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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 : 30th day of October, 2023

Other Suit No. 166 of 2012

Md. Kamal Ahmed**Plaintiffs**

-Versus-

Most. Moyna Chowdhury and Ors.**Defendants**

This case came up for final hearing on 5/9/2019; 20/11/19;
19/07/23 ;11/09/23; 16/10/23; 13/12/20; 09/02/21; 20/11/22;
23/03/23; 06/07/23 and 27/03/2023.

In presence of :

Mr. Md Mohiuddin Mohin**Advocate for Plaintiff.**

Mr. Kazi Jasim Uddin**Advocate for Defendants.**

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

This is a suit for declaration and Partition.

Case of the Plaintiff

1. Plaintiff's case in brief is that the property described in Schedule
No. 1 includes portions held by Abdul Nabi in ***Eight annas*** and Nazir
Ahamad in ***Eight annas***, which they held in proprietary and possessory

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ownership. Accordingly, their names were duly recorded in the R.S. Khatian. On May 25, 1937, Abdul Nabi transferred 1.69 acres of R.S Plot No.63/70, along with other properties, by a registered deed of sale numbered 2132 to one Md. Hanif, thereby transferring possession and title to the latter. Subsequently, the name of Md. Hanif was recorded in P.S. Khatian No. 217.

2. Thereafter Md. Hanif sold 40 decimals of land within the disputed plots to Haji Abdul Motallib through a registered sale deed vide No. 6718 dated 24.09.1960. Later, on April 27, 1961, he further transferred 30 decimals of land to Ful Banu via registered sale deed No. 2518. After selling 70 decimals out of his purchased 156 decimals, Md. Hanif retained ownership and possession over the remaining 86 decimals. Upon his death, the said 86 decimals devolved upon his legal heirs, including his second wife, Johra Begum; sons from his first wife, Nazu Mia and Sahab Uddin; daughters Fatema Khatun and Amena Khatun; and children of his second wife, plaintiff Kamal Ahmed and his sister Layla Khatun.

3. Upon partition, Md. Hanif's 86 decimals were distributed among his heirs as follows: his second wife Johra Begum and third wife Amin Khatun received 10.75 decimals each, while each son inherited 16.72 decimals and each daughter 8.36 decimals. Plaintiff Kamal Ahmed inherited 16.72 decimals from his father and an additional 3.59 decimals from his mother, Johra Begum, totaling 20.31 decimals. On the other hand, Md. Hanif's third wife, Amin Khatun, along with other heirs, jointly sold their respective shares by a registered sale deed dated January 6, 1964 (Deed No. 69/70), thereby relinquishing their title.

4. On December 20, 2011, while attempting to pay land taxes, the plaintiff discovered discrepancies in the B.S. Khatian. Contrary to the plaintiff's and his predecessors' legitimate ownership and possession, the B.S. record erroneously included the names of Nazir Ahamad's descendants, such as Ahmedur Rahman, Monir Ahamad, defendant No. 2, and other individuals (defendants Nos. 14-17), along with Abdus Motallib, Jalal Ahamad, Ful Banu, Hazera Khatun, and Halima Begum, who had no lawful claim to the property. This error was confirmed on January 1, 2012, when the plaintiff obtained a certified copy of the B.S. Khatian.

5. The plaintiff and his predecessors lacked proper knowledge of the survey and were thus unable to ensure correct entry of their names in the B.S. record. Despite this, the plaintiff has continuously possessed the disputed land, including 20.31 decimals of inherited property. Although the erroneous entry in the B.S. Khatian has not disrupted the plaintiff's possession, disputes regarding boundaries have recently arisen between the plaintiff and the defendants.

6. The disputed land includes 1.56 acres under R.S. Plot No. 63, out of which 27 decimals were allocated to a road, leaving 1.29 acres surveyed in the B.S. Khatian. The plaintiff has consistently maintained uninterrupted possession of the remaining property. However, the absence of a prior partition among the parties necessitates the granting of 20.31 decimals as a separate saham (share) to the plaintiff. Failure to do so would result in irreparable harm to the plaintiff's rights and interests. Hence, plaintiff brought this instant suit.

