

**O. S 1191/2021**

**Bangladesh Form No. 3701**

**HIGH COURT FORM NO.J (2 )  
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE  
DISTRICT- CHATTOGRAM  
IN THE COURT OF SENIOR ASSISTANT JUDGE, 2<sup>ND</sup> COURT,  
PATIYA, CHATTOGRAM**

**Present : Mr. Md. Hasan Zaman,  
Senior Assistant Judge, Patiya, Chattogram.**

**Date of Delivery of Judgment : 30<sup>th</sup> day of August, 2022**

**Other Suit No. 1191 of 2021**

**S.M Abdul Mannan Chowdhury and Others .....Plaintiffs  
-Versus-  
Golam Rabbani and Others .....Defendants**

**This case came up for final hearing on 29.04.2019, 12.09.2029,  
12.11.2019, 29.10.2020, 07.12.2020; 31.05.2022; 04.07.2022 and  
02.06.2022.**

**In presence of :**

**Mr. Md Mohiuddin Muhin .....Advocate for Plaintiff.**

**Mr. Dipak Kumar Seal .....Advocate for Defendants.**

**And having stood for consideration to this day, the court delivered the  
following judgment:-**

**This is a suit for declaration.**

## O. S 1191/2021

### Case of the Plaintiff

1. Plaintiff's case in brief is that the suit land originally belonged to Nazir Ahmed and his name was duly recorded in CS khatian no.68. Later on, Nazir Ahmed's wife Fatema Khatun being decree-holder of dower, purchased the suit property on auction and transferred 03 Gonda (06 decimals) lands of C.S plot no.3505 by way of Patta and Kaboliyat dated 10.09.1918 in favor of Habibul Bokhar who died leaving two sons Nur Mohammad and Nurul Alam. Accordingly their name was duly recorded in R.S Khatian. It is further case of plaintiff that the heirs of Nur Mohammad and Nurul Alam transferred their share on 09.10.2002 by registered Kabala in favor of the plaintiffs.

2. It is further case of the plaintiffs that disputed 02 decimals of plot no 10867 corresponding to B.S plot no. 11799 has been possessed by the plaintiffs since their purchase. On 01.10.2002, the plaintiffs noticed that the name of predecessor of defendants has been wrongly recorded in the LROR of B.S 61 no. khatian. Thereafter on 15.03.2004 the plaintiffs collected the certified copy of the impugned Khatian and finally came to know the matter. Due to such erroneous record, the plaintiffs feel no problem in their enjoyment of the suit property but it has clouded plaintiff's title to the suit property. Hence the case.

### Defendant's Case :

3. **The defendants No. 7/8 contested the suit by filing written Statement contending, *inter alia*, that lands measuring 54 decimals of C.S plot no 3505 belonged to Nazir Uddin Ahmed. Later on, Nazir Uddin's wife Fatema Khatun became owner of land by a decree of dower and on 30.09.2018 transferred 06 decimals land be way of Patta vide no.1808 and Kabliyat vide no 1809 in favour of Habib Bohar who mortgaged the same in favour of Abdul Sattar. Then Bornizan wife of Habib Bohar redeemed the mortgage by way of deed of Release (মুক্তিনামা) vide no.2127 dated 09.11.1930 and became the owner of the land. That time R.S Survey was going on and R.S Khatian was recorded**

## O. S 1191/2021

erroneously in the name of non- existent Nur Ahmed and others who had no title at all. Despite erroneous record, no problem arose in the enjoyment of the land by Bornizan.

4. It is further case of the defendant that Bornizan transferred the said 6 decimals of C.S plot no 3505 by way of deed 5197 dated 21.12.1940 in favour of Abdul Gofir Chowdhury who died leaving a wife Khatiza Begum and a son the defendant no.8 Momtajul Haq Chowdhury. The residence of defendant no.8 is in non-disputed R.S plot no. 10869 and his courtyard is in disputed plot no.10867. Thus the defendant no.8 has been in possession of the suit land since his predecessor. Later on the defendant no.8 transferred 2 decimals land by way of deed of Gift vide no. 551 dated 05.02.2001 in favor of his wife, daughter and son the defendants no. 8(ka)-8(Kha) and 9 of the instant suit.

