

Date of judgment : 10.08.2022.

J U D G M E N T

Hasan Foez Siddique, C. J: This civil appeal is directed against the judgment and decree dated 15.06.2016 passed by the High Court Division in First Appeal No.12 of 2014 disposing of the appeal upon noting an order of abatement. The said appeal was preferred against the judgment and decree dated 12.09.2013 passed by the Joint District Judge, 7th Arbitration Court, Dhaka in Title Suit No.191 of 2005 decreeing the suit.

The relevant facts, for the disposal of this appeal, are that the respondent Nos. 1-36 as plaintiffs filed Title Suit No.211 of 2000 in the Fourth Court of Joint District Judge, Dhaka, which was finally transferred to the Seventh Court of Joint District Judge and Arbitration Court, Dhaka and renumbered as Title Suit No.191 of 2005, for declaration of title and further declaration that the plaintiffs are entitled to get compensation against the acquisition of the suit land and for a direction upon the Government to accept rent of the suit land till its acquisition.

The case of the plaintiffs, inter alia, was that Bhawal Raja settled suit land to Azim Box and Asir Uddin, sons of Sheikh Solim who executed

Kabuliyat in favour of the landlord. The plaintiffs are the successors of said Azim Box and Asir Uddin. Before the C.S. operation, Satinath Banerjee, the intermediate tenure holder tried to evict the predecessors of the plaintiffs forcibly and initiated a proceeding under section 107 of the Code of Criminal Procedure which was dismissed. Thereafter, Sheikh Azim Box and Asir Uddin filed Title Suit No.1114 of 1913 against Satinath and others in the 1st Court of Munsif and got a decree on 01.04.1914. Against the said decree, Satinath and others preferred Other Appeal which was dismissed on 05.06.1915. In C.S. operation, the suit land was recorded in the name of Kumar Rabindra Narayan Chowdhury represented by the Bhawal Court of Wards. Bhawal Raj Court of Wards settled the said land to Azim Box and Sheikh Asiruddin. They paid rent to the Court of Wards. S.A. record-of-right was finally prepared in the names of the predecessors-in-interest of the plaintiffs. During R.S. operation, D.P. khatian No.430 was prepared in the names of plaintiffs. Out of the land possessed by the plaintiffs, .5425 acre was acquired in L.A. Case No.42/68-69 for Dhaka WASA, and compensation was paid to the plaintiffs. One Hajee Khurshed Alam as a plaintiff

filed Title Suit No.764 of 1976 against the present plaintiffs in respect of the suit land. The record of the said suit was destroyed on 02.08.1986 . The plaintiffs sold 7.61 acres of land to different persons who have been possessing the same. The Government acquired 14.16 acres of land from plot No.565 in L.A. Case No.55 of 1958-59 for Gulshan Link Road. After the construction of the Road, 13 acres of land were released in favour of Abdul Khaleque Munshi and Amiruddin who sold the same to Capital Properties Ltd. The plaintiff No.4 agreed to sell 4 acres of land to Reliance Properties Ltd. at a consideration of Tk.20 lacs. The Assistant Commissioner (Land) Tejgaon Circle refused to mutate the names of the plaintiffs in respect of "Kha" scheduled land denying the plaintiffs' title in the same. Hence, was the suit.

The defendant No.1 Capital Properties Ltd. Submitted a written statement contending, inter alia, that 14.13 acres of land of suit Plot No.565 was acquired in L.A. case No.55/56-59 for D.I.T. and after the construction of Road, Abdul Khaleque Munshi and others prayed for getting release of the unused 13 acres of land. Khaleque Munshi and others got the said land released on 02.04.1984

and sold the said land through 7(seven) registered deeds in favour of defendant No.1 who developed the same. The Assistant Commissioner (Land) informed the Additional Deputy Commissioner (Revenue), Dhaka that 13 acres of land of suit plot No.565 are the khas land of the Government. Thus, the defendant No.1 filed Title Suit No.217 of 1989 for permanent injunction against the Government and the said suit was decreed on contest on 03.08.1990. The Government preferred Title Appeal No.380 of 1990 and the said appeal was dismissed on 29.04.1997. Bhawal Raj Court of Wards filed Civil Revision No.4215 of 1997 in the High Court Division. The Rule was ultimately discharged on 18.08.1997. Against this, Civil Petition for Leave to Appeal No.1193 of 1997 was filed in the Appellate Division which was dismissed on 09.03.1998. The defendant No.1 claimed title to the in 13 acres of land.