Defendant's Case :

7. **The defendant No. 18–22/24/25 contested the suit by filing written Statement contending, *inter alia*, that the suit land, as described in the schedule, falls under R.S. Dag No. 63 and spans a total area of 1.56 acres. This land was originally belonged to Abdul Nabi and Nazir Ahmed. Accordingly, R.S. Khatian No. 211 was finally published in their names, with Abdul Nabi noted as the owner in the remarks column of R.S. Dag No. 63. Subsequently, Abdul Nabi transferred his entire ownership interest in the property to Mohammed Hanif by dint of kabala No. 2132, dated May 25, 1937. Mohammed Hanif transferred **40 decimals** to Abdul Motaleb via registered sale deed No. 2960, dated May 5, 1958, **another 40 decimals** to Abdul Motaleb via registered sale deed No. 6718, dated September 24, 1960 and **30 decimals** to Abdul Motaleb's wife, Fulbanu, via registered sale deed No. 2518, dated April 27, 1961. Thus, Abdul Motaleb became the owner and possessor of a total of **80 decimals** of land in R.S. Dag No. 63 through purchases in his name and in the name of his wife. Upon the death of**

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Fulbanu during Abdul Motaleb's lifetime, her ownership interest devolved upon her husband, Abdul Motaleb, and their two children—one son and one daughter. Consequently, Abdul Motaleb retained ownership and possession of 80 decimals of land in the suit plot.

8. Later, Abdul Motaleb transferred **40 decimals** via registered sale deed No. 1151, dated February 28, 1977, **20 decimals** via registered sale deed No. 4930, dated March 13, 1983 and **12 decimals** via registered sale deed No. 5650, dated August 16, 1987. In total, Abdul Motaleb sold **72 decimals** of the suit land to his daughter, Sair Khatun, who thereby became the owner and possessor. The remaining **8 decimals** remained in the ownership and possession of Abdul Motaleb until his death. Upon his demise, his remaining ownership interest passed to his son, Abdul Malek, and daughter, Sair Khatun. By virtue of a family settlement, Abdul Malek's share was transferred to Sair Khatun, making her the exclusive owner and possessor of the entire **80 decimals** of land in R.S. Dag No. 63.

9. Sair Khatun, in turn, transferred her ownership and possession rights to her heirs, namely her husband (Defendant No. 18) and her children (Defendants No. 1–22/24/25). The land in question is primarily wetland (*nal jomi*) and has been used for agricultural purposes. The defendants have been peacefully enjoying ownership and possession, producing crops, paying government revenue, and exercising all ownership rights. No one, including the plaintiff, has any ownership or possession rights over the suit land.

10. Regarding the B.S. (Bangladesh Survey) Khatian records, B.S. Khatian No. 88 erroneously omitted the names of the defendants or their predecessor, Abdul Motaleb, due to either error or malfeasance. To rectify this, the defendants filed Civil Suit No. 325/2007 in the Senior Assistant Judge's First Court, which is currently pending. However, the defendants' names are correctly recorded in B.S. Khatian Nos. 1455 and 168, reflecting 40 decimals and 9 decimals, respectively, under B.S. Dag No. 153. Although these records show a total of **49 decimals**, the defendants claim actual ownership and possession of **80 decimals** as derived from valid title and possession.

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11. The plaintiff challenged the correctness of B.S. Khatian Nos. 1455 and 1463 by filing Miscellaneous Case No. 72/2018, which was dismissed after a thorough hearing on December 22, 2019. As such, the plaintiff lacks exclusive ownership or possession over the suit land. The defendants further claim that Mohammed Hanif, having sold his ownership interest in the land to Abdul Motaleb and others, had no remaining interest to transfer to the plaintiff or anyone else. Consequently, the plaintiff has no legal right or entitlement to the suit land, and the current suit is unsustainable and meritless. Thus this suit is liable to be dismissed with cost.

