

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No. 562 of 2018

In the Matter of:
Government of Bangladesh represented
by the Deputy Commissioner, Manikgonj
and others.

.....Defendant-appellants.

-Versus-

Mst. Hamida Khan Rozi and others

.....Plaintiff-respondents.

Mr. Yousuf Ali, D. A. G with
Mr. Md. Golam Akter Zakir, A.A.G with
Ms. Kamrunnahar Lipy, A.A.G with
Ms. Israt Jahan, A.A.G

..... For the appellants.

Mr. Md. Eunus with

Mr. Md. Humayun Bashar, Advocates

.....For the respondent.

Heard on 08.12.2024, 09.12.2024, 17.12.2024
and Judgment on 18.12.2024.

Sheikh Abdul Awal, J:

This appeal at the instance of the plaintiff-appellant is directed against the judgment and decree dated 27.04.2006 passed by the learned Joint District Judge, 1st Court, Manikgonj in Title Suit No. 5 of 2003.

The necessary facts for the disposal of this appeal are that respondent No.1 as plaintiff instituted Title Suit No. 5 of 2003 in the Court of the learned Joint District Judge, 1st Court, Manikgonj against the appellant and others praying for

declaration of title, partition, permanent injunction and adverse possession measuring 27.60 decimals land as described in schedule “Ka” and “Kha” of the plaint.

The plaintiff’s case in brief is that the original owner of the Khatian No. 358 was one Kedernath Chawdhury. Thereafter suit land was recorded in the name of Post and Telegram Division on behalf of Bharat Samrat. The suit land was homestead and the than Munsef, Manikgonj was living there as his official residence and for this reason .26 acre of homestead land of Sabek Dag No. 288 was recorded in the name of Telegram Master. Thereafter, when the Telegram Master and Munsef left their house, the suit land of Sabek Dag 286 and 288 were abandoned for the time being and in the year 1920 the District Board acquired the suit land of Sabek Dag No. 286 and 288 and possessed the suit land. Thereafter District Board gave settlement to one Sree Pran Nath Roy and in the year of 1925 the said Sree Pran Nath Roy sold 26 decimals of land from DsS khatian No. 999 (ka) at consideration of Tk. 50 to Sree Ashwini Kumar Basu and thereafter, the said Ashwini Kumar Basu mutated his name in the suit land and also paid rent to the Zominder and possessing the land.

On 14.05.1928, the said Sree Ashwini Kumar Basu sold out .26 acre land from Dag No. 286, .07 acre from Dag No. 267, .17 acre from Dag no. 268 totaling .50 acre land through registered deed No. 2747 to Sree Moti Profullo Nath Basu and others, and also handed over the possession. The sister of Profullo Nath Basu named Srimoti Shantilata Sarkar on 27.10.1951 sold out .06 acre of land from Dag No. 267 and Dag

No. 268 and thereafter the suit land was transferred on several occasions and lastly defendant No. 21 became owner of .26 acre suit land and possessed the same in ejmali and thereafter, the defendant No. 21 on 23.09.1997 orally gifted the said .26 acre land in favour of her daughter (plaintiff) and also handed over possession to her and the defendant 21 to fortify her oral gift on 02.06.2003 executed an affidavit in favour of the plaintiff before Notary Public stating that she voluntarily at her own will gifted the land in favour of the plaintiff in order to avoid future controversies. In this way the plaintiff acquired exclusive right, title and possession in the suit land. In this backdrop the postal department issued a eviction notice to the owners of the property with regard to land of lot No. 2 of “ka” and “kha” schedule property of the plaint and thereupon, Mahmuda Khatun, Begam Anjumanara, Mir Mossaraf Ali and Gul Fahm Nesa filed title suit No. 444 of 1975 before the Court of Munsef Adalat Manikgonj for permanent injunction which was ultimately dismissed on 31.12.85. Against the said Judgment and order of Munsef court the plaintiff preferred the title Appeal No. 32 of 1986 and after hearing the said appeal was dismissed by Judgment and order dated 23.08.86. Against the said Judgment and order the plaintiff as petitioner filled Civil Revision No. 25 of 1987 before High Court Division of Bangladesh the Supreme Court in which Rule was discharged by Judgment and order dated 09.11.1997. Since the matter was involved with title of the plaintiff but earlier suit was wrongly filed only for permanent injunction and thus the plaintiff filed

this fresh suit for declaration of title, partition and also for permanent injunction.