The defendant No.2 Reliance Properties Ltd. in its written statement contended that out of 59.36 acres of land of the suit plot No.565, the plaintiff No.4 Forman Ali declared to sell 4 acres and the defendant No.2 agreed to purchase the same at a consideration of Tk.20,00,000/- on 17.11.1997. On different dates, plaintiff No.4,

Forman Ali received the entire money. The defendant No.2 became the sole owner of those 4 acres of land. This defendant prayed to pass a decree in favour of the plaintiff.

The defendant No.3-8 in their written statement supported the entire case of the plaintiffs and prayed to pass a decree in favour of plaintiffs.

The defendant No.9 Manager, Bhawal Raj Court of Wards Estate and 10, Chairman, Land Reforms Board and Bhawal Raj Court of Wards Estate contested the suit by filing written statement denying the material facts to the plaintiff contending, inter alia, that 84.09 acres of land of plot No.565 appertaining to C.S. khatian No.107 under Tejkuni Para Mouja of Tejgaon Police Station belonged to Kumar Rabindra Narayan Chowdhury i.e. Bhawal Raj and others. In 1911, Court of Wards was formed to manage, settle, sell, transfer the Bhawal Raj Estate on behalf of Kumar Rabindra Narayan Chowdhury. The plaintiffs or predecessors of the defendant Nos.1-8 have had no right and title in the suit land. They did not take the settlement of the same. The land measuring 14.06 acres out of 84.09 acres of plot No.565 of Court of Wards was acquired by the Government in L.A.

Case No.55/58-59 for the construction of a road and the remaining land belonged to the Court of Wards. The plaintiffs and other defendants, in different civil cases, failed to prove their title. Abdul Khaleque Munshi and others, by concealing the judgment of the Supreme Court, in Arbitration Case No.248 of 1966 collusively managed to receive Tk.25,000/- and, thereafter, on detection of their deceitful act, they returned the said money. Abdul Khaleque Munshi and others as plaintiffs filed Title Suit No.129 of 1975 in the 4th Court of the then Subordinate Judge, Dhaka without impleading the Court of Wards. Said suit was decreed on ex-parte on 24.03.1976. One Gourango Chandra Das and others filed Title Suit No.290 of 1979 impleading Abdul Khaleque Munshi, Court of Wards and others with a view to grabbing 20.75 acres of land. Gourango Chandra Das executed an agreement with the Managing Director of Shahjalal Housing Limited on 16.05.1994. The said suit, on transfer, was re-numbered as Title Suit No.168 of 1987 which was decreed on compromise. The said decree was, subsequently, set aside since the same was passed in absence of the Court of Wards. One Syed Abul Kalam Azad, claiming title in 37 acres of land alleged to have been

taken settlement from the Court of Wards, filed Title Suit No.52 of 1990. Thereafter, Title Suit No.62 of 1985 was filed. He again filed Title Suit No.537 of 1985 against the Government. An inquiry was held by the Bureau of Anti-Corruption. In such circumstances, Syed Abul Kalam Azad withdrew those suits. Abul Kalam Azad and Abdul Khaleque Munshi tried to grab the property but they failed. They filed Money Suit No.19 of 1988 which was withdrawn. One Hossain Ali Matbor filed Title Suit No.7007 of 1996 against Anwarul Hoq and others. Court of Wards was impleaded as defendant No.18 in that suit. The said suit was re-numbered as Title Suit No.189 of 1996 which was dismissed ex-parte on 11.03.2001. Khaleque Munshi and others, claiming title to the scheduled property, filed Title Suit No.83 of 1985 in the 1st Court of the then Subordinate Judge, Dhaka which was re-numbered as Title Suit N.46 of 1997 wherein the plaintiffs and these defendant Nos.9 and 10 were impleaded. Said suit is pending. The plaintiffs' suit should be dismissed.

That the defendant Nos. 11-13 Government and two others filed a written statement contending that suit land is khas land. The suit should be dismissed.

The defendant Nos. 19-23 contended that these defendants are legal heirs of plaintiff No.1. During the pendency of the suit, the plaintiff No.1 died on 30.8.2006 leaving 19 persons as his heirs. These defendants have been possessing their shares. These defendants are entitled to get their shares.