12. Issues:

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 defect of parties ?
- 5) Whether the plaintiffs have right, title, interest over the suit land?
- 6) Whether the B.S Khatian concerning the suit land has been erroneously recorded?
- 7) Whether the plaintiff is entitled to get preliminary decree ?
- 8) Whether the plaintiffs may get the relief as prayed for?

Discussions and Decisions:

13. To prove the plaint case, the plaintiff examined 02 witnesses namely **Imran Yusuf as P.W.1 and Ali Ahmed as P.W.2** before this court. On the other hand the defendants produced three witnesses namely Zafar Ahmad

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(D.W.1), Azgar Ali (D.W.2) and Md. Monir Uddin (D.W.3). **Imran Yusuf (P.W.1)** for the plaintiff and **Jafar Ahmed as D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

14. During the testimony of the plaintiff, the following documents were marked as exhibits:

1. Certified copies of R.S. Khatian No. 211, P.S. Khatian No. 217, and B.S. Khatian No. 88 – **Exhibit-1 Series**
2. Registered sale deed No. 2132, dated May 25, 1937 – **Exhibit-2**
3. Original copy of the Power of Attorney, dated December 11, 2012 – **Exhibit-3**
4. Photocopy of the plaintiff's application for correction of date of birth – **Exhibit-4**
5. Original copy of the Warisan (inheritance) certificate, dated August 24, 2023 – **Exhibit-5**
6. Original copy of the newspaper publication, dated August 22, 2023 – **Exhibit-6**
7. Order passed in Miscellaneous Case No. 72/18, dated January 28, 2020, for mutation – **Exhibit-7**

15. Again during the testimony of the defendants, the following documents were marked as exhibits:

1. C.C of R.S. Khatian No. 211, B.S. Khatian No. 88 of Khoaz Nagar Mouza, and B.S. Mutation Khatians Nos. 1455/1463 – **Exhibit-Ka Series**
2. C.C of sale deed No. 2132, dated May 25, 1937 – **Exhibit-Kha**
3. C.C of deed No. 2960, dated May 5, 1958 – **Exhibit-Ga**
4. C.C of deed No. 6718, dated September 24, 1960 – **Exhibit-Gha**
5. C.C of deed No. 2518, dated April 24, 1961 – **Exhibit-Uma**
6. C.C of deed No. 1151, dated February 28, 1977 – **Exhibit-Cha**
7. C.C of deed No. 4930, dated March 13, 1983 – **Exhibit-Chha**
8. C.C of deed No. 5650, dated August 16, 1987 – **Exhibit-Ja**
9. C.C of of the plaint in Civil Suit No. 325/07 – **Exhibit-Jha**
10. C.C of the order dated December 22, 2019, in Misc Case No. 72/18 **Exhibit-Nya**
11. C. C of sale deed No. 69 dated 06.01.1964 – **Exhibit-Ta**

Decision with Reasons

Issue no. 1-4:

16. For the convenience of discussion and decision-making, the aforementioned issues have been considered together. I have carefully examined the pleadings and the evidence presented in this case. The present suit has been instituted for the declaration of the plaintiff's title and wrong record record of B.S khatian with partition of the suit property. The suit property is situated in Khuaznagar Mouza under Karnafuli Police Station in the district of Chattogram. The suit has been valued at BDT 3,00,000, which falls within the local and pecuniary jurisdiction of this Court. The present suit is purely civil in nature, and I find no legal impediment to adjudicating the matter before this Court. In view of the above, the suit is maintainable in its present form and nature. The plaint filed by the plaintiff, upon perusal, reveals sufficient cause for the institution of this suit.

17. On 01/01/2012, the cause of action for the suit arose, and subsequently, the suit was filed on 13/11/2012. It appears that the suit has been instituted within the period of limitation. Upon perusal of the plaint, written statement, all evidence, and records, I do not find any material indicating that the suit is barred by defect of parties. Moreover, the defendant did not raise any objections regarding this issue during the argument stage. Therefore, the suit is maintainable in its present form and nature, not barred by limitation, and has been instituted with sufficient cause. Accordingly, issues No. 1–4 are decided in favor of the plaintiff.