5. That the defendants as plaintiff has filed other suit no 40/2003 for wrong B.S record against the plaintiff before this court which is pending. The plaintiff has managed a sale deed dated 09.10.2002 from heirs of Nur Muhammad and Nurul Alam by false personation.

6. It is the fact of additional W/S that Habib Bokhari got the land by way of Patta and Kabuliyat on 10.09.1918. During R.S survey Habib Bokhari was alive. He transferred the suit land and other lands by way of Kabala being no.2117 dated 09.11.1930 in favour of her wife Bornizan. The so called Nur Ahmed and Nursoffa @ Nurul Alam inherited nothing from their father Habibur Bokhari. In R.S Khatian, their name was erroneously recorded in the comments column. The plaintiff's vendor is not heirs of Nur Ahmed. The plaintiffs by deed dated 09.10.2002 never got any possession of the suit land. They have no right title and interest to the suit land. The defendant has been using the suit land as their courtyard of their house. This suit is totally false and baseless. For this, he prayed for dismissal of the suit.

## O. S 1191/2021

### Issues:

7. From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, the following issues has been framed for proper adjudication of the case :

- 1) Whether the suit is maintainable in it's present form and prayer?
- 2) Whether the plaintiffs have any cause of action for filing the suit ?
- 3) Whether the suit is barred by limitation?
- 4) Whether the suit is bad for non-joinder of necessary parties?
- 5) Whether the plaintiffs have any right, title, interest and possession over the suit land?
- 6) Whether the B.S khatian concerning the suit land is wrong?
- 7) Whether the plaintiff may get the relief as prayed for?

### Discussions and Decisions:

8. To prove the plaint case, the plaintiff examined 02 witnesses namely **N. M Hossain Akbar Chowdhury as P.W.1 and Mujibur Rahman as P.W.2** before this court. **During examination of P.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

1. C. C of R.S Khatian no. 3116	Exhibit 1
2. C. C of B.S Khatian no.69	Exhibit 2
3. Original Mortgage deed no. 3482 dated 08.11.1927	Exhibit 3
4. Original deed no. 7804 dated 09.10.2002	Exhibit 4

9. On the other hand, to prove the defendant's case, the defendants examined **02** witnesses namely **Rezwanul Haq Chowdhury as D.W.1 and Jebal Hossain as D.W.2** before the court. During examination of **D.W.1** the following documents were produced and proved, which have been marked as exhibits:-

## O. S 1191/2021

1. C.C of C.S Khatian no. 68 , R.S Khatian No. 3116 and B.S Khatian no. 61	Exhibit Ka (series)
2. Certified copy of Patta and Kabuliyat no. 1808/1809 dated 10.09.1918	Exhibit Kha (series)
3. Original copy of Deed of Release no. 2127 dated 14.11.1930	Exhibit Ga
4. Certified copy of Deed no. 5197 dated 21.12. 1940	Exhibit Gha
5. Original copy of deed of gift no. 3639 dated 08.05.1967	Exhibit Uma
6. Original copy of deed of gift no. 558 dated 05.02.2001	Exhibit Cha
7. Original deed of Power of Attorney no.40 dated 15.02.2022m	Exhibit Chha

### **Decision with Reasons**

10. **N. M Hossain Akbar Chowdhury (P.W.1)** for the plaintiff and **Rezwanul Haq Chowdhury as D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

11. **Issue no. 1, 2 and 3**

**Whether the suit is maintainable in it's present form and prayer?**

**Whether the plaintiffs have any cause of action for filing the suit ?**

**Whether the suit is barred by limitation?**

All these issues are taken up together for the sake of brevity and convenience.

Perusing the plaint, written statement and the evidences appearing in the record, it appears that the suit is purely civil in nature and there is no bar to try this suit by this Court. Therefore, the suit is well maintainable in its present form.

12. The plaint reveals sufficient cause of action for the plaintiffs for bringing the instant suit. It appears from the plaint that the plaintiffs are the owners and possession holders of the disputed 02 decimals lands of R.S plot no.10867. Having no right, title, interest and possession, the defendants are denying the right, title, interest and possession

## O. S 1191/2021

of the plaintiffs. Now, the defendants are claiming the suit land on the basis of erroneous B.S Record. This act of defendants clouded the right, title, interest and possession of the plaintiffs over the 1(ka) schedule property mentioned in the plaint. The cause of action of the instant suit arose on and from 15.03.2004 and the suit was filed on 22.03.2004 which is within the statutory period of limitation. Thus, the suit is well maintainable and has sufficient cause of action and is not barred by limitation.