The added defendant Nos.94-96 filed a written statement contending that 84.09 acres of land of the suit plot No.565 belonged to Jamindar of Bhawal Raj who settled some lands by a kabuliyat dated 18.09.1925 in favour of Sree Monmoth Singh. Monmoth Singh sold 7.95 acres of land by kabala No.2002 dated 22.06.1950 to Fule Newaz, the predecessor-in-interest of the added defendants. Haji Fule Newaz, after effecting measurement as per terms of kabuliyat dated 18.09.1925, found excess land and, thus, took settlement from the Court of Wards by executing kabuliyat in respect of 5.16 acres of land on 11.11.1951. The Court of Wards accepted rent for 5.16 acres land. Fule Newaz mutated his name in respect of 7.95 acres of land. In S.A. operation, 3.41 acres of land was recorded in the name of Fule Newaz who paid rent up to 1969. Thereafter, in L.A. Case No.42/1968-69, 7.95 acres belonging to Fule Nawaz were

acquired for Dhaka WASA who received compensation. He filed Title Suit No.511 of 1988 in the 1st Court of Subordinate Judge, Dhaka against the defendant Nos. 11-13 of the present suit for declaration of title, which was decreed ex-parte on 23.07.1980. Fule Newaz tendered rent to the defendant No.12 who directed the defendant No.13 for reporting after holding an inquiry but till now no report has been submitted. In the R.S. operation, the record was correctly prepared in respect of 7.95 acres in the name of Fule Newaz who sold .35 acre to these defendants by kabala dated 07.11.1960, .33 acre land in favour of the father of these defendants by another deed dated 16.02.1964, .33 acre by another deed dated 10.06.1977 in favour of these defendants. Added defendant Wahed Ali purchased .66 acre from these defendants. Thus, they became the owner of 1.24 acres of land. Mohanagar DP khatian No. 1666 has been prepared in their names. The plaintiffs have no right, title and possession in the suit land.

The defendant Nos. 71-76 also contested the suit by filing another set of written statement contending that Abdul Khaleque sold .16 acre of land from C.S. plot No. 565 to Ahsan Ali by a deed dated 06.04.1968 who sold the same to Md. Hossain

Ali by deed dated 23.02.1971. Md. Hossain Ali sold the same by deed dated 01.11.1974 to Shamsunnahar and her husband Serajuddin. Serajuddin died leaving behind his widow, daughter, and two sons. Lal Mia and his five brothers purchased .16 acre land by kabala dated 23.10.1975 who sold the same to Jamal Ahmed by kabala dated 06.05.1982 who sold .08 acre of land to Ishaqke Ali and Most. Fatema. S.A. khatian No.644, R.S. 644, and 645 were prepared in respect of .35 acre in the name of Fule Newaz who died leaving behind his son Mohammad Ali and others who sold some lands to the defendant No.71 on 24.02.2004. Fule Newaz gifted .2805 acre of land to his grandson, Abul Kalam. Mohanagar DP khatian was prepared in his name who, by two sale deeds dated 25.02.2004 and 19.07.2004, sold the same to the defendant No.71. Kudrot Ali inherited .1237 acre of land and died leaving five sons and five daughters who, by kabala dated 18.05.2004, sold their shares to defendant No.71. Fule Newaz, by kabala dated 17.05.1964, sold .1237 acre of land to the defendant No.71. Mohanagar DP khatian was prepared in the name of Mohammad Ali, son of Fule Newaz, in respect of .1237½ acre of land and other non suited lands and he sold those lands on

30.04.2004 in favour of defendant No.71. Mohammad Ali son of Fule Newaz, Serajul Islam, Faruque Islam and other grandsons of Fule Newaz remained owners of .1650 acre and, on 30.12.2004, they sold the said land to defendant No.71. Fule Newaz sold .1650 acre to Nurul Islam on 27.03.1980 who sold the same to defendant No.71. In R.S. operation, DP khatian was prepared in the name of Samad who died leaving behind widow Rokeya Begum, three sons and two daughters. Heirs of Samad sold some lands to Sahabuddin on 09.02.2004 who sold the same to the defendant No.71 on 26.06.2005. Fule Newaz took settlement of some lands from the Court of Wards. S.A. and R.S. records were prepared in his name and, on 27.03.1981, he sold .33 acre to Akter Jahan and others who, by kabala dated 28.4.2002, sold the same to Nurul Islam. Abdul Khaleque Munshi, by deed dated 23.08.1965, sold the said land to Gafur who, on 19.10.1978, sold the same to Matiur. Defendant Harun purchased .228 acre, Shahid Uddin purchased .34 acre, Ahammed Hossain purchased .34 acre, Khaled purchased .0825 acre and Jesmin Akter purchased .0990 acre of land. They have been possessing the same. The suit should be dismissed.