Issue No : 5 -8 :

18. The plaintiff asserts ownership over 20.31 decimals of the suit land as per the schedule mentioned in the plaint. It is evident that the suit land falls under R.S. Khatian No. 211. The plaintiff has submitted the certified copy of R.S. Khatian No. 211 [**Exhibit-1**], which indicates that in R.S. Dag No. 63, a total of 156 decimals of land was recorded in the name of Abdul Nabi. Further evidence [**Exhibit-2**] reveals that Abdul Nabi transferred the entire 156 decimals of land under R.S. Dag No. 63 to Abdul Hanif via a registered sale deed No. 2132 dated 25.03.1937. Subsequently, P.S. Khatian No. 217 [**Exhibit-2(a)**] was published in the name of Mohammad Hanif, establishing his ownership and possession.

19. The plaintiff's witness, P.W.1, testified that Mohammad Hanif later transferred 70 decimals (40 decimals through deed No. 6718 of 1960 and 30 decimals through deed No. 2518 of 1961) to Haji Abdul Motaleb. After these transfers, Mohammad Hanif retained possession of 86 decimals of land. Upon his demise, his legal heirs, including two wives (Zohra Khatun and Amin Khatun), three sons (Naju Mia, Sahab Uddin, and the plaintiff Kamal Ahmed), and three daughters (Fatema Khatun, Amina Khatun, and Laila Khatun), inherited the remaining property thus : Zohra Khatun and Amin Khatun: 10.75 decimals jointly, each sons 16.72 decimals and each daughters 8.36 decimals. The plaintiff submitted the heirs certificate [**Exhibit-5**], which confirms the inheritance. It is further claimed by the P.W.1 that following the death of Mohammad Hanif's third wife, Zohra Khatun, the plaintiff Kamal Ahmed received 3.59 decimals, while his sister Laila Begum received 1.79 decimals. The plaintiff, therefore, claims a total of 20.31 decimals through inheritance from both his parents.

20. On the other hand the defendants contend that Mohammad Hanif had already transferred the suit property long before the plaintiff's claim. According to their submission, Mohammad Hanif executed Sale Deed No. 2960 dated 05.05.1958 [**Exhibit-Ga**], transferring 40 decimals and Sale Deed No. 6718 dated 24.09.1960 [**Exhibit-Gha**], transferring 40 decimals to Abdul Motaleb and Sale Deed No. 2518 dated 27.04.1961 [**Exhibit-Umo**] transferring 30 decimals to Abdul Motaleb's wife, Mosammat Ful Banu.

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This results in a total of $(40+40+30) = 110$ decimals being transferred to Abdul Motaleb and Ful Banu, establishing their ownership.

21. The information slip [**Exhibit-6**] shows that in L.A. Case No. 12/67-68, 26 decimals of land from R.S. Dag No. 63, belonging to Abdul Motaleb and Mosammat Ful Banu, were acquired by the government. This it appears that after acquisition, Abdul Motaleb and Ful Banu retained ownership over 84 decimals. The certified copy of B.S. Khatian No. 88 [**Exhibit-1(a)**] supports the claim that the land was recorded in the names of Abdul Motaleb and Ful Banu. Subsequently, Abdul Motaleb transferred 40 decimals to his daughter Sayer Khatun via Sale Deed No. 1151 dated 28.02.1977 [**Exhibit-Cha**] and 20 decimals via Sale Deed No. 4930 dated 13.03.1983 [**Exhibit-Chha**] and 12 decimals via Sale Deed No. 5650 dated 16.08.1987 [**Exhibit-Ja**]. Thus, Sayer Khatun lawfully acquired 72 decimals. Upon Abdul Motaleb's death, the remaining 8 decimals were apportioned between Sayer Khatun and her brother Abdul Malek through family settlement. Upon Sayer Khatun's death, the entire 80 decimals of the suit plot passed to her heirs (**defendants No. 18/19-22/24/25**).

