

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, 2023**

**Other Suit No. 07 of 2007**

**Dil Mohammad and Ors .....Plaintiffs**

**-Versus-**

**Abdul Sukkur and Ors .....Defendants**

**This case came up for final hearing on 05.05.2013, 20.01.2014, 12.02.2014, 24.09.2014; 25.11.2014; 16.11.2022; 19.02.2023; 12.06.2023; 18.04.2022; 31.05.2022, 04.07.2022, 21.09.2022, 24.10.2022 and 23.07.2023.**

**In presence of :**

**Mr. A.K.M Shajahan Uddin .....Advocate for Plaintiff.**

**Mr. Balaram Kanti Das .....Advocate for Defendants.**

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

This is a suit for Declaration.

**Case of the Plaintiff**

**1. Plaintiff's case in brief is that** the suit property comprising 18 decimals as stated in the schedule was originally owned by one Achharuzzama, whose name was duly recorded in the R.S. record of rights. Upon his demise, the property devolved upon his sister Saira Khatun as sole heir. Subsequently Saira Khatun died leaving two sons, Md. Abul Hossain and Md. Yusuf, and daughter Ayesha Khatun as her legal heirs. On the other hand Md. Abul Hossain died leaving the plaintiffs No. 1-3 and Md. Yusuf died

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leaving the plaintiffs No. 4-8 and defendants No. 40 and 41 as their legal heirs. However, through a family settlement, defendants No. 40 and 41 relinquished their claims to the disputed property in favor of plaintiffs No. 4-8 in exchange for other lands. It is further case of the plaintiff that Ayesha Khatun alienated her entire share in the suit property through two separate deeds of sale: one dated December 22, 2003, in favor of plaintiffs No. 1-3, and another dated August 29, 2002, in favor of plaintiffs No. 4-7. The plaintiffs further assert that the names of Md. Abul Hossain and Md. Yusuf are duly recorded in P.S. Khatian No. 1375. Thus the plaintiffs becomes owner and have been in possession of the suit land.

2. It is further case of the plaintiff that during the subsequent B.S. survey, only a reduced portion of the land was recorded in the names of the plaintiffs' predecessors, and no part was recorded in the name of Ayesha Khatun. Furthermore, the B.S. Khatian erroneously included the remark, "No possession of Hossain and others by way of compromise settlement," which is factually incorrect. The inclusion of the names of "Nur and others" in the comments column of the B.S. record is factually baseless and patently erroneous. These inaccuracies in the B.S. Khatian have not affected the plaintiffs' possession or ownership rights. The plaintiffs claim that they have continued to possess the entirety of the land under B.S. Plot Nos. 2752 and 2765.

3. It is further case of the plaintiff that a registered Roedade (Decision) bearing No. 755 dated January 29, 1997 was executed between the parties to resolved the disputes. This Roedade declared the defendants' alleged auction-based acquisition of the disputed property as unlawful and ineffective. The defendants did not challenge this decision in any forum, further affirming its conclusiveness.

4. The plaintiffs categorically deny the defendants' claim that the property was auctioned on April 8, 1952, under Auction Sale No. 1437. They contend that the auction documentation, including the erroneous reference to Shahamarpur Mouza instead of Shikalbaha Mouza, is baseless. Furthermore, the fact of transfer of suit land by Kabir Ahmed and Sirajul Haq to Mohammad Ishak by dint of Deed No 512 dated 28.01.1967 and deed no. 1553 dated 09.03.1978 clearly establish that the property was never subjected to auction.

5. The Plaintiff No. 4 resides in a permanent dwelling house on B.S. Plot No. 2752. A tin-shed grocery shop, leased to Ziaur Rahman, is located on Plot No. 2765. The plaintiffs also maintain possession of betel nut and raintree trees on the disputed property. Despite the plaintiffs' longstanding possession and ownership, the defendants, relying on erroneous B.S. records, have made unfounded claims over the disputed property. These unfounded claims have compelled the plaintiffs to file the present suit to remove the cloud over their title and establish their ownership and possession of the disputed property.

