

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

First Appeal No. 80 of 2006

In the matter of:

Divisional Forest Officer and others

... Appellants

-Versus-

Muhammad Ali and another

... Respondents

Mr. A.S.M. Mokter Kabir Khan, D.A.G

with

Mr. Mostafizur Rahman (Tutul), A.A.G

with

Mr. Md. Moniruzzaman, A.A.G and

Ms. Sonia Tamanna, A.A.G

...For the appellants

Mr. Jafar Alim Khan, Advocate

....For the respondent nos. 1 and 2

**Heard on 15.05.2025, 22.05.2028, 28.05.2025
and Judgment on 28.05.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the defendant nos. 1-4 in Title Suit No. 131 of 2001, this appeal is directed against the judgment and decree dated 18.09.2005 passed by the learned Joint District Judge, 1st court, Gazipur in that suit decreeing the same on contest against the defendants nos. 1-3.

The case of the respondent nos. 1 and 2 who were the plaintiffs in the suit, filed a suit for declaration of title as well as declaration to the effect that, that the preparation of RS record in RS khatian No. 1 in the

name of the forest department is illegal, ineffective and not binding upon the said plaintiffs. The suit was filed in respect of the suit land measuring an area of 2.80 acres so have been described to the schedule of the plaint.

The case of the plaintiffs in short is that:

The suit land measuring an area of 280 decimals originally belonged to the then *Jaminder*, Vowel raja Rajkumar Rabindara Roy Chowdnury who during enjoying title and possession over the said property recorded in CS khatian No. 1, comprising 280 decimals of land in CS plot no. 190 and 30 decimals of land in CS plot no. 221 totaling an area of 310 decimals of land. After then one, Jogo Mohon Barmon took *pattan* (lease) of the said portion of land on 26.05.1938 with a *salami* of taka 50/- and possession of that property was handed over to the said lessee, Jogo Mohon Barmon. While Jogo Mohon Barmon had been enjoying title and possession over 310 decimals of land out of the aforesaid two CS plots, bearing plot nos. 190 and 221, he then transferred 30 decimals of land out of non-suited plot no. 221 to one, Hossain Uddin and subsequently SA record was prepared in the name of said Hossain Uddin in SA khatian No. 9. While Jogo Mohon Barman had been in possession in 280 decimals of land of CS plot no. 190, he died leaving behind only son, Chandra Mohon Barmon @ Chandra Nath Bormon who then used to enjoy title and possession over the suit property. While Chandra Mohon Barmon has been enjoying title and possession over 280 decimals of land, SA record came and prepared his name in SA khatian No. 9. Subsequently, he transferred 280 decimals of suit land and 164 decimals of non-suited land in total, 444 decimals of land by registered sale deed dated 31.01.1974 to one, Najir Hossain @ Najir Hossain, Md.

Laddu Miah,, Fazle Hossain, Imam Hossain and Noor Mohammad. While those vendees have been enjoying title and possession over 280 decimals of land out of CS and SA plot no. 190, they mutated their name in the khatian. Out of those vendees, one named Imam Hossain while enjoying title and possession over SA plot No. 190, he by an amicable arrangement got 61¼ decimals of land and sold out 52½ decimals of land by register deed of exchange dated 05.09.1985 in favour of one, Sukur Ali @ Sukkur Ali. Subsequently, Fazle Hossain by registered sale deed dated 31.01.1974 purchased 76 decimals of land from Chandara Mohon Barmon from plot no. 190 and while he had been in possession over that purchased property, he by registered sale deed dated 08.01.1987 sold out that 76 decimals of land to Mohammad Al, the plaintiff no. 1. Then Sukur Ali, by register sale deed dated 22.01.1987 also transferred 61¼ decimals of land in favour of plaintiff no. 1. Then Laddu Mia transferred 70 decimals of land to plaintiff no. 1 by registered sale deed dated 29.01.1907. On the demise of Nazir Hossain, his father then being appointed guardian to the children of Nazir Hossain sold out 29¾ decimals of land to the plaintiff no. 2. Then the heirs of Zanir Jan sold out 43 decimals of land to plaintiff no. 1. In the aforesaid way, the plaintiffs got the suit property from suit plot no. 190 and mutated their name in the khatian and started enjoying title and possession over the suit property by planting different fruit bearing trees. It has further been stated that, the plaintiffs also by giving a *pucca* boundary erected a tin-shed house, consisting of 3 room 2 varanda, as well as bath room and installed a tubwell and built a kitchen as well and started possessing the same through a caretaker. It has also been stated that, at the time of purchasing the suit property by the plaintiffs,

