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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 : 31th day of October, 2023

Other Suit No. 155 of 2016

Rabeya BegumPlaintiffs

-Versus-

Abdus Salam and OthersDefendants

This case came up for final hearing on 06.04.2022, 11.05.2022, 12.09.2022, 02.01.2023, 05.07.2023 and 17.09.2023.

In presence of :

Mr. A K M Shajahan UddinAdvocate for Plaintiff.

Mr. Md Jamiur AlamAdvocate for Defendants.

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

This is a suit for eviction and recovery of Khas possession.

Case of the Plaintiff

1. Plaintiff's case in brief is that originally suit property belonged to one Surut Ali, whose name was duly recorded in R.S. Khatian No. 2700. Upon the demise of Surut Ali, the property was inherited by his three sons: **Abdul Monaf, Abdul Razzak, and Abdul Khalek.** That Abdul Khalek received 10 decimals of land as his share, and upon his

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passing, his heirs comprised his two sons, the defendant No.1 and Defendant No. 2 (Plaintiff's husband) , along with his daughter Mariam Khatun and wife Janaba Khatun.

2. Subsequently, Mariam Khatun's interest in the property was acquired by Defendant No. 2 through a registered deed of sale (Kabala) dated April 24, 1985, bearing No. 7293, using his own funds for the benefit of his mother, Janaba Khatun. Although Janaba Khatun held the title, Defendant No. 2 retained possession of the property. Later, Janaba Khatun executed a registered deed of gift (Heba) on June 22, 2009, transferring the disputed property to Defendant No. 2, along with possession.

3. It is further case that defendant No. 2, a long-term expatriate, invested a significant amount of money, exceeding 20 lacs Taka, to construct a two-story foundation and a four-room house on the disputed land. This structure included internal access between rooms on the north and south and a staircase to the upper floor, located on the northern side of the house. Defendant No. 2 resided in the house with his family and his mother, while Defendant No. 1 resided in the ancestral homestead.

4. At the request of his mother and out of compassion for Defendant No. 1's dire circumstances, Defendant No. 2 allowed Defendant No. 1 to temporarily occupy two rooms on the southern portion of the house in the year 2000. This arrangement was explicitly made on humanitarian grounds, with the understanding that Defendant No. 1 would vacate the premises once his own residence was repaired. However, Defendant No. 1 later closed the internal access doors between the northern and southern portions of the house, thereby restricting Defendant No. 2's access, and initiated legal proceedings (Other Suit No. 103/10) for a permanent injunction, which was subsequently dismissed.

5. On October 26, 2015, through a registered declaration of gift (Heba), bearing deed No. 8093/15, Defendant No. 2 transferred 6.25 decimals of the disputed property, including the constructed house, to the Plaintiff, who has since held exclusive title and possession.

6. In light of the Plaintiff's lawful ownership and the necessity of recovering the southern portion of the house, which Defendant No. 1 occupies without legal entitlement, the Plaintiff served a legal notice under Section 106 of the Transfer of Property Act on

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March 30, 2016, revoking the permissive occupancy granted to Defendant No. 1. Despite repeated requests, including a final notice on October 10, 2016, Defendant No. 1 has refused to vacate the premises. Hence the suit.

Defendant's Case :

7. **The defendants No. 1 contested the suit by filing written Statement contending, *inter alia*, that that the disputed land originally belonged to one Surat Ali and was duly recorded in R.S. Khatian No. 2730. Upon the demise of Surat Ali, his sons—Abdul Khaleq, Abdul Manaf, and Abdur Razzak—became the legal heirs of the property. Abdul Khaleq, who owned 10 decimals of land, passed away leaving behind his wife, Janaba Khatun, two sons, namely Defendant No. 1 Abdul Salam and Defendant No. 2 Nurul Islam, and one daughter, Maryam Khatun, as his heirs.**

8. Under the principles of Sharia law, Janaba Khatun inherited 1.25 decimals, Maryam Khatun inherited 1.75 decimals, and each son (Defendant No. 1 and Defendant No. 2) inherited 3.50 decimals of land. In this manner, Defendant No. 1 claims to have acquired 3.50 decimals of land by inheritance. **He further asserts that, along with Defendant No. 2, he constructed a permanent dwelling house jointly on 1.5 decimals of the inherited land. They have been residing peacefully, sharing the dwelling equally, while the remaining portions of their respective shares have been used as open yards in front of their house.**