The defendant Nos.77-93 contested the suit by filing another set of written statement contending, inter alia, that defendant Mamtaj Uddin purchased .2767 acre of land by two deeds dated 15.06.1974 and 30.06.1997 from S.A. plots No.1225 and 1207 respectively, defendant Most. Hosne Ara purchased .1100 acre on 15.06.1974, defendant Sufia purchased .0167 and .0500 acre by two sale deeds, defendant Nazrul Islam purchased .0167 and .2300 acre by two separate deeds, defendant Azizul Hoq purchased .06660 acre by deed dated 25.12.1982, defendant Sahmsun Nahar purchased .600 acre by deed dated 15.06.1974 and other defendants also purchased some lands by different deeds in different dates. Abdul Gafur, Turab Ali, Amir Ali sold their purchased land to Abdus Samad by deed dated 15.06.1965. S.A. khatian No.298 was prepared in his name. Samad died leaving six sons and two daughters. They sold .99 acre of land to Shahjahan. The plaintiffs have no title. The suit should be dismissed.

The defendant Nos. 44-52 and 55 contested the suit by filing another set of written statement contending that Nurul Islam, husband of added defendant No.44 and father of the defendant No.45-51 on 07.02.1977 purchased .13 acre of land from

plaintiff No.1 . Hossain Ali Matbor died leaving his heirs, the defendant Nos.44-51. The defendant No.52 Tofazzal Hossain purchased .0825 acre by a deed on 15.09.1996. He also purchased .0412 acre from Sheikh Farid and Muzammel Huq, father of Sheikh Farid, by deed dated 27.03.1979. He also purchased .68 acre from Farmonullah, the plaintiff No.4, which is a part of the suit land. The defendant No.55, by deed dated 09.02.1977, purchased .16 acre of land from plaintiff No.1. The defendants prayed for disposal of the suit.

The defendant Nos.60-70 contested the suit by filing a written statement contending that 84.09 acres land of C.S. plot No.565 belonged to Bhawal Raj Court of wards Estate. Bhawal Raj settled 3.44 acres to Monmoth Singh. Khaleque Munshi, in his name and in the benami of Anar Uddin, Amin Uddin, Basor Uddin, Miah Hossain, Sahabuddin, Shamsu Mia, Abdul Hakim, Abdul Barek and Akbor, took settlement of 52.71 acres of land. Khaleque Munshi filed up the ditch. While possessing 52.17 acres land, he sold 7.3067 acres land to these defendants. These defendants acquired title to 17.72 acres through different deeds and have been possessing the same. Khaleque Munshi filed Title Suit No.383 of 1983 in the Second Court of

Subordinate Judge, which was renumbered as Title Suit No.199 of 1992, and at present, the same is pending in the Fifth Court of Subordinate Judge, Dhaka. The plaintiffs' suit should be dismissed.

The defendant No.96 filed another set of written statement contending that he took a settlement of 41.64 acres of land from the Court of Wards in 1305 B.S. On 06.07.1977, he sold some land to Golam Mustafa. Golam Mustafa sold .4164 acre to the defendant No.96 on 31.08.1980 and delivered possession. Abdul Khaleque Munshi took a settlement of .62 acre land from S.A. plot No.12185 which was sold on 23.08.1965 to Gafur Miah who sold the same to the defendant No.96 on 10.12.2000. Md. Siddique sold .72 acre of land to the defendant No.96 on 22.10.1963. Mafijuddin and Asrafuddin took a settlement of .5200 acre from the Court of Wards. S.A. khatian No.659 and R.S. Khatian No.370 were prepared in their names. Ashraf died leaving Samirunnessa and Shahida Begum, two daughters Jahan and Hazira, two sons Seraj and Reza who got .65 acre of land. The heirs of Mafiz and Ashraf sold .5200 acre on 10.09.2003 to the defendant 96. Forman Ullah took settlement of .3900 acre of land from the Court of Wards and sold it to the defendant No.96 on 06.03.1956. The

widow and sons of Sona Mia sold .5950 acre to the defendant No.96. By this way, these defendants got 4.0814 acres of land. The plaintiffs' suit should be dismissed.

The defendant Nos. 98-105 also contested the suit by filling another set of written statement contending, inter alia, that Hossain Ali Matbor took pattan of 59.09 acres of land from the Court of Wards. He sold .33 acre to the added defendant Kamrul and others on 03.02.1967. They mutated their names. These defendants sold some land to Jalfu Ali on 01.02.1977. In this way, they got .66 acre of land. The plaintiffs' suit should be dismissed.

