

Order No-35

Dt-25/11/2024

Today is fixed for passing ex parte order. The plaintiff has failed to appear and file his attendance. The case record has been called up for examination and passing of an order.

Upon review of the case record, it appears that the plaintiff initiated this suit seeking a declaration of ownership and permanent injunction over the suit property described in the schedule of the plaint. The suit property pertains to 23 decimals of residential and commercial land located in Amuchia Mouza, R.S. Plot No. 4440 of R.S. Khatian No. 931, corresponding to B.S. Plot No. 5004 under B.S. Khatian No. 399.

Summons were duly served upon all the **defendants (1–13)**. However, the defendants failed to appear and submit their written statements. Consequently, the case was fixed for ex parte hearing against them vide **Order No. 28 dated 03.10.2022**.

To substantiate his claim, the plaintiff has produced oral evidence through Mohammad Jewel, marked as P.W. 1, and submitted the following documents as exhibits:

1. R.S. Khatian No. 931 (Exhibit-1)
2. B.S. Khatian No. 399 (Exhibit-2)
3. Land Revenue Receipts (Exhibit-3)
4. Registered Sale Deed No. 2166 dated 10.04.1944 (Exhibit-4)
5. Registered Sale Deed No. 3433 dated 27.11.1989 (Exhibit-5)
6. Registered Sale Deed No. 159 dated 13.01.1991 (Exhibit-6)
7. Records of Miscellaneous Case No. 41/13 (Exhibit-7)

After carefully examining the evidence and arguments presented by the plaintiff, it appears that Exhibit-1 indicates that the original recorded owner of the R.S. Plot No. 4440 was Arpana Charan Biswas and others. The plaintiff claims that Arpana Charan Biswas orally transferred the property to Binod Bihari Dutta, who subsequently sold it to Mahim Chandra Biswas via Registered Deed No. 2166 dated 04.10.1944 (**Exhibit-4**). However, under the Transfer of Property Act, 1882 (Section 54), oral transfers are not valid for immovable property except in cases of possession under specific statutory provisions. Therefore, the oral transfer claimed by the plaintiff does not confer title to Binod Bihari Dutta or his successors.

The plaintiff has submitted B.S. Khatian No. 399 (**Exhibit-2**), which allegedly records the suit property under the name of Tajul Islam. However,

the court has noted discrepancies in this document. The photocopy of the same B.S. Khatian available in the case file reveals that Gauranga Choudhury and Moni Bala held ownership shares in the suit land. The submission of conflicting B.S. Khatian copies raises suspicion about the authenticity of Exhibit-2. The court finds that **Exhibit-2** is likely fabricated, as it conflicts with other documentary evidence.

From the review of **Exhibit-6** and other sale deeds, it is evident that Moni Bala and her successors were not the sole owners of the suit property. The co-ownership of Gauranga Choudhury is established, contradicting the plaintiff's claim of exclusive ownership. The plaintiff has failed to produce credible evidence to prove exclusive possession over the suit property. The alleged oral transfer and subsequent transactions are legally insufficient to establish ownership.

Based on the foregoing analysis, the court concludes that the plaintiff has failed to prove his ownership and possession over the suit property. Moreover, the discrepancies in the documentary evidence, particularly the fabricated B.S. Khatian (Exhibit-2), severely undermine the plaintiff's case.

In light of the established principles of property law under the *Transfer of Property Act, 1882*, and the doctrine of co-ownership as elucidated in the case of *Abdur Rahman v. Golam Rabbani* (40 DLR 1988 HC 167), the plaintiff is not entitled to the relief sought.

Court Fee paid is correct

Hence , it is

Ordered

that considering the evidence and submissions, the suit filed by the plaintiff seeking a declaration of ownership and permanent injunction against the defendants is hereby dismissed ex parte without costs.

D/C by me

Md Hasan Zaman
Senior Assistant Judge
Boalkhali Asst. Judge Court, Patiya
Chattogram

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