

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed,
Chief Justice
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Rezaul Haque

CIVIL APPEAL NO. 117 OF 2023
(Arising out of C.P No. 1221 of 2021)

Md. Humayun Kabir and another ... Appellants

=VERSUS=

A.M. Mahmud Chowdhury and Respondents
others

For the Appellants :Mr. Probir Neogi, Senior
Advocate with Mr.
Muhammad Salahuddin,
Senior Advocate and Mr.
Sujad Miah, Advocate
instructed by Mr. Zainul
Abedin, Advocate-on-
Record

For the Respondent :Mr. Miftah Uddin
No.1 Choudhury, Senior
Advocate instructed by
Mrs. Shahanara Begum,
Advocate-on-Record

For the respondent :Not represented
Nos.2-15

Date of hearing :04.03.2025, 11.03.2025
and 12.08.2025

Date of Judgment :26.08.2025

JUDGMENT**Md. Ashfaqul Islam, J:**

This Civil Appeal by leave is directed against the judgment and order dated 06.11.2019 passed by the High Court Division in First Appeal No.198 of 2011 with Civil Rule No.559(f) of 2011 allowing the appeal in part.

The respondent Nos.1-3, as plaintiffs, instituted Title Suit No.27 of 2008 before the learned Joint District Judge, 2nd Court, Chandpur, seeking declaration of title over the 1st scheduled land, recovery of possession of the 2nd scheduled land by evicting defendant Nos.2-4, and further declaration that the deeds in the 3rd and 4th schedules are void, illegal, fraudulent, concocted, inoperative, and not binding upon the plaintiffs.

The plaintiffs' case, in short, is that the suit property under Upazila Hajigonj, Mouza Makimabad, Plot No.588 originally belonged to Payary Mohan and others, recorded in S.A. Khatian No.242. Through successive transfers and purchases, Safur Ali Mallik acquired 13 decimals of land from Plot No.588, which he later gifted to his son-in-law Abu Jafar Miah. Abu Jafar Miah further acquired $1\frac{1}{2}$ decimals from Plot No.583, becoming owner of $14\frac{1}{2}$ decimals in Plots ¹²¹⁸/₁₂₁₉, 588 and 583. He gifted 6 decimals to his brother Ali Asraf Miah through gift Deed No. 7017 dated 17.05.1983, who transferred it to plaintiff No.2, A.F.M. Omar Faruque Chowdhury. Abu Jafar Miah mortgaged 7 decimals with the House Building Finance Corporation through mortgage Deed No.

7379 dated 19.05.1985, whereupon the plaintiffs entered into a tripartite agreement with him and the Corporation and became owners of 7 decimals, paying installments regularly. Later, defendant No.5, Mirza Giashuddin, executed a 'Nadabi' deed in their favour for the remaining $1^{55}/_{98}$ decimal. Thus, the plaintiffs claim ownership of the entire $14\frac{1}{2}$ decimals.

At that time, defendant Nos.2-5 were tenants in the 2nd scheduled land, and defendant No.1 had undertaken to deliver possession after eviction, which was not done. Instead, defendant Nos.2-4 managed to record portions of the suit land in their names under D.P. Khatian Nos.1638/1639/123. On objection and appeal, the plaintiffs discovered forged

and fraudulent deeds (3rd and 4th schedules), which clouded their title. Hence, the suit.

The defendant Nos.2-5 contested the suit by filing written statements denying the plaintiffs' allegations. They contended that the suit land originally belonged to Payary Mohan Saha (4 annas), Girish Chandra Saha (4 annas), and Raj Chandra Saha (2 annas), later acquired by Chinta Moni Saha, with S.A. Khatian No.242 prepared in the purchasers' names. Thereafter, Safur Ali Mollik purchased 8 decimals from Plot No.588 through Deed No.5970 (1952) and took settlement of 5 decimals by Kabuliat No.5868 (1955), thus acquiring 13 decimals, which he gifted to his son-in-law, Abu Jafar Miah. Abu Jafar also purchased 1½

decimals from Plot No.583 and mutated $14\frac{1}{2}$ decimals in his name.

The defendants claimed that Abu Jafar transferred $\frac{1}{2}$ decimals with structures to defendant No.2, Shuku Miah, through Deed No.6679 dated 31.05.1986 and also transferred $\frac{1}{2}$ decimal of land to defendant No.3 from plot No. 588 through registered deed No. 8861 dated 24.07.1986. He further transferred 0.01 decimal of land to defendant No. 4 through registered deed No. 7474 dated 21.06.1986, and accordingly, their names were recorded in D.P. Khatians. Defendants argued that Abu Jafar had already transferred portions of land before executing the tripartite Deed No.1344 (1992) with the plaintiffs, making it void and not binding upon them. They further contend that

the plaintiffs' objection and appeals under sections 30 and 31 of the State Acquisition and Tenancy Act were dismissed, and therefore, the suit is barred by limitation and liable to be dismissed.