since RS record had not been finally published so for that reason, RS khatian number has not been mentioned in the purchase deeds. On 15.05.2000 while the plaintiffs went to pay the land development tax (খাজনা) to the respective *towshil* office, he disclosed that, the suit property has been prepared in the name of the forest department in RS khatian no. 2. It has also been stated that, though the non-suited CS plot no. 221 has rightly been prepared in line with the name of the tenant in RS record, but in respect of CS plot No. 190 it has wrongly been prepared in the name of the defendants, forest department and as the respective *towshilder* denied to receive the rent (খাজনা) from the plaintiffs and hence the suit.

The defendant nos. 1-3 here in the appellant nos. 1-3 jointly contested the suit by filing a written statement denying all the material averment so made in the plaint contending, *inter alia*, that, the suit land in respect of CS plot no. 190 has been declared as reserved forest land by gazette notification as the property belonged to the then Vowel court of estate which was subsequently acquired by the government as of reserved forest land and accordingly a declaration/ notification was issued under section 4 of the Forest Act, 1927. It has also been asserted that the plaintiffs have got no title and possession over the suit property which is rather being possessed by the forest department and thus 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 3 different issues and in order to prove the case, both the plaintiffs and defendants produced several document which were marked an exhibit no. 1-7B while the document so produced by the defendants were marked as 'A' series. Apart from that, the plaintiffs

examined as many as 7 witnesses while the defendant examined a single witness as DW-1. On conclusion of the trial, the learned judge after taking into consideration of the materials and evidence on record, vide impugned judgment and decree, decreing the suit on contest against the defendant nos. 1-3 and ex parte against defendant no. 4.

It is at that stage, the defendant nos. 1-4 jointly as appellants preferred this appeal.

Mr. A.S.M. Mokter Kabir Khan, the learned Deputy Attorney General along with Mr. Md. Moniruzzman, the learned Assistant Attorney General upon taking us to the impugned judgment and decree and all other document appeared in the paper book at the very outset submits that, the learned judge of the trial court has erroneously decreed the suit without considering the materials and evidence on record so placed before it. To supplement the said submission, the learned counsel further contends that, since RS record was prepared in the name of the forest department of the government in view of the gazette notification, issued on 05.05.1955 where of CS plot no. 190 has clearly been described as of forest land and then in revised notification issued on 31.10.1984 under section 4 the suit land of CS plot No. 190 has also been categorizing as of forest land, so under no circumstances can the same be recorded in the name of a private person but the learned judge has not taken into consideration of that very vital documents in its proper perspective, and therefore the impugned judgment and decree is liable to be set aside and appeal be allowed. In the midst of argument, the learned counsel by supplying us photocopies of two gazette notifications dated 06.06.1985 issued under section 6 of the Forest Act and that of notification dated

09.05.2012 issued under section 20 of the Forest Act, also contends that, though at the time of taking evidence of the defendants, those vital documents have not been produced, yet since subsequent action taken by the government clearly shows that, the government took required step to acquire the property as of forest land by giving notice both under section 6 and finally under section 20, so RS record has rightly been prepared in the name of the government having no scope to claim the same by the plaintiffs-respondents as of their own property. In support of his submission, the learned Deputy Attorney General has placed his reliance in the decision reported in 17 BLD (AD) 91 and finally prays for allowing the appeal.

On the contrary, Mr. Jafar Alim Khan, the learned counsel appearing for the plaintiffs-respondents very vehemently opposes the contention so placed by the learned Deputy Attorney General for the appellants and submits that the plaintiffs have proved their case in toto producing all the title documents in acquiring title from their predecessor and the learned judge of the trial court has rightly found so and perfectly decreed the suit.

The learned counsel further contends that, since soon after purchasing the property by the plaintiffs, through several sale deeds, which have been marked as exhibit 2 series and the same they also got their name mutated in the khatian, and paid *khajna* so there has been no scope to get the suit property recorded in the name of the forest department in RS khatian.