Defendant's Case :

6. **The defendant No. 1/2(Ka)-2(Nio) contested the suit by filing written Statement contending, *inter alia* that** the suit property along with other properties under Mahal No.1437 was owned by **Taraf Jiban Kamdar Hossain** and the lands was under the possession of recorded Raiyat Abdul Aziz, Abdul Gani and others subject to payment of revenue 86 $\frac{1}{9}$  pie and the property was included in final record of rights. The said land was auctioned due to unpaid revenue on 08.04.1952. One Jalal Ahmed was the auction purchaser who got Sale certificate (বয়নামা) on 8th April 1952 and got delivery of physical possession of the said land on 09.02.1954. It should be noted that in the sell certificate of 8th April 1952, the name and number of the 1437 Taraf, Jiban Kamdar Hossain, as well as the amount of revenue, 86 $\frac{1}{9}$  pie, were correctly mentioned, but due to an error, the mouza was mistakenly listed as 'Shikalbaha' instead of 'Shahmeerpur.' However, in the decree for possession, the correct mouza 'Shahmeerpur' was stated. Since the disputed Khatian property was auctioned, the deed of transfer, dated 28th January 1967 (Deed No. 512) and 9th March 1978 (Deed No. 1553) presented by the plaintiff, is illegal and invalid as the transferors had no transferable interest at the time.

7. It is further case of the defendant that on 9th April 1956, through Deed No. 2622, Jalaal Ahmad, the son of Mia Jan, transferred a piece of land (measuring 1 kani 1 gonda) to Abdul Aziz and others. This transfer deed was recorded as a 'patta' instead of a 'kabala' due to the prevailing legal practice at the time. Consequently, the rights of the purchasers were recognized, and a final record for PS Khatian No. 1375 was prepared.

8. Abdul Aziz passed away, leaving behind his wife, son, and daughter (Mabia Khatun and others) as heirs. Meanwhile, Rameez Ahmad's share was obtained through a family settlement by Abdul Gani and Nur Ahmad. Abdul Gani and Nur Ahmad, through patta, family agreements, and settlements, maintained possession of the property in question. Abdul Gani had one son and two daughters, and after his death, Jalaal Ahmad (Defendant No. 2), Meheraj Jan, and Kafia Khatun inherited his property. Similarly, Nur Ahmad left behind his wife (Nur Begum) and children (Mohammad Hasan, Mamataz Begum, and Jamila Khatun) as heirs. The heirs of Nur Ahmad obtained their share of the land through a registered sale deed (Deed No. 186, dated 17th January 2007) for RS 2132 plot, which was subsequently transferred to Abdul Shukkur (Defendant No. 1) by purchase. Similarly, the heirs of Abdul Gani, including Jalaal Ahmad and others, obtained their share through a similar sale deed, also transferring ownership to Abdul Shukkur (Defendant No. 1).

9. Another owner, Rasid Ahmad, left behind five sons as heirs, namely Maulana Rafiqul Islam, Mohammad Jamir, Mohammad Harun, Mohammad Faruk, and Mohammad Selim. The disputed land, along with other properties mentioned in the

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plaint, is under the lawful possession of Defendant No. 1 and others, including Defendant No. 2.

**10.** It is further stated that the name of the defendants have been properly recorded in the BS Khatian. The disputed land is cultivated with seasonal crops. Defendant No. 1 has a semi-pucca shop constructed on the northwestern part of RS 2132 plot, which is leased out to Badarjuma, who operates the shop. Apart from the shop, Defendant No. 1 has constructed a permanent boundary wall around the plot. In addition, seasonal agriculture is conducted by Defendant No. 2 and others on the adjacent garden land (RS 2061 plot). Thus the defendants have been in possession of the suit land pay taxes, and exercise lawful rights over the land. The plaintiff, therefore, has no rightful possession of the disputed land.

**11.** It is noteworthy that Defendant No. 2 has never signed any settlement agreement as alleged by the plaintiff. No arbitration meeting or agreement took place, and consequently, the alleged 29th January 1997 settlement deed (Deed No. 755) is null and void, fabricated, and unlawful. Furthermore, the arbitration has no legal standing to cancel the auction or any deed related to the land. The plaintiff's claims and documents are baseless and without merit. Hence the suit be dismissed with cost.

### **Issues:**

**12.** 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 instant suit is maintainable in its present form and nature?
2. Whether the cause of action for filing the instant suit has arisen?
3. Whether the instant suit is barred by limitation?
4. Whether the plaintiff has title and possession over the suit land?
5. Whether the B.S. record relating to the suit property, as described in the schedule, is incorrect or erroneous?
6. Whether the plaintiff is entitled to a decree as prayed for?