9. Defendant No. 1 categorically denies any ownership or possession rights of the plaintiff over the disputed land. He further claims that at no point did the plaintiff, or any other individual, acquire any part of the disputed land through permission or any other means. According to Defendant No. 1, the plaintiff has initiated this suit based on false and fabricated assertions. Moreover, the defendants state that Maryam Khatun, during her lifetime, sold her share of the property to Janaba Khatun through a registered deed (No. 7293) dated April 24, 1985. After the sale, Maryam Khatun passed away. Consequently, Janaba Khatun, having acquired the property both through inheritance and purchase, held ownership and possession of the disputed land until her demise. Upon her death, her two

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sons—Defendant No. 1 and Defendant No. 2—became the rightful heirs and continued to possess and occupy the land.

10. The defendants contend that the plaintiff's claim that her husband acquired the property through a deed of gift (Deed No. 5642 dated June 22, 2009) allegedly executed by Janaba Khatun is baseless and fraudulent. The defendants assert that this deed is fabricated and invalid, as Janaba Khatun did not transfer any part of the disputed land to the plaintiff's husband. Furthermore, the plaintiff's allegation that Defendant No. 2 permitted her husband to reside on the land in the year 2000 is denied as false and concocted.

11. The defendants argue that the disputed land, along with the permanent dwelling house constructed thereon, belongs exclusively to them by virtue of inheritance and purchase. Therefore, the plaintiff has no legal or equitable right to the property, and the present suit is liable to be dismissed with costs.

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 suit is maintainable in its 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 any lawful ownership and possession of the disputed property ?
- 5) Whether Defendant No. 1 has any legal right to occupy the disputed property ?
- 6) Whether the plaintiff may get the relief as prayed for?

Discussions of Evidence:

13. To prove the plaint case, the plaintiff examined 02 witnesses namely **Rabeya Begum as P.W.1 and Md Yunus as P.W.2** before this court. **During examination of**

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P.W.1 the following documents were produced and proved, which have been marked as

Exhibits:-

1.	C C of RS Khatian No. 2730	Exhibit 1
2.	C C of BS Khatian No. 413	Exhibit 2
3.	Original copy of Mutation Khatian No. 5800	Exhibit 3
4.	Tax receipt	Exhibit 4 series
5.	C.C of the sale deed (Kabala) dated 25/04/85, deed No. 7293	Exhibit -5
6.	Original copy of the Hebenama dated 22/06/09, deed No. 5642	Exhibit-6
7.	Original copy of the Hebenama dated 25/10/15, deed No. 8093	Exhibit-7
8.	C.C of the order, petition, and description of Case No. 103/10	Exhibit-8
9.	Legal notice dated 30/03/16	Exhibit-9
10.	Reply to the legal notice dated 10/04/16	Exhibit-10

14. On the other hand, to prove the defendant's case, the defendants examined **02** witnesses namely **Abdus Salam as D.W.1** and **Md Nasir Uddin as D.W.2** before the court. During examination of **D.W.1** produced no documents. **Rabeya Begum (P.W.1)** for the plaintiff and **Abdus Salam as D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

Discussions and Decisions

15. Issue no. 1, 2 and 3

Whether the suit is maintainable in it's present form and prayer?

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

Whether the suit is barred by limitation?

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For the sake of clarity, convenience, and brevity, the issues raised in this suit are being considered together, as they are interconnected and revolve around the core questions of ownership, possession, and the reliefs sought by the plaintiff. From the plaint, written statement, and evidence on record, it is evident that the suit concerns a civil dispute over ownership and possession of the suit property. This Court finds no legal or procedural bar to adjudicating the case. The plaintiff has demonstrated a sufficient cause of action, rooted in the denial of her title by Defendant No. 1. The suit was filed within the statutory period of limitation, as the cause of action arose on October 10, 2016, and the plaint was submitted on November 3, 2016. The plaintiff's allegations of wrongful occupation of her property by Defendant No. 1, coupled with evidence supporting her ownership, establish the maintainability of the suit. Accordingly, all these issues are decided in favour of the plaintiff.

16. **Issue No : 4-5**

Whether the Plaintiff has lawful ownership of the disputed property ?

Whether Defendant No. 1 has any legal right to occupy the disputed property ?