That during the pendency of the suit, a solenama was executed by the plaintiffs and the defendant Nos.18, 40-43, 56-59, 71-76, 94-96, and 97. Thereafter, the defendant Nos. 40-51 executed the second solenama with plaintiff No.1 and claimed .33 acre of land. The defendant Nos.98-106 also filed another solenama with the plaintiffs and claimed their shares.

The trial Court decreed the suit. The defendant Nos.9-10 preferred the First Appeal in the High Court Division and the High Court Division, by the impugned judgment and decrees,

disposed of the appeal noting an order of abatement. Thus, the appellant Manager, Bhawal Raj Court of Wards has preferred this appeal upon getting leave.

Mr. Md. Nurul Amin, learned Senior Counsel appearing for the appellant, submits that the plaintiffs have failed to prove their title in the property in question as such they are not entitled to get a decree. He submits that admittedly, the suit land was acquired in L.A. Case No.02/2009-2010 and as soon as L.A. case was initiated for acquiring property, all the legal proceedings in respect of the said property stand stopped by the operation of the law in view of the clear embargo envisaged in section 44 of the Acquisition and Requisition of the Immovable of the Property Ordinance, 1982 (Ordinance No.II of 1982) the trial Court as well as the High Court Division erred in law in not holding the instant suit was not at all maintainable. He submits that the High Court Division erred in law in noting the order of abatement holding that the appellants have no locus standi for preferring the appeal. He further submits that the High Court Division misconceived and misinterpreted the legal preposition of P.O.

98 of 1972 and thereby erroneously noting an order of abatement.

Mr. Azmalul Hossain, Q.C. appearing for the respondent Nos.1-36, submits upon proper consideration of the facts, circumstances, evidence on record, and the law involved in the case, the trial Court decreed the suit and the High Court Division rightly recorded the order of abatement since the appellant has had no right in the property in question after giving settlement. He further submits that the connecting C.S. khatian No.107 of Mouja Tejkunipara had been cited on page 504 of the Projabili property Gazette of 1952 (exhibit-X series) and compensation having been paid against that property by publishing compensation payment Gazette, 1956 (exhibit-X series) the Court of Wards and S.A. khatians having been prepared and published in the names of different persons by giving the effect of that Gazette of 1952, the Court of Wards, has lost its locus-standi to claim the said property. He lastly submits that the plaintiffs prove their settlement by producing sufficient evidence and thus, the trial Court after proper appreciation of the evidence on record decreed the suit, and the High Court

Division noted the order of abatement. He lastly submits that since the plaintiffs had title and possession in the property, in question and they have been to prove their case they are entitled to get a decree.

Mr. A.M. Amin Uddin, learned Attorney General appearing for the government, respondent No.45, submits that the plaintiffs have totally failed to prove their title as well as possession in the suit land before its acquisition and as such, they are not entitled to get any decree as prayed for.

Initially, the plaintiffs claimed title through their predecessor-in-interest in the suit land, who allegedly executed a kabuliyat in favour of the landlord and also claimed that their predecessor obtained a decree in Title Suit No.1114 of 1913; but it appears that no such kabuliyat was produced and in the said suit, Bhawal Raj Estate was not a party. Thus, the said decree was not binding upon the Raj Estate. It appears from the materials on record that the description of the land given in the schedule to the plaint of Title Suit No.1114 of 1913 was as follows: “ উত্তরেঃ ভাওয়াল রাজের বর্ষা পতিত জমি, পূর্বেঃ ঐ দক্ষিণেঃ এ পশ্চিমে শায় জোত স্বত্ব দখলীয় বর্ষা জমি। জমির পরিমান অনুমান ১ শ।।।। পাখী।” The plaintiffs did not take any step to prove that the

said land and the land as described in the schedule to the plaint of this suit, that is, land measuring an area of 59.36 acres out of 84.09 acres appertaining to C.S. Khatian No.107 and plot No.565 are same land. Moreover, C.S. record-of-right was not prepared in the names of the decree holders of the suit. The same was prepared in the name of Bhawal Raj Estate which has a presumptive value as to its entry. The decree holders of the said suit did not take any step to get the C.S. khatian corrected. In such circumstances, the plaintiffs are not entitled to get any benefit of the decree passed in Title Suit No.1114 of 1913.