The learned counsel further contends that, it is the definite case of the plaintiffs that after purchasing the property they erected a tin-shed

house and installed all utility lines and planted different kinds of fruit bearing trees and have been in possession over the suit property and substantiated the said assertion by all the PWs, apart from plaintiff no. 1, deposed as PW-1, so there has been no scope not to find title of the plaintiffs in the suit property. The learned counsel also contends that, since PW-2 who happened to be a clerk of Vowel raj estate and proved the recitation as well as the signature in the *putta* dated 20.06+.1938 which was marked as exhibit no. 6 without any objection from the defendants and PW-3, the caretaker of the suit property who has also proved the possession for the plaintiffs, so the evidence of those very two vital witnesses as has not been shaken by cross examining by the defendants, and the learned judge of the trial court by discussing all the evidences of the PWs and DW-1 has rightly arrived at a decision and decreed the suit. When we pose a question to the learned Deputy Attorney General as regards to the exhibited documents produced and examined by the defendants as 'A' series, in particular two gazette notifications, the learned Deputy Attorney General then contends that, by those very gazette notification, it was proved that the suit property was rightly acquired for the defendants. Then when we draw the attention of the learned counsel for the respondents about the notifications which has been supplied at the time of hearing of the appeal, issued under section 6 and 20 of the Forest Act, 1927, the learned counsel then contends that, by those notifications, it does not prove that the affected person has ever received those notices and any compensation was given in their favour. He then adds that, the said gazette notifications was issued long after

filing of the suit, which does not create any value in favour of the defendant's case.

The learned counsel finally submits that, since the non-suited CS plot no. 221 has rightly been prepared in the name of the predecessor of the tenants of SA khatian as well as in RS khatian, so it alternatively proves that CS plot no. 190 has wrongly been prepared in the name of the forest department. With such submission, the learned counsel finally prays for dismissing the appeal.

Be that as it may, we have considered the submission so placed by the learned counsel for the Deputy Attorney General for the appellants and that of the respondents. There has been no gainsaying the facts that respective plots with regard to the suit property has rightly been prepared in the name of the predecessor of the plaintiffs in SA khatian and the documents which have been produced by the plaintiffs have also been marked as exhibit without any objection on the part of the defendants. So if any document is marked as exhibit without any objection that alternatively proves its genuineness. Furthermore, with regards to holding possession, the plaintiffs in their plaint clearly asserted that, after purchasing the property they got their name mutated in the record of right (khatian) and also erected tin-shed house, kitchen and planted different fruit bearing trees in the suit property which they have been enjoying through a caretaker. Those very assertions made in the plaint, has clearly been substantiated in the evidence by the plaintiff no. 1 himself as PW-1 and no deviation can be made by the defendants by cross examining with regard to enjoying title and possession over the suit property. Furthermore, though plaintiffs claimed to get the property through their predecessor by

way of *pattan* far back in the year 1938 yet that *pattan* was also produced by the plaintiffs through PW 2 who proved so which was also marked as exhibit-6, even without any objection. So, if by virtue of *pattan*, SA record could be prepared in the name of the predecessor of the plaintiffs then certainly it can be easily presumed that RS record was wrongly prepared in the name of the forest department when admittedly 2 plot was taken *pattan* that is plot nos. 221 and 190 and subsequently plot no. 221 was prepared in the name of SA recorded tenant in RS khatian. On top of that, though the defendants in support of their case, produced 2 notifications, which was issued under section 4 of the Forest Act, 1927 but it is merely an initial notification and to acquire any property as of forest land, there remains several other procedures to be followed apart from the notice issued under section 4 as what happened next following issuance of those notices has not been found from the record. Next, on going through the provision of section 20 of the Forest Act, we find that after performing all the formalities preceding to that section, final publication is made under section 20 of the Act. Though the learned Deputy Attorney General supplied us the photocopy of the notification claimed to have issued under section 20 of the Act dated 27.05.2012 but that very notification has not been marked as any exhibit, so that notification cannot be taken into consideration at this stage. On top of that, since the government mutated the name of the plaintiffs of the suit land in the khatian and also took rent (খাজনা) from the plaintiffs, which alternatively proves that the plaintiffs have acquired indefeasible title and possession in the suit property. Though the learned Deputy Attorney

General cited a decision but on careful perusal of the same, we don't find any nexus of the facts and point of law with the case in hand.

Against the above backdrop, we find that the learned judge of the trial court, has not committed any illegality or irregularity in arriving at a finding that the plaintiffs have been able to prove their case by discussing all the evidences adduced and produced by both the parties which does not at all call for any interference.

Resultantly, the appeal is dismissed however without any order as to costs.

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

Md. Bashir Ullah, J.

I agree.