Defendant Nos. 1/3 and 5 entered appearance in the suit and filed written statement denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner, the plaintiff has/had no right, title and possession in the suit land, the suit is barred by limitation, plaintiff filed the suit on false averments. The case of the defendant No. 1/3 and 5 in short is that in S.A Dag No. 286 and 288 there was a house of Telegram master and Telegram office was the actual owner of the suit land. In the record of D.S Dag No. 286 land measuring .26 acre and in Dag No. 288 land measuring 0.08 acre was recorded in the name of post and Telegram Division of behalf of Bharat samrat, except the post and telegram division, none was the recorded owner. The suit land was never acquired by the District Board and no settlement was given to Sree Pran Nath Roy. Since no pattan was given to Pran Nath Roy so Pran Nath Roy sold out the suit land to Ashini Kumar is not correct. It is on record that earlier plaintiff Mahmuda Khatun became unsuccessful in her T.S No. 444 of 1974 relating to suit land suit up-to the High Court Division and also became unsuccessful in objection case No. 129 and as such, the suit is baseless and liable to be dismissed.

The learned Joint District Judge on the pleadings of the parties framed the following issues for determination:-

- i. Whether the suit is maintainable in its present form and manner?

- ii. Whether the suit is barred by res-judicata?
- iii. Whether the suit is bad for defect of parties?
- iv. Whether the suit is barred by limitation?
- v. Whether the plaintiff has right, title and possession over the suit land?

At the trial the plaintiff side examined in all 5 witnesses and defendant side examined in all 4 witnesses and both the parties also produced some documents to prove their respective cases.

The learned Joint District Judge, 1st Court, Manikgonj after hearing the parties and on considering the evidence and materials on record by the impugned judgment and decree dated 27.04.2006 decreed the suit in favour of the plaintiff .

Being aggrieved by the aforesaid impugned judgment and decree dated 27.04.2006 passed by the learned Joint District Judge, 1st Court, Manikgonj, the defendant-appellants preferred this First Appeal before this Court.

Mr. Md. Yusuf Ali, the learned Deputy Attorney General with Ms. Kamrunnahar Lipy, the learned Assistant Attorney General appearing for the Government defendant-appellants submits that the learned Joint District Judge under misconception of law and facts without considering the case of the defendants particularly the possession of the defendants on the suit land most illegally decreed the suit in favour of the plaintiff. The learned Deputy Attorney General further submits that originally the suit land was recorded in the name of 1st Munsef and postal department on behalf of Bharot Samrat and

thereafter, the suit land was recorded in the name of the Government of Pakistan and it is on record that postal dependent has been possessing the suit land on behalf of the Government and in C.S record the suit land was also recorded in the name of the postal department and 1st Munsef although trial court below giving a go by to such facts mechanically decreed the suit in favour of the plaintiff-respondent.

The learned Deputy Attorney General further submits the plaintiff claimed that suit land was acquired by District Board but the plaintiff failed to show any document in support of their so-called claim and the plaintiff could not also prove that how the previous owners of suit land got their ownership and it is on record that the plaintiff Mahmuda Khatian and others filed title suit No. 444 of 1975 for permanent injunction in the suit land which was dismissed on 31.12.1985 with a finding that ‘*নালিশী জমিতে সত্ত্বেও জটিলতা বিদ্যমান।*’ and as such, without any title the court cannot pass an order of permanent injunction although the learned Joint District Judge without considering all these vital aspects of the case abruptly held that the plaintiff has been succeeded to prove her case.

Finally, the learned Deputy Attorney General submits that in the facts and circumstance the learned Joint District Judge in not considering the fact that owner of the suit land was Post and Telegram Division and suit land relating to D.S Dag No. 286 and 288 was never acquired by the District Board and thus, the District Board cannot give pattan to Sree Pran Nath Datta and others whatsoever and thus the plaintiff could produce any document in support of their so-called pattan fell into an error of

law and facts and by that error a failure of justice has been occasioned.