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 claims ownership of 6.25 decimals of land within BS Dag No. 7478 through a registered gift deed made by her husband defendant No.2. The disputed property, a two-room pucca house situated in the southwestern portion of the plaintiff's land and covering 0.62 decimals, is the focus of the litigation. The plaintiff seeks to evict Defendant No. 1 from these two rooms, asserting that the house was constructed by Defendant No. 2 (the plaintiff's husband) using his own funds and that Defendant No. 1 is merely a permissive occupier.

17. It is undisputed that the original owner of the suit property was Surut Ali, recorded in R.S. Khatian No. 2730 as holding 30 decimals of land in Dag Nos. 4701 and 4702. Upon his death, his heirs, including his son Abdul Khaleque, inherited this land.

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Abdul Khaleque's 10 decimals were further subdivided among his heirs according to Mohammedan inheritance law, with his sons Abdul Salam (Defendant No. 1) and Nurul Islam (Defendant No. 2) receiving 3.75 decimals each, and his wife and daughter receiving 1.25 decimals and 1.75 decimals, respectively.

18. It is evident from [Exhibit-5] that Mariam Khatun transferred her ownership rights to her mother, Janaba Khatun, through a registered sale deed bearing No. 7293, dated 25.04.1925. Upon examination of the B.S. Khatian No. 413 [Exhibit-2] submitted by the plaintiff, it is observed that the said B.S. Khatian was duly and accurately recorded in the names of Abdus Salam, Nurul Islam, and Janaba Khatun. That Janaba Khatun eventually gifted 4 decimals of land to her son, Defendant No. 2, through a registered gift deed (Exhibit-6). Defendant No. 2 later transferred 6.25 decimals, comprising his own share and additional land acquired, to his wife, the plaintiff, through another registered gift deed (Exhibit-7). Thus these transactions, supported by documentary evidence, confirm the plaintiff's ownership over the disputed property.

19. It is claimed by P.W.1 that Defendant No. 2 (her Husband) began residing in the pucca house constructed on the disputed land, while Defendant No. 1 continued to reside in their ancestral home. Defendant No. 2 financed the construction of the entire pucca house on the suit land. P.W.1 further asserted that the house was built while her husband was on abroad, at a cost of approximately 20 lacs Taka, and includes four rooms on the ground floor and a staircase leading to an uncompleted upper floor.

20. It is further claimed by P.W.1 that although Defendant No. 1 intended to build a residence on the eastern portion of the disputed land, he did not construct any such house. At one point in 2000, the ancestral house collapsed, and upon the request of their mother, Defendant No. 2 allowed his brother, Defendant No. 1, to temporarily occupy two rooms on the southern side of the pucca house. Since then, Defendant No. 1 has been residing in those two rooms. Hence, the plaintiff claims that Defendant No. 1 is occupying the disputed property merely as a permissive occupier.

21. Conversely, the Defendant No. 1 as D.W.1 has claimed that the land and house in dispute form part of ancestral property. He asserts ownership of 3.75 decimals within the

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disputed dag as a co-sharer by inheritance. According to his contention, the house was constructed jointly by himself and Defendant No. 2, with each contributing equally to the cost of construction. He further states that he resides in the two southern rooms of the house as a co-owner.

22. From evidences, it appears that the testimony of P.W and D.W 1 clearly shows that the defendant No. 2 constructed the house with his own funds while he was on abroad. Both witnesses admitted that Defendant No. 1, who worked as a rickshaw puller, lacked the financial means to contribute to the construction. The statement of D.W.1 during cross-examination that “ নুরুল ইসলাম বিদেশ থেকে টাকা পাঠিয়েছে। যৌথ থাকায় তিনি শ্রম দিয়ে গৃহ নির্মাণ করেছেন।” clearly proves that defendant No.1 did not finance to the construction of the disputed Pacca building. It indicates that the disputed house was neither jointly funded nor intended to be a joint property, as Defendant No. 1’s contributions were limited to labor, which does not confer ownership.

23. Although Defendant No. 1 claims joint ownership of the house with defendant No.2, no documentary evidence has been provided to substantiate this claim. Defendant No. 1’s claim of joint ownership is further weakened by his inability to provide evidence of financial contribution or a partition agreement. His admission during cross-examination that Defendant No. 2 constructed the house using remittances from abroad indicates that the house was not intended as joint property.

