IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Md. Saiful Islam

First Appeal No. 319 of 2015

Mohammad Jalal Uddin Ahammad and others
....Appellants
-Versus-
Sree Babu Subodh Chandra and others
... Opposite parties
Mr. Shaikh Mamun Al Hadi, Advocate with
Ms. Kaz Shanara Yeasmin, Advocate
Mr. Md. Anwar Hussain, Advocate
... For the appellants.
None appears
… For the respondents.

Heard on 10.12.2025 and Judgment on 11.12.2025.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 09.06.2015 passed by the learned Joint District Judge, 2nd Court, Chattogram, in Other Suit No.20 of 2007.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 37 decimal land appertaining to B.S. Khatian Nos.575 and 1173 alleging that above land belonged to defendant Nos.1 and 2 and their father Nogendra Lal and in their names above two B.S. Khatians were correctly prepared. Defendant Nos.1 and 2 transferred 16 decimal land to defendant Nos.3-5 by three

registered kabla deeds 958, 9559 and 9650 dated 08.06.1981, 08.06.1981 and 09.06.1981 and defendant Nos.3-5 in their turn transferred above 16 decimal land to the plaintiffs by three registered kabala deed Nos.1350, 1062 and 878 dated 17.09.2001, 19.07.2001 and 05.05.2003. Above property has been recorded in the name of defendant Nos.1 and 2 and their father in B. S. Khatian Nos.575 and 1173 and on the basis of above erroneous record they denied title of the plaintiffs.

Defendant Nos.1-5 entered appearance in above suit and executed a solenama admitting plaintiff's title and possession in 16 decimal land of Schedule No.1Ka to the plaint and plaintiffs admitted title and possession of defendant Nos.1-2 in the land of Schedule No.1.

Defendant Nos.6-7 contested above suit by filing joint written statement alleging that 8 decimal land of B.S. Khatian No.1173 was recorded in the name of Bipin Chandra who left this country for India for good long before and above land is as vested property and Government is the custodian of above land.

At trial plaintiffs examined two witnesses and produced documents marked as Exhibit Nos.1-13 and defendant Nos.1 and 2 examined four witnesses to prove the solenama executed on 11.02.2010. Defendant Nos.6 and 7 did not adduce any evidence at trial.

On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as appellants moved to this Court and obtained this Rule.

Mr. Mr. Shaikh Mamun Al Hadi, learned Advocate for the appellants submits that the plaintiffs produced certified copies of B. S. Khatian Nos.575 and 1173 which were marked as Exhibit No.1 series. Above documents show that above record for disputed 37 decimal land was prepared in the names of the defendant Nos.1 and 2 and their father Nogendra Lal. The plaintiffs also produced and proved kabla deeds of defendant Nos.3-5 showing that they purchased 16 decimal land from defendant Nos.1 and 2 and also produced three registered kabla deeds of defendant Nos.1 and 2 showing that above 16 decimal land was purchased by defendant Nos.1 and 2 from defendant Nos.3 and 5. A partial land of B.S. Khatian No.1173 was recorded in the name of Bipin alleging that he is an inhabitant of India but the plaintiffs did not claim above property of Bipin. Defendant Nos.1-5 executed a solenama admitting plaintiff's title and possession in above 16 decimal land and the plaintiffs also admitted title and possession of defendant Nos.1 and 2 in remaining 21 decimals land. Above defendants and plaintiffs have given evidence at trial in support of correctness and genuinity of above solenama. Defendant Nos.5-7 did not adduce any evidence in support of their claim that 8 decimal land out of disputed 37 was recorded as vested and non-resident property. On consideration

of above facts and circumstance of the case and evidence on record the learned Joint District Judge should have decreed above suit on compromise against defendant Nos.1-5 and on contest against defendant Nos.6-7 but the learned Judge utterly failed to appreciate above materials on record correctly and most illegally dismissed above suit which is not tenable in law.

No respondent entered appearance in this First Appeal nor anyone was found available on behalf of any respondent at the time of hearing of this Appeal.

We have considered the submissions of the learned Advocate for the appellants and carefully examined all materials on record.

Plaintiff No.4 as PW1 gave evidence in this suit and produced and proved B.S. Khatian Nos.575 and 1173 (Exhibit No.1 series) which show that disputed 37 decimal land was recorded in the names of defendant Nos.1 and Nogendra Lal.

In their written statement defendant Nos.6 and 7 claimed 8 decimal land at the instance of Bipin but no land of Bipin of above B.S. Khatians have been claimed in this suit by the plaintiffs and defendant Nos.1-5. As such although defendant Nos.6 and 7 submitted a joint written statement they did not produce any evidence oral or documentary in support of their above claims. After promulgation of অর্পিত সম্পত্তি প্রত্যার্পণ আইন, ২০০১ the vested and non-resident properties which were published in the official gazette under above Ain

are regarded as Arpito property. There is nothing on record to show that disputed 37 decimal land or any part of above land was published in the gazette under the অর্পিত সম্পত্তি প্রত্যার্পণ আইন, ২০০১. As such lawful title and possession in above 37 decimal land of defendant Nos.1 and 2 and Nogendra Lal in above 37 decimal land stand proved.

Plaintiffs claim to have purchased 16 decimal land out of 37 decimal from defendant Nos.3-5 by three registered kabla deeds who in their turn purchased the same by three registered kabla deeds from defendant Nos.1 and 2 or their predecessors and all above registered kabla deeds were produced at trial. Defendant Nos.1-5 and plaintiffs executed a solenama on 11.02.2010 in which defendants admitted plaintiff's title and possession in 16 decimal land and plaintiffs admitted title and possession of defendant Nos.1 and 2 in remaining 21 decimal land out. PW1 Monirul Islam and DW2 Samiran Chandra Chowdhury gave evidence in Court in support of legality and due execution of above solenama.

In view of above facts and circumstances of the case and evidence on record the learned Joint District Judge should have decreed above suit in terms of above solenama against defendant Nos.1-5 and on contest against defendant Nos.6-7. But the learned Joint District Judge utterly failed to appreciate above materials on record correctly and most illegally dismissed above suit which is not tenable in law.

In above view of the facts and circumstances of the case and materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 09.06.2015 passed by the learned Joint District Judge, 2nd Court, Chattogram, in Other Suit No.20 of 2007 is set aside and above suit is decreed on compromise against defendant Nos.1-5 in terms of the solenama and on contest against defendant Nos.6-7. Above solenama shall form part of the decree.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Md. Saiful Islam, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER