

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice S.M. Iftexhar Uddin Mahamud

First Appeal No. 135 of 2021

In the Matter of:

Alhaj Md. Hazrot Ali and others
.....Plaintiff-appellants.

-Versus-

Divisional Officer, Social Forest Division,
Dinajpur and others

...Defendant-respondents.

Mr. Ozi ullah, Advocate

.....For the appellants.

Mr. Mohammad Humaun Kabir Pallab, Advocate
with

Mr. Mohammed Kawsar, Advocate

....For the respondent Nos.1,2 and 3

Mr. A.K.M. Rezaul Karim, D.A.G. with

Ms. Papia Sultana, A.A.G.

.... For the Government respondent.

Heard on 22.01.2026 and
Judgment on 02.02.2026.

Sheikh Abdul Awal, J:

This First Appeal is directed against the judgment and decree dated 04.04.2012 (decree signed on 11.04.2012) passed by the Joint District Judge-1, Thakurgaon in Title Suit No.31 of 2008 dismissing the suit.

Material facts relevant for disposal of the appeal, briefly, are that the appellants as plaintiffs instituted Title Suit No.31 of 2008 in the court of Joint District Judge-1, Thakurgaon for declaration of title in suit land as described in schedule of the plaint. The plaintiffs' case in short is that the suit land is under plot No.478 appertaining in CS khatian No. 83/1 and SA Khatian No. 81 was

originally belonged to Shashi Bhusan Roy and others. The above mentioned Shashi Bhusan Roy died leaving behind 3 sons namely- Monoranjan Roy, Fani Bhushan Roy and Timir Baran Roy. Thereafter, the said Monoranjan Roy having got the suit land by way of inheritance and transferred 12½ decimals of land to the plaintiff No.1, vide a registered deed dated 12.4.80 and he also transferred 50 decimals of land to the wife of plaintiff No. 1 by 2 registered kabala deeds dated 12.12.84 and the said Fani Bhushan Roy having got the suit land by way of heirs, who transferred 12½ decimals of land to two sons of the plaintiff No.1 by registered deeds dated 02.10.1994. The said Fani Bhushan Roy also transferred 12½ decimals of land to plaintiff Nos. 3 & 4 by registered kabala deed No.6603 dated 12.8.98 and the said Timir Baran Roy transferred 12½ decimals of land to the plaintiff No.3 by a registered kabala deed No. 2603, dated 02.04.1991. Thereafter, the said Monoranjan Roy died leaving behind 4 sons namely- Mohesh Chandra, Bidhu Bhushan, Panchanan and Bimal Chandra, who transferred 50 decimals of land to the plaintiff Nos. 3-4 respectively by two kabala deeds. That said Bidhu Bhushan, Bimal and Panchanan transferred 12½ decimals of land to the plaintiff No.4 by two kabala deeds dated 03.01.1993. In this way the plaintiffs got the suit land by way of purchase and have been possessed the same. That the defendants have no right, title and interest over the suit land and the defendant No.1 issued a notice upon the plaintiffs to vacate the suit land claiming the same as Forest Reserve land and as such, the title of the plaintiffs have been clouded and hence, the suit.

The defendant Nos. 2 & 4, on the other hand, contested this suit by filing a written statement denying all the material averments of the plaint and contended inter-alia that this suit is not

maintainable in its present form and manner. The suit is barred by limitation and the plaintiffs have/had no locus standi to file this suit and this suit is barred by provision of section 42 of the Specific Relief Act. Defendants' specific case in short is that the Govt. in order to maintain natural balance of the nature and the climate took a project for enhancing forest and as such 3493.04 acres of land including the suit land was declared as a Forest Reserve land by a gazette notification dated March 14, 1985 and since then the suit land has been using as Reserve Forest land and the same is under the control and supervision by forest department; that the plaintiffs having no right, title and interest over the suit land. The plaintiffs filed the suit on false averment to grab the forest reserve land by creating some false deeds, the suit is liable to be dismissed.