Admitting the title of Bhawal Raj Court of Wards Estate in the suit land, the plaintiffs in their pleading stated that they had taken settlement of the suit land mentioning the dates, Chita Plot Nos., jote, Chalan Nos. and areas, which are as follows :

| সেটেলমেন্ট কেইস নং | বন্দোবস্তের তারিখ | চিঠা দাগ নং | জোত | চালান নং | পরিমান |
|-----------------------|-------------------|----------------|-----|-------------------|--------|
| ৪৮ (এম) | ১০ই কার্তিক ১৩৪৮ | ২ | ১০২ | $\frac{১৭}{১১৮০}$ | .৭০ |
| ৪৯ (এম) | ১৪ই কার্তিক ১৩৪৮ | ৩ | ১০৩ | | ৪.০১ |
| ২১৭ (এম) | ১২ই বৈশাখ, ১৩৪৯ | ৪ | ১৩৮ | ৯৯০ | ১২.৮০ |
| ১১৭/৫০ (এম) | ১৩ই আষাঢ়, ১৩৫০ | ৭ | ১০৭ | ৯০০৯ | ১৩.৯৫ |
| ২১৫ (এম) | ১৫ই শ্রাবন ১৩৫০ | ৮ | ৯৪ | $\frac{১১২}{৮০৯}$ | ১৩.৯৫ |

| | | | | | |
|----------|-----------------|---|----|-------------------------------|-------|
| ২১৫ (এম) | ১৫ই শ্রাবন ১৩৫০ | ৮ | | ১১৮ | |
| ২১৫ (এম) | ১৫ই শ্রাবন ১৩৫০ | ৮ | | ১৩৫৩ | |
| ৩৭(এম) | ১৪ই আশ্বিন ১৩৫৩ | | ৮৪ | ২৬১ ২৬৩৭১ ১৩/৭৬ ১১০৯ | ১৩.৯৫ |
| | | | | ৭৯৫৫৩ | |

মোট = ৫৯.৩৬ একর

From the plaint, it appears that the plaintiffs have claimed that their predecessors-in-interest had taken settlement .70 acre of land of Chita Plot No.2 on 10th Kartrick, 1348 B.S. in Settlement Case No.48(L); 4.01 acres of land from Chita plot No.3 on 11th Boishak, 1348 B.S. in Settlement Case No.49(M); 12.80 acres of land from Chita Plot No.4 on 12th Boishak, 1349 B.S. in Settlement Case No.217(M); 13.95 acres of land from Chita plot No.7 on 13th Asar, 1350 B.S in Settlement Case No.117/50 (M); 13.95 acres of land from Chita Plot No.8 on 15th Sraban in 1350 B.S. in Settlement Case No.215(M) and 13.95 acres of land from Chita plot No.9 on 14th Ashwin, 1353 B.S. in settlement Case No.37(M).

In order to prove Chita Map, the plaintiffs produced exhibit-10 which shows that the plaintiffs obtained the Certified Copy of the Chita Map on 02.01.1975. It appears from the Chita

map that on 15.06.1350 B.S. Surveyor Sree Ganendra Kumar Das made the following endorsement with the same: “জিলা ঢাকা কালেক্টারীৰ ৬১ নং জমিদার লক্ষী নারায়ন জিউ ঠাকুর সাবেক থানা কেৱানীগঞ্জ হালে তেজগাঁও সাকীনে পরগনে মকিমাবাদ অধিন কিসমত ২৭৮নং মৌজা তেজকুনি পাড়া স্থিত সিকিমী তালুক সিংহরাম চন্দ্র ষ্টেট কুমার রবিন্দ্র নারায়ন রায় চৌধুরী পক্ষে কোর্ট অব ওয়ার্ডস ভাওয়াল C.W. 5 State ষোল আনার মালিক পক্ষের ৫৬৫ দাগের ৮৪০৯ শতাংশ পতিত জমি উহা জবর দখলীয় প্রজার দখল মতে ষ্টেট পক্ষের ১৩৪৯ সনের ১৫নং পত্রাআদেশ মতে জরীপ মূলে দাগের মোট জমি পরিমাপ করিয়া উহার চিটা নকশা প্রস্তুত করিয়া দেওয়া হইলো।” At the top of the Chita map the word, “হরি-মহান” was also written in 1350 B.S.

