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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 : 28th day of May, 2023

Other Suit No. 248 of 2008

Asma Khatun & othersPlaintiffs

-Versus-

Sayed Nur and OthersDefendants

**This case came up for final hearing on 21.10.2019, 19.01.2021,
11.02.2021, 16.03.2021, 13.04.2022; 26.06.2022; 16.08.2022; 08.11.2022
and 07.02.2023.**

In presence of :

Mrs. Srinivash VattachariyaAdvocate for Plaintiff.

Mr. Dipak Kumar ShilAdvocate 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 original recorded owners of the disputed property, as per the R.S. Khatian No. 2203, were Mofizullah, Mishrijan, Md. Eshaq, and Mosammat Moisona Khatun. Subsequently, due to arrears of rent of disputed property, a Rent case bearing No.1066 of 1934 was instituted and On 11.12.1935, a decree was passed in the said case, and pursuant to the decree, Rent Execution Case No. 34 of 1946

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was filed. Through an auction sale conducted in connection with the said proceedings, the property was purchased by one Afaz Ullah on 24.02.1935 in the court of the Honorable First Munsef of Patiya, who thereby became the lawful owner and possessor of the disputed property.

2. That upon the death of Afaz Ullah his rights devolved upon his lawful heirs. Afaz Ullah was survived by two wives, Meherunnessa and Hajera Khatun. From Meherunnessa, he had two sons, Soltan Ahmad and Amir Ahmad, and from Hajera Khatun, he had one daughter, Sabeda Khatun. Upon Afaz Ullah's death, his two wives, Meherunnessa and Hajera Khatun, inherited $\frac{1}{5}$ annas each, while the remaining was distributed among his children: $\frac{2}{5}$ shares each to his two sons and $\frac{1}{5}$ shares to his daughter.

3. The share of Meherunnessa subsequently passed to her two sons, Soltan Ahmad and Amir Ahmad. The share of Hajera Khatun was inherited by her daughter, Sabeda Khatun. Upon the death of Soltan Ahmad, his share devolved upon his heirs, two sons, who are Plaintiffs Nos. 1 and 2. The plaintiffs also include Soltan Ahmad's three sisters, Nurusufa Khatun, Anjuman Khatun, and Pakija Khatun. Anjuman Khatun is impleaded as proforma Defendant No. 17, while the heirs of the deceased Nurusufa Khatun and Pakija Khatun are impleaded as proforma Defendants Nos. 18–22 and Defendants Nos. 30–31, respectively. Upon the death of Amir Ahmad, his rights devolved upon his son, Nur Mohammad, and his four daughters, Sakina Khatun and Sayera Khatun, who are impleaded as Defendants Nos. 32–33. The heirs of the deceased Nur Mohammad, being Plaintiffs Nos. 3–7, also hold rights to the disputed property. As for Hajera Khatun's share, upon her death, it passed to her daughter, Sabeda Khatun, who is impleaded as Defendant No. 1.

4. The plaintiffs claim that they remain the rightful owners and possessors of the disputed property through inheritance. However, due to their lack of expertise and understanding regarding survey and settlement procedures, the B.S. Khatian does not correctly reflect their ownership and possession.

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5. The plaintiffs allege that Defendant No. 1, Sabeda Khatun, has falsely claimed ownership over an additional portion of the disputed property. This came to light when the plaintiffs received a notice from the Karnaphuli Police Station regarding allegations made by Defendant No. 1. Upon reviewing the B.S. Khatian, the plaintiffs discovered that their lawful shares were not accurately recorded. Instead, an excess portion of the disputed property was recorded under the name of Defendant No. 1, and certain portions were erroneously recorded in the names of persons without any title or interest.

6. The plaintiffs emphasize that although the erroneous entries in the B.S. Khatian have not yet disrupted their possession and enjoyment of the disputed property, they fear that such incorrect records might cloud their lawful inheritance rights in the future. Consequently, the plaintiffs are compelled to seek redress before this Honorable Court to ensure the correction of the erroneous B.S. Khatian and the protection of their lawful rights to the disputed property.

Defendant's Case :

7. **The defendants No. 1(Ka)-1(Eo) contested the suit by filing written Statement contending, *inter alia*,** as per admissions of the plaintiffs, the suit land is the auction-purchased property of Afaz Ullah, son of Raji Uddin, of Joldha village. Afaz Ullah remained in possession and ownership of the property during his lifetime. Upon his demise, the property devolved upon his heirs, which included his first wife, two sons—Sultan Ahmed and Amir Ahmed—his second wife, Hajera Khatun, and his daughter, Sabeda Khatun. Accordingly Hajera Khatun got $\frac{1}{8}$ share, Sultan Ahmed and Amir Ahmed each got $\frac{2}{5}$ and Sabeda Khatun got $\frac{1}{5}$ share.

8. Upon the death of Hajera Khatun, her inherited share devolved to her only daughter, Sabeda Khatun. Consequently, Sabeda Khatun acquired a total of **10 1/4 til** of land, consisting of her own share and her inheritance from her mother. Sabeda Khatun remained in possession of the property, and during the finalization of the B.S. Survey

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Records, the suit land was accurately and lawfully recorded under her name, albeit with some minor inaccuracies.