### **Discussions and Decisions:**

**13.** To prove the case, the plaintiff examined two witnesses namely **Abul Kalam (PW-1)** and **Nurul Haque (PW-2)**. On the other hand, the defendant examined two witnesses, namely **Md. Abu Naeem (DW-1)** and **Md. Nur Alam (DW-2)**. Additionally, **Advocate Arun Kumar Mitra** was examined as an Expert Witness (C.W-1). The

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testimonies of PW-1 and DW-1 supported the statements mentioned in the plaint and the written statement, respectively.

**14. During examination of P.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

1. Original rental agreement dated 10/06/2007 -	Exhibit-1
2. Original rental agreement dated 30/05/2005 -	Exhibit-2
3. Receipt book for renting temporary houses/shops -	Exhibit-3
4. Copy of electricity bill -	Exhibit-4
5. C.C copy of R.S. Khatian No. 1420 of Shahamirpur Mouza -	Exhibit-5
6. C.C copy of P.S. Khatian No. 1375 of Shahamirpur Mouza -	Exhibit-6
7. C.C copy of B.S. Khatian No. 1920 of Shahamirpur Mouza -	Exhibit-7
8. Khajana (rent) receipts -	Exhibit-8 Series
9. Original deed of kabala dated 28/08/2002, No. 6704	Exhibit-9
10. Notarized power of attorney dated 08/04/2006, No. 465 -	Exhibit-10
11. C.C copy of deed dated 22/12/2003, No. 7465 -	Exhibit-11
12. C.C copy of Salishi Roedad dated 29/01/1997, No. 755 -	Exhibit-12
13. C.C copy of kabala dated 10/07/2001, No. 3889 -	Exhibit-13
14. C.C copy of kabala dated 28/01/1967, No. 512 -	Exhibit-14
15. C.C copy of kabala dated 09/07/1978, No. 1553 -	Exhibit-15
16. C.C copy of patta dated 06/07/1937, No. 3082 -	Exhibit-16
17. C.C copy of deed dated 06/07/1937, No. 3083 -	Exhibit-17
18. C.C copy of deed dated 07/08/1942, No. 4786 -	Exhibit-18
19. C.C copy of kabala dated 04/08/1956, No. 5998 -	Exhibit-19
20. C.C copy of kabala dated 14/11/1967, No. 7909 -	Exhibit-20
21. C.C copy of deed dated 14/11/1967, No. 7911	Exhibit-21

**15. During examination of D.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

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1. Original R.S. Khatian No. 1420 of Shahamirpur Mouza -	Exhibit-A
2. Original patta deed dated 09/04/1956, No. 2622	Exhibit-B
3. Certified copies of auction purchase dated 15/03/1951 and baynama dated	Exhibit-C
4. Certified copy of kabala dated 17/01/2007, No. 186 -	Exhibit-D
5. Certified copy of kabala dated 17/01/2007, No. 182 -	Exhibit-E

### Discussion and Decision

#### 16. Issue no. 1, 2 and 3

**“ Whether the instant suit is maintainable in its present form and nature?”**

**“Whether the cause of action for filing the instant suit has arisen?”**

**“Whether the instant 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.

17. 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 inheritance. Unfortunately during B.S Survey, the suit land was wrongly recorded in the names of the predecessors of the plaintiffs, while no portion was recorded in the name of Ayesha Khatun. Furthermore, the B.S. Khatian erroneously included the entry, "No possession of Hossain and others by way of compromise settlement," which is factually incorrect. 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 27.06.2006 and the suit was filed on 21.01.2007 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.

