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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,

PATIYA, CHATTOGRAM

Present : Mr. Md. Hasan Zaman,

Senior Assistant Judge, Patiya, Chattogram.

Date of Delivery of Judgment : 27th day of May, 2024

Other Suit No. 1190 of 2021

Nurunnahar Begum and Ors.Plaintiffs

-Versus-

Azad Hossain and OrsDefendants

This case came up for final hearing on 24.07.2022, 22.09.2022, 25.10.2022, 28.03.2023; 18.06.2023; 27.07.2023; 31.08.2023 and 18.01.2024.

In presence of :

Mr. Dipak Kumar ShilAdvocate for Plaintiff.

Mr. Srinibash BhattachariayaAdvocate for Defendants.

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

This is a suit for permanent injunction.

Case of the Plaintiff

1. Plaintiff's case in brief is that the land described in Schedule-1 was originally recorded in the name of Fazr Rahman in the final publication of the R.S. Khatian. Upon Fazr Rahman's demise, the property devolved upon his two sons, Arban Ali and Korban Ali, as his lawful heirs. Subsequently, the share of Arban Ali was inherited by the plaintiffs upon his death. Similarly, the share of Korban Ali devolved upon one Mohammad Sobhan. On 15.08.1980, Mohammad Sobhan sold his share of the property to Plaintiff No. 1 through a duly registered deed of sale and delivered possession thereof.

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2. As regards the land described in Schedule-2, it was originally owned by Nazir Ahmad and recorded in his name in the final publication of the R.S. Khatian. Upon the death of Nazir Ahmad, the property was inherited by his son, Abdul Samad, who lawfully exercised ownership and possession over it. On 14.01.1969, Abdul Samad sold the land, including the disputed portion of Schedule-2 and other undisputed lands, to Plaintiff No. 1 by registered sale deed No. 7002 and delivered possession thereof.

3. The plaintiffs contend that, by virtue of inheritance and purchase, they have acquired valid title and uninterrupted possession over the disputed properties described in Schedules-1 and 2. They have constructed a permanent boundary wall and residential structures on the land and have been regularly paying land revenue.

4. Recently, the defendants have unlawfully attempted to trespass upon the plaintiffs' property, threatening to demolish the boundary wall and forcibly take possession. They have also threatened to cut down valuable trees belonging to the plaintiffs. On 01.01.2002, the defendants publicly declared their intent to commit these acts, compelling the plaintiffs to initiate this suit to protect their rights.

Defendant's Case :

5. **The defendant No. 1-2 contested the suit by filing written Statement contending, *inter alia*, that the land described in R.S. Dag No. 11231 corresponding to B.S. Dag No. 14822, is Government khas land designated as a village road commonly known as "Alauddin Ojha Road." The road runs in an east-west alignment. Local Union Parishad authorities initiated a repair project for the road, which progressed substantially. However, when the repair work reached the Plaintiff's property boundary, the Plaintiff, through false assertions, filed the instant suit along with an application for a temporary injunction, resulting in a halt to the repair work.**

6. The road initially had a width of eight hands. The Plaintiff owns adjoining land to the south of the road as described in Schedule Nos. 1 and 2 of the suit. Over time, the Plaintiff extended their property boundary by encroaching approximately 4-5 hands of

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the road and constructed a concrete wall. This wall, running east-west, has been erected entirely within the road's land.

7. Despite measurement and verification, which established the Plaintiff's encroachment, the Plaintiff has refused to relinquish the road land. Consequently, the narrowed road repair work could not proceed. In the face of such obstruction, the village community, on 09-01-2002, submitted an application to the Upazila Nirbahi Officer (T.N.O.), seeking appropriate action. When no measures were undertaken, a subsequent application was filed on 23-04-2002. Upon initiation of measurement procedures, the Plaintiff, understanding the unfavorable situation and realizing the encroachment of their boundary wall into the road, avoided cooperation with the measurement process.

8. The Defendants, acting solely in the interest of public access, assert that they hold no title or possession over the Plaintiff's disputed land. However, the Plaintiff has encroached upon 4-5 hands of the public road by extending their boundary, and their refusal to vacate the encroached portion has prompted the filing of this suit with malicious intent to usurp the road land.

9. If the matter is measured in court, it will reveal that the Plaintiff has indeed encroached upon the road land, which they are legally obligated to relinquish. Failure to do so will hinder the repair and restoration of the public road. Despite repeated requests from the Defendants and the local community to vacate the encroached land and restore the road to its original state, the Plaintiff has refused to comply and has instead included their own land in the suit schedule to claim the road land through deceitful means.