That is, the Surveyor was ordered vide letter No.15 in the year 1349 B.S. to prepare a chita map upon surveying the disputed land. After preparing the same, said Surveyor put his signature on it on 15.06.1350 B.S. which clearly proved that the Chita map was prepared in 1350 B.S. but the pleading shows that mentioning the numbers of Chita plots, the plaintiffs took the settlement of the suit land on different dates which were on 10th Kartrikc 1348 B.S.; 14th Boishak, 1348 B.S.; 12th Boishak, 1349 B.S.; 13th Ahsar, 1350 B.S. and 15th Sraban, 1350 B.S. It is apparent that the chita plot numbers were shown in the settlement cases before the preparation of Chita map which created doubt about the reliability of the story of taking settlement of the suit land on the dates and years

as stated in the plaint. The Plaintiffs produced exhibit-11 to 11(Uma) to prove their story of settlement. From exhibit-11, it appears that the same was claimed to be the certified copy of the register of Bhawal Court of Wards Estate, Joydebpur. Exhibit-11 shows that in respect of chita plot No.1, there was land measuring an area of 21.44 acres which was fallen land and the same was not given settlement to any one. Exhibit 11 further shows that .70 acre of land of chita plot No.2 was given settlement to Hossain Ali and others on 14th Baishakh, 1348 B.S. but the plaint case was that the plaintiffs took the settlement of that .70 acre of land on 10th Kartic, 1348 B .S. vide Challan No. $\frac{17}{1180}$. The plaintiffs' further case was that they took the settlement of 4.01 acres of land from chita plot No.3 on 14th Baishakh, 1349 B.S. vide challan No. $\frac{1808}{1505}$ in Settlement Case No.49(M) but the exhibit-11 shows that 4.80 acres of land from chita plot No.3 was given settlement (not 4.01 acres) and the date of giving settlement was not mentioned therein. It further appears that 12.80 acres of land from Chita plot No.4 was given settlement on 12th Baisakh, 1349 B.S. vide Challan No.990 in

Settlement Case No.217(M). It further appears from exhibit No.11 that .70 acre of land from chita plot No.5 was given settlement; but from the pleading, it appears that the plaintiffs did not claim any title in the land of Chita plot No.5. It further appears from exhibit No.11 that 13.95 acres of land of chita plot No.7 was given settlement on 15.03.1350 B.S. but in the pleading, the plaintiffs claimed to have taken settlement those 13.95 acres of land in 3(three) times in one different settlement case from Chita Plot No.8 only in vide Challan No. $\frac{112}{809}$, 118 and 1353. From the exhibit-11, it further appears that one Sundar Chakrabarty, Sadar Nayeb put his signature on it on 14.6.1353 B.S. but it was the claim of the plaintiffs in the pleading that they had taken settlement of the suit land between 1348 to 1350 B.S. It further appears that there is an interpolation in giving the description of the total area of land. In the pleading, we have found that the plaintiffs claimed to have taken settlement of 4.01 acres of land from Chita plot No.3 in Settlement case No.49(M) and vide challan No. $\frac{1808}{1505}$ but produced a certified copy of the accounts register showing that 4.01 acres of land

were given settlement vide proposal No.49/T as well as challans No. 1808 was issued for the year 1353 B.S. and challan No.1555 was issued for the year 1354 B.S. Chita plot No.4 was allegedly given settlement 1349 B.S. in Settlement Case No.217(M) but it appears from the accounts register that order was passed in Settlement Case No.217(M) dated 15.10.1951 and challan number was $\frac{7}{990}$, not 990. Those inconsistencies have made the story of the settlement and those documents unreliable. Moreover, mere pleadings as to taking a settlement, in the absence of any document of settlement, either lease deed or kabuliyat or patta or pattannamna, could not substantiate the claim of the plaintiffs, even prima-facie. Furthermore, section 49 of the Registration Act, 1908 (Act No.XVI of 1908) clearly provides that a document purporting to be a permanent lease in respect of immovable property within the municipality is required to be registered. No such document as to the settlement was at all produced in the instant case. There is nothing in the pleadings or in the evidence as to the payment of consideration of taking the alleged settlement. Section 107 of the Transfer of Property Act, 1882

(Act No.IV of 1882) read with section 17 of the Registration Act, 1908 mandates that the conveyance of title through a written instrument of any immovable property worth more than tk.100/- for a period of one year or more must be registered.