9. Subsequently, Sabeda Khatun sold a portion of the land measuring **1 kani and 3 gonda** to various individuals by executing separate sale deeds, leaving **7||/4 til** of land in her exclusive possession. The plaintiffs have not made these purchasers parties to the current suit, which undermines their claim to the disputed land.

10. The plaintiff No.1, Oli Ahmed, previously filed Other suit No. 08/99 before this Court, claiming 7 gonda of land within the disputed plot based on an alleged contract for sale and sought the execution of a sale deed. After a full hearing, the suit was dismissed on 21.02.2001. Dissatisfied with the dismissal, the plaintiff filed an appeal (No. 189/2001), which was also dismissed on 13.03.2007. Despite the dismissal of the earlier suit and appeal, the plaintiff has now brought the present suit with ulterior motives to financially and mentally harass the defendant No.1, Sabeda Khatun. Furthermore, the plaintiffs, in their fabricated agreement for sale, have acknowledged the ownership rights of the first defendant. Additionally, the plaintiffs have allegedly manipulated and forged a succession certificate in collusion with the local chairman to support their baseless claims.

11. It is crucial to note that the first wife of Afaz Ullah, Meherun Nessa, predeceased him and did not inherit any property from him. Consequently, the plaintiffs, claiming through Meherun Nessa, did not acquire any inheritance rights or possession over the disputed property. The B.S. Khatiyon is accurate and validates the ownership of the defendant No.1

12. The plaintiffs have, in fact, sold portions of their legitimately inherited shares to third parties, namely, Abul Hossain, Nur Hossain, Jamir Hossain, and Amir Hossain, who now hold title and possession of the said lands as evidenced by the finalization of the B.S. Survey Records in their names. Therefore, the plaintiffs' claims to the disputed land are devoid of merit, and the suit is nothing more than an attempt to misuse the judicial process.

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Issues:

13. 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 suit is bad for non-joinder of necessary parties?
- 5) Whether the plaintiff has any right, title, interest and possession over the suit land?
- 6) Whether the B.S khatian concerning the suit land is wrong?
- 7) Whether the plaintiff may get the relief as prayed for?

Discussions and Decisions:

14. To prove the plaint case, the plaintiff examined 02 witnesses namely **Ishak as P.W.1 and Md Sharif 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. C. C of R.S Khatian no. 2203	Exhibit 1
2. C. C of B.S Khatian no.1693	Exhibit 1(1)
3. Original Copy of heirs Certificate dated 10.10.2008	Exhibit 2
4. C.C of order of Rent execution case No 1146 of 1934	Exhibit 3

15. On the other hand, to prove the defendant's case, the defendants examined **02** witnesses namely **Abu Siddik as D.W.1 and Md Hasem as D.W.2** before the court. During examination of **D.W.1** the following documents were produced and proved, which have been marked as exhibits:-

1. Certified Copy (C.C.) of R.S. Khatian No. 2203	Exhibit Ka
2. Certified Copy (C.C.) of B.S. Khatian No. 1963	Exhibit- Kha
3. Certified Copy (C.C.) of Sale Deeds No. 274 and 275, dated 17/01/1976	Exhibit Ga
4. Certified Copy (C.C.) of Sale Deed No. 1982, dated 29/04/1976	Exhibit Gha
5. Certified Copy (C.C.) of Judgment and Decree of Case No. 08/99	Exhibit Uma

6. Certified Copy (C.C.) of Judgment of Appeal Case No. 189/2001	Exhibit Cha
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Decision with Reasons

16. Ishak (P.W.1) for the plaintiff and **Abu Siddik as D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

17. 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?

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.

18. 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. Having no right, title, interest and possession, the defendants are denying the plaintiffs title over the suit property. Now, the defendants are claiming 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 30.10.2008 and the suit was filed on 06.11.2008 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.

19. ISSUES NO.4 :

“Is the suit bad for non-joinder of necessary parties?”

Perusing the plaint, written statement and other materials on record, it appears that plaintiffs admitted that Defendant No. 1, Sabeda Khatun, transferred parts of her share to

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several individuals, including Montaz Khatun, Abu Naser, Md. Idris, Md. Jahangir, Surujjaman, Fazal Ahmed, and Ahmed Ullah. These transferees are necessary parties to this suit, as their rights and interests in the property must be adjudicated to reach a just conclusion. Order 1 Rule 9 of the Code of Civil Procedure, 1908, mandates that all necessary parties whose presence is essential for a fair adjudication of the case must be impleaded. The exclusion of these transferees renders the suit defective for non-joinder of necessary parties. Accordingly, this issue is decided in disfavor of the plaintiff.

20. Issue No : 5,6 and 7

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

“Whether the B.S khatian concerning the suit land is wrong?”