10. The Plaintiff is a cunning individual who has employed various manipulative tactics to halt the repair work of the road. Through fraudulent means, the Plaintiff has secured an order of temporary injunction, thereby obstructing public and governmental works. Strict punitive measures against the Plaintiff are necessary to prevent further disruption. The Plaintiff has not approached the court with clean hands, and the balance of convenience and inconvenience weighs against the Plaintiff. Therefore, the Plaintiff is not entitled to any relief in this suit.

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Issues:

11. 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 plaintiff has exclusive possession of the suit property?
- 5) Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?

Discussions of Evidences:

12. To prove the plaint case, the plaintiff examined 02 witnesses namely **Md Jamil as P.W.1 and Md. Forkan 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. Certified Copy of R.S. Khatiyani No. 1725, 1727	Exhibit 1 Series
2. Deed No. 7002 dated 14/10/1969	Exhibit 2
3. Deed No. 13822 dated 25/08/1980	Exhibit 2(Ka)
4. Certified Copy of B.S. Khatiyani No. 512	Exhibit 3
5. Copy of application dated 08.01.2002 towards UNO	Exhibit 4
6. Report of UNO	Exhibit -4

13. On the other hand, to prove the defendant's case, the defendants examined **03** witnesses namely **Bodiul Alam as D.W.1, Mokbul Ahmed as D.W.2 and Nurul Absar as D.W.3** before the court. No documentary evidence was produced during examination of **D.W.1**.

14. **Besides this the civil court Commissioner namely Mohammad Forkan was examined as C.W.1 and the Local inspection report and his signature was exhibited as X and X1.**

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Md Jamil (P.W.1) for the plaintiff and **Bodiul Alam (D.W.1)** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

Discussion and Decision:

15. The facts of the case reveal a dispute over possession and boundary demarcation of the suit land as described in the schedules. The plaintiff initially sought a permanent injunction against the defendants, seeking to restrain them from trespassing upon the suit land, disturbing the plaintiff's peaceful possession, or causing damage to the boundary walls constructed on the premises. The trial court, after considering the evidence presented, dismissed the suit through a final judgment and decree dated 11.07.2004.

16. Aggrieved by the dismissal, the plaintiff preferred an appeal in Civil Appeal No. 368/2004. The appellate court, after evaluating the grounds of appeal, allowed the same, thereby setting aside the judgment and decree of the trial court. The appellate court remanded the matter to the lower court for retrial with specific directions, including:

1. **Joinder of Additional Parties:** The Chairman of Shikolbaha Union Parishad and the Upazila Nirbahi Officer (UNO), Patiya, were directed to be impleaded as defendant as their involvement was deemed necessary for resolving the dispute effectively.
2. **Local Investigation and Survey:** The appellate court instructed the trial court to appoint a surveyor with expertise in local investigations, specifically a survey-knowledgeable advocate commissioner. The commissioner was tasked with conducting a local inspection of the disputed property to measure the land and the boundary walls existing thereon, and submit a detailed report.

17. Pursuant to these directions, the plaintiff took appropriate steps to include the aforementioned individuals as defendants and sought the appointment of a survey-knowledgeable advocate commissioner. Subsequently, Advocate Commissioner **Mohammad Forkan** was appointed and conducted the local investigation. Following an on-site inspection, he prepared a detailed report consisting of a **field book, a sketch map, and a seven-page investigative document**, which were submitted to the court. The report

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comprehensively outlined the findings of the local investigation, including the measurements of the disputed land and the boundaries in question. To substantiate the report, Advocate Commissioner Mohammad Forkan appeared as a witness (C.W.1) and provided oral testimony in support of his findings

18. **Issues Nos. 1–3:**

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

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

Whether the suit is barred by Limitation ?

For the sake of clarity and convenience, these issues are discussed collectively, as their resolution is interdependent. The parties did not strongly advance arguments or pleadings specifically on these issues. Upon careful examination of the pleadings and evidence presented, it appears that the suit is instituted seeking a decree of permanent injunction against the defendants concerning the suit property situated in Sikolbaha Mouza, under the jurisdiction of the Karnaphuli Police Station, Chattogram District. The valuation of the suit property is BDT 1,000, which falls within the pecuniary and territorial jurisdiction of this court. Being entirely civil in nature, there appears no legal impediment to the trial of this case in its current form and manner.

19. The plaintiff has adequately stated in their plaint that there exists a valid cause of action for filing this suit. According to the plaintiff, they are lawful owners and possessors of the scheduled property through purchase and inheritance and have been in peaceful possession thereof. The plaintiff alleges that on 01/01/2002, defendants having no ownership or possessory rights over the property, threatened to dispossess the plaintiff from the suit property and to destroy the boundary wall standing on the suit land. Consequently, the plaintiff initiated this suit. Thus, a valid cause of action for the suit is evident.