24. Upon review of the plaint of Other Suit No. 103/2010 [Exhibit-8], it is evident that Defendant No. 2 issued a threat to Defendant No. 1 to vacate one of the rooms in the disputed pucca house. Subsequently, Defendant No. 1 filed that suit for permanent injunction against Defendant No. 2, claiming ownership over 0.62 decimals of land in the said house. However, the suit was dismissed. Despite the claim of the defendants No.1 that they (Defendant Nos. 1 and 2) jointly constructed the pucca house on 3 decimals of land, with each contributing **three kora (1.50 decimals each)**, the fact that Defendant No. 1, in the injunction suit, only claimed 0.62 decimals (equivalent to two rooms) rather than 1.50 decimals undermines the claim of joint construction.

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25. Additionally, as per the contents of the plaint of Suit No. 103/2010, Defendant No. 2 had demanded that Defendant No. 1 should vacate one room out of the two in the disputed house. This strengthens the inference that Defendant No. 1's occupancy of the two rooms was based on the permission granted by Defendant No. 2, who had constructed the house using his own resources. The cross-examination testimony of witness D.W.1 further corroborates this finding. D.W.1 stated that *"There are four rooms in the pucca house on the disputed property. There is a staircase to the first floor on the northern side, and the two rooms on the southern side are occupied by Defendant No. 1. The first-floor roof is used by them, but Defendant No. 1 is not allowed access to it."* (“নালিশী জায়গায় পাকা ঘরে চার রুম আছে। উত্তরে দোতলায় উঠার সিঁড়ি। দক্ষিণের দুই রুমে তিনি থাকেন। ঐ দিকে দোতলায় উঠার সিঁড়ি নেই। দোতলা ঘরের ছাঁদ তারা ব্যবহার করে, তাকে ব্যবহার করতে দেয় না।”) This testimony indicates that the house is not a jointly-owned property but was constructed solely by Defendant No. 2 for his own use. The restricted access to certain portions of the house, such as the first-floor roof, further suggests that Defendant No. 1's occupancy of the two southern rooms was based solely on temporary permission granted by Defendant No. 2 and not on any ownership or co-ownership rights.

26. In light of the above facts and evidence, it is clear that the pucca house was constructed by Defendant No. 2 (plaintiff's husband) at his own expense. Defendant No. 1's occupancy of the southern two rooms was permissive in nature, granted out of humanitarian considerations due to the collapse of the ancestral house. This permissive possession does not create ownership rights in the absence of substantive evidence to the contrary. Temporary permissive possession cannot be equated with legal ownership or entitlement, particularly when the possession was granted on humanitarian grounds. Thus the defendant No. has no ownership or co-ownership to the disputed two pucca rooms where he is now residing. The evidences conclusively establish that the plaintiff is the rightful owner of the disputed 6.25 decimals of land, including the pucca house. The defendant No.1 resides there as a permissive occupant without any financial contribution to the house's construction. Therefore, the plaintiff is entitled to recover possession of the disputed two pucca rooms (measuring 0.62 decimals) by evicting the defendant No.1.

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27. In view of the evidence and arguments presented, the plaintiff has successfully demonstrated her lawful ownership and possession over the disputed property, including the *pucca* house. Defendant No. 1's claim of co-ownership lacks merit and is unsupported by evidence. The plaintiff is entitled to recover possession of the disputed two rooms by evicting Defendant No. 1. The issues are thus decided in favor of the plaintiff, and the Court has no hesitation in granting the relief sought.

In result the case succeeded.

Court fee paid is correct

Hence,

it is Ordered

that this suit for eviction and recovery of Khas possession be decreed on contest against the defendant No.1 and ex parte against other without any order as to costs.

It is declared that the Plaintiff holds absolute and indefeasible title over the entire 0.62 decimals of land including two pucca rooms described in the 1(Ka) schedule of plaint.

The Plaintiff is entitled to recover possession of the aforementioned 0.62 decimals of disputed land by evicting the Defendants No.1 therefrom.

The Defendants are directed to voluntarily hand over possession of the disputed land to the Plaintiff within 60 (Sixty) days from the date hereof. Failing compliance, the Plaintiff shall be entitled to recover possession of the disputed land at the expense of the Defendants through due process of the court.

The case is thus disposed of.

Typed & Corrected by me

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

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