

LST case No. 320 of 2023

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, 2ND COURT, AND
LAND SURVEY TRIBUNAL, PATIYA CHATTOGRAM.**

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

Date of Delivery of Judgment : 10th day of November, 2024

L.S.T CASE NO. 320 of 2023

Udayan Chawdhury @ Narayan Chawdhury
.....Plaintiffs

-Versus-

Sub-Divisional Engineer, Roads and Highway, Patiya & Ors
.....Defendants

This case came up for final hearing on 23.09.2024 and 14.10.2024.

In presence of :

Mr.Mintu Achariya (Ranjan)Advocate for Plaintiff.

Mr. Muhammad MuhiuddinAdvocate for Defendants.

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

This is a suit for correction of B.S record.

Case of the Plaintiff

Plaintiff's case in brief is that the suit property described in the schedule originally belonged to Padmalochan Chowdhury's four sons—Sarda Charan, Surendra Bijoy, Upendra Chandra, and Shyama Charan Chowdhury. The property was recorded in R.S. Khatian No. 2139. By a deed of partition executed on **May 5, 1931**, bearing No. 857, Shyama Charan Chowdhury exclusively received 37 decimals of land in R.S. Dag No. 3644. After his death, his three sons—Sudhir Charan Chowdhury, Sukumar Chowdhury, and Sujit Chowdhury—inherited the property. Subsequently, Sukumar Chowdhury sold

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his 13 decimals of share in the said dag to his two brothers, Sudhir Charan and Sujit Chowdhury, via a registered deed on **September 20, 1987**, bearing No. 2746.

Thus, Sudhir Charan and Sujit Chowdhury jointly held ownership and possession of the total 37 decimals of land. Later, 21 decimals of this land were acquired by the Roads and Highways Department (RHD) under **L.A. Case No. 16/9/54-55**, for which compensation was paid to Sudhir and Sujit Chowdhury. The remaining 16 decimals of land remained in their possession. Subsequently, Sudhir Charan Chowdhury sold his entire share in the remaining land to Bani Prabha Chowdhury through a registered deed on **June 27, 1990**, bearing No. 2317. Later, Bani Prabha Chowdhury and Sujit Chowdhury jointly sold 23 decimals of land to Anjan Biswas through a registered deed dated **January 6, 1999**, bearing No. 22.

However, the transferors held saleable rights only over 16 decimals, which Anjan Biswas lawfully acquired. On **December 30, 2002**, Anjan Biswas transferred these 16 decimals to the plaintiff by a registered deed bearing No. 3053. Although the deed of transfer described 23 decimals of land, the plaintiff only acquired ownership rights over 16 decimals in R.S. Dag No. 3644, corresponding to B.S. Dag No. 4058. Since then, the plaintiff has been in peaceful possession of the said 16 decimals of land.

During B.S surveys, the acquired 21 decimals of land were distributed across **B.S. Dag Nos. 4058 (7 decimals), 4131 (5 decimals), and 4296 (9 decimals)**, with records reflecting government ownership under the Roads and Highways Department. However, due to errors in the survey, 7 decimals of the plaintiff's land in B.S. Dag No. 4058 were mistakenly recorded under **B.S. Khatian No. 3**, in the name of the Roads and Highways Department. The remaining 9 decimals were correctly recorded under **B.S. Khatian No. 3933** in the plaintiff's name.

Upon receiving certified copies of the B.S. Khatian, the plaintiff discovered that due to the absence of the predecessor-in-interest (Sudhir Charan Chowdhury and others) during the survey, the government survey officers recorded an erroneous entry. Specifically, 14 decimals of land in B.S. Dag No. 4058 were recorded under the Roads and Highways Department, despite the government's acquisition being limited to 7 decimals in that dag. This entry lacks legal or documentary basis and contradicts the plaintiff's lawful ownership.

The plaintiff asserts that R.S. Dag No. 3644 consisted of 37 decimals of land, of which the government lawfully acquired 21 decimals. The remaining 16 decimals comprise 9 decimals under **B.S. Khatian No. 3933** and 7 decimals under **B.S. Khatian No. 3**. Due to the erroneous record, the plaintiff fears potential clouding of their title. Thus, the plaintiff

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has filed this suit seeking correction of the B.S. Khatian to reflect their rightful ownership of 16 decimals of land.

Defendant's Case :

The Defendant No.1 contested the suit filing W/S contending inter alia that the disputed land is situated in Shakpura Mouza and corresponds to R.S. Dag No. 3644, which matches with B.S. Dag Nos. 4058, 4131, and 4296 as a single and indivisible property. The total area of the R.S. Dag No. 3644 is 37 decimals. Out of this, 21 decimals were acquired by the Roads and Highways Department through L.A. Case No. 16/9/1954-1955. Accordingly, the acquisition was reflected in the gazette notification, and the plot schedule was updated in the department's name.

