

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Appeal No. 693 of 2019

In the Matter of:

Government of Bangladesh represented
by the Deputy Commissioner, Cumilla.

.....Defendant No.1-appellant.

-Versus-

Md. Jamal Mia and others

.....Plaintiff-respondents.

Mr. Yousuf Ali, D. A. G with

Ms. Kamrunnahar Lipy, A.A.G with

Ms. Israt Jahan, A.A.G with

Mr. Billal Ahmed Majumder, A.A.G

..... For the appellant

Mr. Md. Sherder Abul Hossain with

Mr. Md. Saiyedul Islam, Advocates

.....For the respondents

Heard on 26.01.2025, 13.02.2025, 17.02.2025
and Judgment on 20.02.2025.

Sheikh Abdul Awal, J:

This first appeal at the instance of the defendant No. 1-
appellant is directed against the judgment and decree dated

28.02.2018 (decree signed on 06.03.2018) passed by the learned Joint District Judge, 2nd Court, Cumilla in Title Suit No. 135 of 2010 decreeing the suit.

Material facts relevant for disposal of the appeal, briefly, are that the respondent No.1 as plaintiff filed Title Suit No. 135 of 2010 in the court of the learned Joint District Judge, 2nd Court, Cumilla impleading the Government as defendant praying declaration of title in the suit land and to correct the wrong record of right stating, inter-alia, that one Minnat Ali was the original owner of 20 decimal of land of Dag No.526 and his name has been included in C.S. Khatian No.2 as unpermitted possessor in the remark column. Minnat Ali possessed the suit land as illegal occupant. He died leaving behind 8 sons and 2 daughters respectively. Thereafter his son Shamsu got the said land in question by way of amicable settlement and subsequently he gifted the same to the plaintiff on 29.01.2008 by registered Kabala No.557/08. Thereafter plaintiff has been possessing and enjoying the property in question by fishing by developing surrounding areas of the said land till date but at the time of R.S record, the suit land has been recorded in Khatian No.1 wrongly. The said land in question has never been possessed and controlled by the East Pakistan Government and as the value of the land has been increased now and accordingly he came to learn about the wrong record on 05.09.2009 and hence, the suit.

The Government defendant Nos. 1-3 entered appearance in the suit and filed written statement denying all the material allegations made in the plaint stating, inter-alia, the suit is

misconceived, incompetent and not maintainable in law, the plaintiff has/had no right, title and possession over the suit land. The suit property originally belonged to Khawja Habibullah and others and the predecessor of the plaintiff, Minnat Ali took possession of the suit land without taking permission from the real owner, Khawja Habibullah and others before preparation of C.S. Khatian and possession Minnat Ali was also recorded in the comment column of C.S. Khatian No. 2 as illegal occupant. After publishing C.S. Khatian Minnat Ali, the predecessor of the plaintiff left the suit property with uncared condition and after abolishing the Jamindari system the suit land measuring 20 decimal under dag No. 526 and other land adjacent land became vested in the Government. The plaintiff filed the case on false averments and as such, the suit is 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 bad for defect of parties?
- iii. Whether the suit is barred by limitation?
- iv. Whether the plaintiff has right, title and possession over the suit land?
- v. Whether the plaintiff is entitled to get a decree, as prayed for?

At the trial plaintiff side examined as many as 3 witnesses and exhibited some documents while the defendant side examined 1 witness namely DW1 to prove their respective cases.

The learned Joint District Judge, 2nd Court, Cumilla after hearing the parties and on considering the materials on record by his judgment and decree dated 28.02.2018 decreed the suit in favour of the plaintiff.

Aggrieved thereby, the Government of People's Republic of Bangladesh represented by the Deputy Commissioner, Cumilla, Defendant No.1-Appellant has preferred this appeal.

Mr. Md. Yusuf Ali, the learned Deputy Attorney General appearing for the appellant in the course of argument takes us through the evidence and materials on record and then submits that admittedly C.S khatian was recorded in the name of Bharot Samrat, S.A khatian, B.S khatian and R.S khatian were also recorded in the name of Deputy Commissioner, Cumilla on behalf of the then Pakistan Government now the Bangladesh Government and the Government is now possessing the suit land. He further submits that the claim of the plaintiff is that the predecessor of the plaintiff was an unauthorized possessor of the suit land and it is on record that after publishing C.S khatian in the name of Government the predecessor of the plaintiff Minnot Ali left the suit land keeping it as abandoned and since then he had no possession in the suit land and when the SAT Act came into force in the year 1950, suit land became the khas land and recorded in the name of the Government. The learned Deputy Attorney General further submits the trial court wrongly found that suit land was partitioned between the sons and daughters of Minnot Ali although the plaintiff could not submit any document regarding such partition. Since Minnot Ali had no title, the heirs