Accordingly, all these issues are decided in favour of the plaintiffs.

13. **ISSUES NO.4 :**

**“Is the suit bad for non-joinder of necessary parties?”**

Perusing the plaint, written statement and other materials on record, I do not find anything from which it can be ascertained that the suit is bad for defect of parties. Moreover, Ld. Advocate for the contesting defendants no.7 and 8 did not argue on this issue. Accordingly, this issue is decided in favour of the plaintiffs.

14. **Issue No : 5 ,6 and 7**

**“Whether the plaintiffs have any right, title, interest and possession over the suit land?”**

**“Whether the B.S khatian concerning the suit land is wrong?”**

**“Whether the plaintiff may get the relief as prayed for?”**

Admittedly original owner of the suit land was Nazir Ahmed whose name was duly recorded in C.S khatian no.68. In view of **Exhibit-ka**, it transpires 54 decimals land in respect of C.S plot no.3505 was recorded in the name of Nazir Ahmed. It is also admitted by both parties that Nazir Ahmed’s wife Fatema Khatun being decree-holder of dower, purchased the suit property on auction and transferred 03 Gonda (06 decimals) lands of C.S plot no.3505 by way of Patta and Kaboliyat dated 10.09.1918 in favor of Habib Bokhar. **Exhibit No. Kha** and **Exhibit No. Kha/1** proves the fact to be true.

## O. S 1191/2021

15. The plaintiffs claim that Habib Bokhar died leaving behind two sons Nur Ahmed and Nurussofa @ Nurul Alam whose name was duly recorded in R.S Khatian. In view of RS Khatian no.3116 (**Exhibit-Ka/1**), it appears that as per comments column lands measuring (02+04) =06 decimals of R.S plot no. 10867/10869 was recorded in the name of Nur Ahmed and others by dint of Ewaz. In view of original copy of deed no.7804 dated 09.10.2002 marked as **Exhibit no. 4**, it transpires that the heirs of Nur Ahmed and Nurul Alam transferred the suit land in favour of the plaintiffs and on the strength of this deed, the plaintiffs have claimed their title on the suit land.

16. On the other hand, this fact has been denied by the defendants claiming that the R.S record was erroneous as Nur Ahmed and Nurul Alam never got any property by inheritance from their father Habibur Bhokar. In support of their contention, the defendants produced a **deed of Release being no 2117 dated 14.11.30** marked as **exhibit- Ga** which reveals that Habibur Bhokar mortgaged 18 Gond lands including 03 gonda (6 decimals) of disputed R.S plot 3505 in favor of one Abdur Sattar and thereafter the said lands was released by his wife Bornijan Bibi who thus became owner of the suit land.

17. The defendants have filed a sale deed being no.**5197 dated 21.12.1940** executed by Bornijan Bibi w/o Habibul Bokhar in favour of **Abdul Gofur Chowdhury** in respect of suit property marked as **Exhibit nos. Gha**. It transpires that Bornijan bibi transferred of total **16 ll [16 Gonda 2 kora] or 33 decimals** lands including **03 Gonda of disputed plot no.3505** by the said deed.

18. During arguments, learned advocate for the plaintiffs contends that the suit land of 02 decimals of R.S plot no.10867 corresponding to B.S Plot no 11719 was not transferred by the said deed. R.S Plot no 10867 is totally absent in the deed. Only the lands of R.S plot no 10869 was transferred in true sense. This contention was strongly opposed by ld advocate for the defendants. On plain reading of the said deed, it appears to me that of total 33 decimals lands was transferred by the said deed marked as **Exhibit**

## O. S 1191/2021

**nos. Gha.** The first schedule of deed contains **13 Gonda ll kora or 27 decimals** and second schedule contains **3 Gonda or 6 decimals** lands including suit lands. There is no dispute regarding the facts that the said 6 decimals of C.S plot no 3505 split up into two R.S plots such as 02 decimals in R.S plot no 10867 and 04 decimals in R.S plot no 10869. **Bornijan Bibi, by Exhibit- Gha, transferred the same lands of C.S plot no 3505 which she got by Exhibit-Ga. Where entire redeemed lands of disputed C.S plot no. 3505 corresponding to R.S plot no 10867/10869 has been transferred, there left no scope here to claim that 02 decimals of R.S plot no 10867 was not transferred by Exhibit-Gha.**

19. It appears to me that the non-insertion of R.S plot no.10867 in deed was inadvertent mistake of the deed writer. Upon reading of the whole deed, it is my considered view that 06 decimals of C.S plot no 3505 corresponding to R.S plot no 10867 and 10869 was actually transferred by the said deed marked as **Exhibit-Gha**. Thus the contention of the plaintiffs that the disputed lands was not transferred by **Exhibit-Gha** is not tenable at all.