Mr. Md. E unus, the learned Advocate appearing for the plaintiff-respondent, on the other hand, supports the impugned judgment and decree, which was according to him just, correct and proper. Next, the learned Advocate submits that Sree Shirish Chanda Chowdhury was the recorded owner of DS Khatian No.358, plot Nos. 286,287,288 and 289 mentioned in "Ka" schedule of the plaint and in the year of 1925, he sold out 24 decimals of land from the said khatian to one Ashwini Kumar Bashu taking at consideration money amounting to Taka 40/- (exhibit-1) and in the year of 1920 'Kha' schedule property was acquired by the District Board and subsequently District Board gave settlement to one Sree Pran Nath Roy and in the year of 1925 the said Pran Nath Roy sold out 26 decimals of land from DS khatian No. 999 (ka) to the aforesaid Ashwini Kumar Basu taking Taka 50/ as consideration money and in this way Ashwini Kumar Basu, the processor of the plaintiff became owner of total 50 decimals of land in DS Khatian No. 358 and 999 (Ka), since the property was under value of taka 100/- according to section 17 (1) b of the Registration Act 1908 there was no legal scope to register the deeds and thereafter, all the subsequent transferred of the suit land based on registered documents and time to time all the record of rights were prepared and published in the name of predecessors of the plaintiff and it is on record that Sree Moti Profullalata Basu, Sree Moti Ashalata Basu and Sree Moti Bashanti lata Gosh sold out 25 decimals of land to the plaintiff's mother by a registered

Deed No. 6234 dated 28.10.1953 from the DS Khatian Nos. 999(Ka) and 358 (exhibit-2) and mother of the plaintiff also acquired 2.60 decimals of land from the said Khatians by virtue of inheritance and thereby plaintiff's mother became owner of 27.60 decimals land of the suit property and accordingly S.A and R.S record was rightly prepared in her name (exhibit 11 and 12) thereafter the mother of the plaintiff gifted her entire property to the plaintiff by a heba and in support of the gift she executed an affidavit before the notary public being entry no.1 dated 02.06.2003 (exhibit-3) and mother of the plaintiff (defendant No.21) Most. Mahmuda Khatun paid rent and municipal tax of the suit land to the Government (exhibit 9 and 10 series) and in this way the plaintiff has been possessing the suit land chronologically by paying rent and taxes to the Government since 1920. Therefore, on face of chronological number of registered deeds and documents as record of rights, it cannot be said that the plaintiff could produce any document in support of their settlement in 1920 and the plaintiff has/had no possession over the suit land. Finally, Mr. Md. Eunus, the learned Advocate submits that plaintiff's exhibited documents clearly suggest that the plaintiff having possessed the suit land chronologically over a period of 100 years.

These are the points which were argued by the learned Advocates for the respective parties. Now, to deal with the contentions raised by the parties before us it would be convenient for us to decide first that whether Post and Telegram office have been situated on the suit land and Post and Telegram

department has been paying rent to the Government for the suit land years together.

The cases of the respective parties have been elaborately set down above as well as in the impugned judgment and need not be repeated here. On scrutiny of the record, it appears that most of the PWs categorically stated that the plaintiff has been possessing the suit land chronologically years together by constructing building thereon. Now, to detect the truth let us advert to the evidence of defendant Government. DW-1, Md. Mojibur Rahman, Inspector, Post Office stated in his deposition that- “এই জমির মালিক ছিলেন ভারত সম্রাট পক্ষে পোস্ট ও টেলিগ্রাম বিভাগ। পোস্ট অফিসের লোকজন ও টেলিগ্রাম মাস্টার নাঃ দাগের জমিতে দখলে ছিলেন। জেলা বোর্ড নাঃ জমি কখনও একোয়ার করে নাই বা ইহা প্রাণ নাথকে পত্তন দেয় নাই। প্রাণনাথ অশ্বনীর কাছে নাঃ জমি বিক্রী করে নাই। D/S ২৮৬ দাগে ২৬ ডিং এবং ২৮৮ দাগে .০৮ ডিং জমি আছে। S/A রেকর্ডে অবৈধ ভাবে মালিকানা পরিবর্তন হইয়াছে। S/A রেকর্ডে নাঃ জমি পোস্ট ও টেলিগ্রাম নামে রেকর্ড হওয়া উচিত ছিল। S/A ১৫৬/১৫৭/১৫৪ দাগ। উক্ত ভুল রেকর্ড বিষয়ে আপত্তি দেওয়া হইয়াছিল। অবৈধ দখলকারদেও উচ্ছেদ করার জন্য S.D.O- র নিকট দরখাস্ত দিলে তাদের বিরুদ্ধে নোটিশ দেওয়া হইয়াছিল। মাহমুদা খাতুন দেঃ ৪৪৪/৭৫ নম্বর মামলা করিলে তাহা ডিসমিস হয়। আপীলেও দেঃ ৩২/৮৬ মাহমুদা খাতুন হারিয়া যায়।” This witness also stated that- “S/A রেকর্ড সঠিক নহে। বাদী নাঃ জমিতে বেআইনীভাবে দখলে আছে। আমাদের অযথা ক্ষতিগ্রস্ত করার জন্য অত্র মামলা করিয়াছে।” This witness in his cross-examination stated that- “R/S ৬নং খতিয়ানের জমি পোস্ট অফিসের নিজস্ব জমি। এই খতিয়ানের জমি নাঃ জমি না। নাঃ জমির বাহিরে উত্তর পশ্চিম কোনায় পোস্ট অফিস পরিদর্শকের কার্যালয় বহু বৎসর যাবত বিদ্যমান। নাঃ