of Minnot Ali Samsu Mia also had no title, so the transfer registered deed No.557 dated 29.01.2008 in favour of Zamal Mia executed by Samsu Mia has no legal basis and the said transfer has been done without any title and without any lawful authority whatsoever. He further submits as per C.S, S.A and B.S khatian, it is found that suit land is "nal" land and the Government is in possession over the suit land till date but the learned trial Judge wrongly found that the suit land is pond and the plaintiff used to farming fish. He further submits that the Defendant-Appellant in their written statement stated that so called registered deed No. 557 dated 29.01.2008 is forged, void and created and on going through the said deed it is evident that J.L. No, khatian No, quantum of land and Dag No, are not identical with C.S. S.A and B.S khatian. More so, there is only one witness in the said deed and the said witness is identifier also, which proves that it is a created forged deed although the learned trial court without considering all these vital aspects of the case from a correct angle gave wrong finding that heirs of Minnot Ali possessed the suit land without permission of the owner and after the death of Minnot Ali, his son Samsu Mia has been possessing the suit land and subsequently Samsu Mia gifted the suit land to his son Zamal Mia in spite of fact that Minnot Ali and his son Samsu Mia had no title in the suit land. Title less illegal owner cannot transfer the land to anybody by the registered deed and that registered deed is illegal and it has no value in the eye of law and as such, the impugned judgment and decree is liable to be set-aside.

Mr. Md. Sherder Abul Hossain, the learned Advocate appearing for the plaintiff respondent, on the other hand, submits that it is admitted facts by both the parties that the suit property originally belonged to Khawja Habibullah and others and the predecessor of the plaintiff, Minnat Ali took possession of the suit land without taking permission from the real owner, Khawja Habibullah and others before preparation of C.S. Khatian and this possession was also recorded in the comment column of C.S. Khatian No. 2. That C.S. Khatian was finally published in the year of 1926 and since then the plaintiff successively maintaining possession till today which is evident from the subsequent S.A, R.S. and B.S Khatian. In all those Khatians in comment column it has been written that plaintiff's predecessor was in possession without permission. So at least after expiry of 12 years from 1926 Minnat Ali accrued adverse title in the suit land as per provision of Section 28 read with Article 142 of the Limitation Act. He further submits that the Section 20 of the State Acquisition and Tenancy Act provided the list of property which will retain by the Government and in that list there is no mention about the land which was recorded in the name of private persons in C.S. Khatian prepared under the provision of section 3.B(5) of Bengal Tenancy Act and it is apparent in the C.S. Khatian No. 2 that it was recorded in the name of Khawja Habibullah and others as owners, so the entry of S.A. record in the name of Deputy Collector on behalf of East Pakistan Government and the defendant could not say as to how and in what procedure the Government of East Pakistan accrued the ownership in the suit property either in their written

statements or producing any scrap of document and as such, the entry of S.A. and R.S. Khatian are baseless. Finally, Mr. Sherder Abul Hossain submits, the defendant asserted in the written statements that after publication of C.S. Khatian Minnat Ali left the suit property with uncared condition for earning his livelihood, as such the Government became owner of the suit land. In this respect the defendants did not adduce any corroborative witness or evidence to substantiate their case. Moreover there is provision in section 92(3) of the State Acquisition and Tenancy Act for acquiring title by the Government in any abandoned property by filing a Miscellaneous Case and finally publishing Gazette Notification and the said act was effected from 14.04.1956 and the State Acquisition and Tenancy Act has no retrospective effect, so the claim of the defendant is beyond the purview of any law and as such the entry of S.A, R.S. and B.R.S. Khatian are wrong and not binding upon the plaintiff.

To effectively deal with the contentions raised by the learned Advocates for both the parties before us it would be convenient for us to decide first how far the learned trial Judge was justified in decreeing the suit. It is found that the respondent as plaintiff instituted the suit praying the following reliefs:

ক) আরজির ১ম তপছিলোক্ত ভূমিতে বাদী দান সূত্রে মালিক মর্মে এক ঘোষণার ডিক্রী দিতে,

খ) আরজির ২য় তপছিলের আর,এস ১নং খতিয়ান সম্পূর্ণ বেআইনী, তঞ্চকী, বানোয়াটি, অকার্যকরী ভিত্তিহীন এবং উহা দ্বারা বাদী বাধ্য নয় মর্মে ঘোষণার ডিক্রী দিতে,

(গ) মোকদ্দমার খরচ ডিক্রী দিতে,

ঘ) আদালতের ন্যায় বিচারে বাদীগণ আর যে, যে, প্রতিকার পাওয়ার অধিকারী হয় তাহার পাওয়ার আদেশ দানে সুবিচার করিতে মর্জি হয়।