The learned Joint District Judge-1, Thakurgaon on the pleadings of the parties framed the following issues for determination:-

- 1) Is the suit maintainable in its present form?
- 2) Is the suit barred by limitation?
- 3) Is the suit bad for defect of parties?
- 4) Have the plaintiff's right, title and possession over the suit land?
- 5) Are the plaintiff's entitled to get reliefs, as prayed for?

At the trial the plaintiffs examined 3 witnesses as PWs and defendants examined 1 witness as DW-1 and both the parties also exhibited some documents to prove their respective cases.

The learned Joint District Judge-1, Thakurgaon upon after hearing the parties and on considering the materials on record by his judgment and decree dated 04.04.2012 (decree signed on

11.04.2012) dismissed the suit holding that 3493.04 acres of land including the suit land is under Reserve Forest land and to that effect a gazette notification was published on 14th March, 1985 and since then the suit land is under the control and supervision of the Forest Department. The plaintiff-appellants have not acquired any title over the suit land by their purchase deeds.

Aggrieved plaintiffs then preferred this appeal before this Court.

Mr. Ozi ullah, the learned Advocate appearing for the plaintiff-appellants by referring the evidence of PWs and Exhibits submits that plaintiffs have been possessing the suit land since the date of purchase and it is on record, that the Government acquired the suit land by way of notification dated March 14, 1985 without exhausting all the legal formalities and as such, the suit land acquired by the Govt as reserved forest is out and out illegal. The learned Advocate further submits that the Govt. by gazette notification dated 14th March, 1985 (ka) did not acquire the entire suit land as Forest Reserve land and all 3 PWs. in their respective evidence categorically stated that the plaintiffs have been possessed the suit land by payment of rent to the Government although the trial court below without considering the case of the plaintiffs from a correct angle abruptly dismissed the suit. Mr. Ozi ullah, the learned Advocate to strengthen his submission has relied on the decisions reported in 17 BLD(AD)91, 11ADC 470.

Mr. Mohammad Humaun Kabir Pallab, the learned Advocate appearing for the respondent Nos. 1-3, on the other hand, submits that the suit land was declared as Forest Reserved Land by the Government vide gazette notification dated 14.03.1985 following all relevant procedures under section

4,11,12,13,14,16,17,18 and 20 of the Forest Act, 1927 and all relevant Rules and Laws. After publication of the gazette notification, the Forest Department is in the possession of the gazetted land of 3493.04 acres including the suit land. He further submits that Matporcha Draft Khatiyani of the suit land (Exhibit-Kha) has already been prepared in the name of the Forest department and thus it is apparent that the plaintiff-appellants have no prima-facie right, title or interest in the suit land, which has been justly found by the learned trial Judge.

Having heard the learned Advocate for both the parties and having gone through the materials on record including the impugned judgment and decree, the only question that calls for our consideration in this appeal is whether the trial Court committed any error of law in dismissing the suit.

On scrutiny on record it appears that the appellants as plaintiffs instituted Title Suit No.31 of 2008 in the court of Joint District Judge-1, Thakurgaon against the defendant-respondents praying the following reliefs:

- ক) নালিশী তপশীল বর্ণিত ও কলমী নকসার লাল চিহ্নিত সম্পত্তিতে বাদীপক্ষ স্বত্বান আছে মর্মে বিবাদীগণের বিরুদ্ধে বাদীপক্ষের অনুকূলে স্বত্বের ঘোষণা মূলক ডিক্রী দিতে,
- খ) বাদীপক্ষকে বিবাদীগণের বিরুদ্ধে যাবতীয় আদালত ব্যয়ের ডিক্রী দিতে,
- গ) আইন ও ন্যায়ত মতে বাদীপক্ষ আর যে যে প্রতিকার পাইতে হকদার তাহাও ডিক্রী দিতে আজ্ঞা হয়।

It is found in this case the plaintiffs claimed that they have got the suit land by way of purchase from the heirs and subsequent heirs of Shashi Bhushan and have been possessing the suit land by payment of rent. After purchase they got mutation in their name.