#### 18. Issue No : 4 , 5 and 6 :

**“ Whether the plaintiff has title and possession over the suit land?”**

**“Whether the B.S. record relating to the suit property, as described in the schedule, is incorrect or erroneous?”**

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

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

The plaintiff contends that the suit land (18 decimals of R.S. Plot No. 2061/2132) was originally owned by Achhorozzama, whose name was duly recorded in R.S. Khatian No. 1420. Upon Achhorozzama's death, the property devolved upon his only sister, Saira Khatun, and subsequently to her heirs: Md. Abul Hossain, Md. Yusuf, and Ayesha Khatun. This claim appears valid and true as per the R.S. record (Exhibit-5) and the corresponding P.S. Khatian No.1375 (Exhibit-6), where Md. Abul Hossain and Md. Yusuf's names are recorded. The plaintiffs claim that Md. Abul Hossain and Yusuf died leaving plaintiffs No.1-8 and defendants No. 40 and 41 as their legal heirs. It is claimed by the plaintiff that through a family settlement, defendants 40 and 41 relinquished their claims over the disputed property in favor of plaintiffs No.4-8 in exchange for other lands. In view of **Exhibit-9 and Exhibit-11** it appears that Ayesha Khatun alienated her entire share in the disputed plot by way of two separate deeds of sale: one executed on December 22, 2003, in favor of plaintiffs No.1-3, and another on August 29, 2002, in favor of plaintiffs No. 4-7. Thus plaintiffs has claimed title over the entire 18 decimals lands by inheritance and purchase.

**19.** The plaintiffs further claimed that the dispute regarding the suit land has been resolved by an amicable settlement between the plaintiffs and defendants and a registered decision (Roedade) bearing No. 755 dated January 29, 1997 was executed in support of the settlement. Exhibit-12 proves the facts as true. Plaintiff firmly asserted that the fact of transfer of suit land by Kabir Ahmed and Sirajul Haq to Mohammad Ishak by dint of Deed No 512 dated 28.01.1967 and deed no. 1553 dated 09.03.1978 clearly proves that no auction took place.

**20. Per Contra,** the defendants claim that the suit property along with other properties under Mahal No.1437 was owned by **Taraf Jiban Kamdar Hossain** and the lands was under the possession of recorded Raiyat Abdul Aziz, Abdul Gani and others subject to payment of revenue 86I√9 pie and the property was included in final record of rights. R.S Khatian No.1420 [**Exhibit-Ka**] proves this fact to be true. The defendants further claimed that the suit property was auctioned due to unpaid revenue. In view of Sales Certificate [**Exhibit- Ga**] and Certificate of Delivery of Possession [**Exhibit-Ga(1)**] it appears that property under Mahal No.1437 owned by Taraf Jiban Kamdar Hossain was auctioned on 15.03.1951 vide case No.2395/1950-1951 for unpaid revenue of previous owner Alim Uddin and orthers. One Jalal Ahmed was the auction purchaser who got Sale certificate (**eqbvgv**) on 8th April 1952 and got delivery of physical possession (**Lj †Iqvbv**) of the said land on 09.02.1954. In view of **Exhibit-Kha** it

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appears that that Jalal Ahmed transferred the suit land by dint of **Patta No.2622 dated 09.04.1956** in favor of Abdul Aziz , Abdul Goni Nur Ahmed and Rashid Ahmed and Ramiz Ahmed. Thereafter their names were duly recorded in P.S Khatian No.1375 **[Exhibit-6]**. It is further claimed by the defendants that Abdul Gani and Nur Ahmad, through patta, family agreements, and settlements got the property in question. It is asserted that Abdul Gani had died leaving one son and two daughters namely Jalaal Ahmad (Defendant No. 2), Meheraj Jan, and Kafia Khatun as legal heirs. Similarly, Nur Ahmad left behind his wife (Nur Begum) and children (Mohammad Hasan, Mamataz Begum, and Jamila Khatun) as heirs. In view of **[Exhibit-Gha]**, it appears that the heirs of Nur Ahmad transferred their shares in the R.S. Dag No. 2132 by dint of Kabala No. 186 dated 17/01/2007 in favor of Abdul Shukkur (Defendant No. 1) and **[Exhibit- Gha]** shows that the heirs of Abdul Gani transferred their shares vide Kabala No. 186 dated 17/01/2007 in favor Defendant No. 1 who thereby became the lawful owner and possessor of the said property. Thus the defendants No.1 and others including defendant No.2 claimed the disputed lands to be under their ownerships and possession.

**21.** Considering above evidence on records, it appears that Plaintiffs claim ownership over the entire 18 decimals of R.S suit plot No.2061/2132 by inheritance, purchase, and family settlement. On the other hand the defendants claim ownership and possession through documented auction sale, patta, and registered sale deeds. The plaintiff has fully denied the said auction and raised question about it's validity. But the auction sale conducted in 1951 appears to me as well-documented through the sale certificate **[Exhibit- Ga]** and delivery of possession **[Exhibit-Ga(1)]**. The auction process was legitimate and adhered to the procedural requirements of the relevant tenancy laws.