In line with the gazette, the B.S. survey also correctly recorded the disputed land in favor of the Roads and Highways Department. Specifically, the B.S. Khatian No. 3 lists the following land areas under the department's name: 9 decimals in B.S. Dag No. 4296, 5 decimals in B.S. Dag No. 4132, and 14 decimals in B.S. Dag No. 4058, making a total of 28 decimals. However, it is acknowledged that the B.S. Dag No. 4058 contains an excess of 7 decimals, as 14 decimals were recorded in favor of the department instead of 7 decimals. This discrepancy, amounting to an additional 7 decimals, may be decreed in favor of the plaintiff based on proper documentary and oral evidence presented before the court.

The plaintiff, however, has recently filed this baseless and false suit with the motive of unjust enrichment, exploiting the recent significant increase in the value of the land. The suit appears to be an attempt to usurp government property under the Roads and Highways Department by misleading the court. The plaintiff is not entitled to any relief from this suit, which is devoid of merit and should be dismissed outright.

Issues:

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 its present form and nature?
2. Whether any cause of action has arisen for filing the suit?
3. Whether the suit is barred by limitation?
4. Whether the suit suffers from any defect of parties?

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5. Whether the plaintiffs have title and possession over the suit land?
6. Whether the disputed B.S. Khatian has been prepared erroneously?
7. Whether the plaintiff is entitled to a decree for correction of the Khatian as prayed for?

Discussions and Decisions:

To prove the plaint case, the plaintiff examined 01 witness namely **Narayan Chowdhury as P.W.1** 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. 2139 of Shakpura Mouza.	Exhibit-1
2)	C.C of B.S. Khatian No. 3933/3 of the same mouza.	Exhibit-2
3)	C.C of the Partition Deed No. 857 dated 5/5/1931.	Exhibit-3
4)	C.C of Sale Deed No. 2746 dated 20/9/1987.	Exhibit-4
5)	Notification of L.A. Case No. 16/9/54-55.	Exhibit-5
6)	Certified copy of Sale Deed No. 2317 dated 27/06/1990.	Exhibit-6
7)	Certified copy of Sale Deed No. 22 dated 6/1/1999.	Exhibit-7
8)	Certified copy of Sale Deed No. 3053 dated 30/12/2002.	Exhibit-8

On the other hand, to prove the defendant's case, the defendants examined **01** witnesses namely **Suvasis Chakma as D.W.1** before the court. During examination of **D.W.1** the following documents were produced and proved, which have been marked as exhibits:-

1)	Plot Schedule	Exhibit-Ka
2)	Copy of Gazette	Exhibit-Kha
3)	Power certificate	Exhibit-Ga

Discussion and Decision

Issue no. 1, 2 and 3

Whether the suit is maintainable in its present form and nature?

Whether any cause of action has arisen for filing the suit?

Whether the suit is barred by limitation?

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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.

The plaint reveals sufficient cause of action for the plaintiffs for bringing the instant suit. It appears from the plaint that the plaintiff is the owners and possession holders of the disputed property by way of Purchase. Unfortunately during B.S Survey, the suit land wrongly recorded in the name of Government Institution namely Roads and Highway in B.S khatian no.3 in absance of Predecessor of the plaintiffs. Now, the defendants are claiming the administration and possession of 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 schedule property mentioned in the plaint. The cause of action of the instant suit arose on and from 20.08.2023 and the suit was filed on 29.11.2023 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.

Issue No 4 : Whether the suit suffers from any defect of parties?

Upon review of the plaint, written statements, all evidence, and documents on record, no material was found to indicate that the suit is vitiated by any defect of parties. Moreover, during the presentation of arguments, the defendant did not raise any objection regarding this matter. Therefore, the issue under consideration is resolved in favor of the plaintiff.

Issue No 5-7 :

Whether the plaintiffs have title and possession over the suit land?

Whether the disputed B.S. Khatian has been prepared erroneously?

Whether the plaintiff is entitled to a decree for correction of the Khatian as prayed for?

All these issues are taken up together for the sake of brevity and convenience. This is a suit concerning the ownership, possession, and correction of records in respect of a parcel

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of land measuring 7 decimals of R.S. Plot No. 3644 corresponding to B.S plot No.4058. Both parties have admitted that the suit land originally belonged to Sarda Charan, Surendra Bijoy, Upendra Chandra, and Shyama Charan Chowdhury, as evidenced by R.S. Khatian No. 2139. **Exhibit-1** corroborates this assertion. From the evidence on record, particularly **Exhibit-3**, it appears that by virtue of a deed of partition (**Deed No. 857 dated May 5, 1933**), Shyama Charan Chowdhury acquired exclusive ownership of 37 decimals of land in R.S. Plot No. 3644. Upon his demise, his three sons, Sudhir Charan Chowdhury, Sukumar Chowdhury, and Sujit Chowdhury, inherited the property. Subsequently, Sukumar Chowdhury transferred his 13-decimal share to his brothers, Sudhir Charan and Sujit Chowdhury, through a registered deed dated September 20, 1987 (Deed No. 2746), as evidenced by **Exhibit-4**. Therefore, Sudhir Charan and Sujit Chowdhury jointly held ownership and possession of the entire 37 decimals of land in the said plot.