জমি ও উক্ত অফিস পাশাপাশি। নাঃ জমি ১৯৮৫ ইং সাল থেকে চিনি। তখন থেকেই নাঃ জমিতে বাদী পক্ষের বাড়ি ঘর দেখিয়াছি। তখন টিনের ঘর ছিল। দালান দেখি নাই।”

From the above quoted evidence, it is apparent that admittedly the plaintiff has been possessing over the suit property by constructing house and Telegram and Post office is not situated on the suit property, which is situated adjacent to the suit property.

On a query from the Court Mr. Eonus, the learned Advocate for the plaintiff respondent referring exhibit-Gha submitted that RS khatian No.6 shows telegram office situated thereon and plaintiff's suit property situated in other khatians being Nos. 1392 and 1393 and Mr. Eonus also submitted that the plaintiff has no right, title in land of RS khatian No.6 and Dag No. 183.

The trial Court below as 1st Court of fact on going through the entire evidence and materials on record came to the conclusion that- “এমতাবস্থায় দেখা যায় যে, বাদীপক্ষ নালিশা জমিতে দাখিলা কাগজ পত্র, সাক্ষী ও ডি/ডব্লিউ-১ এর স্বীকার মতে স্বত্ব দখল প্রমাণ করিতে সক্ষম হইয়াছে এবং অত্র মোকদ্দমা বর্তমান আকারে ও প্রকারে চলিতে কোন বাধা নাই বিধায় বাদীপক্ষ প্রার্থনা মোতাবেক প্রতিকার পাইতে আইনতঃ এবং ন্যায়তঃ হকদার।

অপরদিকে ৬,৭/৯-১৪ নম্বর বিবাদীগণের দাখিলা কাগজাত পর্যালোচনাক্রমে তাহাদের দাবী মোতাবেক নালিশা জমিতে ছাহাম পাইতে হকদার মর্মে প্রমাণিত হওয়ায় তাহারা প্রার্থনা মোতাবেক ছাহাম পাইবে।”

This being purely a finding of fact based on proper appreciation of the evidence and materials on record. From the evidence on record, we find that the telegram and post office is

not situated on the suit property, which is situated adjacent to the suit property.

