

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice Md. Mansur Alam

First Miscellaneous Appeal No. 286 of 2008

with

Civil Rule No. 396(F.M) of 2008

In the matter of:

Memorandum of appeal against original order
-and-

In the matter of:

Md. Mokaddes Ali Mondal and others

Plaintiffs-Appellants

Versus

Government of the People's Republic of
Bangladesh represented by the Deputy

Commissioner, Dhaka and others

Defendants-Respondents

Mr. Abdul Alim Miah, Advocate
for the plaintiff-appellant

Mr. Md. Yousuf Ali, D.A.G
for the defendants-respondents

Heard on: 29.04.2025

Judgment on: 06.05.2025

Md.Mansur Alam, J

This miscellaneous appeal as well as rule is heard together as the similar question of fact and law are involved in it and the parties in both the cases are same, so now the two matters are disposed of by a single judgment.

The brief facts of this first miscellaneous appeal are that being aggrieved and dissatisfied the plaintiff appellant preferred this miscellaneous appeal against the judgement and order dated 23.07.2008 passed by the Learned Joint District Judge, 4th Court,

Dhaka in Title Suit No.1355 of 2008 dismissing the injunction petition under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure.

The plaintiff brought aforesaid petition stating in short are that the suit land was originally belonged to one Zummun Moulla who died leaving 7(seven) sons and 3(three) daughters. Zummon Moula's daughter Awal Bibi died leaving behind 2(two) sons namely Abdul Khaleque and Chan Miah and one daughter namely Ambia Khatun alias Asia Khatun. The property inherited by them through Awal Bibi, the same was recorded in S A khatian in their names. They sold away $.0082\frac{1}{2}$ acre of land to the defendant No.1 on 09.10.2005. One heirs Haziirunnessa sold away $.0112\frac{1}{2}$ ojutansho of land on 31.01.2006 to the plaintiff Nos.1 and 2 Abdul Barak Moulla and to other. Another heir's of Zummun Molla transferred their shares $0.0315\frac{1}{2}$ ojutansho on 16.04.2003 to the plaintiff No.3 Ambia Khatun. The plaintiff Nos.4-9 also purchased part of the suit property from the heirs of Jummon Molla. Plaintiffs have been enjoying the land by mutating their names in several khatian and paying rents to the Government and getting gas, electricity connection therein. They have also opened separate holding. But during preparation of R.S. khatian, the suit property wrongly recorded in the Government khas khatian. Due to that

wrong khatian, defendants trying to dispossess the plaintiffs from the suit property and hence the petition.

On the other hand defendant filed written objection denying the averments made in the petition and stated during Revision Survey, settlement personals found nobody in possession of the schedule property for which they have lawfully recorded the suit property in the name of Deputy Commissioner for the Government of Bangladesh. Plaintiffs have fraudulently created their deeds by showing false person produced by the plaintiff. The basis of title and possession of the plaintiff are the deeds executed and registered on 31.01.2006, 05.04.1998, 05.08.2003, 16.04.2005 and 09.10.2005 by heirs of C.S. recorded tenant Jummon Molla. Learned Joint District Judge observed that these deeds in the names of the plaintiffs are executed and registered in very recent time.

Learned Joint District Judge further observed that the Plaintiffs have not produced any documents to prove possession of their predecessor. Plaintiffs submitted the deeds; those are executed after preparation of R.S. record of right. Admittedly R.S. record of right of the suit land has been prepared in the name of the Government. Learned Joint District Judge added in his order that the plaintiff-appellant concealed the matter of preparation of R.S. record of right at the time of registration of those deeds.

Learned Joint District Judge hold the view that the R.S. record of right and the current City Survey was made physically

and the plaintiffs or their predecessor away of the possession of the suit property and accordingly the khatian was prepared in the name of the Government.

We heard learned Advocate and learned Deputy Attorney General and having gone through memo of appeal and other materials on record including the impugned order.

On meticulous and close perusal of the case along with the papers and the observation of the learned Joint District Judge it is prima facie appears that the plaintiffs have submitted some documents which are registered by the sub-registry office and plaintiff appellant relying on those deeds claimed right title over the suit land. Moreover plaintiff appellants got mutated the suit property in their name by opening separate holding. They also paid rent to the Government which shows their possession over the suit land. But learned Joint District Judge did not take the documents into his consideration.

However on perusal the case record and the facts and circumstances of the case as revealed before us, we are of the view that the aims of justice would be best served, if we disposed of this First Miscellaneous Appeal giving a direction to the learned Joint District Judge concerned to hear and dispose of the suit at the earliest. Therefore, we are constrained to hold that the parties are also directed to maintain status-quo in respect of possession of the suit land.

In the result, the instant miscellaneous appeal is disposed of in the above manner as well as the connected Rule being No.396(F.M.) of 2008 is also disposed of without any order as to costs.

Communicate the order to the concerned Court below with a copy of the judgment at once.

Sheikh Abdul Awal, J

I agree