**22.** It appears that in the Sale Certificate dated 8th April 1952, the name and number of the Mohal- 1437 , Taraf Jiban Kamdar Hossain, as well as the amount of revenue, 86/<sup>√</sup>9 pie, were correctly mentioned, but due to an error, the mouza was mistakenly listed as 'Shikalbaha' instead of 'Shahamirpur.' However, in the decree of possession, the correct mouza 'Shahmeerpur' has been stated. This correction reinforces the legality of the auction process. The plaintiffs have not alleged or proven any fraud or irregularity in the auction process. A valid auction sale extinguishes prior ownership rights, including those of the plaintiffs' predecessors. In the case of *Md. Abdul Haque v. Abdul Kader*, reported in **15 BLD (AD) 1** it has been held that a valid auction extinguishes prior ownership rights, even if procedural errors, such as incorrect mouza names, occur. The plaintiffs, or their predecessors, had ample opportunity to challenge the auction or subsequent transfers but failed to do so. By their inaction, they are estopped from asserting ownership claims after decades.

**23.** The auction sale transferred the ownership of the suit land to Jalal Ahmed, severing any legal rights or claims of the original owner or their heirs (including the



plaintiffs). The plaintiffs base their claim on inheritance from Achhorozzama, the original recorded owner in R.S. Khatian No. 1420 (Exhibit-5). But the auction has extinguished the rights of the original owner and their heirs. Since the auction validly took place so there is no legal validity of the deed No. 512 dated January 28, 1967, and deed No. 1553 dated March 9, 1978 claimed by the plaintiff. Thus it appears to me that the plaintiffs have failed to rebut the legality of the auction or demonstrate that they retained ownership rights after the auction.

**24.** On the other hand it appears that after acquiring the land, Jalal Ahmed transferred the suit land by way of patta in 1956 in favor of Abdul Gani and others. Though the plaintiff raised question about the said Patta but in my view **this transfer deed was recorded as a 'patta' instead of a 'kabala' due to the prevailing legal practice at the time.** The heirs of Abdul Gani and Nur Ahmed subsequently transferred their shares in the suit property to Defendant No. 1, Abdul Shukkur vide (Exhibit-Gha) in 2007. This chain of transactions demonstrates continuous and lawful ownership passing to the defendants, negating any competing claims by the plaintiffs. Considering the above position it appears that plaintiffs have no ownership and title over the suit properties.

**25.** While the plaintiffs rely on family settlements (Exhibit-9) and registered sale deeds (Exhibit-11), these documents cannot override the auction sale and subsequent legal transfers to the defendants' predecessors. Any transactions by the plaintiffs or their predecessors (e.g., Ayesha Khatun's sale deeds) are void as the sellers no longer had ownership rights after the auction. The plaintiffs also cite a registered settlement (Roedade No. 755, Exhibit-12) as evidence of their title. However, this settlement appears to address internal disputes among the plaintiffs and certain defendants and does not supersede the documented chain of title established by the defendants.

**26.** From evidence it is found that plaintiffs are the heirs of Abul Hossain and Md Yusuf whose name has been found to recorded in the B.S Khatian No.1920. However, this khatian (Exhibit-7) explicitly notes that their predecessors had no possession of the suit plots (Nos. 2752 and 2765), which conclusively proves the lack of possession and title in the suit land. Since it has already been proved that plaintiffs have no ownership or title in the suit plots so in my view the note that "Hossain and others having no possession" in the Khatian is correctly noted and for this the B.S Khatian cannot be said to be erroneously recorded.

**27.** On the other hand it is found that the defendants rely on P.S. Khatian No. 1375, which records Abdul Aziz, Abdul Gani, and others as raiyats. Later on B.S Khatian has been duly recorded in the name of the defendant No.1 and others .This record (**Exhibit-6 and 7**) carries presumptive value under Section 103B of the State Acquisition and Tenancy Act, 1950, unless rebutted by contrary evidence. The plaintiffs have not provided evidence to challenge or disprove this recorded possession. The defendants,

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through their predecessors, have demonstrated continuous possession of the suit land, as evidenced by the sale deeds (Exhibit-Gha) and delivery of possession after the auction. Possession, along with registered documents, strengthens the defendants' title and undermines the plaintiffs' claim.

**28.** Considering the above discussions, it appears that the plaintiff has failed to discharge their initial burden to prove their right title and possession in the suit properties and any error in the B.S khatain. Thus these issues are decided as against the plaintiff resulting the suit 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.1/2(Ka)-2(Neo) 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.