From the oral evidence, it appears that P.W.1 Md. Babul Chowdhury, who claimed to be the Power of Attorney of the plaintiffs, in his cross-examination has stated that while adducing evidence he was aged about 46 years and in 1964 he was only 10 years old. The plaintiffs are his wife's relatives. In his cross-examination, he said, “কোর্ট অব ওয়ার্ডস ভাওয়াল রাজ স্টেটে যাইনি।” That is, he has had no personal knowledge about the act of the alleged settlement. He was born after the alleged settlement. In his examination-in-chief, he has stated, “ভাওয়াল রাজা নালিশী সম্পত্তি সার্ভে করার জন্য আদেশ দিয়েছিল। উক্ত আদেশ মোতাবেক ভাওয়ালের সার্ভেয়ার নাঃ দাগের জমি পরিমাপ করিয়া একটি চিটা নক্সা প্রস্তুত করে এবং নাঃ সি,এস, ৫৬৫ নং দাগকে ৯টি চিটা দাগে বিভক্ত করে। চিটা নক্সা ১৩৫০ বাংলা সনে প্রস্তুত হয়; চিটা নক্সা জমা দিয়েছি। উহা সার্টিফাইড কপি। ইহা সেই চিটা নক্সা যাহা প্রদঃ১০ হিসাবে চিহ্নিত।” That is, he admitted that Chita map was prepared in 1350 B.S. but almost all the settlements were allegedly given before the preparation of the Chita map. We have already found that in every settlement case, the plaintiffs mentioned the

Chita plot numbers, but admittedly, the Chita map was prepared after the alleged settlement, which clearly proved that those documents were fabricated. To prove exhibit No.11-11(5) the plaintiffs examined P.W.2, a suspended staff of Dhaka Collectorate, who in his cross examination has said, “বর্তমানে আমি সাময়িকভাবে বরখাস্ত। যে রেজিষ্ট্রি থেকে কম্পিয়ার করেছি উহা কাগজ দেখে বলতে পারব। উক্ত মূল রেজিষ্ট্রিতে কার কার স্বাক্ষর আছে বলতে পারব না। আমার নাম স্বাক্ষর পুরা নাম নাই। অনুস্বাক্ষর আছে। আমি সহকারী হিসাবে স্বাক্ষর দিয়েছি উহার কোন মিল নাই।” In view of the nature of exhibit No.10 and 11 series and the oral evidence, it is apparent that those had been created for the purpose of the suit and those were not proved in accordance with law.

The plaintiffs produced some private dakhilas exhibit No.12 series but they did not take any steps to prove their execution and authenticity. Mere production of private rent receipts and marking them as exhibits by the Court cannot be taken as due proof of execution of the rent receipts. Marking documents as exhibits and assessing their proof are two different concepts. Production of those rent receipts without anything more cannot, therefore, carry the case of the plaintiffs very far. Because a document has been marked as “an exhibit”, an objection as to

its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision, considering the facts and prevailing circumstances of the case. Where there are suspicious circumstances regarding any document, the onus is on the producer to explain them to the satisfaction of the Court and when such responsibility is discharged, the Court will accept the document as genuine. We have by ourselves gone through those rent receipts and found that they are not above suspicion or challenge. In fact, the produced rent receipts are full of suspicion. Out of 14 rent receipts, it appears that book No.601 bears receipts No.60074, 60083, 60082, 60074, 60083, and 60082. That is, the same receipt number has been used twice. Similarly, book No.716 bears receipt No.71592 twice. Two of the produced rent receipts do not bear any number. That is, manipulation is apparent. Moreover, counterfoils of those rent receipts had not been produced. Furthermore, the issue of the rent receipts cannot be held to be a proof of title of the plaintiffs. Similarly, the plaintiffs would not be entitled to any claim on the land solely based on an entry in the revenue record since the revenue record does not confer

title to the property nor do they have any presumptive value on the title.

The plaintiffs failed to produce any other documents to prove their title and curiously none of the plaintiffs have been examined even to prove the title of the plaintiffs and the title documents as well. The burden was on the plaintiffs to prove their title. The persons who set up a title to property must prove their title. We have no hesitation in holding that the plaintiffs having failed to prove their title and the title of their predecessors having not being proved, even the contesting defendants are found to be trespassers, the plaintiffs could not succeed on the weakness of the defendants' case.

Since the plaintiffs have failed to prove their settlement, they are not entitled to get any decree. The trial Court has committed a serious error of law in decreeing the suit and directing the Government to pay compensation to the plaintiffs. The High Court Division in First Appeal, without ascertaining whether the plaintiffs were entitled to get a decree or not, erroneously noted the order of abetment of appeal which has caused a total failure of justice. Both the Courts have misappreciated the evidence and

ignored the weight of evidence on record. In view of the discussions made above, we do not find force in the submission of Mr. Hossain.

Considering the aforesaid facts and circumstances, we find merit in the appeal.

Thus, the appeal is allowed. The judgment and decree passed by the trial Court is hereby set aside. The judgment and decree dated 15.06.2016 passed by the High Court Division is also set aside.

C.J.

J.

J.

The 10th August, 2022.

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