In order to resolve the dispute let us advert to the evidence of PWs and sole DW-1. At the trial the plaintiff respondent examined as many as 3 (three) witnesses to prove its case out of which PW-1, Md. Jamal Miah stated in his deposition that : আমি বাদী। নালিশী ১ম তফশীলের জমির মালিক ছিল মিন্নত আলী, তৎনামে CS ২০নং খতিয়ান হয়। খতিয়ানে ৫২৬ দাগে মিন্নত আলী দখল লিপি আছে। মিন্নত আলী দখলে থেকে মরণে ৮ পুত্র, ২ কন্যা ওয়ারিশ হয়। তৎপুত্র আমপু মিয়া মিন্নত আলীর জীবদশায় মারা যায়। মিন্নত আলীর ওয়ারিশগণ দখলে থাকাবস্থায় মিন্নত আলীর পুত্র সামছু মিয়া নালিশী তফশীলের জমি আপোষে এককভাবে প্রাপ্ত হন। তিনি আমার পিতা। আমার পিতা গত ২৯/১/০৮ তারিখে ৫৫৭ নং দাগ দলিলে আমাকে উক্ত জমি হস্তান্তর করে। আমি জমিতে মালিক দখলকার আছি। This witness also stated that : জমিতে বিবাদী সরকারের কোন স্বত্ব দখল নাই। BS ১নং খতিয়ানে সামছু মিয়া অনুমতি দলকার লিপি আছে। In cross examination the defendant side could not able to discover anything as to the credibility of this witness on the matter to which he testifies.

PW-2, Moslem stated in his deposition that : আমি বাদী, বিবাদী ও নালিশী জমি চিনি। নালিশী জমিতে মাছের চাষ করে বাদী। এর আগে নাল ছিল। তখন বাদীর বাবা ফসল চাষ করত। বাদীর দাদাকে দেখিনি। আমার জন্মের পর থেকে বাদীকে দখলে দেখে আসছি। সরকার জমি দখল করে না। আমার বাড়ি নালিশী জমির দক্ষিণ পাশে। This witness also stated that : সরকার নোটিশ দেয়ার পর শুনেছি যে, জমি খাসের। PW-3, Giashuddin stated in his deposition that : আমি বাদী, বিবাদী ও নালিশী জমি চিনি। নালিশী জমিতে বাদী মাছ চাষ করে। বাদী আমার চাচা, মিন্নত আলী, আমার দাদা আকিজউদ্দিন বেপারীর বাবা। নালিশী জমিতে CS জরীপ হতে ফসল চাষে দখলে ছিল। মিন্নত আলীর বাড়িতে আমরা থাকি। বাদী তার

নানা বাড়িতে থাকে। আপোষে নালিশী জমি শামছু মিয়া পায়। শামছু মিয়াও জমিতে চাষাবাদ করত। বাদী পিতা হতে দানমূলে দখলে আছে। সরকারের দখল জমিতে নেই।

On the other hand, sole DW -1, Land assistant officer, stated in his deposition that- “নালিশী দাগের ২০ শতক জমি সহ মোট ২০.৯৪ একর জমির মূল মালিক ছিল তালুকদার হয়ে কিশোরের অধীনে নবাব খাজা হাবিবুল্লাহ গং। তাদের নামে CS ২নং খতিয়ান হয়। উক্ত মালিকদের বিনা অনুমতিতে ৫২৬ দাগে মিন্নত আলী দখলকার থাকায় খতিয়ানের মন্তব্য কলামে সেভাবেই লিপি আছে।: নালিশী দাগের জমিতে সরকার মালিক দখলকার থাকাবস্থায় BSDP ১নং খতিয়ান বর্তমানে চূড়ান্তভাবে সরকারের নামে লিপি হয়েছে। বাদীগণের কোন স্বত্ব দখল জমিতে নেই।” This witness also stated in his cross examination that : CS দাগ ৫২৬; বিনা অনুমতিতে দখল মিন্নত আলী দাগের মন্ডব্য কলামে লিপি আছে।

On assessment of the above quoted evidence PWs and DW-1, it appears that PW-1, PW-2 and PW-3 all of them testified in one voice that the predecessor of the plaintiff respondent possessed the suit land. Name of Minnot Ali, the predecessor of the plaintiff was recorded in CS khotian and Dag No. 526 as possessor. The sole DW-1 also admitted in his evidence as to possession of Minnot Ali in the suit land. Dw-1 in his evidence also could not disclose that as to how and under what way the Government acquired the suit land.