Furthermore, on close perusal of the record, it is found that Sree Shirish Chanda Chowdhury was the recorded owner of DS Khatian no.358 plot nos. 286,287,288 and 289 as mentioned in "Ka" schedule of the plaint and in the year of 1925 he sold out 24 decimals of land from the said khatian to one Awishani kuma Bashu, taking consideration money amounting to Taka 40/- (exhibit-1) and another DS Khatian No. 999(Ka) was recorded in the name of Indian Government under the possession of post and telegram Department as mentioned in "Kha" schedule of the plaint (exhibit I A) and in the year of 1920 'Kha' schedule property was acquired by the District Board and subsequently District Board gave settlement to one Sree Pran Nath Roy and in the year of 1925 the said Pran Nath Roy sold out 26 decimals of land from DS khatian No. 999 (ka) to the aforesaid Awishani Kumar Basu taking consideration money amounting to Taka 50/ and in such way Awishani Kumar Basu became owner of total 50 decimals of land in DS Khatian No. 358 and 999 (Ka). Since the property was under value of taka 100/- according to section 17 (1) b of the registration Act 1908 there was no legal scope to register the deed which the plaintiff stated in her plaint in the following language- উল্লেখ্য যে, তৎকালীন তথা ১৯২৫ সনে বিক্রীত ভূমির মূল্য ১০০/- টাকার কম ছিল বিধায় উক্ত ভূমি সম্পর্কে প্রাণ নাথ হইতে আশ্বিনী কুমার বসুর খরিদা ভূমি সম্পর্কে এবং শ্রী শিরীশ চন্দ্র চৌধুরী হইতে শ্রী আশ্বিনী কুমার বসুর খরিদা ভূমি সম্পর্কে কোন রেজিস্ট্রিকৃত কবলা হইয়াছিল না। And thus, the plaintiff could not produce any settlement document or patton as to transfer of the suit land in 1920 and 1925. Thereafter, Sree

Awishani Kumar Basu sold out his entire land to (1) Sreemoti Profullalata Basu (2) Sreemoti Ashalata Basu (3) Sree Moti Basanti Lata Gosh and (4) Sreemoti Shanti Lata Sarker by a registered deed being No. 2747 dated 14.05.1928 (exhibit 4) and thereafter, Sree Moti Profullalata Basu, Sree Moti Ashalata Basu and Sree Moti Bashanti lata Gosh sold out 25 decimals of land to the mother of the plaintiff (defendant No.21) Most. Mahmuda Khatun by a registered Deed no 6234 dated 28.10.1953 from the DS Khatian Nos. 999(Ka) and 358 (exhibit-2) and the mother of the plaintiff also acquired 2.60 decimals of land from the said Khatians by virtue of inheritance and in this way plaintiff's mother became owner of 27.60 decimals land from the suit property and accordingly S.A and R.S record was rightly prepared in the name of the plaintiff's mother (exhibit 11 and 12) and mother of the plaintiff gifted her entire property to the plaintiff by a heba and in support the said gift she executed an affidavit before the notary public being entry no.1 dated 02.06.2003 (exhibit-3) and it is on record that the mother of the plaintiff paid land revenue and municipal taxes to the Government (exhibit 9 and 10 series), all these facts and exhibited documents clearly manifests that the plaintiff respondent has been able to proof of lawful ownership of the suit land and unbroken possession over a period of 80 years and the plaintiff thus discharged the civil burden of proof. On assessment of the evidence on record it is also found that the defendant-appellants have not been able to discharge the burden of proof that the Telegram and Post office is situated on the suit property.

Besides, the exhibited chronological old Deeds of the suit are more than 30 years old and therefore the Court is entitled to presume that those are genuine documents.

Moreover, it is on record that previously plaintiff's mother (defendant No.21) Most. Mahmuda Khatun filed a Miscellaneous Case being No. 74 of 1968 before the Munsif Court against the appellants for correction of SA record and the learned Judge allowed the Miscellaneous Case on 27.12.1968 (exhibit-7) and during R.S operation the present Appellants filed two objection Cases against the plaintiff's mother and another under section 30 of the East Bengal Tenancy Rules 1955 and both the objection Cases were rejected (exhibit-8).

Another contention raised by the learned Deputy Attorney General that earlier plaintiff's mother Mahmuda Khatun and others became unsuccessful in Title Suit No. 444 of 1974 relating to the suit up-to the High Court Division. On close scrutiny of the record it is found that the said suit being Title Suit No. 444 of 1974 was only for permanent injunction and the plaintiff filed this fresh suit for declaration of title, partition and also for permanent injunction and thus, subject matter and law in both the suits are totally distinct. By now we have covered the points raised by the learned Deputy Attorney General.

The learned Judge Joint District Judge appears to have considered all the material aspects of the case and justly decreed the suit. We find no reason to interfere therewith.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant appeal must fail.

In the result, the appeal is dismissed without any order as to costs. Since the appeal is dismissed the connected Rule being Civil Rule No. 734(F) of 2011 is also discharged.

Let a copy of this judgment along with lower Courts' record be sent down at once.

Md. Mansur Alam, J:

I agree.