On the other hand, the contesting defendants claimed that the govt. in order to maintain natural balance of the climate acquired 3493.04 acres of land including the suit land as Reserve Forest land and to that effect a gazette notification was published on 14th March, 1985 and since then the suit land is under control and supervision of the Forest Department.

It appears that to decide the point whether the suit land falls under the gazetted Reserve Forest land of the Government, the trial court as first court of fact observed as follows:

“PW-3 stated in his cross-examination that there is road to the western side of the suit land and after that there is land of the Forest. Exbt. 'ka' documentary evidence shows that the land of the suit plot No. 478 was brought under Forest Reserve land by gazette notification dated March 14, 1985. On perusal of evidence of PW-3 it is also appears to me that there is Forest Reserve lands beside the suit land. So it is proved by the documentary evidence that the suit land was brought under Forest Reserve land. Moreover, Exbt. 'kha' shows that during present settlement operation the math khatian of the suit land has been recorded in the name of the Forest Department.”

This being the purely findings of fact based on proper assessment of evidence on record.

It is generally true that in civil Courts have limited jurisdiction to challenge official, properly authorized and lawfully published Government Gazette notifications. Law is by now well settled that once a notification is published in the gazette under the relevant Forest Act (declaring land as a reserved forest), the land is deemed to be at the disposal of the Government. Generally, once the Forest Settlement Officer has concluded the inquiry and the

final notification is issued, no private civil suit lies to challenge the ownership, as the land is vested in the Government. If a party is aggrieved by the inclusion of their land in a forest notification, the proper remedy is usually to approach the Forest Settlement Officer or file an appeal within the prescribed time frame during the settlement proceedings, rather than filing a standard civil suit. Any sale deed or transfer of land made after the publication of a gazette notification declaring the suit land as a reserved forest is generally considered invalid. This being the position under the law as it stands today.

On perusal of evidence it is found that Shashi Bhushan was the original owner of the suit land and thereafter the predecessors of the plaintiffs purchased the suit land. The learned Advocate for the respondent Nos. 1-3 points out that section-04 of the Forest Act, 1927 requires the government to publish an initial notice expressing their decision to constitute any land as reserved forest and accordingly it may be validly presumed that notice under section 04 of the Forest Act, 1927 was duly served before the final publication of the gazette notification. The plaintiff-appellant No. 1 claims that he purchased 12.50 decimals land on 12.04.1980, the plaintiff-appellant No. 02 claims that he purchased 25.00 decimals land on 12.12.1984. On the other hand plaintiff-appellant No. 03 and 04 claimed that they purchased land subsequent to the publication of the gazette notification vide purchased deed No. 6602 dated 02.10.1994, 12.08.1998; vide deed No. 2603 dated 22.04.1991: vide deed No. 204 and 205 dated 12.01.1991. The

Appellant No. 04 purchased land on 03.01.1993 by registered deed No. 65 and thus all the transfers of the suit land has occurred after publication of the gazette notification dated 14.03.1985 and therefore, their claim as to title and interest in the forest land which cannot be sustained in the eye of law.

Mr. Mr. Ozi ullah, the learned Advocate for the appellants, indeed, could refute the above contentions raised by Mr. Mr. Mohammad Humaun Kabir Pallab, the learned Advocate for the for the respondents No.1-3 or could not show any error of law or infirmity in the impugned judgments or findings of the court below are either arbitrary or fanciful or findings of the Court below are product of misreading and non considering the evidence on record. Moreover, Exbt. 'kha' shows that during present settlement operation the math khatian of the suit land has been recorded in the name of the Forest Department.

Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the Appellants. The decisions cited by the learned Advocate for the appellants are distinguishable on facts.

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. The impugned judgment and decree dated 04.04.2012 (decree signed on 11.04.2012) passed by the learned Joint District Judge-1, Thakurgaon in Title Suit No. 31 of 2008 dismissing the suit is hereby maintained.

However, in the facts and circumstance of the case the plaintiff appellants may avail the remedy to approach the Forest Settlement Officer or file an appeal with a prayer for condonation of delay, if they so advised.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

S.M. Iftexhar Uddin Mahamud, J:

I agree.