20. The plaintiffs have claimed that Nur Ahmed and Nurul Alam inherited the suit land from their father Habibur Bhokar and accordingly their name was duly recorded in R.S khatian. But the said khatian reveals that Nur Ahmed and others got their name recorded on the basis of Ewaznama (এওয়াজ). The plaintiffs could neither make any explanation regarding such entry of Ewaz nor produced any such document during trial. Apart from this, **Exhibit- Ga** and **Exhibit-Gha** has revealed that the title of Habibul Bokhar over the suit land become extinguished when his wife Bornijan Bibi redeemed the suit land in her name and later on transferred the same in favor of Abdul Gaffar Chowdhury the predecessor of the defendant. Thus it appears that Habibur Bokhar had no properties left to be inherited by Nur Ahmed and Nurul Alam. Considering these facts, there is no doubt here that the name of Nur Ahmed and Nurul Alam was wrongly recorded in the R.S Khatian. No title regarding suit land was accrued in their favor by the

## O. S 1191/2021

said Khatian. Accordingly the heirs of Nur Ahmed and Nurul Alam did not acquire any title regarding the suit land and were not entitled to transfer the same in favor of the plaintiffs. Thus it is my considered view that the plaintiffs have no right title and interest to the suit land.

21. On the other hand, in view of **Exhibit –Uma**, it transpires that Abdul Gofur Chowdhury transferred the said 06 decimals land on 08.05.1969 by way of deed of Gift in favor of Mst. Khatiza Khatun. There is no dispute regarding the fact that Khatiza khatun died leaving Momtazul Haq chowdhury as her legal heir who later on, by **Exhibit-Cha** transferred the disputed 02 decimals of R.S plot no. 10867 in favor of Salma Sikdar, Sakila Sikdar and Nizamul Haq Choudhury, the defendant no. 8(k)-8(Kha) and 9 of the suit. **Considering these facts, it is crystal clear that the defendants have right title and interest over the suit land.**

22. It is admitted by both parties that B.S record regarding the suit land is wrong. P.W.1 deposed that they are in possession of the suit land. But how they possessed the suit land is not clear from his deposition. He admitted in cross examination that the suit land is just in front of the residence of defendants. P.W.2 shared contradictory view from P.W.1 stating that the suit land is within the boundary wall of the plaintiffs. But he has admitted that there is a court yard in front of residence of the defendants and they use it. On the other hand, both D.W.1 and D.W.2 very confidently stated that the suit land is the court yard of the defendants and they use it which is also corroborated by the statement of P.W.1 and P.W.2. Thus it appears that the plaintiffs are not in possession of the suit land. It is the defendants who are in actual possession of the suit land which has been being used as their court yard.

23. Considering the above discussions, it appears that the plaintiffs have failed to discharge their initial burden to prove their right, title, interest and possession over the suit property. Thus, all these issues are decided as against the plaintiffs.

**O. S 1191/2021**

24. Keeping in consideration of the plaint, written statement and other materials on record of this case and hearing of the Ld. Advocates for both the parties to the suit, I have no hesitation to hold that the suit is liable to be dismissed without any order as to cost.

**In result the case fails.**

**Court fee paid is correct**

**Hence,**

**It is Ordered**

that the suit be dismissed on contest against the defendant no. 8/9 and ex-parte against the rest without any order as to cost.

The case is thus disposed of.

**Typed & Corrected by me**

Md. Hasan Zaman  
Senior Assistant Judge,  
Senior Assistant Judge, 2<sup>nd</sup>Court,  
Patiya , Chattogram.

Md. Hasan Zaman  
Senior Assistant Judge,  
Senior Assistant Judge, 2<sup>nd</sup>Court,  
Patiya , Chattogram.