

**Present : Md. Hasan Zaman , Senior Assistant Judge**

**Order No- 43**  
**Dt- 12.02.2023**

Today is fixed for Passing ex-parte Order.

Plaintiff is present filing hazira.

Record is taken up for passing order.

Plaintiff instituted this suit for declaration of title and the B.S Khatian relating to suit was wrongly recorded.

It is the case of the plaintiff that the suit land originally belonged to Karim Ali and Gagon chandra whoes name was duly recorded in R.S Khatian no.423. Karim Ali had four sons Omra Mia, Gunu Mia Kala Mia and Ahmed Mia on 14.04.1940 purchased the suit land of R.S Dag no1471 in the benami of Janab Ali. Later on the heirs of Karim Ali executed among them a partition deed being no.4930 dated 17.08.1940. In order to avoid misunderstanding, Janab Ali executed a deed of release vide no.3630 dated 02.08.1941 in their favour. Karim Ali's Son Ahmed Mia got the lands of disputed R.S plot no1471 who transferred it in favour of Monmohon Sharma vide Kabala no 3616 dated 02.08.1941 who again transferred it in favor of Soshi Mohon by way of kabala no 4092 dated 26.06.1947. While owned and possessed the said lands Soshi Mohon transferred 10 gonda lands in favour of Kala Bi by way of deed no 6186 dated 19.11.1968. Out of 10 gonda 02 gonda was acquired for Gas line purpose by the Government . Later on Kala Bibi transferred her 8 gond or 16 decimals land in favour of plaintiff no 1 and 2 by way of registered Kabala no 6232 dated 02.11.1991. Since then the plaintiffs have been owned and possessed the suit land through Bargadar. B.S Khatian of the suit land being erroneously recorded, plaintiffs brought this instant suit.

The **defendants No. 1-18** were sufficiently served with summons, despite of which they had failed to appear in this suit and the suit was fixed for ex-party hearing against them vide **order no. 13 dated 12.05.2017**.

In order to prove the case the **plaintiff no-2** examined himself as P.W.1 and one Abdul Jabbar as P.W.-2 who were examined in full and discharged.

The following documents were marked as exhibits :

1. Power of Attorney dated 01.01.2014 marked as **Exhibit-1**
2. C.C of R.S Khatian No. 423 marked as **Exhibit -2**
3. C.C of B.S Khatian No. 433 marked as **Exhibit no-3**
4. C.C of deed no 3630 dated 02.04.1981 marked as **Exhibit-4**
5. C.C of deed no 3616 dated 02.08.1981 marked as **Exhibit-5**
6. C.C of deed no 4092 dated 26.06.1947 marked as **Exhibit-6**
7. C.C of deed no 6186 dated 19.11.1968 marked as **Exhibit-7**
8. C.C of deed no 6232 dated 02.11.1991 marked as **Exhibit-8**

The defendants , not having contested the suit , the averments in the plaint have to be considered solely on the basis of the oral and documentary evidence adduced by the plaintiffs in support of his contention.

It is the plaint case that R.S recorded owner of the suit land was Karim Ali and Gagon chandra. Exhibit -2 substantiate the same. In view of Deed of release marked as **Exhibit -4**, it appears that the four sons of Karim Ali purchased the suit land of R.S Dag no1471 in the benami of Janab Ali and later on that Janab Ali by executing the nadabi deed admitted the benami purchase and claimed him titleless to the suit land. From **Exhibit- 5**, it is seen that by amicable partition among heirs of Karim Ali, Ahmed Mia got 40 decimals land of R.S plot no.1471 and transferred the same in favour of Monmohon Sharma. Exhibit-6 reveals that Monmahan Sharma transferred the said 40 decimals to Soshi Mohon who thereafter transferred **10 gonda lands** by way of **Exhibit 7** in favour of Kala Bibi. **From Exhibit- 8** it is seen that plaintiffs no. 1 and 2 purchased the suit lands from that Kala Bibi. All these documents taken together shows that the plaintiffs become the owner of the suit property.

**Exhibit -7** shows that Kala Bibi becomes owner of the suit land on 19.11.1968 by purchase. In view of B.S Khatian no. 433 marked as **Exhibit -3**, it appears that B.S Khatian relating to the suit land has been recorded in the name of predecessor of the defendants instead of Kala Bibi. Since at the time of B.S survey, Kala Bibi had been owned and possessed the suit land B.S khatian relating to suit land ought to be recorded in her name. So there is no doubt that B.S Khatian relating to the suit land has been wrongly recorded. It is contended by the plaintiffs that they are enjoying the possession of the suit land through Bargadar. That means despite of wrong B.S record the plaintiff are in possession of the suit land.

Thus, the title and possession of the plaintiff having been proved by sufficient oral and documentary evidence , this court is inclined to grant the relief sought for.

It is to be mentioned here that the defendants having neglected to avail the opportunity of contesting the suit, the evidence adduced by the plaintiffs, both oral as well as documentary, are sacrosanct in nature and in such a situation, there is no other alternative left for the court but to accept their uncontroverted and unshattered testimony and also to rely upon the unchallenged documentary evidence adduced by them along with plaintiff allegations. *The plaintiffs are, thus, found entitled to seek the relief as prayed for by them in the prayed clause of the plaint and the suit deserved to be decreed.*

**C.F paid is correct.**

**Hence,**

**it is, Ordered**

That the suit be and the same is decreed ex-parte against the defendants without any order as to cost.

It is hereby declared that the plaintiffs have right title and interest over the 16 decimals of lands stated in the schedule of plaint and the B.S Khatian relating to the suit land has been wrongly recorded.

The instant suit is thus, disposed of.

D/C by Me

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

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