The Land Acquisition Gazette (**Exhibit-Ka**) and the Plot Schedule (**Exhibit-Kha**) reveal that 21 decimals of land from R.S. Plot No. 3644 were acquired by the Roads and Highways Department (RHD) under Land Acquisition Case No. 16/9/54-55. Compensation for this acquisition was duly paid to Sudhir Charan and Sujit Chowdhury, as evidenced by the information slip marked **Exhibit-5**.

Subsequently, Sudhir Charan Chowdhury sold his remaining share of the suit plot to Rani Prova Chowdhury via a registered deed dated June 27, 1990 (Deed No. 2317), as indicated by **Exhibit-6**. Thereafter, Rani Prova Chowdhury and Sujit Chowdhury jointly sold 23 decimals of land to Anjan Biswas through a registered deed dated January 6, 1999 (Deed No. 22), as evidenced by **Exhibit-7**. However, it has been conclusively determined that the transferors held saleable rights over only 16 decimals of land. Accordingly, it appears that Anjan Biswas lawfully acquired 16 decimals in R.S. Plot No. 3644.

Anjan Biswas later transferred these 16 decimals of land to the plaintiff through a registered deed dated December 30, 2002 (Deed No. 3053), as evidenced by **Exhibit-8**. Although the deed described the transfer of 23 decimals, the plaintiff effectively acquired ownership of 16 decimals in R.S. Plot No. 3644, corresponding to B.S. Plot No. 4058. It is claimed by the plaintiff that since the purchase, the plaintiff has been in peaceful

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possession of the said 16 decimals of land. Notably, these facts have been admitted by the defendants.

The plaintiff has challenged the entries in the Bangladesh Survey (B.S.) records concerning the disputed property, asserting that they are erroneous. Certified copies of B.S. Khatian Nos. 3933 and 3, marked as **Exhibits-2 and 2(a)**, have been submitted to support this claim. It has been established that 21 decimals of land in R.S. Plot No. 3644 were acquired by the RHD, as reflected in various B.S. records. Specifically, 9 decimals are recorded under B.S. Khatian No. 1 in Plot No. 4296, 5 decimals under B.S. Khatian No. 3 in Plot No. 4131, and 7 decimals under B.S. Khatian No. 3 in Plot No. 4058.

Exhibits-2 and 2(a) further reveal that the 16 decimals claimed by the plaintiff in R.S. Plot No. 3644 are included in B.S. Plot No. 4058, under two khatians: 9 decimals under B.S. Khatian No. 3939 and 7 decimals under B.S. Khatian No. 3. However, B.S. Khatian No. 3 erroneously records 14 decimals of land in the name of the first defendant, the RHD. **The defendant No.1 has admitted that only 7 decimals should have been recorded in their name, thereby acknowledging the incorrect and baseless nature of the erroneous entries.**

This court finds that the B.S. records, particularly the entries in Khatian No. 3, fail to accurately reflect the ownership rights of the plaintiff. The 7 decimals of land in Plot No. 4058, originally belonging to the plaintiff's predecessor, were incorrectly recorded in favor of the defendant No.1. Consequently, the B.S. records are erroneous and require rectification.

Having meticulously examined the plaint, written statements, documentary evidence, and arguments of learned advocates, this court concludes that the plaintiff has successfully established their ownership and possession of the suit property. The plaintiff is entitled to the reliefs sought, including the correction of erroneous entries in the B.S. Khatian. Thus, all these issues are decided in favor of the plaintiffs.

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 plaintiff is entitled to get it's relief as prayed for.

In result the case succeeded.

Court fee paid is correct

Hence,

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It is Ordered

that this suit for correction of the B.S. Khatian be decreed on contest against **Defendants no. 1** and ex-party against the rest of the defendants without any cost.

It is hereby declared that B.S. Khatian No. 3, under District: Chattogram, Thana: Boalkhali, Mouza: Shakpura, J.L. No. 12, is defective and erroneous.

Based on the deliberations and findings recorded in the judgment, and in view of the plaintiff's prayer and the particulars provided in the schedule of the plaint, it is ordered that a separate khatian be prepared and published in favor of the predecessors of the plaintiff, namely Shudir Chowdhury and Sujit Chowdhury regarding suit land of 7.00 decimals of B.S. Dag No. 4058 under B.S. Khatian No. 3.

The Assistant Commissioner (Land), Boalkhali, Chattogram, is hereby directed to prepare and publish the separate khatian in favor of predecessors the plaintiff as described above within **90 (ninety) working days** from the date of receiving a copy of this judgment and decree.

Copies of this judgment and decree shall be forwarded to the Deputy Collector, Chattogram, the concerned Assistant Commissioner (Land), Boalkhali and all other relevant authorities for information and necessary compliance.

The case is thus disposed of.

Typed & Corrected by me

**Md. Hasan Zaman
Senior Assistant Judge,
Boalkhali Assistant Judge court
and Land Survey Tribunal
Patiya, Chattogram.**

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