20. Further, the suit was instituted on 05/01/2002, shortly after the cause of action arose on 01/01/2002. Upon scrutiny of the plaint, written statements, evidence, and records, no facts indicate that the suit is barred by limitation. The defendants also did not

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raise objections in this regard during the trial. Therefore, the suit is maintainable in its present form and manner, is not barred by limitation, and has been instituted upon a valid cause of action. Hence, Issues Nos. 1–3 are resolved in favor of the plaintiff.

21. **Issues Nos. 4 and 5:**

Whether the plaintiff has exclusive possession of the suit property?

Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?

These two issues are closely related and are therefore addressed together. The plaintiff has sought a decree of permanent injunction based on their claim of exclusive possession over the scheduled property. The primary determinant for the plaintiff's claim in such cases is the proof of undisputed possession of the property. Before delving into possession, it is necessary to ascertain the plaintiff's ownership over the scheduled property.

22. The plaintiffs claim ownership and possession of the Schedule 1 and Schedule 2 lands by inheritance and purchase. The exhibited documents clearly prove the very fact that plaintiff has ownership over the scheduled land. Moreover, the defendants did not deny this claim. Furthermore, it is undisputed that none of the defendants in the case have claimed any ownership or possession rights over the disputed road or the plaintiffs' owned and possessed lands.

23. According to admitted facts, the land in Schedule 1, including plots R.S. 11230 and R.S. 11232, is contiguous to the southern part of the plaintiffs' homestead. Adjacent to this, plot R.S. 11231, which corresponds to B.S. 14822, contains an east-west rural pathway. It is also acknowledged that the plaintiffs constructed a boundary wall along the north of this pathway on their owned land.

24. The defendants, however, allege that the plaintiffs have encroached upon 4-5 feet of the R.S. 11231 pathway and have constructed the boundary wall on this disputed portion. On the contrary, the plaintiffs assert that the boundary wall is situated entirely on their owned land, namely plots R.S. 11230 and R.S. 11232.

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25. The primary issue in this case revolves around determining whether the east-west boundary wall constructed by the plaintiffs is located on the plaintiffs' owned land or on the road designated as plot R.S. 11231.

26. The plaintiffs, including Plaintiff No. 1 (P.W.1) and their witness Forkan (P.W.2), testified consistently, asserting that the boundary wall is located on their owned land. Conversely, the defendants' witnesses D.W.1-D.W.3 claim that the said wall encroaches on the land of the designated road in R.S. 11231.

27. The decision of a complaint of Mohammad Sulaiman (Exhibit 4(a)) and a report from the Assistant Commissioner (Land) to the Upazila Nirbahi Officer, Patiya (Exhibit 4), shed light on the issue. Mohammad Sulaiman had filed a complaint alleging that the plaintiffs had unlawfully constructed the boundary wall on the union council-approved road in plot R.S. 11231. Following the complaint, the Upazila Nirbahi Officer directed the Assistant Commissioner (Land) to investigate. The subsequent survey, conducted by Kanungo, Surveyor, and Tahsildar, concluded that the disputed boundary wall was not located on R.S. 11231. This report establishes that the plaintiffs' constructed boundary wall does not encroach upon the union council-approved road.

28. During the pendency of the case, Advocate Commissioner Mohammad Forkan (C.W. 1) was appointed to conduct a local inspection and submit a report. The field book, sketch map, and report prepared by the Advocate Commissioner (Exhibit "X") has been reviewed. These documents clearly indicate that the plaintiffs possess and occupy their owned land in R.S. 11230 and R.S. 11232. The disputed boundary wall was confirmed to fall within R.S. 11230 and not within R.S. 11231, the designated road plot. Upon comprehensive evaluation, it is evident that the plaintiffs hold apparent title and unencumbered possession of the disputed property as described in the schedules. The boundary wall constructed by the plaintiffs does not encroach upon the union council-approved road in plot R.S. 11231.

29. Considering the above discussions, it appears that the plaintiffs have succeeded to discharge their initial burden to prove their prima facie title and exclusive possession over the suit property. Thus, all these issues are decided in favor of the plaintiffs.

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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,

It is Ordered

that this suit for permanent injunction be decreed on contest against the defendant no. **1(Ka)-1(Uma)/2** and ex-parte against the rest without any order as to cost.

It is hereby ordered and decreed that defendants Nos. **1(Ka)-1(Uma)/2 /3-4** are permanently restrained from: 1) Trespassing upon the suit land as described in the schedule to the plaint 2) Causing any obstruction to the plaintiff's peaceful possession and enjoyment of the suit property and 3) Altering or attempting to alter the character or nature of the suit property specially the boundary wall standing on the suit land.

Let the decree be drawn up accordingly.

Typed & Corrected by me

Md. Hasan Zaman
Senior Assistant Judge,
Senior Assistant Judge, 2ndCourt,
Patiya , Chattogram.

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