22. The plaintiff, Abdul Motaleb, claims that the land measuring 40 decimals, purportedly transferred under the Deed of Sale No. 2960 of 1958 [**Exhibit-G**], was actually a mortgage transaction and not an outright sale. On the contrary, the defendant asserts that the said deed was an absolute sale deed. Upon examining the recitals of the subsequent Deed of Sale No. 6718 dated 24/09/1960 [**Exhibit-Gha**], executed between the transferor Md. Hanif and the transferee Abdul Motaleb, it is evident that the land measuring 40 decimals, initially transferred by Md. Hanif to Abdul Motaleb under the Deed of Sale dated 05/05/1958, was described therein as having been mortgaged. The said property was transferred by Md. Hanif to Abdul Motaleb for a consideration of BDT 1,500/-, out of which BDT 500/- was adjusted against the purchase price received under the 1958 deed, and the remaining BDT 1,000/- was paid by Abdul Motaleb.

23. However, upon a careful analysis of both the Deed of Sale No. 2960 of 1958 and the Deed of Sale No. 6718 of 1960, it is apparent that both documents were absolute sale deeds. Although the deed dated 05/05/1958 is

claimed to be a mortgage transaction, no such recital regarding mortgage appears in the document itself. Therefore, there is no legal basis to construe the said deed as a mortgage deed. Furthermore, in the absence of judicial adjudication, the contents of one deed cannot annul or affect the legal validity of another deed merely based on the recitals within its text. Consequently, the plaintiff's assertion that the Deed of Sale No. 2960 dated 05/05/1958 was a mortgage deed is incorrect and cannot be legally sustained.

24. It is evident that Mohammad Hanif retained only 46 decimals after transferring 110 decimals to Abdul Motaleb and Ful Banu. The certified copy of Sale Deed No. 69 dated 06.01.1964 [**Exhibit-Ta**] proves that Mohammad Hanif's heirs subsequently transferred the remaining 46 decimals to Abdul Hakim. This transfer is further substantiated by the testimony of P.W.1 during cross-examination. Since Mohammad Hanif and his heirs had transferred their entire ownership through Sale Deeds [**Exhibits-Ga, Gha, Uma, and Ta**], the plaintiff, as an heir of Mohammad Hanif, has no residual ownership over the suit property.

25. As per the defendants' claim, although the B.S. Khatian No. 88 [**Exhibit-Ka(1)**] was recorded in the name of Abdul Motaleb, the predecessor of the defendants' vendor, the recorded lands was less than the actual share. Upon reviewing [**Exhibit-Jha**], it appears that since the B.S. survey contained errors regarding the Share of previous vendor Abdul Motaleb, Sair Khatun has filed Title Suit No. 325/2007 before the Senior Assistant Judge, 1st Court, Patiya, seeking rectification of the B.S. record, which is currently pending for adjudication.

26. Furthermore, a perusal of Exhibits-Ka(2) and Ka(3) reveals that although the defendants claim ownership of 80 decimals of land, the B.S. mutation records, being Khatian Nos. 1455 and 1463, reflect only $40+9 = 49$ decimals. The plaintiff filed Objection Misc. Case No. 72/2018 against the said mutation records, but the objection proceedings have been stayed due to the pendency of the civil suit. However, since the plaintiff's predecessor, Mohammad Hanif, and his heirs had previously transferred the suit land and

were thus divested of ownership, the omission of the plaintiff's or their predecessors' names from the B.S. Khatian appears to be legally correct.

27. Upon thorough examination of the aforementioned facts, it is evident that the plaintiff has no ownership or interest in the suit land. The absence of the plaintiff's or their predecessor's names in the B.S. Khatian is justified and for this the plaintiff is not entitled to get any preliminary decree of Partition. Thus it is my considered view that the plaintiffs has totally failed to discharge their initial burden to prove their right, title and possession to the suit property. The plaintiff is not entitled to get any relief as prayed for. Thus, all these issues are decided as against the plaintiffs. In such situation, I have no hesitation to hold that the suit is liable to be dismissed without any order as to cost. Thus all these issues are settled in disfavor of the plaintiff.

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. 18-22/24/25 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.

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Senior Assistant Judge,
Senior Assistant Judge, 2ndCourt,
Patiya , Chattogram.