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

The plaint schedule reveals that plaintiff claims 54 decimas of R.S plot No. 171, 38 decimals in R.S plot No.195, 6.4 decimals in R.S Plot No.196 and 2 decimals of plot No.344 of R.S khatian No.2203. Plaintiff has submitted certified copy of that R.S khatian (**Exhibit- 1**) which reveals that lands measuring 5.53 acres including the suit land was originally belonged Mofizullah, Mishrijan, Md. Eshaq, and Mosammat Moymuna Khatun. It is undisputed between both parties that the original owners of the scheduled property in R.S. records lost ownership due to arrears of rent, leading to a public auction in which Afaz Ullah acquired 5.53 acres of land through purchase. **Exhibit-3** corroborates this assertion. The plaintiff further claims that upon Afaz Ullah's death, his two wives, Meherunnessa and Hajera Khatun, and their respective children—Sultan Ahmed and Amir Ahmed (sons of Meherunnessa) and Sabeda Khatun (daughter of Hajera Khatun, Defendant No. 1)—inherited the property. According to the plaintiff, Meherunnessa's rights devolved upon her two sons, while Hajera Khatun's rights passed to her daughter, Sabeda Khatun.

21. The defendants opposed this claim, asserting that Meherunnessa predeceased Afaz Ullah, following which Afaz Ullah married Hajera Khatun as his second wife. They

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contend that Meherunnessa did not inherit any property from Afaz Ullah. **Exhibit-2** (Union Parishad certification) confirms that both wives were alive at the time of Afaz Ullah's death, but during cross-examination, P.W.1 unequivocally acknowledged that Meherunnessa predeceased Afaz Ullah. This acknowledgment renders the Union Parishad certificate unreliable.

22. In view of above discussions it appears that of 5.53 acres of Afaz Ullah's land, Sultan Ahmed got 193.55 decimals, Amir Ahmed: 193.55 decimals, Hajera Khatun: 69.13 decimals, and Sabeda Khatun: 96.77 decimals. Following Hajera Khatun's death, her share devolved upon her daughter, Sabeda Khatun, increasing Sabeda's total entitlement to 165.9 decimals.

23. The plaintiffs' claims regarding ownership and possession were inconsistent and lacked specificity. While P.W.1 limited the claim to 6 gonda or 12 decimals during cross-examination, other plaintiffs did not clarify their individual shares in either the pleadings or depositions. The claim for Meherunnessa's inheritance is untenable, as she predeceased her husband, Afaz Ullah, and thus could not inherit any property. Consequently, the plaintiffs cannot derive any claim through Meherunnessa. Additionally, no partition deed or other legally valid evidence was provided to establish exclusive ownership or possession by the plaintiffs. The plaintiffs also failed to demonstrate how the portions of the schedule property they claimed aligned with their alleged inheritance rights. Without a clear delineation of their ownership, their claim remains vague and unsupported by reliable evidence. Moreover, the survey records (B.S. Khatian) indicate that the property was appropriately recorded in the names of the heirs, including Sabeda Khatun. The plaintiffs did not present evidence to dispute the accuracy of the survey records or establish any irregularities in the process.

24. Regarding possession, the plaintiffs' witness PW.1 testified that the claim pertains to only 12 decimals, excluding any further claims. Another witness, PW.2, mentioned a claim of 60 decimals. These conflicting statements undermine the plaintiffs' credibility. Additionally, **Exhibit-Kha** (B.S. Khatian) establishes that the disputed property has been correctly recorded in the names of both plaintiffs and defendants as co-heirs. Although

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the plaintiffs allege over-recording in Sabeda Khatun's name, they failed to quantify the alleged excess or provide evidence to support their claim. Conversely, Sabeda Khatun's share, including her inherited and transferred property, aligns with the B.S. records, affirming the accuracy of her recorded ownership.

25. In light of the above analysis, the plaintiffs have failed to provide specific and reliable evidence regarding their claims. They did not establish their exclusive ownership or possession of the schedule property, nor did they clearly demonstrate how they derived their rights from Afaz Ullah's estate. The inconsistencies in their pleadings and evidence further undermine their credibility. As the disputed property is ancestral and co-owned, without seeking partition the dispute cannot be resolved appropriately. Additionally, the failure to implead necessary parties renders the suit non-maintainable. Under these circumstances, the plaintiffs are not entitled to the relief sought. This view find support from the following decisions.

1. *Abdur Rahman v. Abdul Aziz* (PLD 1963 SC 1): Plaintiffs bear the burden of proving their case independently and cannot rely on the weaknesses of the defense.

2. *Kalimuddin v. Abdul Aziz* (PLD 1972 SC 13): A suit is liable to dismissal if necessary parties are not impleaded.

3. *Rafiqul Islam v. Nurul Haque* (69 DLR 101): Specificity and clarity in pleadings are essential for ownership disputes.

26. Considering the above discussions and decisions, it appears that the plaintiffs have hopelessly failed to discharge their initial burden to prove their right, title, interest and possession over the suit property. Thus, all these issues are decided in disfavor 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 not entitled to get its relief as prayed for.

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In result the case succeeded.

Court fee paid is correct

Hence,

It is Ordered

that this suit for declaration be dismissed on contest against the defendant no. **1(Ka)-1(Nio)** 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, 2ndCourt,
Patiya , Chattogram.

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