The defendant No.1 echoed with the same tune with the defendant Nos. 2 to 5 also contested the suit by filing written statements denying material averments made in the plaint.

The trial Court decreed the suit on 30.05.2011. The defendants, being aggrieved, filed First Appeal No.198 of 2011 with Civil Rule No.559(f) of 2011 before the High Court Division. After hearing both parties, the High Court Division, by judgment and order dated 06.11.2019, allowed the appeal in part and modified the trial Court's decree, thereby

disposing of the Civil Rule. Dissatisfied with that, the defendants preferred Civil Petition for Leave to Appeal before this Division and obtained leave, giving rise to this appeal.

Mr. Probir Neogi, the learned Senior Advocate appearing with Mr. Muhammad Salahuddin, the learned Senior Advocate and Mr. Sujad Miah, the learned Advocate for the appellants submit that all registered deeds executed by Abu Jafar Miah (defendant No.1) and Md. Ashraf Ali in favour of the plaintiffs, being later in time, are subject to earlier rights created by the 3rd and 4th schedule deeds in favour of defendants Nos.2-4 over 2 decimals of land in Plots 588 and 583. Thus, while the plaintiffs' title may stand for the rest, it cannot extend to these 2 decimals. The trial

Court erred in decreeing the suit in full, and though the High Court Division rightly modified the decree regarding the 4th schedule, it erred in maintaining it for the 3rd schedule. Therefore, the decree relating to the 3rd schedule should be set aside, and the plaintiffs' declaration of title be modified by excluding the 2 decimals covered by the 3rd and 4th schedules. Since this land is part of the 2nd schedule and is already in possession of defendant Nos.2-4, the decree for khas possession of the 2nd schedule land is also liable to be set aside.

On the other hand Mr. Miftah Uddin Choudhury, the learned Senior Advocate appearing on behalf of the respondent No.1,

made submissions supporting the impugned judgment and order of the High Court Division.

We have heard the learned Advocates for both the parties and considered their submissions. We have also perused the judgment of the trial Court and the High Court Division alongwith other connected papers on record.

It appears that the plaintiffs claimed their title on the basis of Mortgage Deed No.7879 dated 19.08.1985, while the defendants asserted rights under the 4th schedule deeds, being Sale Deed No.6844 dated 29.05.1985 and Sale Deed No.6875 dated 30.05.1985, which were executed prior to the aforesaid mortgage deed. Since these 4th schedule deeds were executed earlier in point of time and the purchasers are in possession, the well-settled principle that

the earlier deeds prevail must apply. The learned Advocate for the respondents could not controvert this position and fairly conceded that there was no bar to passing a decree excluding the land covered by the 4th schedule deeds. In such circumstances, the decree of the trial Court declaring the 4th schedule deeds void could not be sustained, and the High Court Division rightly modified the judgment of the trial Court to that extent.

As regards the 3rd schedule deeds, being Deed No.6679 dated 31.05.1986 (in favour of defendant No.2), Deed No.7474 dated 21.06.1986 (in favour of defendant No.4), and Deed No.8861 dated 24.07.1986 (in favour of defendant No.3), it is to be noted that these were executed subsequent to the mortgage deed and the

tripartite deed. The trial Court, upon proper appreciation of the evidence, declared those instruments fraudulent, void, and not binding upon the plaintiffs, and the High Court Division did not interfere with that finding. The argument of the appellants that the 3rd schedule deeds also should have been sustained is thus fallacious and devoid of merit, since later deeds cannot prevail over earlier instruments already creating rights in favour of the plaintiffs.

Considering the facts and circumstances of the case and the evidence on record, we are of the view that the High Court Division was correct in modifying the judgment of the trial Court only in respect of the 4th schedule deeds and in affirming the findings of the trial

Court regarding the 3rd schedule deeds. We find no legal infirmity in the impugned judgment.

Accordingly, the appeal fails and is dismissed without any order as to costs. Consequently, the judgment and order dated 06.11.2019 passed by the High Court Division in First Appeal No. 198 of 2011 with Civil Rule No. 559(F) of 2011 is affirmed.

C.J.

J.

J.

The 26th August, 2025
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