

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.196 of 2019

Mrs. Zearatun Nesa

....Appellant

-Versus-

Md. Abul Kalam and others

... Opposite parties

Ms. Rezina Mahmud, Advocate

... For the appellant.

None appears

... For the respondents.

Heard and Judgment on 05.01.2026

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 05.11.2018 passed by the learned Joint District Judge, 2nd Court, Gazipur in Title Suit No.2030 of 2008 dismissing the same.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title by adverse possession for 20 decimal land as described in “Ga” schedule to the plaint and for further declaration that the registered deed of Power of Attorney No.26336 dated 21.01.2007 as described in “Ga” schedule to the plaint is not binding upon the plaintiff alleging that above land belonged to Rafiqul Islam who declared to sale the same and the plaintiff agreed to purchase

above land for a consideration of Taka 1,50,000/- and on receipt of Taka 50,000/- above Rafiqul Islam executed a deed of bainapatra on 20.01.1990 and delivered possession. The plaintiff is in continuous possession in above land from above date which has matured into valid title by adverse possession on 19.01.2002. Above Rafiqul Islam never refused to execute and register a sale deed on the basis of above deed of bainapatra but on 04.11.2002 he raised objection against construction work of the plaintiff in above land and submitted a petition to the Deputy Commissioner designating the plaintiff as an unlawfully possessor in above land.

Defendant No.10 contested above suit by filing a written statement wherein he has denied all material claims and allegations as set out in the plaint and stated that Rafiqul Islam while owning and possessing above land died leaving one wife, two sons and one daughter who got their names mutated for above 20 decimal land on 07.10.2007 by Misc. Case No.11289 of 2007-2008 and paid rent to the Government and they appointed Abul Kalam Azad as their constituted attorney by executing and registering a deed of power of attorney on 03.09.2008. Above Abul Kalam Azad was living and working in Italy which made him unable to ensure proper management of above property and he appointed DW1 Morsheda Begum as his appointed attorney. Rafiqul Islam did not execute any

bainapatra to the plaintiff for sale of above land nor he delivered possession to the plaintiff and the claim of title by adverse possession is false and without any material basis.

At trial plaintiff examined five witnesses and defendants examined three. Documents produced and proved by the plaintiff were marked as Exhibit Nos.1 series – 9 series and those of the defendants were marked as Exhibit “Ka” series – “Jha” series.

On consideration of the facts and circumstances of the case and evidence 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 plaintiff as appellant moved to this Court and preferred this First Appeal.

Ms. Rezina Mahmud, learned Advocate for the appellant submits that Rafiqul Islam was the lawful owner and possessor of above 20 decimal land who declared to sale above land and the plaintiff agreed to purchase the same for a consideration of Taka 1,50,000/- and on receipt of Taka 50,000/- above Rafiqul Islam executed a deed of bainapatra on 20.01.1990 and delivered possession. While giving evidence as PW1 the plaintiff produced above original deed of bainapatra dated 20.01.1990 which was marked as Exhibit No.9. On the basis of above deed of bainapatra

plaintiff is continuing her possession in above land by constructing a two storied dwelling house. The plaintiff has succeeded to prove her possession in above dwelling house by oral evidence of five competent witnesses as well as by production of relevant documents such as Utility bills, rent receipts and municipal tax receipts. Above long and continuous possession of the plaintiff from 20.01.1990 to 07.09.2008 has matured into valid title by adverse possession. Since above Rafiqul Islam did not refuse to execute a sale deed nor disturbed the possession the plaintiff did not make any endeavor to obtain a registered kabla deed. But on 04.11.2002 above Rafiqul Islam submitted a complaint to the Deputy Commissioner alleging that the plaintiff was unlawfully possessing above land. The defendant could not prove by legal evidence that Rafiqul Islam or his heirs were in possession in above 20 decimal land. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge should have decreed above suit but the learned Judge utterly failed to appreciate the facts and circumstance of the case and relevant points of law and most illegally dismissed above suit which is not tenable in law.

None appeared on behalf of any respondents at the time of hearing of this First Appeal although this First Appeal appeared in the list for hearing on several dates.

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

It is admitted that above 20 decimal land belonged to Rafiqul Islam who died leaving one wife Noor Jahan, one daughter Mariam Jahan Moni and two sons ASM Ahsanul Haque and ASM Maksudul Haque as heirs.

Plaintiff has filed this suit on 07.09.2008 for declaration of title for above 20 decimal land on the basis of adverse possession. As to the entry into the possession of above 20 decimal land it has been stated at Paragraph No.6 of the plaint that on the date of execution of above bainapatra Rafiqul Islam delivered possession and from above date plaintiff is continuously possessing above land. Plaintiff has produced and proved above deed of bainapatra which was marked as Exhibit No.9. It turns out from above deed of bainapatra that specific stipulations were made for payment of remaining Taka 1,00,000/- and obtaining a registered sale deed within a period of two months in default above advance money would be forfeited. There is no mention in above deed (Exhibit No.9) that possession of above 20 decimal land was delivered to the plaintiff. There is no oral evidence of any competent witnesses as to delivery of possession. In view of above evidence we are unable to find any substance in the claim of

the plaintiff that he was inducted into possession of above land by Rafiqul Islam on 20.01.1990.

Even if it is admitted that on the date of execution of above bainapatra Rafiqul Islam inducted the plaintiff into possession of above land that possession cannot be designated as unlawful or adverse possession. When the recipient of a deed of bainapatra gets possession in the land of the bainapatra lawfully and peacefully from the executant of the bainapatra that is lawful possession. The plaintiff did not mention in the plaint or in her evidence as DW1 as to when above alleged lawful possession of the plaintiff from Rafiqul Islam became adverse against above true owner.

It has been alleged in the plaint that above Rafiqul Islam never refused to execute a sale deed nor disturbed possession and title of the plaintiff in above land and but for the first time above Rafiqul Islam made a complaint to the Deputy Commission against the plaintiff as to possession of above land on 04.11.2002. Even if it is accepted that the plaintiff was in possession in above land since 20.01.1990 and her above possession became adverse on 04.11.2002 even then above adverse possession did not mature into valid title before filing of this suit on 07.09.2008.

In a civil suit the plaintiff is required to prove all claims and allegations as set out in the plaint by legal evidence. A claim of title

by adverse possession is the wildest from of acquisition of title and a plaintiff of such a suit has to prove strictly his manner and date of entry into the possession of the disputed land and the date and the manner how above lawful possession became adverse against lawful owner and how above adverse against the matured into valid title by legal evidence. The plaintiff has utterly failed to prove the date and manner of her entry into the possession of above 20 decimal land and how and when above possession became adverse against Rafiqul Islam or when above adverse possession matured into valid title.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Joint District Judge nor we find any substance in this First Appeal which is liable to be dismissed.

In the result, the First Appeal is dismissed.

However, there shall be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.