossain further contends that the plaintiffs went to pay the rents of the land but the contesting defendants denied to receive it and, as such, the plaintiffs filed the suit. But on perusal of the plaint it is evident that this contention has not been mentioned in any paragraph of the plaint which proves beyond reasonable doubt that the plaintiffs never went to the concerned Tahsil office to pay the land development taxes of the disputed property.

In paragraph 9 of the plaint the plaintiffs mentioned that the cause of action of the suit firstly arose on 25.07.2011 when they filed Misc. Case No. 57 of 2011 before the ADC (Rev.), Gazipur and secondly, on 18.03.2013 when the ADC (Rev.), Gazipur vide judgment and order passed in Misc. Case No. 57 of 2011 advised them to seek redress before the

competent Civil Court. Exhibit No. 7 is the certified copy of the order passed in Misc. Case No. 57 of 2011. In the said order the ADC (Rev.) opined that he has no authority to correct the bonafide mistakes caused in the SA record and accordingly he advised the plaintiffs to take proper steps before the civil Court regarding the disputed property.

The contesting defendant Nos. 1-3 in the written statement categorically mentioned that the suit is barred by limitation. The learned Joint District Judge framed a separate issue on this point and replied the same in the negative and considering all other evidence and materials on record decreed the suit.

We have seen from our earlier discussion that the plaintiffs have failed to submit the pattannama as well as the rent receipts paid by them upto 1361 BS. It further appears from Exhibit Nos. 8 and 8/1 that they have paid taxes of the land upto 1385 B.S. In the plaint the plaintiffs simply mentioned that they went to realize the taxes of the land but the government officials denied to accept it and then they filed the instant suit.

In respect of payment of taxes of the suit land, the plaintiffs in paragraph 2 of the plaint had stated, “. . . গত এস.এ জরিপকালে নালিশী ভূমি নিতান্তই ভুলক্রমে জমিদারী সেরেস্তায় যাইয়া খাস খতিয়ানে লিপিবদ্ধ হইলে তৎপরবর্তী সময়ে বর্ণিত আকমল খান গং গভর্নমেন্ট একোয়ার ভাওয়াল এস্টেট খাজনা পরিশোধ করিতে পারে নাই।” (emphasis put)

From the above it appears that plaintiffs had prior knowledge regarding preparation of SA khatian but they did not take any steps in time for correction of the said khatian.

In respect of payment of rents the PW.1 in his examination-in-chief states, “আমাদের পূর্ববর্তীরা খাজনা দিতে গিয়ে জানতে পারে নাঃ সম্পত্তি এস,এ-০১ নং খাস

খতিয়ানভুক্ত হয়েছে। তাই খাজনা নিবে না। তখন আমিন উদ্দিন গং এডিসি Rev. ঢাকা আদালতে

বিবিধ মোঃ নং ১৬/বি/৭৭-৭৮ দায়ের করেন।”

(emphasis put)

P.W.1 in evidence did not clarify the matter that when their predecessors-in-interest went to pay the taxes and when it was refused by the ADC (Rev.) In another place of evidence P.W.1 states, “২৫/০৭/২০১১ তারিখ আমরা খাজনা দিতে গেলে এডিসি Rev. গাজীপুর খাজনা না নেয়ায় আমরা মিস কেইস ৫৭/১১ দায়ের করি যার আদেশ হয় ১৮/০৩/১৩ তারিখ।”

But this matter has not been in any way mentioned in the plaint. In his evidence P.W.1 specifically mentioned that on 25.07.2011 they went to ADC (Rev.), Gazipur for realizing taxes but it was denied by him and then they filed Misc. Case No. 57/11. Exhibit No. 7/1 is the certified copy of the said miscellaneous case wherefrom it appears that nothing as stated by P.W.1 in his testimony has been disclosed in the petition of Misc. Case No. 57/11 which ultimately disproved the contention raised by P.W.1. On perusal of Exhibit No.7/1 it further appears that the matter of not receiving the taxes of the suit land by the ADC (Rev), Gazipur is also not proved.

The learned Joint District Judge without taking into consideration of the exact picture of the exhibited documents and without applying her judicial mind decreed the suit on misreading and non-reading of the evidence on record. Therefore, considering the evidence of P.W.1 and exhibited documents as well as the contention of the plaint we are of the view that the suit is hopelessly barred by limitation.

It is redundant to mention here that the plaintiffs have failed to establish their chain of title. They did not file the pattannama and the rent receipts. According to them, they had paid rents of the land upto 1361 B.S.

In the aforesaid premises, it can be concluded that plaintiffs have hopelessly failed to prove their title and possession over the suit land. In spite of that the learned Joint District Judge decreed the suit on the basis of erroneous observations.

Mr. Delwar Hossain, learned Advocate of the plaintiff-respondents forcefully submits that Exhibit No. 1 is the Bhawal CS khatian of the suit land which was prepared in the names of the predecessors-in-interest of the plaintiffs but on perusal of it we could not come into agreement that any khatians were prepared in the name of Bhawal Zamidars. This type of khatian is quite unknown in the legal history of Bangladesh.

Admittedly, the suit land is pond in nature. It appears from the record that the CS, SA and RS khatians of the property were prepared showing the disputed property as tank in nature. The learned Deputy Attorney General submits that the suit property is the non-retainable property of the Zamindars which could not be leased out in any manner but the plaintiffs on the basis of some forged documents claiming title over the said government property.

In the case of *Chairman, Sherpur Paurashava v. Jahangir Hossain Chowdhury*, 57 DLR (AD) 120 the Appellate Division observed:

“The suit land is being admittedly a tank and, as such, non-retainable land of the Zamindars the plaintiff of Other Class Suit No. 1379 of 1980 could not claim the land on the basis of alleged settlement from the ex-landlord under the provision of section 20 of the State Acquisition and Tenancy Act.”

Therefore, considering the facts and circumstances of the case, evidence led by both the parties and on consideration of the facts and *ratio* laid down in the said case, we are of the view that under section 101 of the



Evidence Act plaintiffs are duty bound to prove their case and in the instant case, as we have observed, plaintiffs have failed to prove their title and possession over the suit land by adducing necessary documents. In such view of the matter, we are of the considered view that the submission put forward by the learned Deputy Attorney General bears substance.

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

The judgment and decree dated 04.11.2018 and 11.11.2018 respectively passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Gazipur in Title Suit No. 203 of 2013 is set aside and the same is dismissed on contest.

Send down the lower Court's record along with a copy of this judgment to the Court concerned at once.

**Bhishmadev Chakrabortty, J.**

I agree.