On close perusal of the record, it is found that the suit property originally belonged to Khawja Habibullah and others and the predecessor of the plaintiff, Minnat Ali took possession of the suit land without taking permission from the real owner, Khawja Habibullah and others before preparation of C.S. Khatian and this possession was also recorded in the comment

column of C.S. Khatian No. 2 and C.S. Khatian was finally published in the year of 1926 under the provision of Section 103(B)(5) of the Bengal Tenancy Act and since then the plaintiff successively maintaining possession till today which is found from evidence and materials on record. Section 20 of the State Acquisition and Tenancy Act provided the list of property which will retain by the Government and in that list there is no mention about the land which was recorded in the private persons in C.S. Khatian prepared under the provision of Section 3.B(5) of Bengal Tenancy Act and it is apparent in the C.S. Khatian No. 2 that it was recorded in the name of Khawja Habibullah and other as owners so the entry of S.A. record in the name of Deputy Collector on behalf of East Pakistan Government and the defendant could not say as to how and in what procedure the Government of East Pakistan accrued the ownership in the suit property either in their written statements or producing any scrap of paper and as such the entry of the suit land in S.A. and B.S. Khatian are baseless.

The defendant-Government asserted in the written statements that after publication of C.S. Khatian Minnat Ali left the suit property and went away from the suit land for earning his livelihood and thus the Government became owner. In this respect the defendants did not adduce any corroborative witnesses or evidence to substantiate their case. Besides, there is provision in the Section 92(3) of the State Acquisition and Tenancy Act for acquiring title by the Government in any abandoned property by filing a Miscellaneous Case and finally

publishing Gazette Notification and the said act was effected from 14.04.1956 and the State Acquisition and Tenancy Act has no retrospective effect, so the claim of the defendant is beyond the purview of any law as such the entry of the land in question in S.A, R.S. and B.R.S. Khatian are wrong and not binding upon the plaintiff-respondent.

It is found that the C.S. Khatian No. 2 was prepared in the name of Khawja Habibullah and others and Minnat Ali took possession of the suit land without their permission before publication of C.S. Khatian and the matter was noted in the C.S. Khatian No.2 and C.S. Khatian was published in the year of 1926 and Minnat Ali continued his possession within the Knowledge of the real owner Kawja Habibulla, as such after expiry of 12 years i.e. in the year of 1938 Minnat Ali accrued title and it is well settled that "In order to claim title by adverse possession it is incumbent upon a person to prove that he has been in continuous possession of the disputed property over the statutory period of 12 years. Ref. 49 DLR (AD) 61.

Adverse possession is a legal process that allows someone to gain ownership of a property without the legal owner's permission. It's based on continuous occupation of the property or in other words, in Bangladesh, adverse possession law states that someone can gain ownership of land if the rightful owner doesn't evict them within 12 years. This means that long-term occupation of a property can lead to ownership without the need for documents.

In this case, we have already noticed that the plaintiff has been able to show his unbroken possession in the suit land for the last 80 years and this long-term occupation of a property can lead to ownership without the need for documents. Therefore, we think, there is a good deal of persuasion in the submission of the learned counsel for the plaintiff respondent.

On perusal of the impugned judgment, it appears that the trial court below after a detailed discussion of the attending circumstances borne out by records came to conclusion that :
 উপরোক্ত সাক্ষ্য প্রমাণ পর্যালোচনায় দেখা যায় যে, নালিশী জমিতে বিবাদী সরকার পক্ষের মালিক হওয়ার বা দখলে থাকার কোন কারণ নাই। পক্ষান্তরে বাদীর পূর্ববর্তী মিন্ত আলী সিএস রেকর্ডের পূর্ব হতেই বিনানুমতি দখলকার হিসেবে নালিশী জমি ভোগ দখল করে স্বত্বের মালিক হয়েছেন এবং তার মৃত্যুর পর তার ওয়ারিশদের মধ্যে আপোষ বন্টনে তার পুত্র সামছু মিয়া নালিশী জমি ভোগ দখল করেছেন। সামছু মিয়া হতে দানপত্র দলিল মূলে বাদী মালিক দখলকার হয়েছেন। বাদীপক্ষ নালিশী জমিতে তার স্বত্ব ও দখল প্রমাণ করতে সক্ষম হয়েছেন।

This being purely a finding of fact based on proper assessment of the evidence and materials on record that the plaintiff has been able to prove his unbroken possession and title in the suit land before publishing C.S. record. Therefore, we find no substance in either of the contentions as raised by the learned Deputy Attorney General.

The learned trial Judge appears to have considered all the material aspects of the case and justly decreed the suit by his judgment and decree dated 28.02.2018, we find no reason to interfere therewith.

In any view of the matter, having regard to the fact as aforesaid, this appeal must fail.

In the result, the appeal is dismissed. In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.